



BULAN INSTITUTE
for PEACE INNOVATIONS

Source: Olav Saltbones, Norwegian Red Cross



State Obligations and International Norms towards Children with Links to ISIS Being Held in North-Eastern Syria

Policy Paper, March 2021

Table of Contents

1	Introduction.....	4-10
	<i>1.1 Conditions in the detention camps in North-Eastern Syria</i>	5-7
	<i>1.2 Prosecution of children and prison conditions in Iraq</i>	7-8
	<i>1.3 Repatriation efforts of UN Member States towards children</i>	8-10
2	Applicable Human Rights and Humanitarian Law.....	11-19
	<i>2.1 The Universal Declaration of Human Rights</i>	11
	<i>2.2 The International Covenant on Civil and Political Rights</i>	12
	<i>2.3 The International Covenant on Economic, Social and Cultural Rights.</i>	12-13
	<i>2.4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>	13-14
	<i>2.5 Convention on the Reduction of Statelessness</i>	14
	<i>2.6 Convention on the Elimination of All Forms of Discrimination against Women</i>	14-15
	<i>2.7 Security Council Resolution 2178</i>	15
	<i>2.8 Security Council Resolution 2396</i>	15-16
	<i>2.9 The Convention on the Rights of the Child</i>	16-17
	<i>2.10 Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict</i>	17-18
	<i>2.11 Security Council Resolution 2427</i>	18
	<i>2.12 The Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups</i>	18-19
3	Summary and Conclusions.....	20-22
4	Bibliography.....	23-28

About Us

The Bulan Institute for Peace Innovations is a research institute and non-governmental organization that aims to promote peacebuilding and human rights-based dialogue on security in Eurasia, Central Asia and South Asia. Its headquarters are located in Geneva, Switzerland, with an additional regional office in Bishkek, Kyrgyzstan. The Institute works to promote peace and human rights through field-centred research, building dialogue and advocacy. Since 2018, the Bulan Institute has been observing state policies regarding returning foreign fighters, with a special focus on women and children.

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1. Introduction

This policy paper highlights the plight of children originating from other countries who are being held in camps and prisons in North-Eastern Syria and Iraq and aims to elucidate obligations of UN Member States towards them. These children are currently being held in camps set up to accommodate individuals and families who previously lived under ISIS and other associated terrorist groups in the region and prisons in Iraq. As victims of conflict who were either brought to or born in the area, these children remain extremely vulnerable and face multiple violations of their rights under international law. The preventable deaths of eight children under five years of age being held in such camps in Syria, over a period of only four days in August 2020, provide a mere glimpse of the most serious threats facing foreign children and children originating from Syria and Iraq being held in detention in the region.¹

The obligations of UN Member States to address this desperate situation stem from their commitment to multiple essential international binding instruments including:

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

CONVENTION ON THE REDUCTION OF STATELESSNESS

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

SECURITY COUNCIL RESOLUTION 2178

SECURITY COUNCIL RESOLUTION 2396

THE CONVENTION ON THE RIGHTS OF THE CHILD

OPTIONAL PROTOCOL TO THE CONVENTION OF THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

SECURITY COUNCIL RESOLUTION 2427

¹ UNICEF, 'Eight Children Die in Al Hol Camp, Northeastern Syria in Less than a Week', accessed 26 February 2021, <https://www.unicef.org/press-releases/eight-children-die-al-hol-camp-northeastern-syria-less-week>.

The aforementioned treaties, declarations and resolutions contain the minimum obligations agreed upon by the States, which they must guarantee to the population in its territory (*ratione loci*) and outside of it (*ratione personae*)². Their relevance to the particular situation of children being deprived of their liberty in Syria and Iraq lies in giving substance to rights to ensure their safety, *inter alia*, access to justice, a life free from violence and minimum conditions of detention. The relevant aspects of these instruments are laid out in this policy paper and are offered as a guide to subsequent action by States, providing both the impetus for and information pertinent to the necessary features of any intervention. Specifically, the paper furthers the cause of a growing contingent of Non-Governmental Organisations, Special Rapporteurs from the United Nations, and Human Rights groups calling for the immediate repatriation of children from North-Eastern Syria and Iraq. Immediate and comprehensive policy change is essential to restore adherence and integrity to these commitments and to reinforce rights-based efforts to bring peace and prevent atrocities internationally.

1.1 Conditions in the Camps in North-Eastern Syria

When former ISIS strongholds in Syria collapsed in March 2019, thousands of so-called foreign fighters and their families were captured by the Syrian Democratic Forces (SDF), a predominantly Kurdish organisation including Arab groups³. These detainees were either imprisoned or put into one of two camps in the region, the largest of which is Al-Hol in Al-Hasakah Province. By May 2020, Save the Children estimated that approximately 68,000 people were being held in Al-Hol camp. An estimated 43,000 of those people were children, mainly from Syria and Iraq, but also including 7,000 children with claims to foreign nationality. The second-largest camp, Al-Roj, to the South-East of Al-Hol, held people from 66 different countries, including approximately 1,000 children. The vast majority of foreigners remain in the camps⁴.

In response to the deaths of eight children under the age of five in Al-Hol camp in August 2020, UNICEF stated that a longer-term solution is long overdue. “Children in Al-Hol, like all children affected by conflict, have the right to humanitarian assistance. Those born to foreign nationals have the right to be safeguarded, including with legal documentation, family reunification and

² United Nations Human Rights Special Procedures, ‘Extra-Territorial Jurisdiction of States over Children and Their Guardians in Camps, Prisons, or Elsewhere in the Northern Syrian Arab Republic’ (United Nations, 2020), <https://www.ohchr.org/Documents/Issues/Executions/UNSRsPublicJurisdictionAnalysis2020.pdf>.

³ Neil J. Saad, ‘The Al Hol Camp in Northeast Syria: Health and Humanitarian Challenges’, *BMJ Global Health* 5, no. 7 (July 2020): e002491, <https://doi.org/10.1136/bmjgh-2020-002491>.

⁴ Save the Children, ‘Syria: Thousands of Foreign Children in Al Hol Camp Must Be Repatriated given Coronavirus Fears’, Save the Children International, 11 May 2020, <https://www.savethechildren.net/news/syria-thousands-foreign-children-al-hol-camp-must-be-repatriated-given-coronavirus-fears-0>.

repatriation to their home countries when it is in their best interest.”⁵ Save the Children noted that each of the deceased children’s conditions was treatable and that their deaths could have been prevented by access to proper health services.⁶ Far from isolated events, this tragic loss of life reflects the current conditions in the camps, which have been described as untenable and abhorrent. Understanding of the basic needs of children is well-established and has informed minimum standards of social rights, health care and education provision in countries around the world. Survival in childhood is reliant upon access to quality maternal antenatal care, shelter, security and responsive caregivers, food and water, healthcare and immunisation. The ability to thrive personally, socially and economically is fostered through access to opportunities for socialisation, play and education.⁷

Upon their arrival in the camps, children reportedly presented as exhausted and malnourished due to their exposure to armed conflict and associated homelessness and deprivation.⁸ Some of the children faced forced separation from parents who were imprisoned in separate quarters for suspected involvement in atrocities. Hundreds of families were left without adequate shelter from the open air and have been directly exposed to the Syrian winter. The camps continue to suffer from poor water and sanitary conditions, with families having to queue for hours to receive just three litres of water per day for drinking and cleaning. The quality of the water provided is also extremely poor, leading to waterborne diseases and potentially life-threatening symptoms such as severe diarrhoea.⁹ An International Crisis Group Report from November 2019 summarised reported cases of acute diarrhoea, severe malnutrition, tuberculosis, measles, and hepatitis among the children in Al-Hol camp, with deaths from pneumonia and hypothermia being common during winter.¹⁰ The report also highlighted the sexual violence occurring against women and girls, as some are subjected to forced marriage.¹¹

Lack of access to water and sanitation is a major concern in the light of the global pandemic of coronavirus, COVID-19, and the emergence of more highly infectious variants. Save the Children recognizes that children in the camps are particularly vulnerable to infection, given the fact that there are higher rates of pre-existing health conditions and weakened immunity among the younger detainees, perhaps not least in part due to their exposure to chronic stress¹². In the

⁵ ‘Eight Children Die in Al Hol Camp, Northeastern Syria in Less than a Week’.

⁶ Save the Children, ‘Syria: Child Death Rate Triples in Al-Hol Camp as Medical Access Deteriorates’, Save the Children International, 13 August 2020, <https://www.savethechildren.net/news/syria-child-death-rate-triples-al-hol-camp-medical-access-deteriorates>.

⁷ National Research Council (US) and Institute of Medicine (US), *Influences on Children’s Health, Children’s Health, The Nation’s Wealth: Assessing and Improving Child Health* (Washington DC: National Academies Press (US), 2004), https://www.ncbi.nlm.nih.gov/books/NBK92206/pdf/Bookshelf_NBK92206.pdf. World Health Organisation, ‘Children: Improving Survival and Well-Being’, accessed 19 February 2021, <https://www.who.int/news-room/fact-sheets/detail/children-reducing-mortality>. Ingrid Schoon et al., ‘Wellbeing of Children: Early Influences’ (Nuffield Foundation, 1 April 2013), <https://www.nuffieldfoundation.org/project/well-being-of-children-early-influences>. June Statham and Elaine Chase, ‘Childhood Wellbeing: A Brief Overview’ (Childhood Wellbeing Research Centre, August 2010), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/183197/Child-Wellbeing-Brief.pdf.

⁸ Saad, ‘The Al Hol Camp in Northeast Syria’.

⁹ Ibid.

¹⁰ ‘Women and Children First: Repatriating the Westerners Affiliated with ISIS’ (International Crisis Group, 18 November 2019), <https://d2071andvip0wj.cloudfront.net/208-women-and-children-first.pdf>.

¹¹ ‘Women and Children First’. Pages 3,6 and 8.

¹² Jennifer N. Morey et al., ‘Current Directions in Stress and Human Immune Function’, *Current Opinion in Psychology* 5 (1 October 2015): 13–17, <https://doi.org/10.1016/j.copsyc.2015.03.007>.

event of a high number of infectious cases, it can be assumed that any existing healthcare provision will be woefully inadequate leading to a high number of deaths and unnecessary suffering.

Exposure to violence, armed conflict and deprivation can have severe neurobiological, psychological and physical effects, particularly when children have directly witnessed, been manipulated or coerced into, participating in violence¹³. Reports indicate that children held in the camps in Syria are presenting with symptoms of anxiety and post-traumatic stress which are not being addressed.¹⁴ Reports suggest children spend a lot of time unsupervised within the camps. Incidences of sexual abuse against children during detention have been reported with few apparent interventions to safeguard young people, attend appropriately to their emotional or physical injuries, or to identify and punish perpetrators.¹⁵ Many children have been exposed to violence within the family and they continue to be exposed to radical ideologies.^{16 17} Exposure to multiple adverse childhood experiences has cumulative effects associated with an increased risk of negative outcomes in later life, including poor mental health, physical illness, substance abuse and risk-taking.¹⁸ As such, not only must children be recognised as victims of conflict, their ongoing exposure to potentially traumatising conditions in camps and prisons places them at immediate and enduring risk of harm both now and in the future.¹⁹

1.2 Prosecution of Children and Prison Conditions in Iraq

Human Rights Watch estimated that Iraqi federal authorities and Kurdish authorities had detained around 1,500 children in Iraq by the end of 2018, and at least 185 children of foreign nationals were convicted and sentenced to prison terms under anti-terrorism laws by mid-2019.²⁰ The Iraqi legal system stipulates that criminal responsibility applies from nine years of age, which places foreign children who were taken to Syria at increased risk of facing prosecution. International standards maintain that even if children have committed acts of violence, their

¹³ Ayesha Kadir, Sherry Shenoda, and Jeffrey Goldhagen, 'Effects of Armed Conflict on Child Health and Development: A Systematic Review', *PLoS ONE* 14, no. 1 (16 January 2019), <https://doi.org/10.1371/journal.pone.0210071>.

¹⁴ Saad, 'The Al Hol Camp in Northeast Syria'.

¹⁵ *Women and Children First*.

¹⁶ Orlaith Minogue and Amjad Yamin, 'A Children's Crisis: Update on Al Hol Camp and COVID-19 Concerns' (Save the Children, 6 May 2020), <https://resourcecentre.savethechildren.net/library/childrens-crisis-update-al-hol-camp-and-covid-19-concerns>.

¹⁷ Christian Vianna de Azevedo, 'ISIS Resurgence in Al Hawl Camp and Human Smuggling Enterprises in Syria: Crime and Terror Convergence?', *Perspectives on Terrorism* 14, no. 4 (2020): 43–63.

'Isis Women Languish in Dire Conditions with Nowhere Else to Go', *The Guardian*, 26 February 2021, sec. World news, <http://www.theguardian.com/world/2021/feb/26/isis-women-languish-in-dire-conditions-al-hawl-shamima-begum>.

¹⁸ Vincent J. Felitti et al., 'Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study', *American Journal of Preventive Medicine* 14, no. 4 (1 May 1998): 245–58, [https://doi.org/10.1016/S0749-3797\(98\)00017-8](https://doi.org/10.1016/S0749-3797(98)00017-8).

¹⁹ Fionnuala Ní Aoláin, 'The Challenges of a New UN Security Council Resolution on Foreign Fighters', Just Security, 17 August 2020, <https://www.justsecurity.org/72052/the-challenges-of-a-new-un-security-council-resolution-on-foreign-fighters/>.

²⁰ Jo Becker, 'Iraq's ISIS Trials Don't Deliver Justice – Including for Children', Human Rights Watch, 31 January 2020, <https://www.hrw.org/news/2020/01/31/iraqs-isis-trials-dont-deliver-justice-including-children>.

incarceration should be a measure of last resort, with sentencing prioritizing rehabilitation.²¹ Convictions related to terrorism in Iraq, however, can lead to the death penalty.

Although Iraq has relinquished custody of some foreign children, a large number remain in detention on charges pertaining to illegal immigration into the country and alleged activities in support of ISIS and affiliated groups.²² Pre-trial investigations are typically controlled by the police and military, use of force by whom cannot be ruled out. This presents a particular concern for children who, by virtue of their relative powerlessness and level of maturity, are highly susceptible to coercion. Indeed, there have been allegations of beatings, use of electric shocks, and other means of torture being used by the authorities in order to extract confessions, according to a report by Human Rights Watch.²³ This is despite the fact that torture to extract confession is prohibited under articles 19 and 37 of Iraq's 2005 constitution.²⁴ Sentences ranging from ten to twenty years' imprisonment have been handed down based upon forced confessions.

In an investigation corroborating the findings of a UNAMI and OHCHR joint report, Human Rights Watch highlighted the sweeping and rash measures used to prosecute children holding any known affiliation to terrorist groups.²⁵ They found that prosecutions came after inadequate investigations which failed to comply with international standards for fair trials and due process. Lack of defence access to state's evidence, lack of cross-examination of witnesses, inadequate translation services, and rushed proceedings are all concerns that have been raised.²⁶

As in Syria's detention camps, poor health and sanitary conditions are endemic in Iraq's prison system, as is a lack of medical attention and insufficient nourishment. Not only are children aged nine years and above who have been charged with or convicted of offences exposed to these conditions, young children under the age of three whose mothers have been incarcerated are also suffering alongside them in the prisons. Children aged between three and nine years, whose mothers have been incarcerated, are forcibly separated from them and placed in residential institutions, the conditions of which appear unknown.²⁷

1.3 Repatriation Efforts of UN Member States towards Children

²¹ Jo Becker and Belkis Wille, "'Everyone Must Confess': Abuses against Children Suspected of ISIS Affiliation in Iraq' (New York, N.Y.: Human Rights Watch, 2019).

²² Reuters Staff, 'Iraq Hands over 188 Turkish Children of Suspected Islamic State Members', *Reuters*, 29 May 2019, <https://www.reuters.com/article/us-iraq-court-turkey-idUSKCN1SZ0XV>.

²³ Becker and Wille, 'Everyone Must Confess'.

²⁴ Becker and Wille, 'Everyone Must Confess'.

²⁵ United Nations Assistance Mission for Iraq and Office of the United Nations High Commissioner for Human Rights, 'Human Rights in the Administration of Justice in Iraq: Trials under the Anti-Terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL' (United Nations, January 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25504&LangID=E>.

²⁶ Bulan Institute for Peace Innovations, 'Detention and Prosecution of Former ISIS Fighters in Iraq: Lessons Learned and an Assessment of the Deficits of the Judicial System' (Bulan Institute for Peace Innovations, 22 August 2020), <https://bulaninstitute.org/wp-content/uploads/2021/01/Policy-Paper-on-Iraq.pdf>.

²⁷ Human Rights Watch, 'Iraq: Change Approach to Foreign Women, Children in ISIS-Linked Trials', Human Rights Watch, 21 June 2018, <https://www.hrw.org/news/2018/06/21/iraq-change-approach-foreign-women-children-isis-linked-trials>.

The repatriation of foreign children has been a slow and inconsistent process. A few countries, most notably Kazakhstan, Kosovo and Uzbekistan, have made significant repatriation efforts of both women and children, while Tajikistan, Russia and Kyrgyzstan have repatriated children only. Through a number of operations, Kazakhstan successfully repatriated 595 citizens from Syria, the majority of whom were children.²⁸ Medical care, education, individual and group therapy, religious counselling and cultural activities have been provided at a dedicated rehabilitation centre with reintegration support once citizens return to their local community or that of their extended family. Whilst the long-term impact of the programme will not be evident for some time, Kazakhstan's approach provides a hopeful example of how solutions proposed by the Office of the Special Representative for the Secretary General on Violence Against Children can be enacted.²⁹

Kosovo provides another example of remarkable efforts to repatriate citizens from detention in Syria and Iraq. Through formal and informal channels, the number of returnees has been estimated as 242, of which 124 were men, 38 women, and 80 children. As in Kazakhstan, the repatriation process has included a comprehensive system of care and rehabilitation, providing medical and psychiatric treatment, housing, education, and other social services with the aim of effectively reintegrating the returnees. Kosovo's example stands out as the most proactive among European countries in making efforts to this degree.³⁰ Alongside Kazakhstan and Kosovo, Russia has repatriated many children from the camps in Syria, 274 in total, and has also begun the process of identifying and repatriating a further 36 children from camps in Turkey. Rehabilitation programmes have been developed with individualised approaches and multi-disciplinary care³¹. On 16 March 2021, Kyrgyzstan repatriated 79 children from Iraq whose mothers are serving their terms in Iraqi prisons³².

Many other States have been hesitant or have increasingly evaded their responsibilities by stripping the citizenship of their nationals. This practice has typically emerged in cases when the affected person reportedly has claims to more than one citizenship, thus avoiding rendering him or her stateless.³³ However, in reality, some countries have presumed dual citizenship without any real safeguards to prove it, leaving the person *de facto* stateless. Countries like Belgium and Denmark require a criminal sentence to deprive a national from their citizenship.³⁴ The United

²⁸ Sarah Wolfe and Cholpon Orozobekova, 'Lessons Learned from Kazakhstan's Repatriation and Rehabilitation of "Foreign Fighters"' (Bulan Institute for Peace Innovations, 20 June 2020), <https://bulaninstitute.org/wp-content/uploads/2021/01/Lessons-Learned-from-Kazakhstan-Experience.pdf>.

²⁹ Special Representative of the Secretary-General on Violence against Children, 'Solutions for Children Previously Affiliated With Extremist Groups: An Evidence Base to Inform Repatriation, Rehabilitation and Reintegration' (United Nations: UN Special Representative of the Secretary-General on Violence Against Children, 2020), https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/2020/reports_extremism/un_hq_osrsg_solutions_for_children_previously_affiliated_with_extremist_groups_20-01153_lo-res.pdf.

³⁰ Teuta Avdimetaj and Julie Coleman, 'What EU Member States Can Learn from Kosovo's Experience in Repatriating Former Foreign Fighters and Their Families' (Clingendael Institute, 2020), <https://www.jstor.org/stable/resrep24659>.

³¹ Panel discussion with Anna Kuznetsova, Children's Rights Commissioner for the President of the Russian Federation, 'Repatriation, reintegration and resocialization of children repatriated from conflict zones: Online side event on the margins of the 46th session of the Human Rights Council', (11 March 2021).

³² UNICEF, 'Statement of UNICEF Representative, Christine Jaulmes, on the Repatriation of Kyrgyzstani Children from Iraq', 16 March 2021, <https://www.unicef.org/kyrgyzstan/press-releases/statement-unicef-representative-christine-jaulmes-repatriation-kyrgyzstani-children>.

³³ Amandine Scherrer et al., 'The Return of Foreign Fighters to EU Soil: Ex-Post Evaluation - Think Tank' (European Parliament, May 2018), [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621811/EPRS_STU\(2018\)621811_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/621811/EPRS_STU(2018)621811_EN.pdf).

³⁴ *ibid.*

Kingdom has a lower threshold. They can deprive a person of their British citizenship when he or she has been deemed to have behaved “in a manner which is seriously prejudicial to the vital interest of the [UK]”.³⁵

Shamima Begum’s case has been in the spotlight, a British citizen at birth who travelled at the age of 15 to Syria with two friends in 2015. As was typically demanded of women associated with ISIS, Ms Begum was married to a combatant and she allegedly aligned herself with the group. She is currently detained in Al-Roj camp and has suffered the loss of three children. Ms Begum now wishes to return to the UK to face trial if required and to access medical care and education. On 19 February 2019, the Secretary of State for the Home Office took the decision to deprive her of her British citizenship, on the basis that her return would represent a risk to national security. On 26 February 2021, the Supreme Court from the UK ruled that Ms Begum cannot return to British territory to legally affront her appeal against the decision of the Secretary of State.³⁶

There are several significant challenges facing States considering the repatriation of children, such as confirming the nationalities of those without documentation, whether through DNA testing or other means.³⁷ In a recent webinar hosted by the Bulan Institute for Peace Innovations on repatriation and rehabilitation of ISIS associates, Anne Charbord, legal advisor to the UN Special Rapporteur on Human Rights while countering terrorism, expressed concern about the collection of detainees’ personal information, including DNA samples, which must comply international human rights standards.³⁸ Although repatriation is not explicitly listed in any binding instrument as a right, its relevance in ensuring the rights of detained persons has been recognised. For instance, the Secretary General of the UN, Antonio Guterres, signed the Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children, which highlights that any repatriation effort needs to consider humanitarian and human rights standards, as well the dimensions of gender and age.³⁹

Counter-terror responses and the securitisation of children have become commonplace, which suggests State responses have so far been guided heavily by presumptions of criminal and extremist intent.⁴⁰ Placing children who are currently in Syria and Iraq, the majority of whom are under 12 years of age, in the pre-criminal space has blinded human rights and humanitarian considerations.⁴¹ The repatriation of only 10 children to France in June 2020 demonstrates that

³⁵ UK Parliament, ‘British Nationality Act 1981’, § 40 (1981), <https://www.legislation.gov.uk/ukpga/1981/61/section/40>.

³⁶ The Supreme Court, ‘R (on the Application of Begum) (Respondent) v Secretary of State for the Home Department (Appellant) - The Supreme Court’ <<https://www.supremecourt.uk/cases/uksc-2020-0157.html>> accessed 26 February 2021.

³⁷ Scherrer et al., ‘The Return of Foreign Fighters to EU Soil’.

³⁸ Interview with Anne Charbord, Legal Advisor to the UN Special Rapporteur on human rights while countering terrorism, ‘Repatriation and Rehabilitation of ISIS Associates: Challenges, Risks and Lessons Learned’ (4 March 2021).

³⁹ United Nations, ‘Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups’, April 2019, https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/Key%20Principles%20-%20April%202019_0.pdf.

⁴⁰ Francesca Capone, ‘The Children (and Wives) of Foreign ISIS Fighters: Which Obligations upon the States of Nationality?’, *Questions of International Law* Zoom In, no. 60 (23 September 2019): 67–97. <http://www.qil-qdi.org/the-children-and-wives-of-foreign-isis-fighters-which-obligations-upon-the-states-of-nationality/>

⁴¹ Romyana van Ark, Faith Gordon, and Devyani Prabhat, ‘Repatriating the Forgotten Children of ISIS Fighters: A Matter of Urgency’, *Globalcit*, 8 May 2020, <https://globalcit.eu/repatriating-the-forgotten-children-of-isis-fighters-a-matter-of-urgency/>.

repatriation is possible but highly selective.⁴² Priority has been given to orphans and children who have been separated from their parents. Those separations reportedly involved parental consent, but in the face of very little choice due to refusals to support adults to return. Belgium stands out as one of the European countries which has expedited their efforts to recover ten children aged 12 or younger, following a court order made in December 2019, due to the deteriorating conditions in Al-Hol camp⁴³.

2. Applicable Human Rights and Humanitarian Law

The following section expounds that the obligations of States to protect the children of foreign fighters stem first and foremost from international human rights and humanitarian law. This argument is supported by the obligations established on the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), UN Conventions on Statelessness (1954 and 1961), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Security Council Resolutions 2178 (2014), 2396 (2017), and 2427 (2018). Additionally, the Convention on the Rights of the Child and the Optional Protocol on the Involvement of Children in Armed Conflict, and the Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups.

2.1 The Universal Declaration of Human Rights⁴⁴

The UDHR, the foundation of international human rights, states that everyone is entitled to all rights and freedoms, without distinction on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Notably, it also stipulates that no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.⁴⁵ This makes it clear that even foreign fighters and associated individuals, such as their families, are entitled to basic rights by virtue of being human. Moreover, no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment,⁴⁶ especially children who, due to their status as minors, are already vulnerable.

UDHR also deems it unjust to consider children stateless since they had no part in the process of being declared so. Article 15 clearly presents that everyone has the right to a nationality and no

⁴² Constant Mehéut and Ben Hubbard, 'France Brings 10 Children of French Jihadists Home From Syria', *New York Times*, 22 June 2020, <https://www.nytimes.com/2020/06/22/world/europe/france-isis-children-repatriated.html>.

⁴³ Marine Strauss, 'Belgium to Repatriate Children and Some Mothers Held in Syria', Reuters, 4 March 2021, <https://www.reuters.com/article/us-mideast-crisis-syria-belgium-idUSKCN2AW2J2>.

⁴⁴ The United Nations General Assembly. 1948. "Universal Declaration of Human Rights", 217 A (III) <https://www.un.org/en/universal-declaration-human-rights/>

⁴⁵ Article 2, *UDHR*

⁴⁶ Article 5, *UDHR*

one should be arbitrarily deprived of the same, nor denied the right to change their nationality.⁴⁷ The UDHR also states that everyone has the right to leave any country, including their own, and also to return to their country.⁴⁸ While judicial prosecutions of formerly active ISIS foreign fighters are essential, the UDHR must be upheld for children who either have no active part in the hostilities, or were forced by the adults to partake in their actions.

2.2 The International Covenant on Civil and Political Rights⁴⁹

The ICCPR is a multilateral treaty that came into force in March 1976. Even in situations wherein children may be pronounced guilty of crimes, the ICCPR expressly declares that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.⁵⁰ The ICCPR reiterates that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁵¹ Article 17 establishes that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Moreover, the ICCPR makes it abundantly clear that every child should have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by their status as a minor, on the part of their family, society and the State.⁵²

Since the families and surrounding environments of these children are not ideal to provide protection, the responsibility falls to the States to undertake measures to ensure that protection. Collection of biometric data requires careful consideration and safeguards which, if neglected, can result in serious breaches of the right to privacy and misuse of information. Any resulting restrictions must be aimed at protecting a legitimate aim and with due regard for the principles of necessity, proportionality and non-discrimination.

2.3 The International Covenant on Economic, Social and Cultural Rights.

The ICESCR is a multilateral treaty which came into force in 3 January 1976. It expressly declares that everyone has the right to education,⁵³ which implies whether public or private, formal or non-formal, it shall “enable all persons to participate effectively in a free society”, and it shall promote understanding among all “ethnic” groups, as well as nations and racial and

⁴⁷ Article 15(1) and 15(2), *UDHR*

⁴⁸ Article 13(2), *UDHR*

⁴⁹ The United Nations General Assembly. 1966. “International Covenant on Civil and Political Rights.” *Treaty Series* 999: 171. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁵⁰ Article 10(1), *ICCPR*

⁵¹ Article 7, *ICCPR*

⁵² Article 24(1), *ICCPR*

⁵³ The United Nations General Assembly. 1966. “International Covenant on Economic, Social, and Cultural Rights.” *Treaty Series* 993: 3. Article 13, *ICESCR*

religious groups.⁵⁴ The ICESCR establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,⁵⁵ that consists not only of health care, but embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.⁵⁶ Also, the ICESCR recognises the right of everyone to an adequate standard of living.⁵⁷ To that aim, the Committee on Economic, Social and Cultural Rights (CESCR), has recognised that water is essential to realize other human rights, such as, food, health and cultural rights.⁵⁸ The adequacy of this right depends on the different contexts where it will be implemented, always ensuring its availability, quality, accessibility and receiving information on the above.⁵⁹

As mentioned, all these rights have to be guaranteed even when children are being detained. The Standard Minimum Rules for the Treatment of Prisoners (so-called Mandela Rules) foresee good principles and practices in the treatment of prisoners, *inter alia*, access to proper health care (Rules 24-35), regular contact with friends and family (Rules 58-63) and the provision of education (Rules 104-105), and water (rule 18 and 22). The international community has to make efforts to ensure that these rights are guaranteed in the camps and prisons holding people associated with ISIS and other displaced persons. The current situation leaves children without opportunities. A lack of adequate education denies children the opportunity to broaden their world view and nurture their curiosity. In being deprived of this opportunity, the children in detention remain vulnerable to extremist views and, by extension, the label of potential “risks to national security”. Moreover, due to the conditions of their detention and the lack of basic care, sufficient food, shelter from the elements, safe water, adequate sanitation, medical services, education and to risks of further harassment, violence, exploitation and sexual and other forms of abuse, the impact of their situation on their most basic rights is severe.

2.4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The CAT is a multilateral treaty that entered into force on 26 June 1987. Article 1 establishes that torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting

⁵⁴ General Comment 13. *CESCR*. Par. 4

⁵⁵ Article 12, *ICESCR*

⁵⁶ General Comment.14. *CESCR*. Par.4.

⁵⁷ Article 11, *ICESCR*

⁵⁸ General Comment 15. *CESCR*. Par. 6.

⁵⁹ *Ibid.* Par. 15.

in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

As it is recognised as *jus cogens*, all the states need to take effective measures to prevent acts of torture in any territory under its jurisdiction, and no exceptional circumstances whatsoever can be invoked as a justification to perpetrate it.⁶⁰ For these reasons, any evidence obtained with torture will be inadmissible and the states shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.⁶¹ It has been reported that many of the convicted juveniles' convictions are supported by confessions obtained under torture. In view of the international obligations, all evidence must be excluded and all other evidentiary material must be assessed to determine whether liability may exist; and initiate investigations to hold the perpetrators accountable.

2.5 Convention on the Reduction of Statelessness

The two conventions of the UN system, the Convention relating to the Status of Stateless Persons (1954) and Convention on the Reduction of Statelessness (1961), which entered into force on 6 June 1960 and 13 December 1975 respectively, establish obligations to the states regarding the right of citizenship and avoid rendering people stateless. The right of citizenship is considered the right to have rights. Like any other human right, it is not absolute, and states are entitled to deprive of citizenship. However, this deprivation is attached to safeguards, because states must avoid leaving a person stateless, and any action is ruled by the principles of necessity, proportionality and reasonableness.⁶² It is of the utmost importance that states only deprive their citizens of their nationality in cases of extreme exception and with the necessary safeguards to prevent leaving them stateless. Citizenship is an essential prerequisite for repatriation, which cannot occur without documentation. Thus, to render someone stateless is to deny them any opportunity to leave the camps and prisons now or in the future. The reader is referred once again to the examples of Kazakhstan and Kosovo regarding how repatriation is the ideal solution to address the needs of children being detained in Syria and Iraq.

2.6 Convention on the Elimination of All Forms of Discrimination against Women

The CEDAW is a multilateral treaty that entered into force on 3 September 1981⁶³. Article 2 provides the overarching obligation of State parties to pursue, by all appropriate means and

⁶⁰ The United Nations General Assembly. 1984. "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *Treaty Series* 1465: 85.

Article 2, *CAT*

⁶¹ Article 15, *CAT*

⁶² United Nations Human Rights Council. 2011. Human Rights and Arbitrary Deprivation of Nationality. Report by the Secretary-general. 19 December 2011. A/HRC/19/43.

United Nations Human Rights Council. 2013. Human Rights and Arbitrary Deprivation of Nationality. Report by the Secretary-general. 19 December 2013. A/HRC/25/28.

⁶³ The United Nations General Assembly. 1979. "Convention on the Elimination of Discrimination Against Women." *Treaty Series* 1249:13.

without delay, a policy of eliminating discrimination against women, including gender-based violence against women. According to the General Recommendation of the Committee on the Elimination of all forms of Discrimination Against Women (General Recommendations No. 19, 28, 30 and 35)⁶⁴ conflict-related violence happens everywhere - including detention facilities, within which women are at a very high risk of being exposed to violence. The Working Group on Discrimination against Women and Girls emphasizes in its report on Women Deprived of Liberty (A/HRC/41/33) that women's deprivation of liberty is a significant concern around the world and severely infringes their human rights⁶⁵. States have an obligation to prevent, investigate, prosecute and punish any acts of gender-based violence. Therefore, all reported acts of violence against girls and young women inside the camps, *inter alia*, sexual abuse and forced marriage, must be investigated with due diligence.

2.7 Security Council Resolution 2178 (2014)⁶⁶

The UN Security Council's Resolution 2178 pronounces that member States must ensure that any measures taken to counter terrorism must comply with all their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law. Respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures.

It is pertinent to address the underlying factors to meaningfully address the threats posed by foreign nationals who were once terrorist fighters. This includes preventing radicalization to terrorism, curtailing recruitment, inhibiting foreign terrorist fighter travel, disrupting financial support to foreign terrorist fighters, countering violent extremism, countering incitement motivated by extremism or intolerance or any act that can be conducive to terrorism. States should aim to alleviate conditions that aid recruitment by promoting political and religious tolerance, economic development, social cohesion and inclusiveness, ending and resolving armed conflicts, and facilitating reintegration and rehabilitation.

All Member States, following their obligations under international law, should cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization of terrorism and recruitment of foreign terrorist fighters, including children, preventing foreign terrorist fighters from crossing their borders, disrupting and preventing

⁶⁴ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38)*, 1992, A/47/38

UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28

UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30

UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 35 -- sixty-seventh session on gender-based violence against women, updating general recommendation No. 19*, 26 July 2017, CEDAW/C/GC/35.

⁶⁵ United Nations Human Rights Council. 2019. Women Deprived of Liberty. Report of the Working Group on the issue of discrimination against women in law and in practice. 15 May 2019. A/HRC/41/33.

⁶⁶ United Nations Security Council. Security Council resolution 2178 (2014), S/RES/2178 (2014).
[https://www.undocs.org/S/RES/2178%20\(2014\)](https://www.undocs.org/S/RES/2178%20(2014))

financial support to foreign terrorist fighters, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign fighters and their families.

2.8 Security Council Resolution 2396 (2017)⁶⁷

This resolution asserts that foreign terrorist fighters may travel with family members they brought with them to conflict zones, with families they have formed, or family members who were born while in conflict zones. UN Security Council Resolution 2396 highlights the need for Member States to assess and investigate these individuals for any potential involvement in criminal or terrorist activities, including by employing evidence-based risk assessments, and to take appropriate action in compliance with relevant domestic and international law. The Resolution also submits that children may be especially vulnerable to radicalization and in need of particular social support, such as post-trauma counselling, while stressing that children need to be treated in a manner that observes their rights and respects their dignity, under applicable international law. Likewise, it is highlighted that women and children associated with foreign terrorist fighters returning or relocating to and from conflict may have served in many different roles, including as supporters, facilitators, or perpetrators of terrorist acts. As such, they require special focus when developing tailored prosecution, rehabilitation and reintegration strategies. The resolution stresses the importance of assisting women and children associated with foreign terrorist fighters who may be victims of terrorism, and to do so taking into account gender and age sensitivities.

2.9 The Convention on the Rights of the Child (1990)⁶⁸

The Convention on the Rights of the Child (CRC) entered into force on 2 September 1990 and sets the baselines for the educational, social, political, health and economic rights of children. The Convention affirms the basic right to life for every child, including the duty of States to uphold the right to life, as well as the rights to survive and develop. The Right to Develop specifically outlines that children should be able to grow up in an environment that positively impacts their physical and mental wellbeing.⁶⁹ Further, the Convention clearly articulates the need for all States to put the best interests of children at the forefront of any of their actions.⁷⁰ The rights of children to healthcare and education are spelled out in the Convention, presenting explicitly that States must work to ensure all children have access to these services.⁷¹ Children are afforded the right to their nationality and preservation of their identity, and the Convention explains that it is up to States to implement these rights. Additionally, State parties shall ensure

⁶⁷ United Nations Security Council. Security Council resolution 2398 (2017). S/RES/2396 (2017).

⁶⁸ The United Nations General Assembly. 1989. "Convention on the Rights of the Child." *Treaty Series* 1577: 3. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁶⁹ Article 6, *CRC*

⁷⁰ Article 3, *CRC*

⁷¹ Article 24 and Article 28, *CRC*

that a child shall not be separated from his or her parents against their will, unless such separation is necessary for the best interests of the child.⁷²

The Convention also details protections for children in legal settings, including trials, imprisonment, and torture, with the right of children to humanity and liberty.⁷³ The Convention addresses the role of States in ensuring the safe reintegration of children who have experienced events such as armed conflict.⁷⁴

Regarding children in justice systems, the CRC commands under article 40 (3) to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. There is no consensus on what is the minimum age for a minor to have criminal responsibility, however, 14 years old is the common acceptable age for this.⁷⁵ Moreover, child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.⁷⁶ During a trial where a minor is prosecuted, the CRC establishes safeguards to guarantee a fair trial, *inter alia*, retroactive application of child justice, right to be heard, presumption of innocence, and the right to consider always the best interest of the child.⁷⁷ . In accordance to other treaties, the CRC mentions that the commission of acts of torture or cruel, inhuman or degrading treatment to extract an admission or confession constitutes a grave violation of the child's rights.⁷⁸

Iraq and Syria must strengthen their legal frameworks to provide children held in prison with proper legal procedures, in line with their best interests and international standards. Many of those sentenced who are now adults were sentenced for acts that allegedly occurred when they were minors. Therefore, their best interests must be considered and, wherever possible, they should not be sentenced as adults.

Where repatriation is being considered, States must carefully consider the best interests of the child and view separation from a parent as a last resort, rather than a first measure. The re-traumatisation involved in leaving a parent, particularly in such circumstances and regardless of parental consent, is a significant concern when considering what might be in a child's best interests and their future wellbeing.

⁷² Articles 7, 8 and 9, *CRC*

⁷³ Article 37, *CRC*

⁷⁴ Article 39, *CRC*

⁷⁵ General Comment 24. Committee on the Rights of the Child. Para. 20.

⁷⁶ *Ibid.* Para 31.

⁷⁷ Article 40 (2), *CRC*. See note 54. Paras 38 – 71.

⁷⁸ Article 37 (2), *CRC*

2.10 Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict (2002)⁷⁹

The Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict entered into force on 12 February 2002 and has been ratified by 170 countries. The Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict builds on the obligations of States regarding the rehabilitation and reintegration of children who are victims of armed conflict. The Optional Protocol was drafted due to a need for further “international cooperation” concerning the “physical and psychological rehabilitation and social reintegration of children who are victims of armed conflict”.⁸⁰ The Optional Protocol further affirms that States must work to cooperate on preventing activities that would disallow the rehabilitation and reintegration of children.⁸¹

2.11 Security Council Resolution 2427 (2018)⁸²

Security Council Resolution 2427 (2018), adopted unanimously on 9 July 2018, makes it clear that States on the Security Council recognize the unique and perilous situation of children in armed conflict. The Resolution reiterates that children must not be deprived of liberty and should not be unlawfully or arbitrarily detained or subjected to torture and other inhumane treatment. Further, the Resolution recognizes the crucial nature of reintegration and rehabilitation for children who have been in armed conflict, including ensuring their access to health care and education.

The OSCE’s Guidelines note,

*“Especially for children, criminal justice responses should not be the norm, but used as a matter of last resort and with a pedagogical orientation, with the purpose of rehabilitating children [...] According to the recommendations of the UN Committee... criminal justice responses for FTF-related acts are not appropriate for young children.”*⁸³

⁷⁹ The United Nations General Assembly. “*Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*”, 25 May 2000. <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx>

⁸⁰ *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.*

⁸¹ Article 7, *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.*

⁸² United Nations Security Council. Security Council resolution 2427 (2018). 9 July 2018, S/RES/2427 (2018)

http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2427.pdf

⁸³ Organization for Security and Co-operation in Europe, ‘Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework’ (Organization for Security and Co-operation in Europe, 12 September 2018), <https://www.osce.org/odihr/393503>.

2.12 The Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups⁸⁴

The 2007 Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups, and the accompanying Paris Principles, provide guidelines to States on practices for ensuring the protection and reintegration of children who have experienced armed conflict. They offer that children who have been utilized by armed forces must be treated “in accordance with international humanitarian law, with special consideration of their status as children.”⁸⁵ The treatment of children in accordance with international law is also brought forth in relation to children facing criminal charges for actions taken as part of an armed group, with the addition of special child specific provisions.⁸⁶ The Paris Commitments clearly spell out that children should be considered “primarily as victims of violations against international law and not only as alleged perpetrators”.⁸⁷ In relation to criminal charges, the Paris Commitments also implore States to utilize alternatives to the justice system when possible and to ensure that children in the justice system are properly supported at all times.⁸⁸ The Paris Commitments also advocate that children shall be afforded these rights and protected even when they are not in their country of nationality, and their human rights must be upheld to the same extent as other children.⁸⁹

⁸⁴ UNICEF. *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, February 2007. <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>.

The Paris Commitments: Consolidated Version. https://www.icrc.org/en/doc/assets/files/other/pariscommitments_en.pdf

⁸⁵ Commitment 9, *The Paris Commitments: Consolidated Version.*

⁸⁶ Commitment 10, *The Paris Commitments: Consolidated Version.*

⁸⁷ Commitment 11, *The Paris Commitments: Consolidated Version.*

⁸⁸ Commitment 12, *The Paris Commitments: Consolidated Version.*

⁸⁹ Commitment 15, *The Paris Commitments: Consolidated Version.*

3. Summary and Conclusions

The situation in Al Hol and Al-Roj camps in northeast Syria and in prisons in Iraq has been the subject of several analyses and recommendations made by international lawyers, scholars and international organisations. The consensus evident in those recommendations is that repatriation offers the ideal means of guaranteeing human rights, especially those of children who represent the biggest proportion of detainees in the camps. The Special Rapporteur on the promotion and protection of human rights while countering terrorism, Fionnuala Ní Aoláin, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, jointly stated that “the urgent return and repatriation of foreign fighters and their families from conflict zones is the only international law-compliant response to the increasingly complex and precarious human rights, humanitarian and security situation faced by those women, men and children”.⁹⁰ It has been suggested that “[by] acknowledging children involved in violent extremist groups as primarily trafficking victims, existing initiatives can be tailored to their specific circumstances, including restorative justice, repatriation, reintegration, and family reunification programmes”.⁹¹⁹² Romyana van Ark, Post-Doctoral Researcher in Terrorism, Counter-Terrorism and International Law at the T.M.C. Asser Institute, points out “[repatriation policies] should ensure that they utilise any safeguarding powers to protect, support the welfare and well-being of the affected children and their families as they return to their country of citizenship. Such [policies] should not criminalise or further stigmatise the children and their families”.⁹³

In signing the Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to United Nations Listed Terrorist Groups, the United Nations Secretary General clearly set out the centrality of the ‘best interests of the child’ and that children must be seen first and foremost as victims. These essential messages were echoed again by Special Rapporteur Fionnuala Ní Aoláin during a recent UN side event on the margins of the 46th session of the UN Human Rights Council. She reminded attendees how the issue of repatriation has been repeatedly framed as a security issue, “At the expense of addressing the balance between security and human rights...in order to solve this problem, we need a human rights-based approach to addressing the needs of the children, but also ensuring the long-term security of states *by* addressing the needs of these children – the two go hand-in-hand”. The Special Rapporteur emphasised the importance of language and the need to change the discourse surrounding the children to one in which the narrative centres on “the rights of the child, the best interests of the child, care, compassion, and responsibility for children”.⁹⁴

⁹⁰ United Nations Human Rights Special Procedures, ‘Extra-Territorial Jurisdiction of States over Children and Their Guardians in Camps, Prisons, or Elsewhere in the Northern Syrian Arab Republic’ (United Nations, 2020), <https://www.ohchr.org/Documents/Issues/Executions/UNSRsPublicJurisdictionAnalysis2020.pdf>.

⁹¹ Jessica Jahn and Yvon Dandurand, ‘Children Victims of Trafficking by Violent Extremist Groups’, *International Centre for Criminal Law Reform & Criminal Justice Policy* (blog), 8 April 2020, <https://icclr.org/2020/04/08/children-victims-of-trafficking-by-violent-extremist-groups/>.

⁹² Shannon Welch, ‘Human Trafficking and Terrorism: Utilizing National Security Resources to Prevent Human Trafficking in the Islamic State’, *Duke Journal of Gender Law & Policy* 24, no. 2 (17 May 2017): 165–88.

⁹³ Romyana van Ark, Faith Gordon, and Devyani Prabhat, ‘Repatriating the Forgotten Children of ISIS Fighters: A Matter of Urgency’, *Globalcit*, 8 May 2020, <https://globalcit.eu/repatriating-the-forgotten-children-of-isis-fighters-a-matter-of-urgency/>.

⁹⁴ Panel discussion with Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights while countering terrorism, ‘Repatriation, reintegration and resocialization of children repatriated from conflict zones: Online side event on the margins of the 46th session of the Human Rights Council’ (11 March 2021).

This policy paper has contributed to these efforts to highlight the desperate situation faced by children being held in detention in Syria and Iraq alongside adult so-called foreign fighters by outlining in brief the multiple and ongoing threats of harm faced by these children by virtue of their experiences of terrorism and conflict, the conditions of the camps and prisons in which they are held, and the lack of attention to their basic but essential needs as children. The paper has sought to support proactive efforts to help these children survive and thrive and to claim their rights by explicitly detailing the essential binding instruments which affirm those entitlements and the obligations of States associated with them.

The binding instruments which have been outlined are varied and comprehensive. They allude to both historical atrocities worldwide and recent atrocities committed by ISIS and others, remaining relevant to the suffering being endured by many children in the world today, including those detained in Syria and Iraq whose identities have been reduced to an association with extremism and terror. In the spirit of collaboration and co-operation to act in accordance with the universal values intrinsic to those instruments, this policy paper recommends the following courses of action to UN member states and the international community:

1. Supporting children of foreign fighters detained in North-Eastern Syria and Iraq to claim their rights by explicitly recognising them as victims of conflict deserving of nationality, protection and care, including repatriation and rehabilitation. Repatriation is the ideal option which can address the full spectrum of concerns raised in this paper whilst contributing meaningfully to the fight against terrorism.
2. Taking steps to identify and account for State citizens using liaison with camp and prison authorities, involvement of family members remaining in the country of origin where appropriate and sensitive and considerate use of measures such as DNA testing, i.e. informed choice, consent and secure storage of data, and providing identity documents.
3. Advocating for those children detained in Iraq to be protected from use of torture or degrading or inhuman treatment, including demanding the revocation of any charges brought as a result of confessions obtained where torture is reported or suspected. Additionally, advocating that any children remaining who have been tried and sentenced as adults be repatriated and, where appropriate, re-tried as children. Liaison with Iraqi authorities to locate, identify and assess the wellbeing of children separated from incarcerated mothers and placed in residential care.
4. Liaising with camp authorities and advocating for those children detained in the camps to be provided with safe water, medical care, education, and contact with family members from whom they have been separated. Additionally, investigating any claims of abuse and neglect with due diligence.
5. Reviewing cases involving deprivation of citizenship to ensure no children and young people have been left stateless and considering whether the principles of necessity, proportionality and reasonableness have been met. Keeping the best interests of children

at the centre of decision-making through sound assessment and consideration of both the short and long-term impact of those decisions with regards to risk of harm, the children's wellbeing and their potential to make a meaningful contribution to society.

6. Liaison and consultation between States and other key stakeholders to share information regarding approaches to reintegration and rehabilitation, particularly from those countries that have examples of best practice already available, and which might be most responsive to the needs of returnees and the communities receiving them, including the evidence base regarding ecological models of health and wellbeing, child development, complex trauma, and restorative justice.
7. Liaison with international organizations such as UNICEF and the International Committee of the Red Cross for consultation and support to deliver successful repatriation and rehabilitation of children.

Together, these courses of action emphasise repatriation as the solution which best fulfils State obligations under international law and offers children the opportunity to survive, belong and thrive in spite of their early experiences of complex trauma and deprivation. To render children detained in Syria and Iraq stateless is to abandon and condemn them to early mortality, illness, injury, further trauma, and an extremely narrow range of options for survival, which could include further recruitment by extremist groups operating in the region. Repatriation necessitates overcoming many barriers as mentioned in this paper, but examples of successful retrieval operations indicate that they are not insurmountable. The act of repatriation is arguably the strongest means through which States can uphold the personhood of each child, in acknowledging their citizenship and taking responsibility for their protection and future development.

Previous experiences of welcoming children back into communities who have been harmed by the adults with which they have previously been associated, such as in the case of child soldiers for example, show that approaches which involve turning towards children, nurturing them, developing their knowledge and skills, and supporting them to engage in restorative justice, can have positive outcomes. This paper strongly encourages the reader to engage with the solutions set forth by the Special Representative of the Secretary-General on Violence against Children in addition to the current analysis⁹⁵. It is recommended that all key stakeholders required to support a programme of repatriation look to the examples of Kazakhstan, Kosovo, and Russia and draw upon this paper as impetus to develop interdisciplinary approaches to assessment and rehabilitation for children emerging from terror-related conflict and detention.

⁹⁵ Special Representative of the Secretary-General on Violence against Children, 'Solutions for Children Previously Affiliated With Extremist Groups'

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