

# Bringing Children Home: A children's rights approach to returning from ISIL

## Introduction

An estimated 4,640 children travelled to Iraq or Syria, either alone or with their families, from more than 80 countries to join the self-proclaimed Islamic State (ISIL), before and after the declaration of the caliphate in June 2014.<sup>1</sup> Around 1,460 children who travelled to, or were born in, Iraq or Syria to parents who left their home countries to join ISIL have since returned.<sup>2</sup> In total, an average of 12,000 foreigners – among them 4000 women and 8000 children – currently live in the three camps in the north-east of Syria<sup>3</sup>.

Children who were recruited by the group have been used to carry weapons, guard strategic locations, arrest civilians, subjected to sexual violence, forced marriage and exploited in suicide bombings. Regardless of their role, these children have experienced and witnessed extreme violence<sup>4</sup> and been subjected to indoctrination placing them at a significant risk of lasting physical and mental harm.<sup>5</sup> The youngest child verified by the United Nations to have been recruited by ISIL to serve as a child soldier was four years old.<sup>6</sup>

Despite the fall of ISIL, there remain large numbers of children living in refugee camps in Iraq and Syria. As of May 2019, 73,000 people were living in al-Hol in Northern Syria, 90 percent of whom were women and children. The camp is overcrowded with inadequate services and deplorable living conditions; 240 children have died, primarily as a result of inadequate medical and humanitarian assistance.<sup>7</sup> Many of the children now living in displacement camps have never lived in ISIL controlled territory therefore have no link at all with the terrorist group.

Since the movement of Turkish forces into northern Syria, the situation for people living in displacement camps has grown more precarious. The UN has reported attacks on pumping stations providing water to camps<sup>8</sup> and more than 750 people are reported to have fled Ain Issa camp following Turkish shelling in the region. These developments require an urgent response to protect children living in the region to prevent irreparable harm.

<sup>1</sup> Joana Cook and Gina Vale, *From Daesh to Diaspora: Tracing the Women and Minors of Islamic State*, International Centre for the Study of Radicalisation, 2018, p 3. The countries from which most children have been recruited are France (460-700), Morocco (391), Kazakhstan (390), Tajikistan (293) and Germany (290).

<sup>2</sup> Joana Cook and Gina Vale, *From Daesh to 'Diaspora' II: The challenges posed by women and minors after the fall of the caliphate*, July 2019, p. 8. Available at: <https://icsr.info/wp-content/uploads/2019/07/ICSR-Feature-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-II-The-Challenges-Posed-by-Women-and-Minors-After-the-Fall-of-the-Caliphate.pdf>.

<sup>3</sup> <http://www.leparisien.fr/faits-divers/syrie-l-onu-reclame-le-rapatriement-des-enfants-de-djihadistes-etrangiers-16-01-2020-8237493.php>

<sup>4</sup> See World Congress on Justice for Children "Challenges and trends in Justice systems for youth and their families: maintaining children's

rights including in cases of violent extremism" May 2018 Unesco House - Paris [www.j4c2018.org](http://www.j4c2018.org)

<sup>5</sup> See Radicalisation Awareness Network, *RAN Issue Paper: Child returnees from conflict zones*, November 2016.

<sup>6</sup> UN Secretary General, *Children and armed conflict in the Syrian Arab Republic*, S/2018/969, 30 October 2018, para. 17.

<sup>7</sup> Statement by Mr. Paulo Sérgio Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic at the 41st Session of the UN Human Rights Council, 2 July 2019. Available at: <https://reliefweb.int/report/syrian-arab-republic/statement-mr-paulo-s-rgio-pinheiro-chair-independent-international-2>.

<sup>8</sup> UN News, "Turkey's Syria offensive could spark another catastrophe, warn humanitarians", 11 October 2019. Available at: <https://news.un.org/en/story/2019/10/1049051>.

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## International law

A broad range of international human rights and humanitarian law applies to the treatment and return of children who have lived under ISIL control or have been born in the displacement camps. Every child up to the age of 18 is entitled to the full rights set out in international law on children's rights, regardless of whether they have been recruited by a terrorist group or their parents are involved with such a group. Among the guiding principles underlying children's rights law is that the best interests of the child must be a primary consideration in all actions concerning children and that children should not be subjected to discrimination of any kind.<sup>9</sup> These requirements support and complement the more specific protections enshrined within the UN Convention on the Rights of the Child (CRC), apply to all actions carried out by States and should guide States' responses to children repatriated from Syria and Iraq.

**Prevent recruitment.** The first of these specific obligations that falls on States is to prevent children being recruited by armed groups, including terrorist groups. States have a duty to take all feasible measures to prevent the recruitment of anyone under the age of 18 by a non-state armed group, including by criminalising recruitment.<sup>10</sup> This obligation applies to all children within the jurisdiction of the State<sup>11</sup> and may have extraterritorial application.

**Rehabilitation and victim-centred approach.** When a child has been recruited by an armed group, the primary emphasis of international human rights and humanitarian law lies on providing rehabilitation to the child. The UN General Assembly has strongly condemned the systematic recruitment and use of children to perpetrate terrorist attacks and recognised that children accused of committing terrorist acts may themselves be victims of terrorism.<sup>12</sup> It has

stressed that these children should be treated in a manner consistent with their rights, dignity and needs, in accordance with applicable international law, in particular, obligations under the CRC.<sup>13</sup>

States that have ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) have accepted an obligation to ensure the demobilisation of children recruited by armed groups and to assure these children "all appropriate assistance for their physical and psychological recovery and their social reintegration."<sup>14</sup> This specific duty is met with a more general obligation under the CRC to guarantee the provision of this support to all child victims of neglect, exploitation, abuse and armed conflict.<sup>15</sup>

**Victims of trafficking.** Children who have been recruited or used by terrorist groups may also be victims of trafficking and therefore be entitled to special protection under international law. Trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person or having control over another person for the purposes of exploitation.<sup>16</sup> The UN Security Council has acknowledged trafficking by terrorist groups, recognising that the recruitment and use of children in violation of international law by parties to armed conflict can be associated with trafficking in persons<sup>17</sup> and affirmed that victims of trafficking in this context should be considered victims of terrorism and eligible for support, recognition and redress available to these victims as well as access to national relief and reparations programmes.<sup>18</sup>

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<sup>9</sup> Convention on the Rights of the Child, Article 3(1) and Article 2 respectively..

<sup>10</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), Article 4.

<sup>11</sup> OPAC, Article 6(1).

<sup>12</sup> This paper uses the term "terrorism" to refer to acts of political violence and "terrorist groups" to identify groups that plan or carry out acts of terrorism. This terminology is used for consistency with international standards that have adopted these terms.

<sup>13</sup> UN General Assembly Resolution A/RES/70/291

<sup>14</sup> OPAC, Article 6(3).

<sup>15</sup> Convention on the Rights of the Child, Article 39.

<sup>16</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Res 55/25 of 15 November 2000, Article 3(a).

<sup>17</sup> UN Security Council Resolution S/RES/2331, adopted 20 December 2016.

<sup>18</sup> UN Security Council Resolution S/RES/2331, para. 10.

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**Restrict prosecution.** International human rights and humanitarian law does not rule out holding children criminally liable for offences committed while part of an armed group, but sets a number of restrictions on situations where this would be permitted and the protections guaranteed to children who are accused of committing offences. International standards are clear that no child should be prosecuted, punished or threatened with prosecution or punishment solely for their membership of an armed group.<sup>19</sup> The Committee on the Rights of the Child has also elaborated on State obligations with regards to trafficked children exploited by criminal groups, holding that they “should not be penalised and should receive assistance as victims of a serious human rights violation.”<sup>20</sup> Where children are prosecuted for offences committed as part of a terrorist group, they are entitled to the full protections of a specialised child justice

system as set out within the Convention on the Rights of the Child.<sup>21</sup> In particular, their treatment must take into account the child’s age and the desirability of promoting the child’s reintegration and assuming a constructive role in society.<sup>22</sup>

**Right to acquire a nationality.** Every child has a right to acquire a nationality under the CRC and States must enable children to do so.<sup>23</sup> The Convention on the Reduction of Statelessness explicitly prohibits States from depriving a person of nationality if doing so would render the person stateless<sup>24</sup> and everyone has a right to enter their own country.<sup>25</sup>

**No detention.** Children should never be detained because of their or their parents’ immigration status<sup>26</sup> and no child should be subjected to preventive or administrative detention for counter-terrorism purposes.<sup>27</sup>

## National responses and challenges

Countries have adopted dramatically different policies for the return of children and people who have been recruited by ISIL as children, who lived in ISIL controlled territory or are living in displacement camps.

A basic requirement of the international human rights standards set out above is that States accept responsibility for their citizens and repatriate their nationals, particularly children. A number of countries, particularly across central Asia, have begun to more rapidly meet this obligation in recent years. As of July 2019, 403 children had returned to **Kazakhstan** from Iraq and Syria, at least 41 children returned to

**Tajikistan** over a two year period.<sup>28</sup> Many other jurisdictions have adopted policies that are broadly guided with the international law set out above to return children to their home country paving a way for repatriation.

Once children have returned to their home countries, they face a variety of processes for rehabilitation. More people per capita have left **Denmark** to join terrorist groups in Syria than any other western-European country except Belgium.<sup>29</sup> In response, Denmark has used its “Aarhus model” for the reintegration of returnees, which was developed following terrorist attacks across Europe prior to the

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<sup>19</sup> Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“the Paris Principles”), Principle 8.7.

<sup>20</sup> Committee on the Rights of the Child, *General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6, para. 53.

<sup>21</sup> Convention on the Rights of the Child, Articles 37 and 40; Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, pp.652-653.

<sup>22</sup> Convention on the Rights of the Child, Article 40(1).

<sup>23</sup> Convention on the Rights of the Child, Article 7.

<sup>24</sup> Convention on the Reduction of Statelessness 1961, Article 8(1).

Note, between 208 and 2016, the UN Human Rights Council has passed seven resolutions on the right to nationality and the avoidance of statelessness, available at: <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.

<sup>25</sup> International Covenant on Civil and Political Rights, Article 14(1); S/2019/103, para. 21; European Convention on Human Rights, Protocol 4, Article 3(2).

<sup>26</sup> Convention on the Rights of the Child Articles 3(1) and 37; Joint General Comment No. 4 (2017) of the Committee on the Protection

of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2018, para. 5.

<sup>27</sup> *Report of the Independent Expert leading the United Nations global study on children deprived of liberty*, A/74/136, 11 July 2019, para. 140. Available at: <https://undocs.org/A/74/136>; Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, pp.652-653.

<sup>28</sup> Foreign Policy Research Institute, *Russia’s Repatriation of ISIS Members*, 12 April 2019. Available at: <https://www.fpri.org/article/2019/04/russias-repatriation-of-isis-members/>.

<sup>29</sup> International Centre for the Study of Radicalisation, “Foreign fighter total in Syria / Iraq now exceeds 20,000 surpasses Afghanistan conflict in the 1980s,” 26 January 2015. Available at: <https://icsr.info/2015/01/26/foreign-fighter-total-syria-iraq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/>.

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Syrian conflict. The model involves cooperation between police, social workers and religious groups and assigns young people returning to the country with trained mentors able to provide day-to-day help as well as religious and moral debate. Returnees also receive specialised psychological counselling.<sup>30</sup> While the measures have seen many young people returning to education after returning to Denmark, it exists alongside a policy of prosecuting any returnees who are suspected of committing crimes. The model is therefore limited in cases of children who have been groomed by terrorist groups to commit criminal offences, who are therefore victims.

In the **United Kingdom**, policy denies a home for children who are born to British foreign fighters or who have been recruited by terrorist groups. The UK's 2018 strategy for countering

terrorism sets out an example of responding to the return of a child born to a British mother who had joined ISIL. The guidance requires that DNA testing is conducted to establish the child's entitlement to a British passport, that the home secretary seek a court order to control the return of the mother and child to the UK, and that police launch an investigation into any criminal conduct while local authorities are engaged to ensure the child's welfare.<sup>31</sup> In practice, however, the UK government has used powers to strip the citizenship of individuals who were recruited by ISIL as children when they sought to return to the country, denying them and their subsequently born children a right to return to their homes and to rehabilitation.<sup>32</sup> **Switzerland** has also adopted a policy of making case by case decisions on whether to repatriate Swiss children in Syrian displacement camps<sup>33</sup>.

## Recommendations

The situation for children living in displacement camps in Syria and Iraq is dire, requiring an urgent response. International human rights and children's rights law should form the basis for State's response to children in displacement camps in Syria and Iraq.

The signing organisations recommend<sup>34</sup> that States urgently take the following 10 steps:

1. The recruitment of children by all armed groups, including terrorist groups, must be criminalised to ensure accountability for this exploitation of children;
2. Children should not be criminalised purely for their association or membership of a terrorist group;
3. States must never deprive a child of their nationality, regardless of whether

they have been recruited by a terrorist group;

4. States must accept responsibility for children who are their citizens, ensuring that they are able to return to their country;
5. Ensure that children are able to access health, education and other services while awaiting return from displacement camps;
6. States must ensure that children are not separated from their parents unless it is in the child's best interests. To ensure no separation, States must consider repatriating entire families;
7. Children should never be detained because of their immigration status or subjected to preventive or

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<sup>30</sup> See Radicalisation Awareness Network, *Foreign fighter returnees and the reintegration challenge*, November 2016. Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation\\_awareness\\_network/ran-papers/docs/issue\\_paper\\_foreign\\_fighter\\_returnees\\_reintegration\\_challenge\\_112016\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_foreign_fighter_returnees_reintegration_challenge_112016_en.pdf). Jon Henley, "How do you deradicalise returning Isis fighters?" *The Guardian*, 12 November 2014. Available at: <https://www.theguardian.com/world/2014/nov/12/deradicalise-isis-fighters-jihadists-denmark-syria>.

<sup>31</sup> HM Government, *Contest: The United Kingdom's strategy for countering terrorism*, June 2018, p. 50. Available at: <https://assets.publishing.service.gov.uk/government/uploads/system>

[/uploads/attachment\\_data/file/716907/140618\\_CCS207\\_CCS021892\\_9798-1\\_CONTEST\\_3.0\\_WEB.pdf](#).

<sup>32</sup> For detailed reporting on the case of Shamima Begum in the United Kingdom, see: <https://www.theguardian.com/uk-news/shamima-begum>.

<sup>33</sup> Opinion of the Federal Council of 28 August 2019. Available at: <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20193745>.

<sup>34</sup> See 2018 World Congress on Justice for Children - Paris Declaration [http://www.aimjf.org/download//Home/World\\_Congress\\_J4C\\_Paris\\_Final\\_Declaration\\_30\\_May\\_2018\\_EN.pdf](http://www.aimjf.org/download//Home/World_Congress_J4C_Paris_Final_Declaration_30_May_2018_EN.pdf)

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administrative detention for counter-terrorism purposes;

8. Children recruited by terrorist groups should be recognised as victims of grave human rights abuses and States should facilitate their recovery and rehabilitation;
9. States should develop specialised rehabilitation and reintegration services for child returnees, including health, education, vocational and social support that takes account of an individual child's gender, age and cultural background;
10. In exceptional situations when people are prosecuted for criminal offences committed as children while they were part of a terrorist group, States must guarantee the full protections of a specialised child justice system and specialised diversion and restorative justice practices.

**For further guidance, see:**

- United Nations Office on Drugs and Crime, Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups, 2018.
- United Nations Office of Counter-Terrorism (UNCCT), Handbook on Children Affected by the foreign-fighter phenomenon: Ensuring a child rights-based approach, 2019.

### About CJAG

The Child Justice Advocacy Group is a coalition of human rights organisations working to ensure children's rights are respected within justice systems.