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International obligations concerning the repatriation of children from war and conflict zones

Report¹

Committee on Social Affairs, Health and Sustainable Development

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Summary

The situation of the children in Syria and Iraq whose parents are believed to be affiliated to ISIS/Daesh is appalling: stranded in squalid camps and detention centres, exposed to grave violations of their rights, as well as risks of radicalisation, and a high rate of illness and mortality. With every passing day, more children's lives will be lost or ruined unless immediate action is taken.

These children are neither responsible for the actions of their parents nor do they bear responsibility for the circumstances in which they find themselves. In the light of member States' obligations and commitments to these children stemming from international and European human rights and humanitarian law, actively repatriating, rehabilitating and (re-)integrating these children without further delay is a human rights obligation and a humanitarian duty.

Furthermore, integrating a child-rights perspective into counter-terrorism efforts is not only a human rights imperative but would also constitute an essential contribution towards the national security of the countries concerned. The Assembly should thus also urge the Committee of Ministers to ensure that Council of Europe action against terrorism, when dealing with child-related issues, is focused on the best interest of the child and ensures adequate protection of children's rights.

1. Reference to Committee: Reference no. 4489 of 27 January 2020.



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A. Draft resolution²

1. The Parliamentary Assembly is appalled by the dire situation of the children in Syria and Iraq whose parents, believed to be affiliated to ISIS/*Daesh*, are citizens of Council of Europe member States. Most of these children are below the age of 12, stranded in squalid camps and detention centres, lacking food, shelter from the elements, access to clean water, medical services and education. They are exposed to risks of endemic violence, exploitation and sexual abuse, trafficking, harassment, as well as radicalisation risks. Girls are especially vulnerable and a gender-sensitive approach and policies must be ensured throughout to mitigate risks and exposure. Many of the children are unaccompanied and/or orphans. With every day passing, more children's lives will be lost or ruined unless the member States concerned act without further delay
2. The Assembly acknowledges the significant difficulties and challenges national authorities face in their efforts to repatriate these children, as well as the existence of highly polarised opinions within Council of Europe member States on the question of repatriation of these children. The Assembly underlines that these children are neither responsible for the actions of their parents nor do they bear responsibility for the circumstances in which they find themselves. In addition, as stipulated by the United Nations Convention on the Rights of the Child (UNCRC), the Assembly underlines that children are rights holders in their own capacity and hence their rights cannot be undermined by the actions of their parents.
3. The Assembly recalls that all Council of Europe member States have ratified the UNCRC, as well as other relevant Conventions, and have thus undertaken to protect all children and to take all possible steps in practice to ensure that children affected by armed conflict benefit from protection and care. The United Nations, its Security Council and its Agencies have all recalled that children whose parents are believed to have been affiliated to ISIS/*Daesh* should be considered victims first and foremost.
4. The Assembly underlines that the UNCRC clearly stipulates that a child should not be separated from their parents against their will, unless such separation is necessary for the best interest of the child. Continuing to stay in camps or detention facilities cannot be considered to be in the best interest of the child.
5. The Assembly reminds member States of their obligations and commitments to these children stemming from international and European human rights and humanitarian law, which include, but are not limited to, protection of the right to life, the right to be free of inhumane treatment, protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, protection from statelessness, as well as the need to give primary consideration to their best interests in all circumstances. States are also obliged to set up effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, and take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.
6. In the light of the above, the Assembly is convinced that actively repatriating, rehabilitating and (re-)integrating these children without further delay is a human rights obligation and a humanitarian duty. Integrating a child-rights perspective into counter-terrorism efforts is not only a human rights imperative but would also constitute an essential contribution towards the national security of the countries concerned.
7. The Assembly calls on the media to ensure that media coverage does not place children at risk of physical or psychological harm. Media, publication standards, codes of conduct and other safeguards should be implemented to prevent placing children at risk, violating confidentiality standards and otherwise causing harm to the children or their families, as underlined by the Paris Principles and Guidelines on children associated with armed forces or armed groups.
8. To this end, the Assembly urges member States to:
 - 8.1. with respect to repatriation:
 - 8.1.1. take all necessary measures to ensure immediate repatriation of all children whose parents, believed to be affiliated to ISIS/*Daesh*, are citizens of their State, regardless of their age or degree of involvement in the conflict;
 - 8.1.2. repatriate children together with their mothers or primary care givers, unless it is not in the best interest of the child;

2. Draft resolution unanimously adopted by the Committee on 28 January 2020.

8.1.3. avoid taking measures which could result in a child becoming stateless, including by ensuring that every child is registered;

8.1.4. provide urgent assistance to all children in the camps and detention centres in Syria and Iraq with a view to alleviating the humanitarian crisis in these facilities, and to delivering sustainable care and protection to all child victims regardless of their nationality;

8.1.5. raise public awareness of the situation of the children concerned, based on reliable data, with a view to alleviating public concerns related to national security;

8.2. with respect to rehabilitation and (re-)integration:

8.2.1. take all necessary measures to ensure the effective rehabilitation and (re-)integration of all returnee children whose parents, believed to be affiliated to ISIS/*Daesh*, are citizens of their State;

8.2.2. first and foremost, take all appropriate measures to promote physical and psychological recovery and social reintegration of these children, regardless of their age or degree of involvement in the conflict;

8.2.3. where children are suspected of having committed criminal acts, adhere to due process and fair trial standards, including the presumption of innocence and the right to an appeal, with the appropriate consideration for age and gender, conforming to child-protection and child-friendly justice standards; if possible, divert children from such criminal proceedings altogether.

9. The Assembly urges the European Union to embed a human-rights approach and children's rights perspective in its counter-terrorism efforts. This perspective must be at the heart of the policy of 'promoting the European way of life', protecting European citizens and values and enabling the emergence of a society that is more resilient to terrorism and radicalism. The Assembly encourages the European Union to continue its support for those involved in the rehabilitation and (re-)integration of repatriated children (justice, social services, local governments, universities, civil society, etc.) and invites it to share the results and lessons learned with all Council of Europe member States.

B. Draft recommendation³

1. The Assembly stresses the gravity of the situation of the children in Syria and Iraq whose parents, believed to be affiliated to ISIS/Daesh, are citizens of Council of Europe member States. It deplores the living conditions these children are confronted with: stranded in squalid camps and detention centres, lacking food, shelter from the elements, access to clean water, medical services and education, and exposed to violence, abuse, trafficking and exploitation, and a high rate of illness and mortality.
2. The Assembly considers that the human-rights based approach of the Council of Europe is essential for effectively combating terrorism. Abandoning the children stranded in Syria and Iraq in zones characterised by war, conflict and their aftermath, leaves these children exposed to grave violations of their rights as well as risks of radicalisation. Investing in their repatriation, recovery and (re-)integration is an investment in building prosperous and resilient societies.
3. The Assembly takes note of the Council of Europe Counter-Terrorism Strategy (2018-2022) and the Council of Europe Strategy for the Rights of the Child (2016-2021). These are complementary policy frameworks, which provide useful guidance for the Council of Europe member States. However, synergies and complementarity between these Strategies should be further reinforced, with a view to effectively integrating a child-rights perspective into counter-terrorism efforts.
4. In view of these elements, the Assembly calls, in this urgent situation, on the Committee of Ministers to:
 - 4.1. ensure that Council of Europe action against terrorism, when dealing with child-related issues: is focused on the best interest of the child; is in line with the priorities set by the Council of Europe Strategy for the Rights of the Child; and ensures adequate protection of children's rights;
 - 4.2. invite the Steering Committee for the Rights of the Child (CDENF) to advise it on appropriate action to be taken by the Council of Europe to address the situation of child returnees (including with respect to their (re-)integration), and to co-ordinate action decided upon;
 - 4.3. include a parliamentary round table on measures taken by the Council of Europe member States to repatriate and reintegrate children from zones characterised by war, conflict and their aftermath, as part of the Conference on the roles of women and children in terrorism, organised by the Council of Europe Counter-Terrorism Division in June 2020.

3. Draft recommendation unanimously adopted by the Committee on 28 January 2020.

C. Explanatory memorandum by Mr Stefan Schennach, rapporteur

1. Introduction

1. Following a proposal by the Socialists, Democrats and Greens Group (SOC), the Parliamentary Assembly decided to hold a debate under urgent procedure on “International obligations concerning the repatriation of children from war and conflict zones” on 27 January 2020. I was appointed rapporteur on the same day.

2. It is in the context of news on the death and suffering of children caused by the conflicts in Syria and Iraq and their aftermath – which are reported daily – that this urgent debate is being held. Similar to the tragedy of lives lost in perilous Mediterranean Sea crossings, neither the situation in the refugee/detention camps nor the humanitarian crisis children are confronted with can leave us indifferent. We must respond to this tragic reality by upholding children’s rights and protecting them and their best interests.

3. On several occasions, the Assembly has drawn attention to the humanitarian crisis caused by the war in Syria and Iraq. In its [Resolution 2107 \(2016\)](#) on “A stronger European response to the Syrian refugee crisis”, the Assembly notes that the regional situation is untenable. It raises concern with respect to the situation of children in Syria and Iraq in its [Resolution 2204 \(2018\)](#) on “Protecting children affected by armed conflicts”. The Assembly urges Council of Europe member States to repatriate captured foreign fighters, and their families, who fought with ISIS/Daesh in Syria, and to bring them to trial in its [Resolution 2298 \(2019\)](#) on the “Situation in Syria: prospects for a political solution?”. Other texts, such as [Resolution 2134 \(2016\)](#), reiterate its firm commitment to fight impunity. In its [Resolution 2221 \(2018\)](#) on “Counter-narratives to terrorism”, the Assembly renews its condemnation of all acts of terrorism and calls on member States to draw up national strategies for the prevention of radicalisation. In its [Resolution 2263 \(2019\)](#) on “Withdrawing nationality as a measure to combat terrorism: a human-rights compatible approach?”, the Assembly states that deprivation of nationality of a parent must not lead to the deprivation of the nationality of his or her children. [Resolution 2099 \(2016\)](#) on “The need to eradicate statelessness of children” points to the fact that Syria and other countries have gender-discriminatory nationality laws which deny women the right to confer their nationality on their children.

4. This report will once more sound the alert on the dramatic situation of children stranded in camps and detention centres in Syria and Iraq following the fall of the so-called Islamic State (ISIS/Daesh). In *al Hol* refugee/detention camp in north-eastern Syria alone, over half of the more than 60 000 camp residents are children below the age of 12. Many of them are unaccompanied and/or orphans. Hundreds, if not thousands, of them are descendants of nationals of European countries and/or European Union citizens. These children are in acute humanitarian distress. Their rights and their situation are given adequate consideration only by few governments of Council of Europe member states. They lack food, shelter from the elements, clean water, medical services and education. Their situation is degrading further because of winter weather and a spate of fighting and terror acts in the region. They are exposed to risks of endemic violence, exploitation and sexual abuse, harassment, trafficking, as well as radicalisation risks, to name but a few. Their access to health, education and safety is next to zero. They suffer from post-traumatic stress disorder and other mental, physical and social consequences of having lived for many years in a war zone.

5. Despite the support of eminent personalities, international organisations, NGOs and national independent entities for repatriation, many national authorities have remained or become reluctant to deliver the necessary humanitarian efforts to take appropriate care of these children, often for domestic reasons. These children are not responsible for the actions of their parents but should be considered as victims first and foremost, as well as rights-holders in their own right. Our states have an obligation to secure their safety, as they would for any other child of their state in danger abroad.

6. In this context, the Assembly should urge governments to fulfil their international and European commitments and obligations, and thus support the repatriation and (re-)integration of these children, and work to overcome the hesitations of national authorities. It appears that the source of the hesitations may be a lack of a real or perceived public support for the repatriation of these children, often rooted in ungrounded or overblown fears of terrorism, as well as xenophobia and Islamophobia, peddled by irresponsible actors in the media (including on social media). Informing the public of the realities may thus be an important first step that our debate on Thursday may accomplish, so that politicians can live up to their responsibility to take the lead in saving these children.

2. The children bear no responsibility for the circumstances in which they find themselves

7. After nine years of armed conflict and terrorist activities, 1/3 of the children in Syria and Iraq remain in at-risk situations, according to Save the Children⁴: 18 out of 1000 children die before their 5th birthday; 85% of refugee children are living below the poverty line; 28% of children suffer from stunting due to malnutrition.

8. As a consequence of the fighting in north-eastern Syria and the defeat of ISIS, *al Hol* camp was established to provide shelter to refugee women and children, but also to detain those women (and their children) who had – or are believed to have had – supported ISIS/Daesh. According to the International Committee of the Red Cross (ICRC),⁵ its population dramatically increased from 10 000 in December 2018 to 72 000 residents at the end of March 2019. The general situation remains tense after recent military moves and a resurgence of terror acts. 55% of the residents of *al Hol* refugee camp are below the age of 12. 7 000 children under the age of 12 are foreigners, children whose parents are believed to have been affiliated to ISIS/Daesh. The situation in *al Hol* camp is preoccupying. 306 children died between March and November 2019 at *al Hol* refugee camp alone. In December 2019, the Rojava Information Center⁶ reported that the population in *al Hol* camp fell to 68 000 residents for various reasons. 1-2 deaths or stillbirths are seen daily through malnutrition and cold weather.⁷ The three highest morbidities were respiratory tract infections, diarrhoea and anaemia at 35.6%, 11.8% and 4.2% respectively.

9. Broadcasted images of the camps show miserable infants and toddlers living in tents.⁸ They lack food, shelter from the elements, clean water, medical services and education. Some of them were terribly wounded before their arrival whereas healthcare was almost inexistent before the opening of an ICRC field hospital in the summer. Their situation is further degrading because of the extreme winter conditions. They are exposed to risks of harassment, endemic violence, exploitation and sexual abuse. Most are below the age of 12⁹ and too young to be anything but innocent victims. None of them bear responsibility for the circumstances in which they find themselves. While it is true that many of the children over 12 years of age may have been radicalised, and some of them may even have participated in the fighting or in terror attacks, international law is very clear about the protection of children – any person under the age of 18. Children should be treated first and foremost as victims and their treatment must be determined with the best interests of the child as a primary consideration, in line with the Convention on the Rights of the Child (UNCRC). This includes actions taken by both public and private actors and in legislative, judicial, and administrative decisions. Children have special rights and protections that apply in all situations, irrespective of the children's age, sex, or other status, including actual or perceived family or personal affiliation¹⁰.

10. Where children are suspected of having committed criminal acts, due process and fair trial standards, including the presumption of innocence and the right to an appeal must be adhered to, with the appropriate consideration for age and gender. When relevant, these children should be repatriated to the countries of nationality for judicial proceedings¹¹, or diverted from such proceedings if possible. For example, they should not be prosecuted solely for their suspected association with or membership of any armed group. They should be involved in specific child-sensitive rehabilitation programmes for their (re)-integration in society. Should criminal proceedings be necessary, these should conform to child-protection and child-friendly justice standards¹².

11. The International Committee of the Red Cross (ICRC) was the first international body to sound the alarm on the disastrous conditions in *al Hol* camp in early 2019, immediately backed by the World Health Organisation. On 24 April 2019, United Nations Assistant Secretary-General for Humanitarian Affairs, Ursula Brigitte Müller, also sounded the alarm. On 21 May 2019, UNICEF General Director, Henrietta Ford, requested the immediate protection of the rights of the children of foreign fighters. Council of Europe

4. <https://www.savethechildren.org/us/what-we-do/where-we-work/greater-middle-east-urasia/syria>

5. <https://www.icrc.org/fr/document/syrie-ouverture-dun-hopital-de-campagne-dans-le-camp-de-deplaces-dal-hol>

6. Rojava Information Center (RIC) is an independent, volunteer-staffed organisation based in North East Syria. The aim of this Kurdish organisation is to help journalists, researchers and the general public to access information on Kurds in Syria.

7. <https://twitter.com/RojavaIC>

8. <https://www.bbc.com/news/world-middle-east-47867673>

9. <https://www.un.org/sc/ctc/wp-content/uploads/2019/09/CTED-Analytical-Brief-Repatriation-of-Children.pdf>

10. "Key principles for the protection, repatriation, prosecution, rehabilitation and reintegration of women and children with links to United Nations listed terrorist groups", UN Secretary General, April 2019: https://www.un.org/counterterrorism/ctitf/sites/www.un.org/counterterrorism.ctitf/files/Key%20Principles%20-%20April%202019_0.pdf

11. Ibid.

12. Such as those of the Council of Europe: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

Commissioner for Human Rights, Dunja Mijatović, together with the members of the European Network of Ombudspersons for Children (ENOC), called on the 47 member States on 28 May 2019 to urgently repatriate their underage nationals. At the 41st session of the Human Rights Council of the United Nations, on 24 June 2019, High Commissioner for Human Rights, Michelle Bachelet, called for the urgent repatriation of foreign family members. On 11 November 2019, four United Nations high-level advocates published a joint statement related to the conflict-affected women and children in Syria and Iraq.¹³ On 26 November 2019, on the occasion of the adoption of a Resolution¹⁴ “on children’s rights on the occasion of the 30th anniversary of the UN Convention on the Rights of the Child”, the European Parliament expressed “its gravest concern regarding the humanitarian situation of children of foreign fighters held in north-eastern Syria and urges the member States to repatriate all European children, taking into account their specific family situations and the best interests of the child as a primary consideration, and to provide the necessary support for their rehabilitation and reintegration; deplores the lack of action hitherto of EU member States and the absence of coordination at EU level”.

12. Civil society organisations are unanimous in their condemnation of the lack of action to address the critical situation of the children and in the battle to hasten their safe return. Human rights organisations like Human Rights Watch and children rights organisations such as Save the Children have issued appeals to bring these children home. In December 2019, an Albanian orphan¹⁵ was evacuated from *al Hol* with the help of the Albanian and Syrian authorities, and with the support of the Red Cross and Red Crescents’ “Restoring Family Links” programme¹⁶, to live with his father in Italy. In Belgium, Child Focus is leading a campaign in favour of their return. Civil society organisations dealing with the fight against violent radicalism such as SAVE Belgium¹⁷ are also alerting public opinion. In December 2019, a Brussels Court ordered the repatriation of 10 children of four Belgian ISIS fighters. In Denmark, former Assembly member Bjørn Elmquist¹⁸ is counselling the families as a lawyer to push for the repatriation of the approximately 30 Danish children in *al Hol*. With the Danish authorities the family of a 11-month boy was able to organise the return from *al Hol* camp in November 2019.¹⁹ The boy has no other relative except from his grandparents and aunt in Denmark. In France, families and relatives represented by the “*Collectif des Familles Unies*” are supported by FIDH, “*Ensemble contre la peine de mort*” (ECPM), “*Association française des Victimes du Terrorisme*” (AfVT), magistrates’ and lawyers’ trade unions. A petition has collected 2 950 signatures to contradict a poll implying that 2/3 of the French are against the repatriation of these children from Syria and Iraq.²⁰ With their lawyers, they filed a complaint against France with the UN Committee for the rights of the children in spring 2019 and six additional complaints during the summer 2019 in domestic courts. The coalition of human rights organisations “the Child Justice Advocacy Group” (*Terres des hommes*, Penal Reform International, CRIN, and others) published the call “Bringing Children Home: A children’s rights approach to returning from ISIL” on 28 January 2020 and addressed 10 recommendations to the over 80 countries whose citizens decided to join the so-called Islamic State (ISIL).²¹

13. At national level, public figures and independent administrative authorities have supported the repatriation of these children. Their situation has caused turmoil for the governmental majority in Finland²² and Norway²³. In Belgium, Mr Bernard De Vos, the “*Délégué général aux droits de l’enfant*” of the Wallonia-Brussels federation ordered the return of all Belgian children detained in Syria on 19 March 2019²⁴ after a first interpellation of the public authorities in December 2018. Already in 2012, he had listed recommendations on the need for protection of the Belgian children in Syria and Iraq and for a secure repatriation and the integration of these children in Belgian society. In France, after different referrals in 2017, Mr Jacques Toubon, the “*Défenseur des droits*”, took the decision numbered 2019-129 urging French authorities to provide adequate support to the French children in Syria²⁵. The “Commission nationale consultative des Droits de

13. <https://www.un.org/sc/ctc/wp-content/uploads/2019/09/CTED-Analytical-Brief-Repatriation-of-Children.pdf>

14. Resolution 2019/2876(RSP) of the European Parliament

15. <https://aawsat.com/english/home/article/1981016/albanian-boy-freed-isis-camp-way-home-italy>

16. <https://familylinks.icrc.org/en/Pages/home.aspx>

17. <https://savebelgium.org/>

18. <https://politiken.dk/indland/art7524764/> »Jeg-er-sikker-på-at-de-alle-dør-hvis-ikke-vi-henter-dem-hjem«

19. <https://nyheder.tv2.dk/samfund/2019-11-21-foraeldreloes-dansk-baby-er-ankommet-til-danmark-forenet-med-familien>

20. https://www.francetvinfo.fr/monde/proche-orient/offensive-jihadiste-en-irak/deux-tiers-des-francais-souhaitent-que-les-enfants-de-jihadistes-francais-restent-en-irak-et-en-syrie_3211623.html

21. <https://www.tdh.ch/en/news/children-not-terrorists>

22. https://www.euractiv.com/section/all/short_news/al-hol-camp-causes-government-turmoil/

23. <https://www.aljazeera.com/news/2020/01/norway-finance-minister-quits-isil-woman-return-syria-200120201356390.html>

24. http://www.dgde.cfwb.be/index.php?id=dgde_detail&tx_ttnews%5Btt_news%5D=926&L=0&cHash=adef7ae23346116d2d634ab888a57df4

25. https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=28974

l'Homme" (CNC DH) published a detailed opinion on 24 September 2019.²⁶ The Coordinator of the anti-terrorist centre and magistrate David De Pas is in favour of the repatriation of the children, women and fighters.²⁷ Former President François Hollande also supported the urgent repatriation of the French children in Syria and Iraq.²⁸ In the UK, MP Crispin Blunt said that bringing British citizens back to the UK was "a burden we have to bear" and that children should be prioritised. The country was moved by the story of three children believed to be from the UK and broadcasted by the BBC. Many in the country were also shocked by the case of Ms Shamima Begum who was deprived of UK citizenship. Although the government had indicated that her child would remain British, the baby passed away because of the deplorable condition in *al Hol* camp when he was less than three weeks old.

14. The situation in *al Hol* and other camps in the region is not sustainable and is particularly volatile.²⁹ It is highly unlikely that the Kurdish authorities have the means and sufficient financial resources to properly manage facilities like the *al Hol* camp. According to Kurdish sources, among the residents of the *al Hol* camp are detained nationals of at least 54 countries³⁰ (among them 16 different member States of the Council of Europe are represented, but it is likely that there are citizens of many more member States in this and other camps). Nevertheless, residents are mainly from Syria (43%) and Iraq (42%). About 90% of the camp residents are women and children. The camp is separated into zones based on the degree of radicalisation of the women living there. Kurdish forces managing the camp indicate that fanatical women are threatening women willing to return and to face justice for their acts. They also claim these women are subject to violence from the more radicalised women. The women who are taking care of the children are inclined to lead them to radicalisation. Small children were seen reciting ISIS slogans. The camp can be considered a timebomb. The unique chance to save the children currently detained in the *al Hol* camp and other facilities may disappear when those who manage to survive are old enough to become fighters themselves. The camp could become the catalyst of future radical violence. This global issue cannot be solved by the Kurdish authorities.

15. *Ad hoc* co-operation between European countries already exists for the relocation of returnees from Syria and Iraq. France has repatriated orphans of Belgian and Dutch nationals in the spring of 2019. However, co-ordinated co-operation between countries to sort the situation of all their nationals in Syria and Iraq is missing. The situation must be resolved at domestic and European level as soon as possible, as time is lacking.

3. Member States' obligations and responsibilities

16. The key principles supporting the urgent repatriation of the children whose parents are believed to have been affiliated to ISIS/Daesh and who are now stranded in Syria and Iraq are States' international commitments and obligations related to the rights of the child, the primary responsibility of States for their own nationals and the right to nationality. Lack of action could have a considerable human cost with children's lives lost or ruined; a reputational cost with the refusal to take responsibility for their own nationals; and a legal cost as a consequence of pending cases before different international human rights bodies. UNSC Resolution 2178, 2331 and 2427 recall that children whose parents are believed to have been affiliated to ISIS/Daesh should be considered victims. The Secretary-General of the United Nations Antonio Guterres published already in April 2019 "Key principles for the protection, repatriation, prosecution, rehabilitation and reintegration of women and children with links to United Nations listed terrorist groups".³¹

Protection and repatriation

17. Whatever the link their parents have with United Nations listed terrorist groups³², the children currently held in refugee camps and detention facilities in the north-east of Syria are first of all children: infants, toddlers, pre-schoolers, school-aged children. The best interest of the children is clearly in danger. The United

26. <https://www.cncdh.fr/fr/publications/avis-sur-les-enfants-francais-retenus-dans-les-camps-syriens>

27. <https://www.20minutes.fr/societe/2631819-20191019-coordonnateur-juges-antiterroristes-plaide-rapatriement-djihadistes-francais>

28. <http://www.leparisien.fr/faits-divers/face-aux-familles-de-djihadistes-hollande-s-est-dit-favorable-au-retour-des-orphelins-07-05-2019-8067363.php>

29. <https://www.bbc.com/news/world-middle-east-47867673>

30. <https://anenglishmobile.com/features/jailed-isis-members-will-either-be-returned-home-or-tried-here-34430>

31. https://www.un.org/counterterrorism/ctitf/sites/www.un.org/counterterrorism.ctitf/files/Key%20Principles%20-%20April%202019_0.pdf

32. <https://scsanctions.un.org/en/?keywords=al-qaida>

Nations Convention on the Rights of the Child (UNCRC) is very clear about the protection of the child – any person under the age of 18 – and the need to give primary consideration to their best interests in all circumstances.

18. Strong international standards in favour of the repatriation of the children exist. The access to their country cannot be barred. Article 10 of the UNCRC stipulates that “States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.” Article 3 of Protocol No. 4 to the European Convention on Human Rights (ECHR) states that “No one shall be deprived of the right to enter the territory of the state of which he is a national”, and was cited by French lawyers in a case filed with the Court in May 2019. International standards take into consideration the specific case of war. According to Article 38 of the UNCRC: “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.” Nevertheless, it must be recognised that it is hypothetical for these children to exercise these rights without assistance when they are in refugee/detention camps in Syria and Iraq.

19. The children should thus enjoy the appropriate protection of their rights of return, including active repatriation. Article 19 of the UNCRC requires State Parties to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and to set up effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child. Article 35 requires States Parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.” These obligations find concrete expression at European level through several Council of Europe Conventions, such as the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

20. In view of the fact that the situation in the detention camps is putting at risk the lives of the children and possibly exposing them to inhumane treatment, the right to be free from torture and inhumane treatment in accordance with Article 7 of the International Covenant for Civil and Political Rights (ICCPR) and Article 3 of the ECHR could be invoked; as well as, of course, the right to life (protected in the UNCRC, the ICCPR and the ECHR)³³. The case law of the European Court of Human Rights has demonstrated that the jurisdiction of States Parties can be extended beyond domestic borders where the action of state bodies is implemented.

21. The UNCRC provides the main elements in support of family unity; the obligation of humanitarian support in case of armed conflict; the obligation of care once returned and the reintegration of these children. Article 36 stipulates that “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.” It should be noted, however, that the right to family unity (or family life at European level through Article 8 of the ECHR) is not absolute. Alternative care arrangements should thus be explored for situations in which children cannot remain with their parents or where it is not in the best interest of the child to remain with his or her primary care givers. Family-based interim care arrangements should be prioritised, followed by community-based interim care arrangements³⁴.

22. In this context it should be noted that a court in Berlin ruled that, due to the dire conditions in the *al Hol* camp, the German government had to repatriate a woman and three children. The Higher Administrative Court ruled on 6 November 2019 that repatriation of the traumatised children is only possible if the mother were also repatriated. The German government was already taking steps to repatriate the children but refused to repatriate the mother. According to the Higher Administrative Court, repatriation of the mother could only be refused if there was a concrete and tangible threat, which the German government was unable to prove³⁵.

23. The case of nationals of member States of the Council of Europe, who were deprived of their citizenship in Denmark, Switzerland, and the United Kingdom has put their children in a difficult situation. The eventuality of them becoming stateless is an infringement of the Geneva Convention on Statelessness.³⁶ The Council of Europe's *acquis* related to avoiding statelessness is also important in this regard, in particular the 1997 European Convention on Nationality (ETS No. 166), the 2006 Convention on the Avoidance of Statelessness in relation to State Succession (CETS No. 200) and Committee of Ministers Recommendation

33. <https://icct.nl/publication/european-countries-are-being-challenged-in-court-to-repatriate-their-foreign-fighters-and-families/>

34. https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/Key%20Principles%20-%20April%202019_0.pdf

35. <https://icct.nl/publication/european-countries-are-being-challenged-in-court-to-repatriate-their-foreign-fighters-and-families/>

36. <https://www.unhcr.org/un-conventions-on-statelessness.html>

CM/Rec(2009)13 on the nationality of children. Article 8 of the ECHR (right to respect for private and family life) has been interpreted to include respect for a nationality in the context of the denial of citizenship or uncertainty of recognition of citizenship.

24. At the level of the European Union, Directive 2015/637³⁷ of 20 April 2015 on “the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries” facilitates the exercise of the right set out in point (c) of Article 20(2) TFEU of citizens of the Union to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that Member State. The Directive recalls that Citizenship of the Union is the fundamental status of nationals of the member States.

Rehabilitation and (Re-)Integration

25. International law guarantees the rights of returnee children to rehabilitation and (re-)integration. Article 39 of the UNCRC stipulates that “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim”. While the situation and trauma of the children may vary according to their age and gender, it is clear that the consequences of war and armed conflict for children are dramatic, as noted in the Assembly’s report on “Protecting children affected by armed conflicts” by Ms Sevinj Fataliyeva (Azerbaijan, EC/DA)³⁸.

26. As the Assembly pointed out in [Resolution 2204 \(2018\)](#), member States should “educate children and young people who have experienced traumatising armed conflicts on non-violent approaches to ending aggression and conflict, in order to make them resilient to the trans-generational transmission of violence and allow them to grow up in a culture of constructive dialogue”³⁹, and provide “specialised support to children [...] and young people returning from territories controlled by *Daesh*, when they arrive in safe destinations, including in different European countries, and in particular by giving them psychological assistance and support, with appropriate therapy for post-traumatic stress, as quickly as possible after their arrival in the host country”⁴⁰.

27. Useful guidance on ensuring the well-being of children who are deprived of parental care can be found in the United Nations Guidelines for the Alternative Care of Children,⁴¹ as well as the Council of Europe Recommendations Rec(2005)5 on the rights of children living in residential institutions⁴² and CM/Rec (2011)12 on children’s rights and social services friendly to children and families.⁴³ However, so far, no minimum standards seem to have been developed to guarantee the smooth integration in society of the children who have experienced armed conflicts. This is why Save the Children has called for the establishment of such minimum standards for integration with a child-sensitive approach to encompass the complexity of the different individual cases. Since the Council of Europe Strategy for the Rights of the Child (2016-2021) calls for children to be protected against violence, including in armed conflicts, this may be a field where the newly set-up Council of Europe Steering Committee for the Rights of the Child (CDENF) may want to become active.

28. The specific case of children who are also offenders is strictly framed. Article 40 states that “States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.” The First Optional Protocol on the Involvement of Children in Armed Conflict applies to the care of alleged offenders, whereas the Second Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2006) reminds us that armed conflicts feed the market for trafficking of children. It is important to ensure that returnee children are provided with proper rehabilitation and (re-)integration services even in cases where they are suspected or convicted of criminal offenses.

37. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0637&from=FR>

38. Doc. 14461.

39. Paragraph 5.3.

40. Paragraph 5.6.1.

41. <https://resourcecentre.savethechildren.net/library/united-nations-guidelines-alternative-care-children>

42. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805daac2

43. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046ccea>

29. The European Union organised a high-level conference on child returnees and released prisoners in Luxembourg, on 11 October 2018, and a study visit to Pristina on the on-going experience on the ground. Kosovo⁴⁴ as one of the first in Europe, made a political decision and repatriated 110 Kosovan citizens from detention camps in North Syria, most of them women and children, already in April 2019.

4. Risks and challenges should not be underestimated

30. Since the beginning of the conflict, almost all Council of Europe member States have been “blind” and powerless in Syria as diplomatic and consular representations are closed. The support in the field is limited and relies largely on the assistance provided by military forces controlling war and conflict zones. Chancelleries are dependent on the good will of Kurdish forces, while the Autonomous Kurdish Authority has neither the legitimacy nor the capacity to prosecute European ISIS/Daesh fighters. In addition, the unprecedented nature of the number of individuals to repatriate, the complexity and risks of rescue operations have pushed chancelleries to be extremely cautious.

31. Information is essentially coming from the Kurdish authorities, journalists and providers of humanitarian assistance who carry out their mission with difficulty. The Syrian Arab Red Crescent (SARC)⁴⁵ voices concern about the current escalation of hostilities, which would exacerbate the plight and internal displacement, in the north-eastern area, where SARC was and is still making every effort to meet the needs of the families suffering adverse conditions. The *al Hol* camp is currently under the authority of Kurds of the Syrian Democratic Forces (SDF) but this could change following the most recent military moves. In addition, their capacity to run the camps is limited and they may not be capable to hold the detainees indefinitely.

32. The exact number of children whose parents, believed to be affiliated to ISIS/Daesh, are citizens of Council of Europe member States is difficult to track with precision as many of them were born in Syria. According to the International Centre for the Study of Radicalisation (ICSR) of King's College in London, their number varies between 1 300,⁴⁶ 1 834 and 5 000.⁴⁷ These numbers are almost impossible to verify. The children are often undocumented, some are stateless, and others have never had any contact with their relatives in Europe. The Kurdish authorities have established a commission to try to determine the exact figures of women and children.⁴⁸ The identification of the children is difficult⁴⁹. The situation of children whose parent believed to be affiliated to ISIS/Daesh is a citizen of a Council of Europe member State and binational is even more complicated. Of the 30 to 40 Swedish nationals (women and children) in *al Hol* camp, half of them are binational citizens of Somalia. The recent decision of the Somali authorities to repatriate their citizens was considered by a newspaper as a risk for their potential uncontrolled return to Sweden where they have families and relations.⁵⁰

33. Some countries have already repatriated a large number of children, whereas some others have been reluctant and sometimes opposed to repatriation. Surprisingly the United States which has demonstrated a strong position against terrorism, is in favour of the return of all fighters.⁵¹ President Trump encouraged the European countries to do the same at the recent NATO summit. For him, “the military achievement can easily be undone by failing to address what it has brought”. The escape of all fighters and their families is not an option for the Americans and must be prevented. In Europe, Kosovo* has said that they will not allow their citizens to be a danger for others and have repatriated 110 individuals, including 74 children (including 9 orphans). Russia repatriated 122 children between December 2018 and November 2019. Kazakhstan has airlifted 524 nationals, mainly children.

34. Others have repatriated a smaller number of children or have halted their efforts. From the 69 children identified in Syria, Belgium has repatriated six after a Court order. After having authorised the return of more than 100 children, France has considerably slowed the pace for further repatriations to now decide case by case. Between 149⁵² and 300⁵³ French minors remain trapped in Syria. 17 were repatriated in 2019.

44. * All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

45. <http://sarc.sy/syrian-arab-red-crescent-worried-humanitarian-suffering-spillover-northeast-area/>

46. <https://www.nytimes.com/2019/08/15/world/europe/isis-children-belgium.html>

47. https://icsr.info/wp-content/uploads/2018/07/Women-in-ISIS-report_20180719_web.pdf

48. <https://rojavainformationcenter.com/storage/2019/07/Bringing-ISIS-to-justice-Rojava-Information-Center-Report-2019-Website.pdf>

49. In Belgium, the Child Ombudsperson Mr De Vos is not in favour of DNA testing but rather favours inquiries aimed at gathering evidence to confirm the nationality of the children. The use of DNA testing should, according to him, apply only to children who cannot speak. The cost of DNA testing should not be an obstacle in this case.

50. <https://www.aftonbladet.se/nyheter/a/mRdMGq/risk-att-is-kvinnorna-atervander-till-sverige>

51. <https://ctc.usma.edu/app/uploads/2019/05/CTC-SENTINEL-052019.pdf> page 11

In December, Bosnia and Herzegovina repatriated 24 women and children.⁵⁴ Of the 100 German children identified, four were repatriated. Sweden repatriated seven orphans; Austria and the Netherlands two children each; Denmark one. Direct access to *al Hol* camp and facilities in the north-east of Syria is insecure.

5. Conclusions

35. This report aims to provide a basis for an urgent debate to take place on 30 January 2020. Its ambition is not to provide a complete overview of the situation of children whose parents, believed to be affiliated to ISIS/Daesh, are citizens of Council of Europe member States, but to restore the perception of their humanity and to remind member States that these children are first and foremost victims of war in need of urgent protection. Repatriating these children from Syria and Iraq is a human rights obligation and a humanitarian duty. The Assembly should call upon the member States concerned to be transparent about the actual number of children concerned and to take measures responding to their urgent needs before it is too late. Their return should be organised as early as possible and coordinated with their relatives in Europe.

36. These child victims have witnessed war and extreme violence, and have lived in wretched and squalid conditions. They need specific support to recover and solidify their resilience. It goes without saying that girls require special attention and gender sensitive policies should be applied throughout. Child-care professionals are trained to deliver appropriate services, including health and education, but also dedicated psychological and psychiatric support to respond to the specific needs of these children. Additional training is probably needed. The capacity of the child-care services to effectively take care of a large number of returning children should be ensured. These measures should be supported by the provision of adequate financial resources.

37. The (re-)integration of these children may be a challenge for the countries concerned when it concerns the minority of older children (the vast majority of the children are aged under 12, often under six). De-radicalisation is complex and has a mixed track record. Among good practice examples available in Europe is a pilot project in Aarhus, Denmark, which shows that child returnees need above all support and empathy to be safe from risks. Taking care of the children who have lived in this extremely violent environment is key to combating radicalisation and terrorism. As underlined by Belgian Child Ombudsperson Mr De Vos, this approach stands at the opposite pole of the exclusionist mindset which only serves to further ISIS' and other terrorist groups' anti-Western ideology.

38. The role of the media is important here: media coverage should not place children at risk of physical or psychological harm and psychological damage. Media, publication standards, codes of conduct and other safeguards should be implemented to prevent placing children at risk, violating confidentiality standards and otherwise causing harm to the children or their families, as underlined by the Paris Principles and Guidelines on children associated with armed forces or armed groups⁵⁵.

39. As noted by the Congress of Local and Regional Authorities, de-radicalisation is the responsibility of all levels of government.⁵⁶ The role of public services, local governments and civil society organisations active in this field should be supported because they are essential to prevent the ideas supporting terrorism. Establishing a society which is resilient to threats and vulnerabilities caused by radicalism and terrorism is a common-sense objective. National human rights institutions can also make an important contribution.

40. In cases where surviving parents are prosecuted or convicted for criminal activity, separation from the child may be inevitable. This situation cannot be a matter of policy but must be decided on a case-by-case basis. The question of returning European ISIS fighters is another issue on which the Parliamentary Assembly is preparing a separate report.⁵⁷

41. I am profoundly convinced that actively repatriating, rehabilitating and re-integrating these children without further delay is a human rights obligation and a humanitarian duty. Integrating a child-rights perspective into counter-terrorism efforts is not only a human rights imperative but would also constitute an essential contribution towards the national security of the countries concerned.

52. https://www.liberation.fr/planete/2019/09/25/nouvel-appel-pour-rapatrier-les-enfants-francais-de-syrie_1753499

53. Information from the CNCDH

54. <https://aawsat.com/english/home/article/2043581/ex-isis-militants-women-and-children-return-bosnia>

55. <https://resourcecentre.savethechildren.net/node/3384/pdf/3384.pdf>

56. https://search.coe.int/congress/Pages/result_details.aspx?ObjectId=0900001680718986

57. "Addressing the issue of *Daesh* foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe", Rapporteur Pieter Omtzigt (the Netherlands, EPP/CD)