



Fourteenth United Nations Congress on Crime Prevention and Criminal Justice

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Items 5 and 6 of the provisional agenda**

Multidimensional approaches by Governments to promoting the rule of law by, inter alia, providing access to justice for all; building effective, accountable, impartial and inclusive institutions; and considering social, educational and other relevant measures, including fostering a culture of lawfulness while respecting cultural identities, in line with the Doha Declaration

International cooperation and technical assistance to prevent and address all forms of crime:

- (a) Terrorism in all its forms and manifestations;
- (b) New and emerging forms of crime

Statement submitted by the Friends World Committee for Consultation***

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Human rights concerns for children of parents accused or convicted of association with designated terrorist groups¹

The situation of children of parents accused or convicted of association with designated terrorist groups requires the attention of this Congress.² As the international community continues to deal with the challenges of designated terrorist activity including through its discussions and decisions at this Congress, we urge delegates to recall the fundamental rights to which these children are entitled, and to promote and protect these rights in all actions designated as responses to terrorism. Doing so is not only a moral imperative and legal requirement, but a fundamental element of the global push towards achievement of the 2030 Agenda, as we strive to “leave no one behind”.

The Sustainable Development Goals and the rights of children are inextricably linked and mutually reinforcing. We urge delegates to maximize the alignment of these two vital tools by ensuring the protection and promotion of the rights of children of parents accused or convicted of association with designated terrorist groups in their responses. Leaving no-one behind means ensuring the rights of *all* children, regardless of the actions of their parents.

SDG16 calls for building peaceful and inclusive societies, providing access to justice for all, and building effective, accountable and inclusive institutions, all of which are central to any activity intended to prevent designated terrorist activity. Inclusive societies and institutions require the full participation of all children and respect for and protection of their rights. We draw delegates’ attention to the Security Council’s emphasis that all responses to terrorism should be undertaken in full accordance with international law,³ as well as the High Commissioner for Human Rights’ remarks that, all children alleged of, accused of or recognized as having infringed the law, as well as child victims and witnesses of crimes, should be treated in a manner consistent with their rights, dignity and needs in accordance with applicable international law, in particular the Convention on the Rights of the Child.⁴

Agenda Item 6 will focus on “International cooperation and technical assistance to prevent and address all forms of crime”, including “terrorism in all its forms and manifestations”. We remind States that the measures they take in the name of countering terrorism have impacts upon children. The children of parents accused or convicted of association with designated terrorist groups encounter a range of human rights violations. They, like all children, are entitled to the full protection of their rights as recognized under the Convention on the Rights of the Child, which only allows for exceptional derogation from three rights.⁵

We note the importance of treating these children in full accordance with their rights in regard to the interventions discussed in Workshop 2 on “Reducing Reoffending”. Upholding the rights of these children is key to preventing intergenerational cycles of exclusion and grievance that can contribute to radicalization, and is an essential component of States’ efforts to reduce complex and multidimensional violence,

¹ Lucy Halton (2020), Key Human Rights Concerns for Children of Parents Accused or Convicted of Association with Designated Terrorist Groups (Quaker United Nations Office, Geneva).

² This terminology will be used throughout this statement to refer to all children of parents who are accused or convicted of crimes including association with or membership of designated terrorist groups, or of any other terror-related offences, as defined within national, regional and international legal frameworks, and is not limited to those accused or convicted of acts of politically or ideologically motivated violence.

³ United Nations Security Council, Resolution 2396 (2017) Preamble.

⁴ *Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*: Report of the United Nations High Commissioner for Human Rights (A/HRC/40/28) (2019) para. 1.

⁵ Only three of the substantive rights in the Convention on the Rights of the Child may be restricted in the interests of national security (Article 10.2 on the child’s right to leave any country and to enter their own country for the purposes of maintaining contact with their parents, Article 13 on the child’s right to freedom of expression, and Article 15 on the child’s right to freedom of association and peaceful assembly).

including terrorism, and live up to the 2030 Agenda commitment to foster peaceful, just, and inclusive societies.⁶

In addition to the harm that parental incarceration can do,⁷ there are specific issues to consider for these children.

Key issues

Non-discrimination

Article 2 of the Convention on the Rights of the Child protects the child's right to freedom from discrimination, in law or in practice, on the basis of the activities or status of their parent(s). Policies or responses which treat all children of parents associated with designated terrorist groups as security threats, including detaining or punishing them, based solely on the activities or views of their parents therefore violate the rights of these children.⁸ It should never be assumed that these children pose a security risk: each child must be assessed on a case-by-case basis. Children whose parents are suspected or convicted of involvement with designated terrorist groups must be given birth certificates which do not reflect this.

The best interests of the child

The best interests of the child must be taken as a primary consideration in all decisions which affect them, including judicial decisions about their parents or caregivers. States should ensure the provision of competent authorities to independently assess the best interests of each child on a case-by-case basis.

Children of suspected members of designated terrorist groups must be treated primarily as rights-holders in all circumstances and, while respecting States' legitimate security concerns, all measures taken in respect of these children must be based upon the principle of best interest, and made on a case-by-case basis rooted in protection.

In cases where there is concern about security risks posed by a particular child because of their exposure to designated terrorist activity or for any other reason, decisions about that child must be made 'to serve the child's best interests on a case-by-case basis and pursuant to due process',⁹ even where these best interests conflict with States' security interests.¹⁰

The right to privacy

The child's right to privacy is enshrined in Article 16 of the Convention on the Rights of the Child: children of parents accused or convicted of offences designated as terrorist activity are often at particular risk of this right being violated.

⁶ United Nations Plan of Action to Prevent Violent Extremism (2015), para. 29.

⁷ Lucy Halton and Laurel Townhead (2020), *Children of Incarcerated Parents: International Standards and Guidelines* (Quaker United Nations Office, Geneva); Oliver Robertson (2012), *Collateral Convicts: Children of Incarcerated Parents, Recommendations and Good Practices from the United Nations Committee on the Rights of the Child Day of General Discussion 2011* (Quaker United Nations Office, Geneva); Adele Jones and Agnieszka Wainaina-Woźna (eds.) (2012) *The Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health* (University of Huddersfield).

⁸ *Ibid.*, paras. 63 and 64

⁹ United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019) para. 61.

¹⁰ "States parties are obliged, in line with article 3 of the Convention on the Rights of the Child, to ensure that any decision to return a child to his or her country of origin is based on evidentiary considerations on a case-by-case basis and pursuant to a procedure with appropriate due process safeguards, including a robust individual assessment and determination of the best-interests of the child." Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, No. 22 (2017) of the Committee on the Rights of the Child, para. 33; Committee on the Rights of the Child, General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration (2013);

This may arise in a range of circumstances, including the DNA testing of children by state authorities to determine their nationality. Any such data can only be collected if justified according to the child's best interests, and the data must not be retained by the state for any purpose other than the one for which it was taken.¹¹

Other situations in which the child's right to privacy is of critical importance include the release of information about people accused or convicted of offences designated as terrorist activity to the media: States must take necessary measures to protect the child's right to privacy, and take preventative measures to preclude any violence, harassment or intimidation towards the child.

Any interference with the right to privacy must comply with the principles of legality, necessity, and proportionality.¹²

Recovery and reintegration

Children whose parents are accused or convicted of designated terror offences should be given all the support necessary to their unique situation, in accordance with Article 39 of the Convention on the Rights of the Child. For some, especially those who have lived in conflict zones, this is likely to include extensive rehabilitation.

All such interventions must be undertaken with the best interests of the child as a primary consideration and should respect the child's right to be heard and to have their views taken into account, incorporating an understanding of the child's developing capacity. An inclusive and participatory approach is likely to help the process of recovery and reintegration.¹³

Preservation of family unity

The child's right to family life, to not be arbitrarily separated from their parents, and to maintain contact with their parents if separation does occur are protected in Article 9 of the Convention on the Rights of the Child, and recognized as a vital principle elsewhere in international human rights law.¹⁴ International humanitarian law also requires that family units be preserved as far as possible.¹⁵ Given the severe impact of family separation on children and the importance of preserving family unity when doing so is in the best interests of the child, best interests assessments should include consideration of the preservation of family unity, and consider alternatives to detention for parents whenever appropriate.

If the State deems that separating a family is in the best interests of the child, the separation should be periodically reviewed, and the child should have contact with their parent as appropriate following an individual best interests assessment.¹⁶

¹¹ United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019), para. 102.

¹² UNOCT and CTED, *United Nations Compendium of Recommended Practices for the Responsible Use and Sharing of Biometrics in Counter Terrorism* (2018). In exceptional circumstances, the right to privacy may be violated by a State on the basis that they have a "legitimate aim" in doing so. In the particular case of children of parents accused or convicted of terror offences, such a "legitimate aim" is likely to refer to the protection of the child. Monitoring a child as a security risk based solely on the crimes of their parents does not constitute a legitimate aim and violates the principle of non-discrimination. Any gathering of data about these children must, therefore, be subject to a strict and rights-based regulatory framework

¹³ *Protection of Human Rights and Fundamental Freedoms While Countering Terrorism: Report of the United Nations High Commissioner for Human Rights (A/HRC/40/28)* (2019) para. 12.

¹⁴ Universal Declaration of Human Rights (1948), art. 16(3); International Covenant on Civil and Political Rights (1966), art. 23; International Covenant on Economic, Social and Cultural Rights (1966), art. 10(1); American Convention on Human Rights (1969), art. 17(1); Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (1988), art. 15(1); African Charter on Human Rights and Peoples' Rights (1981), art. 18.

¹⁵ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949), art. 27(1); Rule 105 of the ICRC's Rules of Customary International Humanitarian Law database.

¹⁶ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949), arts. 106 and 107; Additional Protocol II to the Geneva Conventions (1977), art. 5 (2) (b);

If the parent(s) is detained, this should be near to their children wherever possible, and visits should be made possible in a child-friendly environment. Children separated from their parents must also be provided with alternative care, whether that is appropriate kinship care, other care, or care organized by the state, in accordance with the United Nations Alternative Care Guidelines.¹⁷ In cases where repatriation is involved, parent and child should be repatriated together whenever in the child's best interests.

Deprivation of liberty and conditions of detention

It is well-established that deprivation of liberty is almost never¹⁸ in the best interests of a child: for this reason, along with the importance of the family environment,¹⁹ alternatives to detention should be sought wherever possible.

Many children are, however, being detained with their parents who have been accused or convicted of offences designated as terrorist activity.²⁰ Where this is the case, conditions must be human rights compliant, including ensuring safety, and ensuring the provision of adequate food and sanitation and access to services such as education and health care.

States have primary responsibility for their nationals. There is widespread reporting of children suffering serious violations of their rights in detention facilities in several conflict zones: the International Covenant on Civil and Political Rights (ICCPR) requires that States ensure the right to life of those who are outside of its territory and whose right to life is impacted by the State's activities in a reasonably direct and foreseeable manner.²¹ Furthermore, the ICCPR entitles every child to "such measures of protection as are required by his status as a minor on the part of his family, society and the State". This provision can be interpreted to mean States must extend protective measures to all children of their nationality, including children of parents accused or convicted of involvement with groups designated as terrorist.²²

Right to nationality and re-entry

Every child has a right to a nationality, as recognized in Article 7 of the CRC, and all States must ensure that children, regardless of the crimes or alleged crimes of their parents, are not subjected to statelessness. Denying a child their nationality because of the suspected or confirmed involvement of their parents in terrorist activity would

Convention on the Rights of the Child (1989), art. 37 (c); Rule 125 of the ICRC's Rules of Customary International Humanitarian Law.

¹⁷ United Nations General Assembly, Resolution 64/142, *Guidelines for the Alternative Care of Children* (2010).

¹⁸ This must be considered in a situational manner: in some circumstances, such as immigration detention, it is never in the best interests of a child to be deprived of their liberty. In others, it is *almost* never in their best interests to be deprived of their liberty, because there are exceptional circumstances in which a full best interests assessment may determine that it is the most suitable course of action. Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 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 (2017) paras. 5–13; Manfred Nowak, *United Nations Global Study on Children Deprived of their Liberty* (2019).

¹⁹ As outlined in various key human rights documents, including the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and in International Humanitarian Law in Article 46 of the Hague Regulations, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949), art. 27 and Rule 105 of the ICRC's Rules of Customary International Humanitarian Law.

²⁰ United Nations High Commissioner for Human Rights, *Protection of human rights and fundamental freedoms while countering terrorism* A/72/865, 10 January 2019, para. 224.

²¹ Human Rights Committee, general comment No. 36 (2018), para. 63.

²² United Nations United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019), p. 24.

constitute a violation of the principles of non-discrimination and best interests as outlined in Articles 2 and 3 of the Convention on the Rights of the Child respectively.

ICCPR article 12(4) guarantees the right of every person to re-enter their own country: children, regardless of the actions of their parents, are no exception to this right and must not be barred from re-entering their country of nationality. Such barring not only constitutes a violation in and of itself, but often gives rise to further violations as children are left in detention facilities, awaiting transfer.

Children should be repatriated with their parents, if in their best interests. States should ensure that repatriation programmes treat all children equally, without preference to those with orphan status or of a particular age: all of those under the age of 18 are entitled to equal protection under international law.

Conclusions

There is an urgent need for more rights-based work to be undertaken on this issue. We urge States present at the Congress to promote, protect and fulfil the rights of children of parents accused or convicted of association with designated terrorist groups, in their ongoing responses to national, regional and global activity designated as terrorism.

Further research should be undertaken to identify the specific risks faced by these children and to identify the measures necessary to uphold their rights.

We call on the United Nations Office on Drugs and Crime to ensure that child rights are upheld throughout all of their work designated as counter terrorism including through all advice, guidance and technical assistance provided to States in line with the Secretary General's call to action on human rights.²³

²³ António Guterres (2020), *The Highest Aspiration: A Call to Action for Human Rights* (United Nations).