



Position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Consultation meeting with Experts on the return of “Foreign Fighters” and their families to Europe

Paris, 25 September 2019



**Position of the Special Rapporteur: Return of foreign fighters and their families
to the Consultation meeting with Experts on the Return of “Foreign Fighters”
and their Families to Europe**

The Special Rapporteur on the promotion and protection of human rights while countering terrorism recalls that the urgent return and repatriation of foreign fighters and their families from conflict zones is the only international law-compliant response to the increasingly complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in inhumane conditions in overcrowded camps, prisons, or elsewhere in northern Syrian Arab Republic and Iraq. Such return is a comprehensive response that amounts to a positive implementation Security Council resolutions 2178 (2014) and 2396 (2017) and is considerate of a State’s long-term security interests.

States have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of international human rights law. This includes flagrant denial of justice, the imposition of the death penalty, torture or cruel, inhuman or degrading treatment, sexual violence, or deprivation of liberty in grave violation of human rights standards, including arbitrary detention, incommunicado detention, and detention that fails to comply with the most basic standards of humanity.

In light of the inhumane, degrading and increasingly dangerous situations of detention, the Special Rapporteur cannot accept that stated practical challenges faced by States in the return process, including the lack of consular representation in areas where nationals are present and the shortage of information on the whereabouts of and conditions faced by nationals in conflict zones who frequently find themselves in the power of armed groups operating as de facto authorities, be used as excuses to obstruct returns. The Special Rapporteur has seen first hand that partnerships can be optimized in tracing, identifying and delivering the practical means to extract individuals from territories under the control of non-state actors and ensure their safe return to home countries. She has also seen that a number of steps can be taken to ascertain nationality, to obtain assistance from state and non-state actors to move individuals from camps and assist in air transport, as well as in the provision of humanitarian assistance and medical care before, during and after transit. While effective consular assistance can play a preventive role when facing a risk of flagrant violations or abuses of human rights, the remedial nature of this protection frequently means that they cannot effectively prevent an irreparable harm from being committed.

The Special Rapporteur further stresses that an effective return process includes holding individuals accountable for serious violations of national and international law for serious and systematic crimes committed in Syria and Iraq. It is, in fact, the only way to close the gaping impunity gap for which the inadequate and dysfunctional judicial system in both Iraq and Syria is not an answer. There is an urgent need for justice for

all of the victims of the violations of human rights and humanitarian law that has occurred in the region. States thus have a responsibility to prosecute individuals against whom there is sufficient evidence of criminal behaviour, and sanction them appropriately through fair trials that comply with due process. This includes ensuring that security measures throughout the return process, including those aimed at establishing potential criminal culpability, preserve the legal rights of returnees and conformity with national and international law, including the absolute prohibition of torture and arbitrary detention, the violation of which would compromise the fairness and integrity of the judicial process.

Returning children is a humanitarian and human rights imperative. The argument that children are not deserving of protection constitutes a moral failure by their home countries, particularly those who have ample resources. State and non-state actors at all levels should affirm and respect the fundamental vulnerability of children caught up in armed conflict, through a range of circumstances almost always not of their own making, or from contexts which have no meaningful exit. Children enjoy special protection in accordance with the Convention on the Rights of the Child and its Optional Protocols as well as international humanitarian law. Children must always be treated primarily as victims, while the best interest of the child must always be a primary consideration. States have obligations to undertake individualized assessments for each child, determining what integration needs may be based on comprehensive, multiagency and multidisciplinary approaches for addressing their needs, while preventing discrimination based on nationality, birth status, immigration status, and statelessness. States should take all necessary measures to avoid the stigmatization or creation of further negative distinctions between children who were born of rape, children who were recruited because of their vulnerable birth status, or children who participated in hostilities enabled by their birth status.

Returning States must disaggregate the experience of women and girls and recognize the complexity of birthing, violence and gendered realities under the Caliphate. An analysis of mobilization, including roles and motivations, is necessary to understand the complexities of each situation. Particular attention must be paid to women and girls who have been forcibly kidnapped, coerced into sexual or other slavery, subjected to sexual exploitation and harm on joining or being associated with non-state armed groups as well as to girls who have been groomed on-line and recruited and enabled to travel marrying, providing sexual or household services to their husbands, as well as providing labour for the larger non-state armed group/terrorist organization. States must also bear in mind that the distinction between victims and perpetrators can be complex, with returnees being victims of terrorism, trafficking, slavery or sexual violence as well as perpetrators of criminal offences. In the Special Rapporteur's view, maternal responsibilities should on their own never qualify as 'material support' to terrorism.

Meaningful action towards rehabilitating and reintegrating returning foreign fighters and, if applicable, members of their families is consistent with the spirit of international solidarity and cooperation as required by Security Council resolutions 2178 (2014) and 2396 (2017) and is in the long-term interest of international peace and security. Practical and detailed guidance is available to States to enable human rights complaint return in the *Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters* produced by the CTIFT Working Group on Promoting and Protecting Human Rights and Rule of Law while Countering Terrorism

<https://www.ohchr.org/EN/newyork/Documents/Human-Rights-Responses-to-Foreign-Fighters-web%20final.pdf>). Programs must be human rights-compliant and avoid any long-term stigma for those who successfully reintegrate and return to everyday life. States must take special care that such programs do not over-emphasize on religious “normalization” and that theological criteria is not being used as a ‘stand-in’ for a broader and scientifically based understanding of rehabilitation. The right to freedom of religious belief in respect of all religious groups must be firmly protected. Such programs must also engage with and support the families of persons who have travelled to conflict zones. The stigma, exclusion and challenges they face in society should be recognised as should their role as key allies in the fight against terrorism and as advocates against radicalization. The Special Rapporteur encourages and supports pro-active and human rights complaint action by States in this regard as an urgent priority.