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REVISED: Key Human Rights Concerns for Children of Parents Accused or Convicted of Association with Designated Terrorist Groups

Lucy Halton

Human Rights and Refugees

For over 15 years, QUNO has worked to draw attention to the impact on children of parental incarceration and clarify the existing human rights protection in international law.¹

This paper draws on that work to outline the additional specific rights violations faced by children because their parents are accused or convicted of association with designated terrorist groups.²

For more info, contact:

ltownhead@quno.ch

Introduction

The global community continues to face the challenges of terrorism. It has become clear in recent years that there is an increasing concern regarding the many children associated with designated terrorist organisations, one group of whom are children of parents suspected, accused or convicted of association with designated terrorist groups.³ Upholding the rights of these children in all circumstances is not only a moral imperative, but a legal requirement and an essential component in preventing inter-generational cycles of association with designated terrorist groups.⁴

This paper provides a brief overview of the key human rights concerns for children whose parent(s) or caregiver(s) are suspected, accused or convicted of involvement with designated terrorist groups. The Committee on the Rights of the Child has made clear that children whose parents are in conflict with the law must be given special consideration by States: children whose parents are suspected, accused or convicted of involvement with designated terrorist groups are equally entitled to this specific consideration.⁵

The rights of these children must be a key consideration in the ongoing implementation of UN Security Council Resolution 2396, including in the implementation guidance provided to States by the UNOCT and CTED and in any future Security Council resolutions and follow-up.

1 Lucy Halton and Laurel Townhead (2020), Children of Incarcerated Parents: International Standards and Guidelines (Quaker United Nations Office, Geneva).

2 We have also undertaken work on the specific impacts on children of parental death sentences and executions, see Stephanie Farior (2019), Protection of the Rights of Children of Parents Sentenced to Death or Executed: A Legal Analysis (Quaker United Nations Office, Geneva) and Oliver Robertson and Rachel Brett (2013) Lightening the Load of the Parental Death Penalty on Children (Quaker United Nations Office, Geneva).

3 This terminology will be used throughout this publication 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.

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

5 Committee on the Rights of the Child, general comment No. 14 (2013), para. 28

A Child Rights-Based Approach to Children of Parents Suspected, Accused or Convicted of Involvement with Groups Designated as Terrorist

Noting that the Convention on the Rights of the Child entitles all children to equal rights on the basis that they are children, this paper explores the inherent and indivisible rights of all children, focussing on the children of parents suspected of, charged with or convicted of involvement with designated terrorist groups. Crucially, all children have the right not to be discriminated against based on the status or activities of their parents (Convention on the Rights of the Child, Article 2.2), the right to have their voice heard in any judicial or administrative proceeding affecting them (Convention on the Rights of the Child, Article 12.2), and the right to have their best interests taken as a primary consideration in all actions concerning them (Convention on the Rights of the Child, Article 3.1).

The United Nations Security Council has emphasised that all responses to terrorism should be undertaken in full accordance with international law⁶; and the High Commissioner for Human Rights has noted 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.⁷

This paper highlights the main human rights concerns for children of parents suspected, accused or convicted of involvement with designated terrorist groups based upon international human rights law, international humanitarian law, and international refugee law, noting the central role of the United Nations system and of States in addressing this significant global challenge.

The Convention on the Rights of the Child does not allow for derogation in times of conflict or emergency, and only three of the substantive rights it includes 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).

Children of Parents Suspected, Accused or Convicted of Involvement with Designated Terrorist Groups

The 2019 UN Counter-Terrorism Centre's Handbook on Children Affected by the Foreign Fighter Phenomenon⁸ provides a helpful entry-point into some of these issues: however there is a wider group of children who are affected as a result of State responses to their parents being suspected, accused or convicted of involvement with designated terrorist groups. This paper will focus on this wider group, and on how State actions linked to criminal justice and national security responses impact on children's rights.

This paper is intended to refer to the children of parents suspected, accused or convicted of involvement with terrorist groups wherever they may be, including those whose parents are tried and detained in in conflict zones as well as those not in areas of active armed conflict, and children affected by the foreign fighter phenomenon. These children often face complex and multifaceted challenges, especially when multiple state territories are involved: this paper therefore seeks to reiterate the rights to which they are *all* entitled.

⁶ United Nations Security Council, Resolution 2396 (2017) Preamble.

⁷ *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.

⁸ United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019).

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 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.⁹ 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 terrorist groups must be given birth certificates which do not reflect this.

The Best Interests of the Child as a Primary Consideration

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. Best interests are a three-fold concept, including (a) the child's substantive right to have their best interests considered as a primary consideration, (b) the interpretative legal principle requiring the interpretation of legal standards in such a way that privileges the child's best interests and, (c) a rule of procedure which requires the review of the possible impact upon a child's best interests of any decision taken.

States should ensure the provision of competent authorities to independently assess the best interests of each child on a case-by-case basis.

Sentencing decisions must take into account the best interests of the child as a primary consideration: this means that courts must seek to obtain accurate and up-to-date information about the children and/or caring responsibilities of any persons accused of involvement with designated terrorist groups. Furthermore, this means that policy decisions made about groups of children, such as the children of parents suspected or convicted of involvement with terrorist groups, must also be made with the best interests of the child as a primary consideration.

⁹ *ibid.* paras 63 and 64

Children of suspected, accused or convicted members of terrorist groups must be treated primarily as rights-holders in all circumstances and, while respecting States' legitimate security concerns, all responses to 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 terrorist activity or for any other reason, decisions about that child made must be made 'to serve the child's best interests on a case-by-case basis and pursuant to due process',¹⁰ even where these best interests conflict with States' security interests.¹¹ The principle of best interests is fundamental and non-derogable. In the long term, it is likely that such a rights-based approach will also serve the state's security interests, reducing the risk of later radicalisation.¹²

The Right to Privacy, including the use of Biometric Data

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 terror offences are often at particular risk of this right being violated. The protection of the right to privacy in the Convention on the Rights of the Child offers some of the strongest privacy protection in international human rights law.

Any interference with the right to privacy must comply with the principles of legality, necessity, and proportionality.¹³ In exceptional circumstances, the right to privacy may be limited by a State on the basis that they have a legitimate aim in doing

¹⁰ United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019) para. 61.

¹¹ '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);

¹² United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019).

¹³ UNOCT and CTED, *United Nations Compendium of Recommended Practices for the Responsible Use and Sharing of Biometrics in Counter Terrorism* (2018).

so. In the particular case of children of parents accused or convicted of terror offences, such legitimate aims are likely to refer to the protection of the child, or their reunification with family members. 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. Gathering data about these children must, therefore, be subject to a strict and rights-based regulatory framework.

Situations in which the child's right to privacy is of critical importance include the release of information about people accused or convicted of terror offences 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 which may occur as a result.

A particular situation in which the child's right to privacy must be a primary consideration is in the collection of biometric data. This includes but is not limited to the DNA testing of children by State authorities to determine their nationality or parentage. While there are circumstances in which such data collection may be in the child's best interests, to enable family reunification, 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.¹⁴ Best interests assessments must take into account the unreliability of biometric data when it comes to children: this includes the instability of biometric data of young children, racial biases inherent in many biometric technologies, and the inability of DNA testing to provide a full picture of familial relationships. More detailed information on this is available in QUNO's supplement to this paper, 'The collection and use of biometric data in the context of children of parents suspected, accused or convicted of association with designated terrorist groups: a child rights-based briefing note for Civil Society, States and UN entities.'

Recovery and Reintegration

Children whose parents are accused or convicted of designated

¹⁴ United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019), para 102; Dr. Krisztina Huszti-Orbán and Prof. Fionnuala Ní Aoláin, 'Use of Biometric Data to Identify Terrorists: Best Practice or Risky Business?' [Report prepared under the aegis of the Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism], (July 2019).

terror offences should be given all the support necessary to their unique situation. For some children, especially those who have lived in conflict zones, this is likely to include extensive rehabilitation, including appropriate therapy and counselling and in some cases deradicalisation. In accordance with Article 39 of the Convention on the Rights of the Child, States should:

(T)ake all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

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.¹⁵

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 recognised as a vital principle elsewhere in international human rights law.¹⁶ International humanitarian law also requires that family units be preserved as far as possible.¹⁷ 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.

¹⁵ *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.

¹⁶ 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.

¹⁷ 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.

In some circumstances when a parent is convicted of involvement with designated terrorist groups, the State may deem that separating a family is in the best interests of the child. In such cases, the separation should be periodically reviewed, and the child should have contact with their parent as appropriate following an individual best interests assessment.¹⁸

Parents should be detained near to their children wherever possible, and visits should be made in a child-friendly environment. Humanitarian actors facilitating family visits to those deprived of their liberty for association with designated terrorist groups must not be prosecuted, fined, or threatened with the aforementioned, for facilitating such visits. Children separated from their parents must also be provided with alternative care, whether that is appropriate kinship care, other care, or care organised by the state, in accordance with the United Nations Alternative Care Guidelines.¹⁹ In cases where repatriation is involved, parent and child should be repatriated together whenever in the child's best interests.

Children separated from their parents due to incarceration as a result of suspected or convicted designated terror offences require additional support, including protection from stigmatisation and protection of their right to privacy.

The UN's Handbook on Children Affected by the Foreign Fighter Phenomenon notes that:

When detention or imprisonment of a parent cannot be avoided, States should provide support to children to prevent the risk of violence that they may be exposed to owing to the parent's situation, acknowledging the complementary roles of the criminal justice system, child protection agencies, health, education and social service sectors. That may also require States to address the responsibility of the media and to enforce legislation to protect the right to privacy of those children and prevent their stigmatization.²⁰

Deprivation of liberty and Conditions of detention

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

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

20 United Nations United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019) para. 121.

It is well-established that deprivation of liberty is almost never²¹ in the best interests of a child: for this reason, along with the importance of the family environment,²² alternatives to detention should be sought wherever possible.

Many children are, however, being detained with their parents who have been accused or convicted of designated terror offences.²³ Where this is the case, conditions must meet the necessary minimum standards: these include ensuring safety, ensuring the provision of adequate food and sanitation and access to services such as education and health care, to ensure the full protection of their rights. Rule 87 of Customary International Humanitarian law states that 'Children who are deprived of their liberty must be held in quarters separate from those of adults, except where families are accommodated as family units.'²⁴

These children are also likely to require specialist interventions in order to address the experiences they have gone through, such as post-trauma counselling, and must be treated with respect and dignity. Where these children are deemed to require deradicalisation interventions, such interventions must be undertaken with full respect for the rights and dignity of the child.

The Committee on the Rights of the Child has repeatedly recognised the necessity of safe and appropriate conditions for children detained with their parents: this right must be equally enjoyed by the children of parents accused or convicted of designated terror offences. These children must not be treated as if they themselves are prisoners. This applies to children

21 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) para. 5-13; Manfred Nowak, *United Nations Global Study on Children Deprived of their Liberty* (2019).

22 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.

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

24 Rule 87 of the ICRC's Rules of Customary International Humanitarian Law.

detained with their parents within the State's territory, but also includes child citizens detained overseas.

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 both outside of its territory and whose right to life is impacted by the State's activities in a reasonably direct and foreseeable manner.²⁵ Additionally, the test of 'effective control' can be used to establish when a State is responsible for the protection of the rights of an individual outside of the State's territory: if a State is in effective control of an individual's enjoyment of a specific right, then it is the duty of the state to protect that right.²⁶ 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 as meaning that 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.²⁷

Right to nationality & Re-entry

Every child has a right to a nationality, as recognised in Article 7 of the CRC, and all States must ensure that children,

Conclusions

There is a clear need for further work to be done in this area in order to ensure that the rights of all children are protected and upheld, including children of parents accused or convicted of terror offences. Further research should be undertaken to identify the specific risks faced by these children and to identify the measures necessary to uphold their rights. Where these children are separated from their family members due to residing overseas, States should work as quickly as possible to reunite children with their relatives.

The implementation of Security Council Resolution 2396 should be undertaken in full accordance with internationally recognised child rights protections, taking into account

²⁵ Human Rights Committee, general comment No. 36 (2018), para. 63.

²⁶ See *Al-Skeini and others v. the United Kingdom*, European Court of Human Rights, Grand Chamber, Application no. 55721/07, Judgment, Strasbourg, 7 July 2011, and the International Court of Justice's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004.

regardless of the crimes or alleged crimes of their parents, are not subjected to statelessness. Domestic legislation must provide protection against statelessness: States which have adopted legislation allowing for citizenship to be revoked from persons posing a security threat must ensure that sufficient safeguards are in place to prevent any children of these individuals from being made stateless. Denying a child their nationality because of the suspected or confirmed involvement of their parents in terrorist activity would 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.

International human rights law (ICCPR article 12(4)) guarantees the right of every person to re-enter their own country: children, whatever their parents may have done, are no exception to this right and must not be barred from re-entering their country. 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, wherever it is in their best interests, be repatriated with their parents, and 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.

the specific circumstance and needs of children of parents suspected, accused or convicted of association with designated terrorist groups. Any future human rights-based guidelines on the implementation of Resolution 2396 must be developed with the input of child rights experts.

We encourage the whole of the United Nations system, in particular the UN Office of Counter-Terrorism and the UN Counter-Terrorism Committee Executive Directorate, as well as the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Human Rights Council to pay specific attention to the issues these children face and to contribute to ending violations of their rights.

²⁷ United Nations Counter-Terrorism Centre, *Handbook on Children Affected by the Foreign Fighter Phenomenon* (2019) p. 24.