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Steering Committee for the Rights of the Child (CDENF)

**Opinion by the Steering Committee for the Rights of the Child (CDENF)
on Recommendation 2244 (2023) – “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”**

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Opinion by the Steering Committee for the Rights of the Child (CDENF) on Recommendation 2244 (2023) – “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”

1. Following the adoption on 23 January 2022 of [Recommendation 2244 \(2023\) – “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”](#) (“the Recommendation”) by the Parliamentary Assembly of the Council of Europe (“PACE”), the Committee of Ministers agreed, at its 1456th meeting on 8-9 February 2023, “*to communicate it to the [...] Steering Committee for the Rights of the Child (CDENF), [...] for information and possible comments by 17 March 2023*”¹.

2. The CDENF Plenary has adopted the following opinion to the Recommendation during its 7th plenary meeting (Reykjavík, 28-29 March 2023).

3. The CDENF recalls that the [Council of Europe Strategy for the Rights of the Child \(2022-2027\)](#) contains relevant objectives and actions to safeguard the rights of children of Daesh foreign fighters. Under its Strategic Objective 4 “Child-friendly justice for all children”, the Strategy proposes that member States assess “the needs and challenges of child victims and witnesses of violent crimes [...] within the justice system, including re-integration and rehabilitation of children affected by terrorism”. Strategic Objective 6 “Children’s rights in crisis and emergency situations”, which includes armed conflict and terrorism, is also relevant for “children living in conflict zones given their parents’ involvement with terrorist organisations, who may seek to return to their European countries of origin”.

4. The CDENF has addressed related issues during a “Thematic exchange on addressing welfare and child protection challenges related to child returnees” held during the 2nd Plenary meeting on 17-18 November 2020. This exchange resulted in the adoption of a [report](#) by the CDENF Bureau during its 4th meeting (2 February 2021).

5. The CDENF notes that the PACE issued three main recommendations to member States relevant for children and the mandate of the CDENF:

- a) first, that States “guarantee that children who are nationals of those States are not deprived of their nationality”;
- b) second, that States guarantee that children who are nationals of those States “may return with at least one of their parents”; and
- c) third, that “the conditions of reception, including in the context of criminal justice, must as far as possible keep separation of child and parent(s) to a minimum where this is in the child’s best interest, and they must be applied on a “case-by-case” basis”.

6. Following this structure, first, the CDENF welcomes the fact that the PACE has called on member States to guarantee that children of Daesh foreign fighters who are nationals of Council of Europe member States are not deprived of their nationality, even if they hold a second nationality. Deprivation of nationality is even more harmful for children who hold only one nationality, as they would become stateless as a result. The 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality (ETS No. 166) remain highly relevant in this regard.

7. The UN Human Rights Council has recalled, in a Report of the Secretary-General, of “the fundamental right of every child to a nationality” (according to article 7 of the UN Convention on the Rights of the Child (CRC)) and “the importance of integrating safeguards to ensure that statelessness is prevented when loss or deprivation of nationality is provided for in legislation”, as “any interference

¹ The deadline for comments has been extended by the Committee of Ministers’ secretariat to 30th March, to allow for the CDENF Plenary to review and adopt the opinion at its 7th plenary meeting (28-29 March 2023).

with the enjoyment of nationality has a significant impact on the enjoyment of rights”.² The same Report highlights that “deprivation of nationality must meet certain conditions in order to comply with international law”, including “serving a legitimate purpose, being the least intrusive instrument to achieve the desired result and being proportional to the interest to be protected”.³ The CDENF recalls that children of foreign fighters who remain in Iraq or Syria should be treated first and foremost as children, and should not bear the consequences of the offences committed by their family members. Deprivation of nationality of children solely on the basis of the offences committed by their family members, including their participation in a terrorist group, could be interpreted as discriminatory. Hence, the deprivation of nationality of those children would be arbitrary and contrary to international law.

8. Second, the CDENF also agrees with the PACE that States should be encouraged to repatriate their under-age nationals, as they are mostly living in detention or refugee centres in unsuitable conditions, at risk of seeing their basic human rights violated on a regular basis. These violations, as the PACE highlights in its Resolution 2321 (2020), include exposure to violence, sexual abuse and exploitation, risk of further radicalisation, no access to education and healthcare and lack of adequate food or water. Therefore, the CDENF supports the PACE in its call for member States to repatriate these children and prevent them from further suffering from human rights violations.

9. Regarding the question of repatriating the children with one of their parents, the CDENF shares the view expressed by the PACE in Resolution 2475 (2023) that children should in principle be repatriated with their primary care givers, unless it is not in the best interests of the child as determined on a case-by-case basis, or in the interests of national security or public safety.⁴ This Recommendation is in line with the statement issued, in May 2019, by the Council of Europe Commissioner for Human Rights, urging “member States to take all necessary measures to ensure the repatriation as a matter of urgency of their under-age nationals” and “to consider repatriating their mothers as well, in order to safeguard the best interests of the child”.⁵

10. Third, with regard to the question of keeping the family unity and avoiding the separation of children from their parent(s) upon reception, the CDENF affirms that both under Article 8 ECHR and Article 9 of the CRC, the family unity should be preserved, unless family separation would be necessary for the best interests of the child. It should be reminded that any separation can only be agreed by competent authorities subject to judicial review in accordance with applicable law and procedures. The United Nations Committee for the Rights of the Child General Comment No. 14 (2013) specifies that “family separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary”, and that “separation should not take place if less intrusive measures could protect the child”.⁶

11. Finally, the CDENF recalls that, under international law, children of Daesh foreign fighters should be treated as victims or witnesses and not offenders, given that their involvement and exposure in terrorism acts is a form of serious violence against children.⁷ Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict provides that “armed groups that are distinct from the armed forces of a State should not, under any circumstances,

² U.N. Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, U.N. Doc. A/HRC/25/28 (Dec. 19, 2013).

³ See U.N. Doc. A/HRC/25/28, para. 4; A/HRC/13/34, para. 25; European Court of Human Rights, application No. 31414/96, *Karashev and Family v. Finland*, 12 January 1999; Court of Justice of the European Union, Case No. C-135/08, *Rottmann v. Freistaat Bayern*, 2 March 2010.

⁴ Article 8.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁵ Council of Europe Commissioner for Human Rights, [Council of Europe member states should urgently repatriate their under-age nationals stranded in Northern Syria](#).

⁶ U.N. Committee for the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), at ¶¶ 60-61, CRC/C/GC/14, (May 29, 2013).

⁷ U.N. Office On Drugs and Crime, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the justice System*, 2 (2017).

recruit or use in hostilities persons under the age of 18 years”, making the recruitment of children by Daesh a violation of international human rights law and international humanitarian law. Therefore, and based on the case law of international criminal jurisdictions related to children associated with armed forces and armed groups, children of Daesh foreign fighters under 18 years old should not be prosecuted, as they are considered victims.

12. Nonetheless, should States prosecute repatriated children suspected of having committed criminal acts, the CDENF urges to explicitly recall Article 6 of the ECHR and the [Council of Europe Guidelines on Child-friendly Justice](#) in the reply to the Recommendation. The CDENF shares the view of the PACE, as expressed in point 13.7 of Resolution 2475 (2023) that, they should only be prosecuted “under internationally recognised juvenile justice and fair trial standards in accordance with [Resolution 2321 \(2020\)](#) “International obligations concerning the repatriation of children from war and conflict zones” and the United Nations Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with links to United Nations Listed Terrorist Groups.”

13. Judicial proceedings should always uphold the rights and the best interests of the child, duly considering that most of child returnees have compounded trauma and suffer from post-traumatic stress disorder. Juvenile justice systems should be duly adapted to the specific needs of these children and efforts should be done to prioritise rehabilitation and reintegration programmes for children. As already stated in its [Opinion on PACE Recommendation 2169 \(2020\)](#), the CDENF believes that any successful rehabilitation and reintegration of child returnees will require the adoption of a holistic psychosocial support strategy, addressing all aspects of their social interaction and reintegration in the home, school and community setting.

Annex

Recommendation 2244 (2023) | **Provisional version**

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

Parliamentary Assembly

Text adopted by the Assembly on 23 January 2023 (2nd sitting).

- 1.** The Parliamentary Assembly refers to its Resolution 2475 (2023) “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”.
- 2.** The Assembly recalls its support for the Council of Europe Counter-Terrorism Strategy (2018-2022), which has covered issues such as the gathering of evidence from conflict zones for the purpose of criminal prosecution, the prosecution of foreign terrorist fighters, deradicalisation, disengagement and social reintegration and the roles of women and children in terrorism.
- 3.** The Assembly welcomes the adoption by the Committee of Ministers of its Recommendation CM/Rec(2022)8 to member States on the use of information collected in conflict zones as evidence in criminal proceedings related to terrorist offences.
- 4.** The Assembly invites the Committee of Ministers to:
 - 4.1** draft a recommendation on deradicalisation, disengagement and social reintegration of those involved in terrorist offences, on the basis of the ongoing collection of good practices from member States by the Council of Europe Committee on Counter-Terrorism (CDCT);
 - 4.2** consider inviting the CDCT to examine the issue of cumulative prosecution of foreign terrorist fighters, for terrorism and other crimes under international criminal law and international humanitarian law, and also consider the interaction between anti-terrorism legislation and these branches of international law, and draft guidelines in this field;
 - 4.3** encourage all member States to participate in setting up a special international tribunal or hybrid tribunal with jurisdiction over international crimes committed by Daesh foreign fighters, on condition that it may not impose the death penalty, and examine ways and means for the Council of Europe as a whole to play an active role in setting up and operating such a tribunal.
 - 4.4** make it incumbent on the States to guarantee that children who are nationals of those States are not deprived of their nationality and may return with at least one of their parents. The conditions of reception, including in the context of criminal justice, must as far as possible keep separation of child and parent(s) to a minimum where this is in the child’s best interest, and they must be applied on a “case-by-case” basis.