



GCERF

Preventing Violent Extremism
and Terrorism



LEGAL FRAMEWORKS ON RETURNING 'FOREIGN TERRORIST FIGHTERS': INTERNATIONAL AND DOMESTIC PERSPECTIVES

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Glossary

BNPT	Indonesian National Counterterrorism Agency
CRC	Convention on the Rights of the Child
ECtHR	European Court of Human Rights
FTF	Foreign Terrorist Fighter
ICCPR	International Covenant on Civil and Political Rights
IHL	International Humanitarian Law
ISIS	Islamic State of Iraq and Syria
NPRRR	National Plan for Reintegration, Re-socialisation and Rehabilitation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNSC	United Nations Security Council

I. Introduction

Foreign fighters are individuals who travel to a conflict zone to train or join the conflict. While the mobilisation of foreign fighters in conflicts is not new, the civil war in Syria and the rise of ISIS saw unprecedented numbers travel to join Islamic State in Syria.¹ By December 2015, around 30,000 fighters from 85 countries had travelled to join ISIS.² Six years on from the fall of Islamic State's self-declared caliphate in north-east Syria, about 46,500 people remain in local camps and makeshift prisons.³ More than 38,000 of these are held in the al-Hol and Roj camps, of which over 60% are children.⁴ The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called the conditions in al-Hol camp 'dire and extreme'.⁵ There has been much debate as to what the international community should do with respect to their nationals in these camps, with domestic political considerations and security concerns a priority in the minds of policymakers. From an international perspective, the Special Rapporteur has maintained that the only legally compliant response is repatriation to the countries of nationality of those in the camp.⁶ At the same time, however, the European Court of Human Rights (ECtHR) has referred to the situation in the camps as "verging on a legal vacuum" presenting difficulties in the enforcement of rights.⁷ Even from a purely security perspective, however, there is an emerging consensus that, humanitarian concerns aside, camps like al-Hol could become breeding grounds for new waves of extremism should the status quo be maintained.⁸ Closely linked to this is the issue of citizenship and statelessness, which factors in both as a tool used by states to avoid any obligation (legal or otherwise) which may exist to facilitate the repatriation of their nationals, but also represents a substantial issue for many children in particular, who may have been born in these camps and are

¹ Tanya Mehra and Abigail Thorley, 'Foreign Fighters, Foreign Volunteers and Mercenaries in the Ukrainian Armed Conflict' (International Centre for Counter-Terrorism, 11 July 2022) (ICCT report).

² Efraim Benmelech and Esteban F. Klor 'What Explains the Flow of Foreign Fighters to ISIS' (2018) *Terrorism and Political Violence* 32(7) pp.1458-1481, 1458.

³ International Centre for Counter-Terrorism 'ISIS suspects Held in Syria: Repatriation Reset under New US, Syrian Leaders?' (ICCT) 18 March 2025 Available at <https://icct.nl/publication/isis-suspects-held-syria-repatriation-reset-under-new-us-syrian-leaders>.

⁴ *ibid.*

⁵ Ní Aoláin Fionnuala, *Statement by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: End-of-Mission Visit to the Syrian Arab Republic (EOM Visit to Syria, 21 July 2023)* (Office of the UN High Commissioner for Human Rights, 21 July 2023) <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf> accessed 14 July 2025, p2.

⁶ Ní Aoláin Fionnuala, *Non-Refoulement in the Context of Repatriation from Northeast Syria* (Office of the UN High Commissioner for Human Rights, October 2023) <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/non-refoulement-in-context-repatriation-from-northeast-syria-oct2023.pdf> accessed 14 July 2025, p.2.

⁷ *H.F. and Others v France* (Grand Chamber) App nos 24384/19 and 44234/20, 14 September 2022 para 265.

⁸ Ana Luquerna 'The Children of ISIS: Statelessness and Eligibility for Asylum under International Law' (2020) *Chicago Journal of International Law* 21(1) pp.148-193, 157.

unable to avail of many services as a result of their uncertain legal status. Key to the success of repatriation, are rehabilitation and reintegration programs in the home state. The extent to which some of these lack an effective legal basis, are carried out in contravention of legal principles present further challenges.

This research paper will examine, in the context of returns from these camps in Syria, the extent to which (1) both international and domestic legal systems provide for a right to repatriation/obligation to repatriate, (2) how questions of citizenship and statelessness interact with this, and (3) how international and domestic law may mandate, facilitate or enable rehabilitation and reintegration programs. It will examine the various applicable international legal frameworks, while also considering regional and domestic law and policy comparing and contrasting different regions. Paying particular attention to the rights and status of children, this paper will focus primarily on the domestic systems in North Macedonia, Indonesia and Iraq as reflective of states in different regions which have facilitated the return of their nationals. This is achieved through a review of the relevant literature, an examination of the states' publicly available domestic law and strategies, and through semi-structured interviews with individuals with specific knowledge of the relevant systems in place in these states. Drawing upon this, this paper will highlight specific findings and make recommendations in its three focus areas: the existence of an obligation to repatriate, questions of citizenship, and rehabilitation and reintegration programs.

a. Foreign Terrorist Fighters

The people who travelled to join ISIS are often referred to as "Foreign Terrorist Fighters" (FTFs). Although the concept of "Foreign Fighter" traces back to the Spanish Civil war and before,⁹ it achieved international legal recognition for the first time in UN Security Council Resolution 2178 (2014). This defined "Foreign Terrorist Fighters" as individuals who travel to a State other than their states of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with an armed conflict."¹⁰

It is UN Security Council Resolutions 2178 and 2396¹¹ which define and address foreign terrorist fighters and are considered binding on States in international law by virtue of their adoption under Chapter VII of the Charter of the United Nations. They make up the

⁹ Dr S. Krhenmann 'Foreign Fighters under International and National Law' (2015) Netherlands Military Law Review 1, p.6. Available at [Foreign Fighters under International Law and National Law - Militair Rechterlijk Tijdschrift](#).

¹⁰ UN Security Council, *Resolution 2178 (2014)*, UN Doc S/RES/2178 (24 September 2014).

¹¹ UN Security Council, *Resolution 2396 (2017)*, UN Doc S/RES/2396 (21 December 2017).

foundation of the international legal framework on this issue. As a result of Resolution 2178 (2014) many states updated their counter-terrorism or security legislation to include provisions against FTFs. As opposed to directly criminalising FTFs, such provisions typically criminalise the acts associated with them, such as travelling to obtain training. On the domestic front, both North Macedonia and Indonesia have introduced new legislative provisions criminalising the act of joining a foreign army or paramilitary or terrorist group. This is mirrored in many other states. Iraq conversely has not introduced any specific legislative provision targeting foreign terrorist fighters, relying on its broad 2005 Anti-Terrorism Law to prosecute returnee FTFs suspected of ISIS membership.

The use of the “Foreign Terrorist Fighter” designation is not without criticism. One reason for this is that it conflates foreign fighters active in conflict zones (Ukraine the often-cited example) with international terrorists.¹² This conflation may give rise to legal uncertainties where the law of armed conflict or International Humanitarian Law, is distinct from the different branches of international law governing the prevention and suppression of terrorism.¹³ Indeed, it has been argued that it is problematic where States focus on prosecuting FTFs due to their membership of a particular terrorist group, rather than prohibited acts under International Humanitarian Law (IHL) such as war crimes.¹⁴ This paper uses the term “Foreign Terrorist Fighter” solely for ease of expression due to its use in much of the literature and the relevant UN Security Council Resolutions.

II. The Existence of an Obligation to Repatriate?

There is no clear and definitive obligation in International Law for States to repatriate, reintegrate or rehabilitate Foreign Terrorist Fighters. Indeed, some States have sought to use the existing law to prevent this. While there are no strict or explicit obligations, there are several legal instruments or sources of international law which favour the arguments framing repatriation as an obligation under international law.¹⁵ As mentioned above, on many occasions the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism has stated that the urgent return and repatriation of FTFs from conflict zones is the only response which is compliant with international human law,

¹² Geneva Academy, Academy Briefing No.7, ‘Foreign Fighters under International Law’ (2014), p.3.

¹³ *ibid.*

¹⁴ *ibid* p.35.

¹⁵ Widagdo, S., Indrayanti, K. W., & Saraswati, A. A. N. (2021). Repatriation as a Human Rights Approach to State Options in Dealing with Returning ISIS Foreign Terrorist Fighters. *SAGE Open*, 11(3). <https://doi.org/10.1177/21582440211032679>.

including human rights law.¹⁶ In a 2019 position paper, the United Nations outlined the key legal, policy and operational principles that must be adhered to in states' responses to the challenge of FTFs.¹⁷ It highlighted that it is Member States that have the primary responsibility for their own nationals, who must be treated in accordance with international law.¹⁸ States do not typically have a clear legal framework for the repatriation of their citizens, the process is often political or administrative, rather than legal. The legal question as to whether people should be repatriated and how this should be carried out relies largely on different areas of international and regional legal frameworks, especially those treaty obligations which are also effective in national law.

a. Applicable International Legal Frameworks

(i) International Human Rights Law – International Covenant on Civil and Political Rights

The aforementioned UNSC Resolutions 2178 (2014) and 2396 (2017) repeatedly reference the fact that obligations enshrined in the Resolutions must be applied consistently with human rights, international humanitarian law and refugee law.¹⁹ According to the former United Nations Special Rapporteur on the promotion and protection of human rights while countering terrorism, 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.²⁰ The International Covenant on Civil and Political Rights (ICCPR) provides for the right to enter one's 'own country'²¹, for protection against arbitrary detention,²² and for the right to life.²³ These areas of international human rights law provide the basis for a possible legal

¹⁶ Widagdo, S., Indrayanti, K. W., & Saraswati, A. A. N. (2021). Repatriation as a Human Rights Approach to State Options in Dealing with Returning ISIS Foreign Terrorist Fighters. *SAGE Open*, 11(3). <https://doi.org/10.1177/21582440211032679>

¹⁷ United Nations, Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with links to United Nations Listed Terrorist Groups (2019).

¹⁸ *ibid.*

¹⁹ OSCE, 'Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework' (2018) ISBN 978-83-66089-27-3, p.18.

²⁰ United Nations Human Rights Special Procedures, Joint Regional High-Level Conference convened by the OSCE, UNCOT, and Switzerland, in cooperation with the Albanian OSCE Chairmanship on 'Foreign Terrorist Fighters – Addressing Current Challenges' (2020) Statement of the mandate of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism.

²¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 12(4).

²² *ibid.*, art 9.

²³ *ibid.*, art 6.

argument for repatriation from the camps in Syria which it may be argued amount to arbitrary deprivation, and the conditions of which may infringe the right to life. That said, however, the extent to which these rights are enforceable depends on the jurisdiction of a signatory state being triggered.

In *H.F v France* the European Court of Human Rights (ECtHR) found against the applicants who claimed that France had breached Article 3 of the Convention against inhumane and degrading treatment by not repatriating the applicants' grandchildren from Syria.²⁴ The Court interpreted jurisdiction narrowly, and found that France had no jurisdiction to be held responsible for the substantive complaint under article 3,²⁵ although procedurally it held that France had not provided adequate safeguards against arbitrariness in the processing of repatriation requests.²⁶ The Court found that there was no European consensus supporting a right to repatriation, nor was there an obligation to repatriate.²⁷ There are many principles in international human rights law which may prima facie establish an obligation to repatriate the nationals of states, but enforcing that obligation is complicated by narrow conceptions of jurisdiction. By contrast, the UN Committee on the rights of the Child reached a different conclusion on similar facts (discussed below). This follows a pattern where the UN Human Rights Committees have tended to use a broader conception of jurisdiction, whereas the ECtHR has been more restrictive.

(ii) The Convention on the Rights of the Child

Given that the vast majority (estimates around 60%) of the population of these camps are minors, with an estimated 80% of those under the age of 12,²⁸ international legal frameworks dealing with the rights of the Child are extremely relevant. Children must always be treated primarily as victims with their best interests as a primary consideration in accordance with their special protection afforded by the Convention on the Rights of the Child and international humanitarian law.²⁹

²⁴ *H.F. and Others v France App* nos 24384/19 and 44234/20 (ECtHR, 14 September 2022)

<https://hudoc.echr.coe.int/eng?i=001-219333>

²⁵ *H.F. and Others v France* (n 6) para 203.

²⁶ *ibid* para 284.

²⁷ *ibid* para 258.

²⁸ UN Human Rights Office of the High Commissioner, 'Children in Northeast Syria Must Be Urgently Repatriated, UN Experts Say' (OHCHR, 6 March 2023) <https://www.ohchr.org/en/statements-and-speeches/2023/03/children-northeast-syria-must-be-urgently-repatriated-un-experts> accessed 17 July 2025.

²⁹ United Nations Human Rights Special Procedures, Joint Regional High-level Conference convened by the OSCE, UNOCT and Switzerland, in cooperation with the Albanian OSCE Chairmanship on 'Foreign Terrorist Fighters- Addressing Current Challenges' (2020) Statement of the mandate of the United Nations Special Rapporteur on the promotion and protection of human rights while countering terrorism.

International Human Rights Law recognises ‘the family’ as a natural and fundamental unit, entitled to protection by the State.³⁰ The Convention on the Rights of the Child (CRC), one of the world’s most widely ratified Conventions with 196 State parties provides for additional protections for children. The CRC provides that a child cannot be separated from their parents against their will unless “competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”³¹ In accordance with this, article 10 provides that “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.”³²

It has been reported that as some countries of origin refuse to receive adults suspected of being associated with armed groups, children are left in prolonged detention or situations of deprivation of liberty in restricted camps while in legal and administrative limbo.³³ Under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, States parties have the obligation to ensure the rehabilitation and reintegration of children affected by armed conflict, which includes the foreign fighter phenomenon.³⁴

UN Special Rapporteurs on the promotion and protection of human rights while countering terrorist and on extrajudicial, summary or arbitrary executions have argued that States have de facto control over the human rights of children and their guardians in camps in Syria, for example, and have positive obligations to prevent violations of those rights.³⁵ The UN Committee on the Rights of the Child, in a case similar to that of the ECtHR, found that “the State party, as the State of the children’s nationality, has the capability and the power to protect the rights of the children in question by taking action to repatriate them or provide other consular responses.”³⁶ This represents a more expansive conception of jurisdiction, although it must be noted that this was on the specific facts of the abilities of the French authorities, and their previous interactions and promises made vis-à-vis those children in the camps.

³⁰ ICCPR art 23(1).

³¹ ICRC art 9.

³² *ibid*, art 10.

³³ United Nations Office of Counter-Terrorism ‘Children affected by the Foreign-Fighter Phenomenon: Ensuring a Child Rights-Based Approach (year??).

³⁴ *ibid*, art 7 Optional Protocol.

³⁵ United Nations Human Rights Special Procedures ‘Extra-territorial jurisdiction of States over children and their guardians in camps, prisons or elsewhere in the northern Syrian Arab Republic’.

³⁶ Committee on the Rights of the Child, *Decision adopted ... concerning communication No 77/2019* (Geneva, UN Committee on the Rights of the Child, 25 February 2021) UN Doc CRC/C/86/D/R.77/2019 para 8.8.

Jurisdiction therefore complicates the extent to which international human rights law and the Convention on the Rights of the Child can provide a legal basis for a right to repatriation or obligation to repatriate. While there is little doubt that a state would be obliged to take in their national should they arrive at its border, the extent to which consular assistance should be provided to assist a state's nationals, including minors was the subject of much debate in the European Court.³⁷ *Actual* processes of repatriation are likely to involve effective control on the part of the state and so all domestic repatriation process must be compliant with international human rights law, including refugee law and *non-refoulement*³⁸ and the Convention on the Rights of the Child. In summary, both arguments under the ICCPR and the CRC are hampered by questions of jurisdiction, leaving those individuals in the camps with little to no ability to enforce their human rights, and at the mercy of policy decisions in their state of nationality.

b. Repatriation Frameworks at the National Level

Despite the extensive attention paid to rehabilitation and reintegration in the UNSC Resolutions on FTFs, they do not mention an obligation to repatriate the nationals of a state. Whereas many member states amended their counterterrorism legislation to incorporate provisions against FTFs following these Resolutions, there was therefore no such incorporation of provisions concerning return. Repatriation frameworks at the national level therefore tend to be primarily politically rather than legally driven.

The Indonesian government's policy with regard to handling Indonesian Citizens Abroad Associated with FTFs is dealt with in a yearly policy decision, the most recent of which issued in late January 2025.³⁹ It is issued by the Coordinating Minister for Political Legal and Security Affairs on the Task Force for Handling Indonesian Citizens Abroad Associated with FTFs. The document outlines a pre-border operation phase involving the synchronisation of data and information held by relevant ministries and agencies about the presence of suspected Indonesian citizens abroad associated with FTFs, the validation of such data, the tracing of addresses, relatives and financial transactions, coordination with foreign countries, and training for the Task Force involved. Step 2 is the Border Operation Phase, which involves further in-depth investigations, identification and verification of the citizenship status of suspected Indonesian citizens associated with Foreign Terrorist Fighters. The Post -Border operation phase involves placing the citizens in designated temporary shelters, further investigation to determine if legal or non-legal processes are necessary, the provision of

³⁷ *H.F. and Others v France App* nos 24384/19 and 44234/20 (ECtHR, 14 September 2022)

<https://hudoc.echr.coe.int/eng?i=001-219333>

³⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 33.

³⁹ From interview.

social rehabilitation programs if no criminal elements are found and the conduct of evaluation meetings related to rehabilitation and social guidance programs. There is no explicit mention of policies regarding children in the document.

By way of comparison, since 2021 Iraq has been facilitating the return of its nationals but the legal basis for the current process of repatriation remains unclear.⁴⁰ Since May 2021 Iraqis at al-Hol camp have been able to request repatriation, with the current focus being on repatriating those who it is believed will not be subject to criminal prosecution upon return.⁴¹ These repatriations are not carried out according to a law, but rather by a series of agreements with United Nations bodies among others. In North Macedonia organized repatriation followed identification by the State of individuals in detention camps or prisons in north-east Syria.⁴² This is done in accordance with the Macedonian National Plan for Reintegration, Re-socialization and Rehabilitation of returnees from the foreign armies and members of their families (NPRRR).⁴³ Bearing in mind the prominence of administrative measures in all three cases, it is important to highlight the criticisms around administrative counter-terrorism measures and the limited procedural guarantees available.⁴⁴ Procedural safeguards include the publicity of the process and the authority that imposes it and may include a request for legal review.⁴⁵ In the context of repatriation, adequate safeguards may mean the right of review of decisions refusing the request for repatriation, or for the identification of a substantive legal basis for further detention in the process.

What is key is that by engaging in proactive repatriation of nationals, a state is bringing those people within its legal system for other purposes going forward. While the UNSC Resolutions do not explicitly call for repatriation, the implementation of rehabilitation and reintegration is in some ways predicated on the efficacy of formal state-returns as opposed to providing pathways for self-returnees. Where formal repatriation efforts fail, self-returnees may pose a greater risk as they exist outside the state's legal sphere. It is clear in

⁴⁰ Haroro J. Ingram et al 'The Repatriation & Reintegration Dilemma: How states manage the return of foreign terrorist fighters and their families' (2022) *J Deradicalisation* Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC10698679/pdf/nihms-1936981.pdf> p.17.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Office of the High Commissioner for Human Rights, *Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism: North Macedonia* (19 October 2022) <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/cfi-gs-impact/2022-10-19/CFI-North-Macedonia-Promotion-and-protection-of-human-rights-and-fundamental-freedoms.pdf> accessed 15 July 2025.

⁴⁴ Bérénice Boutin, *Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards* (International Centre for Counter-Terrorism, December 2016) p.23, <https://icct.nl/sites/default/files/import/publication/ICCT-Boutin-Administrative-Measures-December2016-1.pdf> accessed 12 July 2025.

⁴⁵ *The Expanding Use of Administrative Measures in a Counter-Terrorism Context: Part I – "In need of rule of law safeguards"* (International Centre for Counter-Terrorism, December 2022) <https://icct.nl/sites/default/files/2022-12/Administrative-Measures-in-Counter-Terrorism%20part%20I.pdf> accessed 21 July 2025. P7.

many cases however that the extent to which there is a legal obligation to repatriate FTFs from the camps depends to a great extent on its manifestation from political will in the home country. Where, for example, in Indonesia, experts understand that “self-returnees” can pose a greater threat due to anonymity and lack of access to rehabilitation there may be greater political will to manage official state returns in a comprehensive manner.

III. Citizenship and Statelessness

There are two separate issues which link FTFs and citizenship. The first is the policy trend of States in attempting to prevent FTFs from a country from returning to that country through the revocation of citizenship.⁴⁶ This is an example of a severe ‘counter-terrorism’ measure which is administrative in nature and must be subject to stringent procedural safeguards. It also could be argued that revoking an individual’s citizenship may constitute a violation of other states’ sovereignty.⁴⁷ The second issue is where the issue of statelessness complicates R&R efforts in particular with children.

a. International Law on Citizenship and Statelessness

The right to a nationality is enshrined in the Universal Declaration of Human Rights (UDHR)⁴⁸ and in numerous treaties ratified by many States such as the International Covenant on Civil and Political Rights,⁴⁹ the International Convention on the Rights of the Child⁵⁰ and the International Convention on the Elimination of all forms of Racial Discrimination.⁵¹ All individuals have the right to a name, identity, and nationality, the deprivation of which is prohibited under international law.⁵² Further to this, International Human Rights Law provides that everyone has the right to return to his or her country of nationality, any limitations to this must be lawful, pursuant to a legitimate aim, and necessary and proportionate to achieve that aim.⁵³ States that are party to the 1961 Convention on the

⁴⁶ Carlota Rigotti and Julia Zomignani Barboza, ‘Unfolding the case of returnees: How the European Union and its member States are addressing the return of foreign fighters and their families’ (2021) *International Review of the Red Cross* 103, p.690.

⁴⁷ Ida Asscher, ‘Shifting Responsibilities and Security Threats by Depriving Foreign Terrorist-Fighters of Their Nationality’ (2024) *Journal of Conflict & Security Law* 29(2) 231–248, advance access published 26 June 2024, <https://doi.org/10.1093/jcs/lkrae007>.

⁴⁸ UDHR art 15.

⁴⁹ ICCPR art 24.

⁵⁰ ICRC art 7.

⁵¹ ICERD art 5(iii).

⁵² United Nations, *Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with links to United Nations Listed Terrorist Groups* (2019).

⁵³ *ibid*.

Reduction of Statelessness must ensure that if a law provides for the loss of a state's nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.⁵⁴

b. National Law on Citizenship and Statelessness

Different states have different laws on the acquisition and revocation of nationality. In North Macedonia a report by the Special Rapporteur highlighted the challenge of establishing legal identity and producing identity documents for children, it concluded that this issue had mostly been resolved.⁵⁵ This is not a universal experience articulated by NGOs. They highlight statelessness as a major persisting problem for children. According to the interviewees, existing bureaucratic requirements make statelessness extremely difficult to rectify, in particular onerous requirements for proving paternal lineage, such as DNA analysis.⁵⁶

According to the Macedonian Constitution, people cannot be deprived of citizenship or expelled.⁵⁷ It is therefore the *acquisition* of citizenship by children born to FTFs outside of Macedonian territory that presents the clearest problem. Due to the extremely high prevailing levels of statelessness in North Macedonia as a legacy of the transition from former Yugoslavia, statelessness of FTFs is more of a practical problem than a legal one. Proof of paternal linkage provided through foreign documents or DNA analysis must be provided to acquire birth certificates in order to access key public services.⁵⁸ Possessing insufficient documentation in North Macedonia limits the extent to which children and young people can engage with the state. For example, child returnees without documentation may avail of education, but will not be awarded school certificates in the absence of proof of citizenship.⁵⁹

By contrast, the situation in Iraq stems from both practical issues and the nature of the legal framework surrounding Iraqi citizenship. A key issue with citizenship and statelessness here is not only the invalidity in Iraqi law of documents issued by ISIS, but the fact that possession of such documents may lead to arrest and prosecution for association with the group.

⁵⁴ Convention on the Reduction of Statelessness 1961, art 6.

⁵⁵ UN Human Rights Council (n 1)

⁵⁶ From Interview.

⁵⁷ Constitution of the Republic of North Macedonia, Art 4.

⁵⁸ From Interview.

⁵⁹ From Interview.

Iraqi nationality law dates from 2006.⁶⁰ As per the 2006 law, a child acquires Iraqi citizenship by blood through either father or mother, or through territory if born in Iraq to unknown parents.⁶¹ Article 4 provides that a person born outside Iraq to an Iraqi mother and unknown or stateless father may be considered Iraqi if they choose the Iraqi nationality within one year from coming of age, unless they fail to do so due to difficult circumstances. Article 15 of the Law states that “the Minister may, following a final court judgement, withdraw Iraqi nationality from a naturalised non-Iraqi if he is proved to have perpetrated or attempted to perpetrate an act considered to jeopardise State security or safety or has provided wrong information himself or his family upon submitting the application.”⁶² There are little to no protections against statelessness in the Iraqi law,⁶³ and in the case of a child born outside of Iraq to an Iraqi mother and unknown father, the Minister for the Interior has sole discretion to decide whether the child is eligible for Iraqi nationality.⁶⁴

One major issue with citizenship and statelessness in Iraq is how interlinked civil documentation processes are.⁶⁵ “The ability to register a child’s birth, obtain a civil ID are contingent on presenting documentation of preceding family life events, including official marriage certificates, proof of lineage and death certificates.”⁶⁶ “A combination of four documents (the golden square) including the civil ID, nationality card, PDS card and housing card, are often required to update one another and access a range of services in Iraq.”⁶⁷ Changing the law on the necessity of a marriage certificate to register birth would go a long way in alleviating some of the practical issues faced on an administrative level.

By contrast, Indonesian Citizenship Law provides for many protections against statelessness in children. For example, while Indonesia does not allow dual citizenship in adults, it allows for children to have dual citizenship until the age of 18.⁶⁸ Indonesian citizenship may be conferred both through blood and territory and does not require

⁶⁰ National Legislative Bodies / National Authorities, *Iraqi Nationality Law No. 26 of 2006* (Iraq, 7 March 2006, published in Gazette No. 4019) (English translation by UNHCR).

⁶¹ *ibid* art 3.

⁶² *ibid* art 4.

⁶³ Article 21 provides minimal protections against statelessness if it were to be caused by the revocation of the earlier 1975 law.

⁶⁴ *Statelessness in Iraq: Country Position Paper – Summary* (Stateless Journeys – a project of the European Network on Statelessness and the Institute on Statelessness and Inclusion, April 2019) <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iraq-summary-final.pdf> accessed 21 July 2025.

⁶⁵ Norwegian Refugee Council ‘Barriers from Birth: Undocumented children in Iraq sentenced to a life on the margins’ (April 2019) <https://www.nrc.no/globalassets/pdf/reports/iraq/barriers-from-birth/barriers-from-birth---report.pdf> p.17.

⁶⁶ *ibid*.

⁶⁷ *ibid*

⁶⁸ Indonesia, *UndangUndang Republik Indonesia Nomor 12 Tahun 2006 tentang Kewarganegaraan– Republik Indonesia* (Law No 12/2006, enacted 1 August 2006) <https://www.ecoi.net/en/document/i170232.html> accessed 15 July 2025, art 6.

marriage.⁶⁹ The loss of Indonesian citizenship of a parent is not effective against a child or spouse.⁷⁰

Indonesia does not explicitly revoke the citizenship of FTFs, the closest legal provision being Article 23(d), entering into a foreign state's military service. On several occasions however, the Ministry of Law and Human Rights has stated that ISIS is not a "state" entity that the provisions of the article are difficult to apply, in the case of ISIS.⁷¹ This opinion is based on Article 1 of the Montevideo Convention on the Rights and Duties of States that states that "the state as a person of international law should possess the following qualifications (a) permanent population, (b) defined territory (c) government and (d) capacity to enter into relations with other states."⁷² The revocation of citizenship is not compatible with Article 28 of the Constitution of the Unitary Republic of Indonesia which categorizes one's right to citizenship as a human right.

Citizenship and statelessness are very closely linked to the return and rehabilitation of FTFs and children from north-east Syria. While there are many practical issues with the loss of documentation, proof of lineage and other administrative hurdles, the legal dimensions of citizenship are crucial.

IV. Rehabilitation and Reintegration

The rehabilitation and reintegration of returnee FTFs is an internationally recognised imperative. The Madrid Guiding Principles on Foreign Terrorist Fighters emphasise that a comprehensive, interdisciplinary approach involving Government, the community and civil society can be more effective in mitigating long term risks posed by the return of such individuals.⁷³ Guiding Principle 31 states that "Member States should consider appropriate administrative and/or rehabilitation and reintegration programs as alternatives to prosecution in appropriate cases. Such measures should be used in a manner compliant with applicable international human rights law and national legislation and should be subject to effective review."⁷⁴ Rehabilitation and reintegration programs involve a series of social, educational and psychological supports with the long-term aim of enabling the returnees to reintegrate in their communities, reducing the risk of recidivism.

⁶⁹ibid art 4.

⁷⁰ ibid arts 15, 27.

⁷¹ Pulung Widhi Hari Hananto 'The Legality of Ex-ISIS Citizenship from Indonesia in Iraq and Syria' (2021) *Diponegoro Law Review* 6(1) pp96-107, 100.

⁷² Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 UNTS 19, art 1.

⁷³ United Nations Security Council Counter-Terrorism Committee, Madrid Guiding Principles 2015, p.18.

⁷⁴ ibid.

a. International Emphasis

Both UN Security Council Resolution 2178 (2014) and 2396 (2017) on the response of states to the “Foreign Terrorist Fighter phenomenon” contain provisions for the prosecution, rehabilitation and reintegration of FTFs. Resolution 2178(2014) art4 calls upon Member States to develop and implement prosecution rehabilitation and reintegration strategies for returning foreign terrorist fighters.⁷⁵ Resolution 2396(2017) echoes this, calling on Member States to “develop and implement comprehensive risk assessments for those individuals, and to take appropriate action, including by considering appropriate prosecution, rehabilitation and reintegration measures” while emphasizing that Member States should ensure all action is taken in compliance with domestic and international law.⁷⁶ It further emphasizes the obligation of States to ensure that “any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, to develop and implement comprehensive and tailored prosecution, rehabilitation and reintegration strategies and protocols, in accordance with their obligations under international law, including with respect to foreign terrorist fighters and spouses and children accompanying returning and relocating foreign terrorist fighters, as well as their suitability for rehabilitation and to do so in consultation, as appropriate, with local communities, mental health and education practitioners and other relevant civil society organizations and actors.”⁷⁷ It further underscores the importance of a whole of government approach, and the importance of assistance to children.⁷⁸ The importance of these processes are underlined in the 2015 Madrid Guiding Principles, and the Hague-Marrakech Memorandum Addendum on Good Practices for a More Effective Response to the FTF Phenomenon. These Resolutions and Guiding Principles outline the importance of rehabilitation and reintegration in preventing violent extremism and lowering rates of recidivism. Such principles therefore involve both a humanitarian and security aspect.

The 2015 Guiding Principles and 2018 Addendum encourage the adoption of a comprehensive, multidisciplinary approach to FTFs that involves all branches of Government and engagement with Civil Society. They acknowledge that the employment of rigid prosecution policies and practices can be “counterproductive to the implementation of comprehensive strategies to combat such fighters and violent

⁷⁵ UN Security Council, ‘Resolution 2178 (2014) on threats to international peace and security caused by terrorist acts’ UN Doc S/RES/2178 (24 September 2014), 4.

⁷⁶ UN Security Council, *Resolution 2396 (2017) on threats to international peace and security caused by returning foreign terrorist fighters*, UN Doc S/RES/2396 (21 December 2017), 29.

⁷⁷ *ibid* 30.

⁷⁸ *ibid* 32, 36.

extremism.”⁷⁹ They advise that Member States should also “consider alternatives to incarceration, as well as the reintegration and possible rehabilitation of returnees, prisoners and detainees.”⁸⁰

There is therefore much international legal guidance on the importance of rehabilitation and reintegration programs. The extent to which they have been successfully transplanted into domestic systems varies, and indeed the extent to which they form part of the domestic *legal* system is another question.

b. National Practice

In Iraq, rehabilitation programs are carried out at the Al-Jedda centre. In cases where returnees may be returned to their localities, authorities typically contact local tribal or community leaders who must vouch for them. In such areas of return, NGOs take care of them through case management. They may meet with the head of the household, assess their case and refer them to the necessary services. Such services may include education, psychosocial support, livelihood supports and access to essential services.

Iraq’s rehabilitation program in al-Jedda does not extend to all returnees. Those directly involved in acts of terrorism are excluded from the program.⁸¹ “This exclusion underscores the complexity of Iraq’s strategy. Many former ISIS members are classed as high-risk individuals by the Iraqi judiciary, and its counterterrorism laws allow for the indefinite detention of individuals deemed a threat to national security.”⁸² In addition to this, concerns have been voiced about the lack of a legal basis for such rehabilitation programs. An underlying tension exists between the importance of all returnees receiving rehabilitation and reintegration supports, and the need to due process and firm legal basis for mandatory programs. Striking this balance is a challenge for States.

Indonesia operates a more fragmented rehabilitation system, albeit with a clear legal basis. Article 43C of the Indonesian Counter-Terrorism Amendment Law 2018 stipulates the existence of deradicalization programs which are “planned, integrated, systematic and continuous.”⁸³ The legislation references the forms that such programs should take, and that they should be government run. While Article 43C deals with ‘counter-radicalization’, Article 43D deals with ‘de-radicalization’ to “reverse the radical terrorism ideology that has

⁷⁹ United Nations Security Council Counter-Terrorism Committee, Madrid Guiding Principles 2015, p.18.

⁸⁰ *ibid.*

⁸¹ Shafaq News, *Security vs Humanity: Iraq’s struggle with ISIS repatriation* (16 February 2025) https://shafaq.com/en/Report/Security-vs-Humanity-Iraq-s-struggle-with-ISIS-repatriation?utm_source=chatgpt.com accessed 15 July 2025.

⁸² *ibid.*

⁸³ Indonesia, *Undang-Undang Republik Indonesia Nomor 5 Tahun 2018 tentang Perubahan atas Undang-Undang Nomor 15 Tahun 2003 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 tentang Pemberantasan Tindak Pidana Terorisme*, art 43C (22 June 2018).

already taken root.”⁸⁴ Article 43 F identifies The National Counterterrorism Agency (BNPT) as the agency responsible for deradicalization. Indonesia operates based on its National Counterterrorism strategy which is currently in the process of renewal.⁸⁵

In practice, according to the interview carried out for this research, returnees are usually placed in a rehabilitation centre belonging to the Ministry of Social Affairs in Indonesia for a period of one to two years. According to the interview, for the majority of returnees the focus is on rehabilitation and reintegration rather than prosecution (here it is worth noting that Indonesia only criminalized the activity of FTFs in 2018 and the law cannot be applied retroactively). It is very rare for women and children to be prosecuted. These programs are mandatory for those repatriated by the state, and while they do not enjoy a 100% success rate, a current concern for the Indonesian government is self-returnees who do not avail of these programs. A further issue identified is that the rehabilitation center was initially designed not for radical individuals but for people with social problems, like homeless people, those with disabilities etc. Often children are put in separate centers from their parents due to fears surrounding further radicalization, but this may run contrary to international legal principles concerning family separation. Aside from the rehabilitation centers,

the National Counter Terrorism Agency runs a deradicalization center. There are some documented instances of each type of center trying to attribute responsibility to the other, which may result in neither providing the necessary program and supports.

According to the interviewees, Rehabilitation programs in North Macedonia have unclear legal basis and are voluntary upon exit from incarceration. They are led by multidisciplinary teams consisting of the Centre of Social Work as the lead, the Agency for National Security, the Ministry of the Interior and the Ministry for Health. Participation in the voluntary programs involves the receipt of Social Security rights, participants may request remuneration and psychosocial support.

Programs and rehabilitation teams do exist within the prisons. After being freed from prison, the Agency for National Security and the Ministry of the Interior follow their activities, this is a separate process to the voluntary resocialization. Programs within the prisons are supposed to be mandatory. Prison teams are typically obliged to prepare a report even when there is little cooperation, everything must be recorded. Active participation in such programs may affect the status of the prisoner. Once people leave the prisons, however,

⁸⁴ *ibid* art 43D.

⁸⁵ From interview.

the Centre for Social Services may follow up with them but cannot force people to cooperate or engage with any resocialization or rehabilitation services.

The implementation of rehabilitation programs, although universally recognized as crucial in the international legal instruments, varies greatly across states. A common issue identified is the extent to which such programs should be mandatory or voluntary, and the extent to which they are compliant with human rights. Issues of family separation may violate the convention on the rights of the child while the arbitrary detention in the al-Jedda camp similarly poses difficult legal questions. The importance of procedural safeguards in administrative programmes mentioned earlier is especially relevant here. While it was the opinion of interviewees that for efficacy such programs should be mandatory, a substantive legal basis is undoubtedly very important. It is undeniable that many of these programs are carried out only with the support and cooperation of many civil society organizations, sometimes on an ad hoc basis, sometimes with an MOU with the government. In any case, the status of the interventions of these organizations and the programs they provide are an important question also.

V. Conclusion and Recommendations

With recent cuts in international aid, the situation in the al-Hol and Rawj camps has grown even more dire. There have been renewed concerns about the potential for ISIS to recruit in the camps as inhabitants become increasingly hungry and desperate.⁸⁶ Return, rehabilitation and reintegration is ever more important. This section summarises each focus area, highlighting where attention should be paid moving forward.

a. Return

There is no explicit obligation in international law to repatriate FTFs. Bearing this in mind, the FTF issue has created unprecedented challenges for legal systems. They are still adjusting to the variety of legal situations created by the influx of FTFs to conflict areas in Syria under ISIS. Attempts to construct such an obligation from a more expansive interpretation of international human rights law have been rejected by judicial bodies such as the ECtHR. The primary barrier to such an approach is how jurisdiction is construed through effective control. Return processes at the national level tend to be administrative, or subject to consistent review. Moving forward, there are two areas in particular to be emphasized.

⁸⁶ Amnesty International, *Syria: New Urgency to End Unlawful Detention System Holding Tens of Thousands of People Following Islamic State Defeat* (20 May 2025) <https://www.amnesty.org/en/latest/news/2025/05/syria-new-urgency-to-end-unlawful-detention-system-holding-tens-of-thousands-of-people-following-islamic-state-defeat/> accessed 16 July 2025.

Firstly, the importance of state repatriation programs in bringing returnees into the legal sphere of their home state should be consistently emphasized. This ensures access to rehabilitation and further support systems. **Secondly**, administrative processes whereby decisions are made returns should be subject to procedural safeguards including a proper appeals system and the provision of clear reasons for each decision.

b. Citizenship

As mentioned above, there are two main issues linking issues of Citizenship and nationality to the return of FTFs. The use of revocation of citizenship as a tool to *prevent* the return of FTFs, and the issue of statelessness as a barrier to the return, particularly of children. It should be emphasised in terms of the latter that statelessness is often a practical, not solely legal issue requiring a multi-disciplinary response. Statelessness may compound the vulnerabilities of children by excluding them from education, healthcare, social services and legal protections. As an administrative measure, the revocation of citizenship may be incompatible with international law, including the ICCPR, CRC and the 1961 Statelessness Convention. Such action which renders an individual or their family members stateless is particularly unlikely to fulfill the requirement of proportionality and should be challenged. The arbitrary deprivation of citizenship is prohibited under international law, such far-reaching decision should be open to 'effective administrative or judicial review.'⁸⁷ With regard to the statelessness of children, significant progress could be made by States by delinking the processes for acquiring different documents, for example the requirement for valid marriage certificates to register a birth. However, in many cases this is less reflective of issues in state citizenship law as it is the result of practical issues such as the loss of physical documentation.

c. Rehabilitation and Reintegration

While there is a strong emphasis on rehabilitation and reintegration in the international legal framework, national practices are diverse. At the domestic level, such programmes suffer from the lack of a legal basis, a heavy but sometimes inconsistent reliance on civil society, instances of family separation and weak enforcement. Where decisions have to be made as to whether such programs are voluntary or mandatory, balancing human rights with public safety and national security presents a difficult challenge. Looking to future

⁸⁷ Maarten P Bolhuis and Joris van Wijk, 'Citizenship Deprivation as a Counterterrorism Measure in Europe; Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism' (2020) 22 *European Journal of Migration and Law* 338, 358.

development of these programmes, it would be beneficial to look toward establishing a legal basis for mandatory participation, subject to review mechanisms and compliance with key human rights principles. In particular, R&R is important for children, but such programs must be carried out in line with the Convention on the Rights of the Child, with the best interests of the child as the key guiding principle. The clear roles and responsibilities between different government agencies and civil society organisation should be highlighted, and legal pathways for self-returnees could be created to enable their inclusion.

To conclude, in an imperfect and highly complex response to a very difficult task there are many interlinking legal and practical issues to consider. This paper has provided a brief overview of some of these from a mainly legal perspective. In all three focus areas it is clear that administrative and judicial ways in which governments seek deal with these problems must take the implementation of procedural safeguards as a starting point to ensure a human rights compliance response to such difficult questions.

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