

Independent Commission on UK Counter-Terrorism Law, Policy and Practice

This submission was made by the Child Rights International Network (CRIN), December 2022

Introduction

1. Child Rights International Network (CRIN) works on human rights issues, with a focus on children's rights. We press for rights - not charity - and campaign for a genuine shift in how governments and societies view and treat children.
2. In this submission, we focus on the aspects of the United Kingdom's counter-terrorism law, policy and practice that affect children or interact with the human rights of children. Where relevant, this submission draws on international experience relevant to the United Kingdom's counter-terrorism law, policy and practice. We would be happy to provide more information on any of the issues raised in this submission.

Administrative and Executive Measures

Children detained in camps in North East Syria

3. An estimated 34 British children are in camps in North East Syria¹ and almost half of Britons detained in these camps were children when they entered Syria.²

Repatriating British children from North East Syria

4. In October 2022, a British woman and her child were permitted to return to the United Kingdom for the first time since the ground war in Syria ended.³ Despite this development, the UK continues to resist the repatriation of people who entered Syria when they were children or who remain children.
5. International jurisprudence recognises the obligations that fall on States to secure the rights and safety of children within camps in North East Syria. In a complaint related to 49 French children, the UN Committee on the Rights of the Child has found that children held in the al-Hol camp are detained in conditions that constitute torture, cruel, inhuman or degrading treatment or punishment and that the failure of France to protect the child victims constitutes a violation of Articles 3 and 37(a) of the Convention on the Rights of the Child.⁴

¹ Reprieve, *Trafficked to Syria: British families detained in Syria after being trafficked to Islamic State*, 2021, p. 19, available at: <https://reprieve.org/uk/2021/04/30/trafficked-to-syria/>.

² United Nations Security Council Counter-Terrorism Committee Executive Directorate, 'Gender Dimensions of the Response to Returning Foreign Terrorist Fighters: Research Perspectives', *CTED Trends Report*, 2019, p.2, available at: <https://www.un.org/securitycouncil/ctc/content/gender-dimensions-response-returning-foreign-terrorist-fighters-research-perspectives>.

³ Dan Sabbagh, 'First British woman and her child repatriated to UK from Syrian camp', *The Guardian*, 13 October 2022, <https://www.theguardian.com/politics/2022/oct/13/british-woman-and-her-child-repatriated-from-syrian-detention-camp-in-uk-first#:~:text=A%20British%20woman%20and%20her,ground%20war%20against%20Islamic%20State>.

⁴ *FB and 48 others v. France* [2022] Communication no. 77/2019, 79/2019, 109/2019. Summary and link to full decision available at: <https://legallibrary.crin.org/fb-and-48-others-v-fr/>.

6. The Council of Europe Commissioner for Human Rights agrees that the repatriation of children is ‘an absolute and mandatory priority’ from a children’s rights perspective.⁵
7. At the domestic level, the Children’s Commissioner for England has also criticised the Government’s position that it does not have a duty towards British children in the camps, and that it can offer consular assistance on a case-by-case basis. The Commissioner referred to the Crown’s protective duty, recognised by English courts, a duty which, in the case of British children, ‘extends (...) to protect the child wherever he may be, whether in [the UK] or abroad’.⁶
8. International experience also demonstrates that it is possible to safely repatriate, rehabilitate and reintegrate children from Syria. Since 2019, an estimated 1,400 children have been repatriated to their home countries from al-Hol and Roj camps,⁷ proving that the practical difficulties of doing so are far from insurmountable. Research into the experiences of children who are repatriated has also demonstrated that security concerns can and should be effectively dealt with domestically.⁸
9. To date, the vast majority of repatriations have been to Uzbekistan, Kosovo, Kazakhstan and Russia. Kazakhstan, in particular, has a remarkable record, having repatriated 410 children, which as of 2021 accounted for 36% of all repatriations.⁹
10. But it is also UK allies from the Global Coalition against Da’esh that have actively sought to repatriate their nationals. Notably, the United States has repatriated almost all its nationals, explaining that ‘beyond being the best option from a security standpoint, repatriation is also simply the right thing to do’.¹⁰ Germany has repatriated 76 children, France 70, Belgium 32, Albania 27 and Sweden 27.¹¹
11. The United Kingdom could draw useful lessons from aspects of the efforts of these countries:

⁵ Third party intervention by the Council of Europe Commissioner for Human Rights before the European Court of Human Rights under Article 36, paragraph 3 of the European Convention on Human Rights, Applications Nos. 24384/19 and 44234/20, *H.F. and M.F. v. France* and *J.D. and A.D. v. France*, para. 28. Available at:

<https://rm.coe.int/third-party-intervention-by-the-council-of-europe-commissioner-for-hum/1680a31834>

⁶ Children’s Commissioner for England, *Response to the Home and Foreign Secretaries regarding British children in Syria*, 5 November 2019.

⁷ Save the Children, “Deaths of Two Girls in Syria’s al-Hol Camp Highlight Risks to Women and Children”, 15 November 2022. Available at:

<https://www.savethechildren.net/news/deaths-two-girls-syria-s-al-hol-camp-highlights-risks-women-and-children-save-children>.

⁸ See Human Rights Watch, “*My Son is Just Another Kid*”: Experiences of children repatriated from camps for ISIS suspects and their families in North East Syria, 21 November 2022. Available at:

[https://www.hrw.org/report/2022/11/21/my-son-just-another-kid/experiences-children-repatriated-camp-s-isis-suspects-and#:~:text=\(New%20York%2C%20November%2021%2C,in%20a%20report%20released%20today..](https://www.hrw.org/report/2022/11/21/my-son-just-another-kid/experiences-children-repatriated-camp-s-isis-suspects-and#:~:text=(New%20York%2C%20November%2021%2C,in%20a%20report%20released%20today..)

⁹ Save the Children International, *When am I Going to Start to Live? The urgent need to repatriate foreign children trapped in Al Hol and Roj Camps*, 2021, p. 22.

¹⁰ Middle East Eye, *Biden supports repatriating foreign nationals from Syria, says US diplomat*, 10 February 2021. Available at:

<https://www.middleeasteye.net/news/biden-administration-syria-repatriating-nationals-us-diplomat>

¹¹ Rights and Security International, *Global Repatriations Tracker*. Available at:

<https://www.rightsandsecurity.org/action/resources/global-repatriations-tracker>.

- a. Belgium: Upon arrival, children are taken to a paediatric hospital, where their medical, psychosocial, education and outpatient care needs are determined. Family members spend time with them in hospital until they are released in their community, where they benefit from specific services.¹²
- b. Finland: The Government adopted a resolution to repatriate children as soon as possible. More generally, repatriation decisions have been vested in civil servants, not politicians, as Finland seeks to ensure compliance with the rule of law, and its national and international legal obligations.¹³
- c. Germany: Services are coordinated through a case manager who oversees the cooperation of various structures like youth welfare, offices, schools, employment agencies. Returnees are supervised to assess reintegration.¹⁴
- d. Kazakhstan: Children are given Kazakh birth certificates. They join an ‘adaptation centre’ for around a month, where they receive support from mental health professionals, religious scholars, lawyers, healthcare workers, and teachers in order to transition to life in the country. They receive individual learning to be able to begin formal education upon leaving the centre.¹⁵

Deprivation of citizenship

12. The UK Home Secretary has the power to deprive British citizens of their citizenship in limited circumstances under the British Nationality Act 1981.¹⁶ The Act applies to all citizens, irrespective of their age.
13. In the context of children held in camps in North East Syria, deprivation of citizenship impacts children and children’s rights in three circumstances, namely where the person deprived of British citizenship: (a) is a child, (b) was a child when travelling to Syria, or (c) is an adult whose deprivation order indirectly affects the situation of a child.
 - a. It is our position that the UK must never deprive a child of their nationality.¹⁷ Under international law, in all actions concerning children, including in decisions on the deprivation of citizenship, the best interests of the child must be a primary consideration.¹⁸ They have high priority and are not just one of several considerations.¹⁹ It can never be in a child’s best interests to lose their

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Section 40 of the British Nationality Act 1981. Available at:

<https://www.legislation.gov.uk/ukpga/1981/61>

¹⁷ CRIN et al., *Bringing Children Home: A children’s rights approach to returning from ISIL*, 2020, p. 3. Available at:

<https://resourcecentre.savethechildren.net/node/16725/pdf/childreturneespositionpaperfinaljanv.2020.pdf>

¹⁸ Article 3 (1) of the Convention on the Rights of the Child (CRC). Available at:

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁹ Committee on 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)*, CRC/C/GC/14, para. 39. Available at: https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

nationality,²⁰ given the profound consequences this has for their future, particularly regarding the protection of their rights in situations of armed conflict. Moreover, international law requires that children trafficked to armed groups be treated primarily as victims.²¹ Children with a less protected status due to citizenship deprivation might also be more at risk of being exploited by armed groups.²² In a letter to the Home and Foreign Secretaries, the Children's Commissioner for England acknowledged that it is '[n]ever appropriate to remove British citizenship from a child.'²³

- b. The UK has stripped people who have been trafficked to Syria as children of their British citizenship.²⁴ Where a person cannot return to the UK to challenge the legality of the deprivation decision, the possibility is left open that the decision to deprive them of nationality was unlawful, but impossible to challenge in practice, because the conditions within displacement camps do not allow for meaningful participation in legal proceedings. In our view, this policy fails to treat those who were trafficked to Syria as children primarily as victims.
- c. Children can be impacted indirectly when their caregivers are deprived of their citizenship. At the very least, this might mean that children have a less secure legal status and a higher risk of statelessness.²⁵ Children born after the deprivation decision are at a particular risk of statelessness, despite the recognition under the British Nationality Act of the need to avoid rendering people stateless. This increases the risk of children being recruited and exploited by non-State armed,²⁶ with long term consequences for the well-being of the children, as well as undermining counter-terrorism efforts. For instance, research on the ground indicates that at least one British child may have become stateless because her mother's citizenship was stripped when she was pregnant.²⁷

²⁰ Institute on Statelessness and Inclusion and Open Society Justice Initiative, *Principles on Deprivation of Nationality as a Security Measure*, 2020, Principle 9.7.4. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>

²¹ Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, CRC/C/GC/24, para. 100. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqlkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2BF0RPR9UMtGkA4>

²² 'Children without nationality risk being marginalised and exploited by designated terrorist groups in the long run'. See UN Counter-Terrorism Centre (UNCCT), *Children affected by the foreign-fighter phenomenon: Ensuring a child rights-based approach*, 2019, para. 84. Available at: https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/0918_ffh_handbook_web_reduced.pdf

²³ Children's Commissioner for England, *Response to the Home and Foreign Secretaries regarding British children in Syria*, 5 November 2019. Available at: <https://www.childrenscommissioner.gov.uk/2019/11/05/response-to-the-home-and-foreign-secretaries-regarding-british-children-in-syria/>

²⁴ Reprieve, *Trafficked to ISIS: British families detained in Syria after being trafficked to Islamic State*, 2021, p. 41. Available at: <https://reprieve.org/uk/2021/04/30/trafficked-to-syria/>

²⁵ Open Society Justice Initiative, *European States' Obligations to Repatriate the Children Detained in Camps in Northeast Syria*, July 2021, para. 89. Available at: <https://www.justiceinitiative.org/uploads/d9762590-424c-4cb6-9112-5fedd0d959d1/european-states%E2%80%99-obligations-to-repatriate-the-children-detained-in-camps-in-northeast-syria-20210722.pdf>

²⁶ See UN Counter-Terrorism Centre (UNCCT), *Children affected by the foreign-fighter phenomenon: Ensuring a child rights-based approach*, 2019, para. 84.

²⁷ Reprieve, *Trafficked to ISIS: British families detained in Syria after being trafficked to Islamic State*, 2021, p. 20.

The separation of children from families for the purposes of repatriation

14. There have been reports of European governments pursuing policies to separate families detained in North East Syria, and repatriate children separately from their parents.²⁸ States are reportedly taking steps to secure the mothers' agreement to their children's return without them.²⁹ The mothers, already victims of trafficking, are faced with an unpalatable choice: refuse the separation and have their children face the possibility of statelessness and transfer to other areas where they will risk re-trafficking and other human rights abuses, or agree and be separated from their children indefinitely.³⁰ In view of the power dynamics between the mothers and the state, where the mothers might have been deprived of their citizenship and are unlikely to have meaningful access to legal advice,³¹ it is not possible for their consent to be free and informed.
15. Research by human rights groups on the ground suggests that, in addition to stripping mothers of their citizenship, the UK has also established such a policy of family separation and seeking mothers' 'consent'.³²
16. The ECHR and the CRC protect children's right to family life.³³ The CRC's preamble recognises the family as 'the fundamental group of society and the natural environment for the growth and well-being of children'. The term 'family' must be interpreted broadly to include 'biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom'.³⁴
17. It is a fundamental principle of children's rights law that in all actions concerning children, including in decisions on the repatriation of their families, the best interests of the child must be a primary consideration.³⁵
18. Under the CRC, it is important to preserve family unity, therefore children must not be separated from their parents against their will, except where competent authorities subject to judicial review determine that such separation is necessary for their best interests.³⁶ In the case of children separated from one or both parents, they are entitled to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to their best interests,³⁷ and the Committee has clarified that this

²⁸ Save the Children International, *When am I Going to Start to Live? The urgent need to repatriate foreign children trapped in Al Hol and Roj Camps*, 2021, p. 32.

²⁹ Ibid.

³⁰ Reprieve, *Trafficked to ISIS: British families detained in Syria after being trafficked to Islamic State*, 2021, pp. 42 and 51.

³¹ Rights and Security International, *Abandoned to Torture: Dehumanising rights violations against children and women in northeast Syria*, 2021, p. 39. Available at: https://www.rightsandsecurity.org/assets/downloads/Abandoned_to_Torture_-_Final_Report.pdf

³² Reprieve, *Trafficked to ISIS: British families detained in Syria after being trafficked to Islamic State*, 2021, p. 51.

³³ Article 8, ECHR. Article 16, CRC. See also Articles 12 and 16 (3), UDHR and Articles 17 and 23 (1), ICCPR.

³⁴ Article 5, CRC. See also Committee on 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)*, CRC/C/GC/14, para. 59.

³⁵ Article 3 (1), CRC.

³⁶ Article 9 (1), CRC.

³⁷ Article 9 (3), CRC.

extends to anyone 'holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.'³⁸

19. The Committee on the Rights of the Child has further emphasised the gravity of the impact of separation on the child, explicitly providing that separation should only occur as a measure of last resort, not used if less intrusive measures are possible. In particular, prior to resorting to separation, States should support parents and restore or enhance the family's capacity to take care of the child.³⁹
20. The Committee has also urged States to guarantee that, in all separation cases, the situation of the child and their family has been assessed by a multidisciplinary team of well-trained professionals with appropriate judicial involvement.⁴⁰
21. In assessing the best interests of the children in the camps, it should be considered that they have already suffered physical and emotional trauma, most of them have never known life outside the camps, and their primary caregivers are their only stable reference point.⁴¹ A broad interpretation of the concept of 'family' is particularly important in the case of nationals detained in North East Syria, who have formed family units that are a combination of full and partial biological families. These units are the very limited support networks that the children in camps have, and are especially significant given the frequent lack of a male role model or father figure.⁴² More generally, studies have shown that the forcible separation of children from their parents has profound effects on children's development, leading to acute stress, depression and developmental regression.⁴³ It is therefore highly unlikely that the separation of children from their primary caregivers would be in their best interests. Moreover, Kurdish authorities might refuse to repatriate children without their mothers.⁴⁴
22. In our view, if the UK is pursuing a policy of separating children from families for repatriation, the UK is violating children's best interests and their right to family life.
23. Given the complex nature of the best interests assessments, we submit that, in very practical terms, the UK is simply not in a position to conduct these assessments while children and their primary caregivers are in the camps. Therefore, as recognised by the Council of Europe Commissioner for Human Rights,⁴⁵ the UK should repatriate children

³⁸ Committee on 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)*, CRC/C/GC/14, para. 60.

³⁹ *Idem*, para. 61.

⁴⁰ *Idem*, para. 64.

⁴¹ Open Society Justice Initiative, *European States' Obligations to Repatriate the Children Detained in Camps in Northeast Syria*, July 2021, para. 151.

⁴² Save the Children International, *When am I Going to Start to Live? The urgent need to repatriate foreign children trapped in Al Hol and Roj Camps*, 2021, p. 24.

⁴³ *Idem*, p. 32.

⁴⁴ Thomas Renard and Rik Coolsaet, *From bad to worse: The fate of European foreign fighters and families detained in Syria, one year after the Turkish offensive*, October 2020, p. 6. Available at: https://www.egmontinstitute.be/content/uploads/2020/10/SPB130_final.pdf?type=pdf

⁴⁵ Third party intervention by the Council of Europe Commissioner for Human Rights before the European Court of Human Rights under Article 36, paragraph 3 of the European Convention on Human Rights, Applications Nos. 24384/19 and 44234/20, *H.F. and M.F. v. France* and *J.D. and A.D. v. France*, paras. 28-29.

and caregivers together, and carry out the assessments domestically. The caregivers may face prosecution, but the UK should prioritise their rehabilitation and reintegration.

The Prevent Strategy and Counter-Radicalisation Policies

24. For a full analysis of how Prevent impacts children and their human rights, along with recent case studies, please refer to CRIN's 2022 report [Preventing Safeguarding: The Prevent strategy and children's rights](#).⁴⁶

Context

25. This submission focuses primarily on the Prevent programme in England and Wales, since the Scottish programme is of a much smaller scale.⁴⁷
26. Between 2015/16 (when the Prevent Duty was first introduced) and 2020/21, approximately **3,000 children** under the age of 18 were referred to Prevent **every year**,⁴⁸ including an average of **400 children under the age of 10**.⁴⁹ Many further children are affected without a formal referral ever being made.⁵⁰
27. Children are disproportionately impacted by Prevent. In the same period, children under the age of 18 accounted for **47%** of all Prevent referrals, despite making up only **21%** of the UK population.⁵¹ On average, **less than one in ten (9%)** of child referrals were escalated to receive 'support' through Channel.⁵²
28. In the last year for which data is available (2020/21), significantly fewer children were referred to Prevent (1,920), and the percentage of these that were adopted as a Channel case was higher than in previous years (18%).⁵³ It's possible that this was due, at least in part, to the Covid-19 pandemic, which led children to have significantly reduced contact with services, much of it remote.
29. There is no legal requirement to obtain consent of a child or their parent/guardian before making a Prevent referral, but a parent/guardian must consent before a child may receive 'support' under Channel.⁵⁴ Testimony from children referred to Prevent and civil society

⁴⁶ Child Rights International Network, *Preventing Safeguarding: the Prevent strategy and children's rights*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>.

⁴⁷ In 2020/21, for example, 55 individuals were referred to Prevent in Scotland, compared to 4,915 in England and Wales. Police in Scotland, *Prevent Referral Data 2020-21*, 2021, available at: <https://www.scotland.police.uk/spa-media/ej0f3bzu/prevent-referral-data-2020-21.pdf>; Home Office, *Individuals referred to and supported through the Prevent Programme, April 2020 to March 2021*, 2021, available at:

<https://www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2020-to-march-2021>

⁴⁸ Child Rights International Network, *Preventing Safeguarding: the Prevent strategy and children's rights*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, p. 13.

⁴⁹ Information obtained under the Freedom of Information Act, Ref. 68181, 17 May 2022.

⁵⁰ See e.g. 'Case study B', Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, p. 25.

⁵¹ Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, p. 13.

⁵² Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, p. 13.

⁵³ Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, p. 13.

⁵⁴ Counter-Terrorism and Security Act 2015, section 36(4)(b) available at: <https://www.legislation.gov.uk/ukpga/2015/6/section/36> and section 41(1), available at:

organisations supporting them shows that in some cases children and their families have been placed under pressure to engage with Prevent, and that refusal to do so attracted negative consequences.⁵⁵

30. Police play a key role in the operation of Prevent, meaning a referral draws a child into contact with, and to the attention of, the police. Most referrals are made to counter-terrorism police in the first instance for assessment and triage, and even where referrals are made through local authority mechanisms, these are forwarded to the police.⁵⁶ Police also have a representative on Channel panels - the Channel Case Officer - who has considerable responsibilities for the management and referral of cases, including the option of escalating them to a police-led space.⁵⁷ Following a pilot in 2017,⁵⁸ ('Operation Dovetail') the Home Office has transferred the responsibilities of the Channel Case Officer role to the local authority in some regions, but even in these areas the police retain responsibility for initial assessment and triage of referrals and leading on "high risk cases".⁵⁹

Relevant children's rights law and standards

31. The UK has an obligation under international law to take all feasible measures to prevent the recruitment and use of children by non-state armed groups.⁶⁰ International standards affirm that such children are victims of grave human rights violations and should be treated as such, including in the context of counter-terrorism.⁶¹
32. In taking measures to prevent child recruitment and use, the UK must also uphold children's rights, as required by national⁶² and international⁶³ law. Of particular relevance to Prevent are:

<https://www.legislation.gov.uk/ukpga/2015/6/section/41> See also HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, pp. 33-34.

⁵⁵ Child Rights International Network, *Preventing Safeguarding*, 2022,

<https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, pp. 13-14, 28.

⁵⁶ HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, p. 20.

⁵⁷ HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, p. 14.

⁵⁸ 'Operation Dovetail' was piloted in nine areas in 2017 (Brighton, Croydon, Haringey, Kent, Kirklees, Lancashire, Luton, Oldham and Swansea), and has since been rolled out in other regions of England and Wales, including the North-West. Local Government Association, 'Operation Dovetail update', 2018, available at:

<https://lga.moderngov.co.uk/documents/s16757/Operation%20Dovetail%20update.pdf>.

⁵⁹ Wigan Council, *Prevent Channel policy, guidance and procedure for working with adults and children/young people who are vulnerable to the messages of violent extremism*, 2019, available at: <https://www.wigan.gov.uk/Docs/PDF/WSCB/PVE-Policy.pdf>, p. 5.

⁶⁰ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), Article 4, available at:

<https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx>.

⁶¹ See e.g. UN Secretary-General, *Children and Armed Conflict: report of the Secretary General*, A/2016/360-S/2016/360, 20 April 2016, para. 16, available at:

<https://reliefweb.int/sites/reliefweb.int/files/resources/N1611119.pdf>.

⁶² Human Rights Act 1998, available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents>; Equality Act 2010, available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

⁶³ Inter alia, the Convention on the Rights of the Child, available at:

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; the International Covenant on Civil and Political Rights, available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; and the European Convention on Human Rights, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

- a. The right to non-discrimination, including on grounds such as race, religion and political or other opinion.⁶⁴
 - i. It is not necessary for discrimination to be intentional for it to be prohibited. Even where a policy is framed in neutral terms, if it nonetheless leads to disproportionately prejudicial effects against a particular group, it can still violate the prohibition on discrimination.
- b. Fundamental rights, including the right to privacy,⁶⁵ freedom of expression,⁶⁶ freedom of assembly⁶⁷ and freedom of thought, conscience and religion.⁶⁸
 - i. Human rights law allows for restrictions to be placed on these rights for purposes of national security or public safety, but only provided that such restrictions are **necessary** for those legitimate purposes, **proportionate** to the aim and **prescribed by law**.⁶⁹
- c. The right for children to have their “best interests” taken as a “primary consideration [...] in all actions involving [them]”.⁷⁰

33. The collection, sharing and retention of data for the purposes of Prevent must comply with human rights law (Human Rights Act 1998) and data protection law (the UK’s General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018). The latter sets out six data protection principles, including that the processing must be **lawful**, **fair** and **transparent**, that personal data be **adequate**, **relevant** and **not excessive**, and that it be **kept for no longer than is necessary**.⁷¹

Prevent’s impact on children’s rights and welfare

Discrimination

- 34. There is evidence that children of Asian ethnicity, Muslim children, children with mental health problems, and children with developmental disorders are disproportionately referred to Prevent, raising concerns that the policy interferes with their right to freedom from discrimination.
- 35. The Government does not routinely publish data on the ethnicity and religion of children referred to Prevent, and has refused to release this data in response to recent Freedom

⁶⁴ European Convention on Human Rights, Article 14, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf; Convention on the Rights of the Child, Article 2, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁶⁵ Human Rights Act 1998, Schedule 1, Part 1, Article 8, available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/>; Convention on the Rights of the Child, Article 16, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; European Convention on Human Rights, Article 8, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁶⁶ Convention on the Rights of the Child, Article 13.

⁶⁷ Convention on the Rights of the Child, Article 15.

⁶⁸ Convention on the Rights of the Child, Article 14.

⁶⁹ Human Rights Act 1998, Schedule 1, Part 1, Articles 8-11, available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents>; Convention on the Rights of the Child, Articles 13-16, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; see also UN Human Rights Committee, General Comments 27 and 34.

⁷⁰ Convention on the Rights of the Child, Article 3(1).

⁷¹ Data Protection Act 2018, Part 3, Chapter 2, First, Third and Fifth principles, available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/31>.

of Information Requests.⁷² However, data from 2014 to 2016 shows that **39%** of children referred under Prevent were recorded as Muslim and **38%** were ethnically Asian.⁷³ This is vastly disproportionate to these groups' representation in the UK population; 6% and 9% respectively.⁷⁴ Since these early years of the Prevent duty, referrals with 'types of concern' other than 'Islamic extremism' have increased markedly; in 2020/21 referrals at all ages for 'Right-wing extremism' slightly exceeded those for 'Islamic extremism', and there were twice as many referrals for 'Mixed, unstable, or unclear ideology'.⁷⁵ However, it cannot be assumed that these categories are indicative of the ethnicity or religion of those referred, especially in the 'Mixed' category.

36. Research by the health workers' charity Medact into the number of referrals in the NHS from specialist mental health departments and trusts, compared with other departments and trusts, suggests that people receiving mental health care (of all ages) are more likely to be referred.⁷⁶
37. Regarding children with developmental disorders, the UK's Independent Reviewer of Terrorism Legislation said in 2021, "my understanding is that the incidents of autism and Prevent referrals are...staggeringly high."⁷⁷ This is despite studies finding that "evidence for official claims that people with mental health conditions are more likely to be drawn into terrorism is not robust enough to base policy upon,"⁷⁸ and that "there is no empirical evidence to link autism and terrorism."⁷⁹

Privacy and freedom of expression, assembly and religion

38. In requiring professionals in contact with children to monitor children for *lawful* behaviour that is purportedly indicative of 'radicalisation', and refer them to a police-led programme if such signs are detected, Prevent infringes children's right to privacy and has a chilling effect on their right to freedom of expression, assembly, and religion. This happens both

⁷² See e.g. Home Office, *Response to Freedom of Information Request (Ref. 62693)*, 3 June 2021.

⁷³ Reporting period: March 2014 to March 2016. Information obtained under the Freedom of Information Act and held on record.

⁷⁴ Office for National Statistics, 'Religion, England and Wales: Census 2021', 2022, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/bulletins/religionenglandandwales/census2021>; Office for National Statistics, 'Ethnic group, England and Wales: Census 2021', 2022, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/bulletins/ethnicgroupenglandandwales/census2021>.

⁷⁵ Home Office, *Individuals referred to and supported through the Prevent Programme, April 2020 to March 2021*, available at: <https://www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2020-to-march-2021>.

⁷⁶ Medact, *False Positives: The Prevent counter-extremism policy in healthcare*, 2020, pp. 35-6, available at: <https://www.medact.org/wp-content/uploads/2020/07/MEDACT-False-Positives-WEB.pdf>.

⁷⁷ "Staggeringly high" number of autistic people on UK Prevent scheme', *The Guardian*, 7 July 2021, available at: <https://www.theguardian.com/uk-news/2021/jul/07/staggeringly-high-number-of-people-with-autism-on-uk-prevent-scheme>

⁷⁸ Medact, *False Positives: The Prevent counter-extremism policy in healthcare*, 2020, p. 6.

⁷⁹ Z Al-Attar, 'Autism spectrum disorders and terrorism: how different features of autism can contextualise vulnerability and resilience', *The Journal of Forensic Psychiatry & Psychology*, 31:6, 2020.

through children censoring themselves in order to avoid referral to Prevent,⁸⁰ and through children who have already been referred ceasing the activities that caused suspicion.⁸¹

39. These infringements on children’s fundamental rights do not meet the strict conditions set out in human rights law.
- a. The high numbers of children referred to Prevent, and the low proportion (9%) that are subsequently adopted as a Channel case,⁸² suggest that the strategy is driving a much larger-scale and intrusive response than is necessary and proportionate to respond to the risk of children being groomed and recruited by non-state armed groups. The lack of evidence for Prevent’s effectiveness also casts doubt on whether the policy is necessary and proportionate. In particular, the methodology underpinning Prevent,⁸³ and the strategy’s assumption that non-violent expression and behaviour is predictive of criminal offending,⁸⁴ have both been widely criticised as flawed.
 - b. Both the vagueness of the Prevent duty as set out in law and statutory guidance, and the broad and contested meanings of the policy’s key terms (e.g. ‘extremism’), infringe the requirement for restrictions on human rights to be prescribed by law. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has concluded that the “overall application of Prevent [is] unpredictable and potentially arbitrary, hence rendering it inconsistent with the principle of the rule of law.”⁸⁵
40. In its ongoing review of the UK, the UN Committee on the Rights of the Child has questioned the Government on how it will “[e]nsure that counter-terrorism measures,

⁸⁰ For example, in 2016 the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association found that the policy had ‘Created unease and uncertainty regarding what can legitimately be discussed in public...some families are reportedly afraid of even discussing the negative effects of terrorism in their own homes, fearing that their children would talk about it at school and have their intentions misconstrued’. Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom, 2016, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19854&LangID=E>.

⁸¹ See e.g. ‘Rahmaan’s case’, RightsWatchUK, *Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools*, 2016, available at:

<https://www.rightsandsecurity.org/assets/downloads/preventing-education-final-to-print-3.compressed-1.pdf>; ‘Case study 4’, Open Society Justice Initiative, *Eroding Trust: The UK’s Counter-Extremism Strategy in Health and Education*, 2016, available at: https://www.justiceinitiative.org/uploads/f87bd3ad-50fb-42d0-95a8-54ba85dce818/eroding-trust-20161017_0.pdf.

⁸² See Figure 2 at p. 4.

⁸³ Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, p. 19.

⁸⁴ See e.g. Open Society Justice Initiative, *Eroding Trust: The UK’s Counter-Extremism Strategy in Health and Education*, 2016, pp. 36-38, available at: https://www.justiceinitiative.org/uploads/f87bd3ad-50fb-42d0-95a8-54ba85dce818/eroding-trust-20161017_0.pdf; ‘Hizb ut Tahrir is not a gateway to terrorism, claims Whitehall report’, *The Telegraph*, 25 July 2010.

⁸⁵ Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom, 2016.

including the Prevent Strategy, do not undermine children's rights to freedom of expression, thought, conscience and religion."⁸⁶

Children's welfare and best interests

41. Prevent has been framed as part of public services' wider safeguarding duties, especially as it applies to children. However, it is not consistent with good safeguarding, which holds children's welfare as its highest priority.⁸⁷ National security and policing priorities are at least as important in the design and implementation of Prevent, if not more. This is evident from the coordinating role that counter-terrorism police play in the programme (see above), despite a consensus in children's rights standards that their interests are best served by keeping them out of contact with the policing and criminal justice systems as far as possible.⁸⁸ Individual case studies also highlight instances in which intelligence-gathering and policing priorities have clearly motivated a referral, rather than genuine concerns for the child's welfare.⁸⁹
42. A wealth of testimony⁹⁰ shows that children have suffered severe negative impacts from a referral or from the impacts of the policy more broadly. In brief, these include: their access to essential public services such as health, education and social care being undermined by their co-option into counter-terrorism; feeling stigmatised and criminalised by a referral; suffering from mental health problems; and withdrawing from friendships, hobbies and expressing themselves.

Data protection and privacy

43. For a detailed analysis of Prevent data practices, see Chapter II (Prevent and children's data) of CRIN's *Preventing Safeguarding* report.⁹¹
44. Prevent entails the collection of a large amount of varied and detailed information about children, from the monitoring of their activity on school computers to information regarding their referral to Prevent or Channel case. The way this data is handled has the potential to seriously impact children's lives; as a High Court judge commented in one case, it could lead to them being "tagged – wrongly – as a supporter of terrorism",⁹² for example.

⁸⁶ Committee on the Rights of the Child, List of issues prior to submission of the combined sixth and seventh review of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/QPR/607, 4 March 2021, para. 17(b).

⁸⁷ For example, the UK's statutory guidance on safeguarding defines it as putting "the needs of children first when determining what action to take," in line with the UN Convention on the Rights of the Child. HM Government, *Working Together to Safeguard Children*, 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942454/Working_together_to_safeguard_children_inter_agency_guidance.pdf, pp. 9-11.

⁸⁸ Convention on the Rights of the Child, Article 3(1), available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 2, available at: <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>.

⁸⁹ See e.g. 'Case study D (Part 1), Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, pp. 28-29.

⁹⁰ Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, pp. 29-33.

⁹¹ Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, pp. 37-51,

⁹² *R (II) v Commissioner of Police for the Metropolis* [2020] EWHC 2528 (Admin), para. 78.

45. There is a chronic, widespread lack of transparency surrounding data processing under Prevent, including regarding the nature of the data collected, who holds it, who it is shared with, how long it is kept for and when consent must be obtained.⁹³ This is largely due to the fact that the statutory guidance is limited and vague, giving wide discretion to the huge number of authorities involved in implementing Prevent, as well private companies contracted by them to process data, to set their own policies and practices. This in itself is a violation of the principle that data processing must be **transparent**. The opacity around Prevent data practices makes it very difficult, especially for children, to understand how personal information is being used and therefore to challenge those uses.
46. Where information does exist about local practices, it often points to uses of children's data that are **excessive**, and clearly not in their best interests. For example, certain local authorities set out extensive lists of data they might collect for purposes of a Prevent referral, and agencies they might share it with, many of which do not appear necessary or relevant.⁹⁴ Similarly, some data processors set excessively long timeframes for retention of such data, or no time limit at all.⁹⁵ Reportedly, Prevent referrals have been shared with immigration enforcement agencies,⁹⁶ and Channel mentors have shared information about their mentees with the police; both uses of children's information that clearly militates against their interests.⁹⁷

Effectiveness at preventing child recruitment and use

47. As noted above, there is a lack of evidence for the theory underpinning Prevent and for its effectiveness. By eroding trust between children and families and the public services they come into contact with, the policy may even be undermining professionals' ability to effectively safeguard children from genuine risks of grooming and recruitment by armed groups, as children and those close to them are less likely to feel they can share any welfare concerns. Professionals in education,⁹⁸ health⁹⁹ and local authority

⁹³ See Child Rights International Network, *Preventing Safeguarding*, 2022,

<https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, pp. 37-51,

⁹⁴ See the discussion of Bury Council's policy in Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, p. 39, 41, 47.

⁹⁵ *Ibid.* and 'Case study D (Part 2)', Child Rights International Network, *Preventing Safeguarding*, 2022, <https://home.crin.org/s/Preventing-Safeguarding-March-2022-CRIN-7a6j.pdf>, pp. 48-49,

⁹⁶ Medact, *False Positives: the Prevent counter-extremism policy in healthcare*, June 2020, p. 60.

⁹⁷ 'Anti-extremism mentors inform on clients to police', *The Times*, 11 August 2019, available at: <https://www.thetimes.co.uk/article/anti-extremism-mentors-inform-on-clients-to-police-1jqdhh13d>.

⁹⁸ The National Union of Teachers passed a motion in 2016 calling on the government to withdraw the Prevent policy in schools and colleges, for reasons including that it "could worsen relationships between teachers and learners". 'NUT prevent strategy motion: what it actually says', *Schools Week*, 28 March 2016, available at:

<https://schoolsweek.co.uk/nut-prevent-strategy-motion-what-it-actually-says/>.

⁹⁹ A 2020 report found evidence of referrals "damaging the therapeutic relationship between patient and practitioner,... and damaging patient trust in health professionals in a way that interrupts care or causes them to disengage entirely." Medact, *False Positives: The Prevent counter-extremism policy in healthcare*, 2020, pp. 52-53.

safeguarding,¹⁰⁰ as well as children themselves,¹⁰¹ have all raised concerns about the breakdown in relationships caused by the policy.

Independent oversight and access to remedy

48. The main vehicle for independent oversight of the policy - the Government's 'Independent Review of Prevent' - has been beset by problems and has lost the confidence of many stakeholders. The Review has **missed two deadlines** - the original statutory deadline of August 2020, and a revised deadline of 31 December 2021 - and is now over **two years overdue**.¹⁰² It has also been **boycotted** by major human rights groups and by hundreds of Muslim community organisations due to concerns over the appointment of Reviewer (William Shawcross), notably his public record of Islamophobic comments, including that "Europe and Islam is one of the greatest, most terrifying problems of our future".¹⁰³
49. As noted above, in recent years the Government has rejected requests under the Freedom of Information Act to provide data on the ethnicity and religion of children referred to Prevent, citing national security justifications.¹⁰⁴ This precludes meaningful scrutiny of whether the policy has a discriminatory impact, despite concerns repeatedly being raised by experts that this is the case.¹⁰⁵

Recommendations for change

¹⁰⁰ A 2017 government study reported: "Safeguarding and child protection professionals worried that families who are sceptical of their role in the Prevent agenda may begin to see them as an arm of the police, damaging relationships and trust that has in many cases been built up through long-term engagement." Department for Education, *Safeguarding and radicalisation: Research report*, 2017, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635262/Safeguarding_and_Radicalisation.pdf, p. 23.

¹⁰¹ See e.g. RightsWatchUK, *Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools*, 2016, p. 44.

¹⁰² HM Government, *The Counter-Terrorism and Sentencing Bill – Independent Review of Prevent Fact-sheet*, 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/959446/cts-bil-fact-sheet0independent-review-prevent-jan-2021.pdf; Lizzie Dearden,

'Review of Prevent counter-extremism programme misses deadline – almost three years after it began', *The Independent*, 24 December 2021,

<https://www.independent.co.uk/news/uk/home-news/prevent-review-shawcross-delay-extremism-b1981654.html>

¹⁰³ Jamie Grierson, 'Human rights groups to boycott government's Prevent review', *The Guardian*, 16 February 2021,

<https://www.theguardian.com/uk-news/2021/feb/16/human-rights-groups-to-boycott-government-prevent-review>; Jamie Grierson, 'Hundreds of Islamic groups boycott Prevent review over choice of chair', *The Guardian*, 17 March 2021,

<https://www.theguardian.com/uk-news/2021/mar/17/hundreds-islamic-groups-boycott-prevent-review-william-shawcross-protest>.

¹⁰⁴ See e.g. Information obtained under the Freedom of Information Act, ref. 62693, 3 June 2021.

¹⁰⁵ See e.g. 'End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland', 2018, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23073&LangID=E>; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 2017, available at: <https://digitallibrary.un.org/record/1298881?ln=en>

50. On the evidence above, the structural flaws with Prevent and its loss of confidence with stakeholders are too great for it to be reformed into an effective policy for the prevention of child recruitment and use, therefore it should be repealed.
51. The Government should develop policy on the prevention of child recruitment and use by non-state armed groups that:
- a. Respects the full spectrum of children's rights;
 - b. Takes their best interests as a primary consideration, including by keeping them out of the policing and criminal justice systems wherever possible, and always when they are not suspected of having committed an offence;
 - c. Addresses the structural conditions that contribute to children's vulnerability to such grave human rights violations, including poverty, marginalisation and displacement.
 - d. Adopts clear, uniform, and transparent data processing policies which comply with human rights law, in particular the right to privacy, and with data protection law and common law duties.
 - i. In particular, children's personal data must not be retained by authorities for longer than is necessary and proportionate.
52. The Home Office should routinely publish statistics regarding the application of all of its counter-terrorism policies to children, including ethnicity and religion data, and ensure that evaluations of said policies and their methods are placed in the public domain.