

**EUROPEAN WOMEN AND CHILDREN IN SYRIA –FACTUAL AND LEGAL BRIEFING**  
RIGHTS WATCH (UK)

**7 November 2019**

1. At the date of writing, we understand that there are 12,300 foreign nationals present across two camps in North East Syria.<sup>1</sup> This includes nearly 9000 children from over 40 nationalities detained by Kurdish authorities in IS-affiliate camps in North-East Syria.<sup>2</sup> It is understood that the majority of children in the camps are below the age of 12 and around half are younger than five years old.
2. The situation on the ground, while undergoing rapid change in the last three weeks, appears to have stabilised. That provides a **limited window for action** before matters evolve further. As we understand it, the current factual situation on the ground is as follows:
  - Roj and Al Hol camps remain under the control of the Kurdish authorities and outside of the now established Turkish buffer zone (32km deep and 120 km wide across the Turkish border with Syria).<sup>3</sup> Prior to the ceasefire between Turkey and the Kurdish authorities, there were no active hostilities between the Kurds and Turkey near these camps.<sup>4</sup>
  - The border with Iraq remains open and the route out of North-East Syria to Iraq is currently still held by the Kurdish authority and under the control of the SDF.<sup>5</sup> The SDF remain in control of both Roj and Al Hol camps.
  - Following a five-day ceasefire and a subsequent Russian-Turkish agreement as to the desired Turkish buffer zone, Turkey now holds a strip of territory along the Turkish-Syrian border. While there has been evacuation of Kurdish forces from this region, there remain intermittent skirmishes and some reported fighting in this area. Nonetheless, this fighting is **not near the camps housing the foreign nationals**.

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<sup>1</sup> While specific nationalities are difficult to discern, it is understood that there are around 30 women and 60 children of British origin between the two camps. For other nations, such as Germany, that number might be closer to 30 in total. It is estimated that approximately 5,000 European men, women and children travelled to Iraq and Syria since 2012 ([The Soufan Center](#)). Approximately 1,200 are estimated to have already returned to Europe. It is estimated that the vast majority of returnees to Europe so far have been Belgium, Denmark, France, Germany, the Netherlands and the UK.

<sup>2</sup> IS-affiliates is a general term used to describe those associated with IS fighters captured and detained following the final offensive against IS in May of 2019. The camps are Al Hol and Roj. A previous camp, Ein Issa, has been dissolved in the 7 days since the Turkish incursion into the region, and its inhabitants dispersed.

<sup>3</sup> <https://www.theguardian.com/world/2019/oct/22/turkey-and-russia-agree-deal-over-buffer-zone-in-northern-syria>.

<sup>4</sup> <https://www.telegraph.co.uk/news/2019/10/18/fighting-continues-along-turkish-syrian-border-despite-us-brokered/>.

<sup>5</sup> <https://news.un.org/en/story/2019/10/1049561>.

3. Despite these developments, **at the date of this briefing there remain logistical pathways to repatriate the European women and children from the camps at Al Hol and Roj.** As noted above, for the time being the Kurds retain control of Al Hol and Roj camps and the route out of North-East Syria to Iraq. There are still humanitarian agencies, including Save the Children and UNICEF, operating in the camps and travelling in the area of the Al Hol and Roj camps (although they have reduced their presence given current uncertainties).
4. However, the humanitarian situation of those detained in the camps is dire, their safety remains precarious and the opportunity to repatriate them may well be running out. This is because:
  - Al Hol camp in particular is massively over-crowded and under-resourced. Over 300 children have died in an annex to that camp, where the majority of European nationals are held. There is limited access to medical supplies, sanitation facilities, education, recreational facilities, or general amenities. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has reviewed the conditions in the camps and confirmed they rise to a standard of **cruel, inhuman and degrading treatment**.<sup>6</sup> Advisors to the ICRC have confirmed that the conditions in Al Hol are as bad as, or worse than, the conditions in prisons it monitors.
  - While the deal between Russia and Turkey, and consequent Kurdish withdrawal from parts of the region, appears to be stable, this situation is liable to unravelling. Continued skirmishes between Turkish and Kurdish authorities may see redeployment of SDF forces guarding the camps to respond to attacks. The Kurdish authorities may reach a point where they no longer have the capacity or will to continue to guard the camps, leaving the women and children to disperse in an extremely uncertain and possibly volatile environment. This could make it very difficult to locate and assist these women and children, including any unaccompanied minors, who may find themselves in the midst of active hostilities or at the very least, without basic provisions or shelter. This is what occurred earlier this month to the children and women held in Ein Issa camp, a third camp run by the Kurdish authorities located North-West along the Turkish border within the Turkish buffer zone.<sup>7</sup> It was in this camp that three orphan British children were located and rescued, but a great many more foreign women and children remained in grave danger, forced to flee on foot with their young children.
  - The presence of the Assad creates a further difficulty, should Assad's government take control in the medium term of the areas where Roj and Al Hol camps are located (the location of the former is at the farthest point North-East of the border, while Al Hol is further south into Syrian territory). Given that EU nations generally have no diplomatic relations with the Syrian regime,<sup>8</sup> any repatriation would be much more difficult, and it is not clear what the Syrian regime would do with the children and women. There is a risk that European nationals may be used as a bargaining chip by

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<sup>6</sup> <https://www.justsecurity.org/66502/returning-foreign-fighters-and-their-families-takes-on-new-urgency-after-trumps-syria-decision/>.

<sup>7</sup> <https://www.independent.co.uk/news/world/middle-east/isis-syria-kurds-turkey-escape-camp-sdf-ain-issa-a9153816.html>. Sources on the ground now confirm this camp has been entirely abandoned, and its detainees dispersed.

<sup>8</sup> With the exception of Czechia.

the Assad regime in an effort to re-establish diplomatic relations with European Governments. Or European citizens may be transferred to Iraq where there is a real risk that they may be (and where some European nationals already have been) subjected to the death penalty, mistreatment and other human rights violations.

- a. There are increased reports of Da'esh militants seeking to exploit the chaos currently prevailing in North-East Syria to capture women and children who have fled from these camps, as has been reported to have happened in Ein Issa,<sup>9</sup> and/or to attempt to extract them from the camps themselves.<sup>10</sup>

#### *Governments' policy positions*

5. While there are slight variations in Government policy on repatriation across European nations, the **broad position** is that:<sup>11</sup>
  - a. They are not obliged to repatriate any women or children;
  - b. They are not obliged to offer consular assistance to any nationals;
  - c. Where nationals can bring themselves to a consular office, assistance *may* be provided;<sup>12</sup>
  - d. Some states will consider active repatriation of orphans with proven nationality; and
  - e. Any other repatriation will be considered on an individualised case by case basis.
6. A number of European governments contextualise their reluctance to repatriate around the lack of consular presence in Syria and the risk of harm to government officials.<sup>13</sup> While some Governments continue to advise citizens in Syria who wish to seek Governmental assistance to find their way to the nearest consulate or embassy in Iraq or Turkey (given that the absence

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<sup>9</sup> <http://english.alarabiya.net/en/News/middle-east/2019/10/15/French-women-from-Syrian-camp-retrieved-by-ISIS-Relatives-.html>

<sup>10</sup> <https://www.cnbc.com/2019/10/14/isis-prisoners-are-escaping-from-camps-in-syria-amid-turkish-offensive.html>. It must be emphasized that a large number of those detained in these camps do not wish to return to Da'esh, arrived in circumstances of dubious consent or misinformation and/or have expressed an explicit desire to return to their countries. RW(UK)'s position is that, regardless of the status of these women, they should be repatriated with their children and as appropriate, subject to the criminal law, of which there are multiple and expanding offences, and/or rehabilitation and reintegration.

<sup>11</sup> Belgium has confirmed it will consider repatriation of children under the age of 10 with proven Belgian parentage; it has in fact repatriated orphans in July 2019. Some reports suggest that those Belgian children in the age bracket 10-18 will be considered on a case by case basis. The UK has confirmed it will consider only orphans and unaccompanied minors for repatriation, and all repatriation on a case by case basis. France is said to be considering repatriation, but with no confirmed policy. In early 2019 France confirmed it would seek to repatriate orphans and unaccompanied minors but has confirmed all repatriation decisions will be on a case by case basis. Germany is said to be considering repatriation and appears to maintain the position that children of fighters are victims and ought to be repatriated but does not have a confirmed policy.

<sup>12</sup> However, **note a recent case in the Netherlands** where two women managed to escape from Al Hol and cross the border to Turkey and bring themselves to an embassy in Ankara, with three children below the age of five. One of those women, who had dual nationality, was thereupon **stripped of her nationality** after seeking consular assistance at the embassy: <https://nltimes.nl/2019/11/01/two-dutch-isis-women-three-children-escaped-syrian-camp-fled-turkey>. The other was returned to the Netherlands to face trial.

<sup>13</sup> While operational facts are **very scant** it seems that a large majority of repatriations prior to September 2019 have been facilitated with US assistance. Since the US withdrawal, that is no longer an option.

of any consular or diplomatic presence in Syria) for obvious reasons, this was and remains a practical impossibility for those children and women detained in the camps and with limited or inconsistent access to telecommunications. Consular solutions remain, as a matter of practicality, tantamount to continued detention.

### *Consular and human rights obligations*

7. There are various legal frameworks that are relevant to the repatriation of women and children in Syria. These include:
  - a. Consular obligations;
  - b. Human rights obligations;
  - c. Domestic constitutional and other legal obligations.
8. These different regimes apply in different ways. They also interact with one another. A key overarching question whether these obligations, and specifically human rights obligations of European States, can apply to individuals outside a State's borders, "extra-territorially". There are some domestic cases which have held that those States may owe obligations to their citizens located extra-territorially. It is also important to note that relevant treaty interpretation bodies have been willing to accept the application of human rights obligations extra-territorially, where the State in question has effective control. There is also an arguable case that the ECHR could apply extraterritorially in this context.<sup>14</sup>
9. Consular obligations owed to citizens by States vary across European countries. There remain fundamental shared characteristics, namely that consular access is typically granted at the discretion of the authorities of the nation concerned.
10. As noted above, these different legal frameworks interact with one another. The operation of consular obligation can, in some cases, be informed by relevant human rights instruments, including the UN Convention on the Rights of the Child, the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights. These human rights obligations operate within the domestic legal framework.
11. This domestic, consular and human rights framework has led, in some cases, to domestic courts mandating the repatriation of women and children. For example:
  - a. In Belgium, an initially successful case is currently under appeal. The Court of First Instance ruled that the Belgian state must take necessary, adequate and concrete measures toward the applicant's repatriation based on an analysis of the Court's jurisdiction and the right to consular assistance (art 46 CFREU), heavily informed by the best interests of the child.
  - b. More recently (October 30 2019), a Belgian court ruled directly that the Government was obliged to deliver consular assistance to a woman and her children, to ensure their physical and psychological integrity; to furnish them with administrative documents necessary for repatriation (either via the government or an NGO), and to facilitate their repatriation.

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<sup>14</sup> This is particularly in the context where the Kurdish authorities controlling the camps continue to seek repatriation of foreign nationals detained. They have repeatedly confirmed their willingness to transfer detainees subject, inter alia, to the UK's consent to receive the transferees and administrative assistance to facilitate that. The successful repatriation from the camps of detainees from a variety of different nations (including European) confirms that.

12. However, this is not a uniform position. For example:
- a. In France, a series of cases calling for repatriation have been unsuccessful for a variety of reasons, including the absence of jurisdiction and the inability of the Court to review questions of foreign relations (including granting consular access).
  - b. An Administrative Tribunal in Berlin has ordered repatriation of a mother and child in July 2019, but purely on the basis of the provisions in the German Constitution creating a duty on the State to protect.
13. While the consular, domestic and human rights contexts interact on the domestic level, the international human rights law component warrants specific analysis. The focus on consular obligations should not preclude the clear and worsening human rights violations these camps pose to European citizens, and the very arguable jurisdiction that these States have, in circumstances where they are capable, but unwilling, to end the detention of their citizens with straightforward administrative and logistical steps. Of particular note:
- a. The UN Convention on the Rights of the Child is widely ratified by EU States. Arts 3 of the UNCRC and art 24 of the CFREU requires parties to consider the best interests of the child as a primary consideration. The Committee on the Rights of the Child has made clear that jurisdiction for the purposes of the UNCRC includes wherever a State exercises effective control outside of its borders.<sup>15</sup>
  - b. The continued focus on **orphans alone** or on children of a certain age (such as below 10) risks violation of the Convention on the Rights of the Child. The best interests of those children above age 10 are no different to those below it. The best interests of orphans are no different to those detained with their mothers. The best response is to return **all women and children** together to face criminal justice, screening and other management measures following repatriation.
  - c. The continued detention of the women and children in these conditions constitutes cruel, inhuman and degrading treatment; and constitutes an arbitrary, unlawful deprivation of liberty in violation of art 5 of the ECHR. Member States can take reasonable steps within their power to bring an end to the detention of these women and children, to facilitate repatriation. These can include the issuing of travel documents, facilitating assistance to a border, and logistical partnership to transit individuals and families home. In such circumstances, the failure of Member States to bring an end to the detention of the women and these children constitutes **violations** of their human rights obligations in respect of the detention.

### *Security concerns*

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<sup>15</sup> [CMW/C/GC/3-CRC/C/GC/22](#) (Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child. Effective control by a State must also be informed by the interpretation of jurisdiction by other relevant treaty interpretation bodies: see specifically Human Rights Committee General Comments No 34 and 36 (2018), specifically [63].

14. There have already been thousands of returnees to European nations, predominantly in two waves.<sup>16</sup> Most of them have been men.<sup>17</sup> All European nations have implemented various criminal, administrative and other safeguarding, rehabilitation and reintegration policies and measures to deal with returnees. In some cases, the States consider that a large proportion of these returnees no longer pose a threat to national security.<sup>18</sup>
15. The ability to manage any threat posed by returnees already exists and ought to be appropriately utilised – security should not be a façade behind which Governments hide to prevent return of women and their children. Moreover, in fact there are significant security risks that attach to leaving these women and children in the camps: long-term detention in these camps fails to take account of the risk of radicalisation or further radicalisation of those in the camps by exposure to more radicalised detainees.<sup>19</sup>

*Proposed policy position*

16. It has been proposed by the UK Government, and considered by other States, that they would consider repatriation only of orphans or unaccompanied minors. Given that the vast majority of children detained are with their mothers or in family units, such a policy could mean that the majority of children are left behind.
17. It remains the Kurdish authority's position, and the **strong position of RW(UK)** and other humanitarian and human rights bodies in Europe that **all women and children should in fact be repatriated.**
18. There is no good reason for the policy to be confined solely to unaccompanied minors or only children, nor is it practical for Government's to confine themselves to a case by case approach, given the extreme humanitarian conditions in the camps and the acknowledged lack of evidentiary means and capacity to conduct such assessments, both prior to accessing the camps, and in the camps themselves.
19. If the return of some individuals, for example unaccompanied minors and orphans, is feasible, then all children and women should also be repatriated. Should this not occur, then European Governments risk their involvement in the continuing suffering of those children and women who remain in the camps.
20. Finally, it should be noted as a further relevant factor that there are an unknown number of women (including those with children of European nationality) who may have had their citizenship deprived, (such as the case of Shamima Begum, who was a minor when she was likely groomed and trafficked to Syria and lost three young children while held in Syria and in camps, who was deprived of her British citizenship).<sup>20</sup> It is known that two European states, the United Kingdom and the Netherlands, have deprived women detained in camps in North

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<sup>16</sup> The vast majority of Europe's returnees to date came back in two waves: the **first in 2013-2014** (prior to the declaration of the caliphate) and **the second in 2015**. See European Parliamentary Research Service Report *The Return of foreign fighters to EU soil: ex-post evaluation* (May 2018) identifying at [1.1.1] Return rate, 31.

<sup>17</sup> See EPRS Report *The Return of foreign fighters to EU soil: ex-post evaluation* at [1.1.2] Gender, 33.

<sup>18</sup> See the CONTEST 2018 Strategy of the UK Government at [167].

<sup>19</sup> See, for analysis of that threat: <https://foreignpolicy.com/2019/10/26/in-syria-the-women-and-children-of-isis-have-been-forgotten/>

<sup>20</sup> <https://www.bbc.co.uk/news/uk-47299907>.

East Syria of citizenship.<sup>21</sup> Where outright stripping is not permitted, some states have resorted instead to trials *in absentia* to permit citizenship-stripping post-trial.<sup>22</sup>

21. It is particularly concerning that in most cases where the power to deprive citizenship is permitted, this is not accompanied by any oversight or scrutiny in the exercise of the power. This is all the more problematic given the profound and enduring consequences deprivation of citizenship will have for the individual concerned.
22. The use of this power without appropriate accountability or checks and balances may result in a situation where these women and their children will be left to a harrowing fate. Even those who decide to appeal or legally challenge these decisions will likely be left in the camps or to whatever fate awaits them while their appeals take place, which usually last a number of years. This may complicate some of the policy landscape.

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<sup>21</sup> <https://nltimes.nl/2019/11/01/two-dutch-isis-women-three-children-escaped-syrian-camp-fled-turkey>.

<sup>22</sup> Denmark has utilized this process in at least one case ([see the case](#) of Enes Ciftci). Belgium permits stripping in a similar process, but with the important prerequisite of a terrorist conviction carrying a prison-sentence of at least 5 years. Proposals to permit similar citizenship stripping in France following the Paris 2015 attacks were dropped. The Netherlands has confirmed that it has stripped dual nationality citizens of Moroccan descent of citizenship. Like the UK, the Netherlands does not require a criminal conviction as a prerequisite to strip citizenship.