

# Rights & Security International's Written Comments to the All-Party Parliamentary Group ('APPG') on Trafficked Britons in Syria

## Background to Rights & Security International

1. Rights & Security International ('RSI') is a registered charity in England and Wales with over 30 years of experience defending human rights in the national security context.
2. Since late 2019, we have been researching the situation of third-country nationals (i.e. non-Syrians and non-Iraqis) – including Britons – living in al Hol and Roj camps in northeast Syria, which are facilities for women and children with alleged ties to Islamic State ('IS'). We have published two detailed research-based reports calling for the repatriation of children and women from the camps. Our first report documented the perilous and harmful conditions in the camps, drawn from an in-depth investigation including visits to the camps and interviews with women living there. In our second report, we provide an international human rights law analysis of these conditions and conclude that the pain and suffering cumulatively rise to the level of torture and that other serious rights violations are occurring. Both reports are enclosed along with our written comments.
3. Therefore, we are well-placed to advise on the matters addressed below in response to the APPG's call for written comments as part of its inquiry into UK nationals trafficked to Syria.
4. In these comments, we provide evidence of dire conditions in the detention camps, which may have worsened further due to COVID-19. Women and children face threats of violence and separation of children from their families. In our view, the dire conditions and the resulting vulnerability of the women and children in the camps have further resulted in an increased risk of trafficking from or within the camps. We conclude that the cumulative impact of these conditions and threats rises to the threshold of torture and violates the rights to life of the women and children held in the camps.
5. In addition, we assess the UK government's apparent two-pronged policy of (1) depriving adult women in the camps of their British citizenship and (2) not repatriating anyone to the UK except for the few unaccompanied minors and orphans. We conclude that these policies, insofar as we can discern them, effectively leave women and children abandoned in northeast Syria to suffering and to face threats to their lives. These policies also have discriminatory effects. We are concerned that the UK government's approach does not appear to include formal investigations of the possibility that individual women or children in the camps are or may become victims of trafficking.
6. Our written comments do not address questions concerning whether trafficking has in fact occurred to or within Syria; the impact on domestic, regional, or global security of the continued detention of individuals in the camps; or the logistics of repatriation. This is because our research has not focused on these issues, and we believe that other experts may be better placed to engage with them.

## A. The situation in the detention camps in Northeast Syria

*Q1: What are the current conditions in the camps in Northeast Syria? How has this been impacted by COVID-19?*

7. Conditions in al Hol and Roj camps in northeast Syria are dire. Domestic courts, including UK courts, have held that these conditions constitute at least cruel, inhuman and degrading treatment (CIDT).<sup>1</sup> In our view, the cumulative severity of the pain and suffering rises to the higher threshold of torture.<sup>2</sup>
8. As our two reports have found, women and children in the camps lack the basic necessities required for an adequate standard of living, in violation of their rights under international law.<sup>3</sup> They live in unsafe plastic

tents that periodically catch fire, reportedly resulting in the deaths of at least 13 children from fire-related injuries between January and September 2021.<sup>4</sup> In addition, the tents regularly flood,<sup>5</sup> collapse and become contaminated with sewage.<sup>6</sup> The camps' dangerously inadequate hygiene and sanitation standards allegedly led to the death of a young child who fell into an open cesspool in June 2019.<sup>7</sup> Water is often in short supply and unclean, with multiple reports of worms and algae being found in drinking water.<sup>8</sup> This lack of adequate, potable water has resulted in dehydration, diarrhoea and other preventable water-borne illnesses.<sup>9</sup> Our information indicates that the food supply is also inadequate, and children have reportedly died of malnutrition.<sup>10</sup>

9. In addition to other physical ailments such as infections, respiratory issues and gastroenteritis,<sup>11</sup> there are reportedly multiple mental illnesses among camp residents such as 'post-traumatic stress injury' and 'toxic stress' resulting from the combined effects of previous trauma and the ongoing pressures of living in the camps.<sup>12</sup> Reports from humanitarian actors on the ground indicate that despite their best efforts, the available healthcare facilities in the camps are basic and insufficient to treat these serious medical concerns.<sup>13</sup> This lack of adequate care includes an absence of specialised psychological support necessary for the children living there.<sup>14</sup>
10. The majority of those living in the camps are children under the age of 12, and many are under five.<sup>15</sup> This means that the people suffering these conditions and at real risk of severe and permanent harm are overwhelmingly young children. Reportedly, an average of five children per week died in al Hol camp alone in 2019 and 2020,<sup>16</sup> and an average of two per week died between January and September 2021.<sup>17</sup>
11. Our research indicates that educational and other developmental opportunities for children living in the camps are inadequate and, where available, limited to informal learning adapted for children living in humanitarian crises.<sup>18</sup> Women interviewed by our researcher in early 2020 reported that the fear of violence and insecurity and the unhygienic conditions in the camps made them reluctant to let their children go outside to play.<sup>19</sup> The lack of access to education and play hinders children's ability to develop cognitively, further compounding the damage that inadequate nutrition, lack of healthcare and other harmful conditions in the camps may cause.
12. COVID-19 has exacerbated these dehumanising conditions and poses an increasing threat in the camps. In late September 2021, cases were reportedly rising amid fears of a new wave of infections across Syria, including the northeast region.<sup>20</sup> In the camps, overcrowding, poor sanitation and insufficient hygiene facilities have led to serious concerns about the spread of the disease<sup>21</sup> and the feasibility of infection control measures such as social distancing and hand washing.<sup>22</sup> The pre-existing inadequacy of healthcare facilities in the camps raises concerns about the risk to life and wellbeing if people do contract COVID-19. There have been at least two regional lockdowns since the start of 2021, with young children in the camps especially affected by the suspension of services necessary for childhood development, such as temporary learning spaces, child-friendly spaces and mother-baby spaces.<sup>23</sup>
13. The conditions in the camps are incompatible with respect for human dignity and threaten the very survival of these women and children. In our view, the reported prevalence of preventable disease and injury in the camps constitutes a threat to the right to life. Additionally, in our view the cumulative impact of these conditions – taking particular account of the implications for young children – constitutes torture. This is because it rises to the level of 'severe pain or suffering, whether physical or mental', the threshold required in the definition of torture in major international treaties.<sup>24</sup>

*Q4: What risks and threats do those within the camps in Northeast Syria currently face, including from armed criminals and terrorist groups operating in the camps?*

14. RSI's research indicates that women and children face ongoing threats and fears of violence in the camps, including fears of violence by camp authorities and other women living there.<sup>25</sup> Our research has not focused on threats specifically from any armed individuals or terrorist groups who may be operating in the camps.
15. When our researcher visited the camps in early 2020, she recorded multiple claims from women living there of uses of lethal force against women and children – although we have been unable to confirm the alleged

events.<sup>26</sup> For example, multiple women claimed that in December 2019, a camp guard responded to children throwing stones by opening fire.<sup>27</sup> In September 2019, Médecins Sans Frontières ('MSF') also reported treating women for gunshot wounds after security forces opened fire on them for protesting the conditions in al Hol camp.<sup>28</sup>

16. Humanitarian organisations have also reported instances of violence between women in the camps. It is not always clear what triggers these alleged acts of violence. However, our researcher was told by multiple women living in the camps that women who express a desire to return to their home countries, wear clothes deemed inappropriate, or speak to men in the camps face threats and violence from groups of women within the camps.<sup>29</sup> Another possible explanation is that the scarcity of resources has led to distrust and tensions between women.<sup>30</sup> We emphasise the need to avoid victim-blaming and ensure that conclusions are not drawn regarding the causes or perpetrators of any violence among camp residents without specific direct evidence. We further recall that everyone is entitled to respect for their human rights, including the freedoms from torture and CIDT, regardless of anything they may allegedly have done or any beliefs they may hold.

17. Mothers and children in the camps also face the distress of what some have described as a constant threat of forced separation. Women in both camps told our researcher in 2020 that women were sometimes separated from their children as punishment following alleged infractions such as trying to flee from the camp or being in possession of a mobile phone.<sup>31</sup>

18. In addition, reports from UN experts, media sources and multiple humanitarian actors on the ground raise concerns about the possibility that some boys are being forcibly removed from the camps and transferred to other facilities in northeast Syria, including one known as the Hourri Rehabilitation Centre.<sup>32</sup> We are further concerned about claims that the boys are then moved directly to adult prisons at age 18,<sup>33</sup> potentially perpetuating a discriminatory cycle of incarceration for these boys, who may be being detained on the basis of their parentage and/or gender rather than anything they themselves have done. One humanitarian worker we interviewed in March 2021 estimated that 300 to 350 teenage boys had been removed from al Hol camp by security personnel.<sup>34</sup> Women in the camps interviewed by our researcher also claimed that these disappearances sometimes occurred at night and that the boys were unable to be contacted by their families in the camps once removed.<sup>35</sup> These allegations raise concerns that the boys may be victims of enforced disappearance,<sup>36</sup> in breach of fundamental principles of international law including the prohibition on torture and CIDT.<sup>37</sup> RSI is concerned that the arbitrary removal of boys – if true – would further subject them and their family members in the camps to torture or CIDT. The mere threat of such forced separations may be enough to cause psychological distress for the children, their mothers and siblings that could amount to torture or CIDT.<sup>38</sup>

19. In our view, these reported threats of violence and forcible separation, and the fears they generate, contribute to the overall conditions which cumulatively amount to torture. The risks to life as a result of any threats of violence could also constitute violations of the right to life.

### **C. Protecting victims of trafficking detained in Northeast Syria**

*Q15: How would you describe the risk of trafficking and re-trafficking within the camps in Northeast Syria? What steps can the UK Government take to prevent this?*

20. We will briefly address the first half of this question, touching on how the poor and unsafe conditions in the camps – described above – lead to an increased risk of trafficking within the camps.

21. We are concerned that desperation to escape the dire conditions in the camps puts women at real risk of trafficking and other exploitation. In July 2021, the *Guardian* reported that women had paid smugglers to help them escape from the camps with money obtained through 'online marriages' to men allegedly associated with IS.<sup>39</sup> This report suggests the lengths to which women may go to escape the conditions in the camps, including to protect themselves and their children. It also suggests that confinement in the camps is leading to a risk of trafficking – including sex trafficking – and exploitation.

22. We also assert that people in conditions of confinement, in the absence of strong protections against abuse, are inherently at risk of trafficking and exploitation. We are also concerned that women and others who were originally trafficked by alleged IS members, including for purported marriages, may be at a special risk of re-victimisation.

#### **D. The UK Government's policy towards UK nationals detained in Northeast Syria**

*Q16: What role, if any, has the UK Government played in the detention of UK and other nationals in Northeast Syria?*

23. There is evidence to suggest that foreign governments, including the UK government, may have some degree of influence in the camps or control over the fates of their nationals living there. Our research suggests that some European States may have informal 'partnerships' with the authorities in northeast Syria.<sup>40</sup> For example, UK government ministers have repeatedly expressed the UK's commitment to 'support' the Syrian Democratic Forces ('SDF') who they regard as a 'partner' in the fight against IS.<sup>41</sup> The SDF is the military wing of the Autonomous Administration of Northeast Syria ('AANES'), the non-State group controlling the northeast area of Syria.<sup>42</sup> A 2020 report in the *Times* also alleged the presence of British Special Forces on the ground speaking with authorities in Roj camp.<sup>43</sup> However, the UK government has denied such physical presence in the camps,<sup>44</sup> and further evidence has been difficult to ascertain.
24. Nevertheless, in our view, the UK government has played a role in the detention of individuals in northeast Syria. This is because, despite having the practical power and ability to remove UK nationals and those deprived of UK citizenship from the camps, the UK has persistently taken decisions not to repatriate its nationals or former nationals, aside from unaccompanied minors or orphans. These decisions, in practice, result in most British children and women continuing to suffer the dire conditions and risks to life in the camps. Today, they are there because the UK government has chosen not to bring them back. The government has also chosen to oppose legal claims by some of the women that could have resulted in their return to the UK as their citizenship deprivation is litigated.
25. It is clear that the UK could engage diplomatically with the authorities controlling the camps in order to bring an end to the detention of British citizens and those the government has deprived of citizenship. The authorities in the region have long been calling on home countries to repatriate their nationals,<sup>45</sup> and, indeed, the UK has repatriated seven unaccompanied minors and orphans over three operations in November 2019,<sup>46</sup> September 2020,<sup>47</sup> and October 2021.<sup>48</sup> These repatriations demonstrate that the authorities controlling the camps are willing to engage in the necessary diplomacy and to conclude arrangements with home-country governments. Thus, by taking decisions not to repatriate its nationals and former nationals when it has the power and ability to do so, the UK is, in effect, deciding to leave these women and children in arbitrary detention – without charge or trial – and in inadequate, dangerous humanitarian conditions.

*Q17: What has been the impact of methods such as citizenship deprivation, both in terms of the individuals stripped of citizenship and for the security of the region and the UK?*

##### *Impact on individuals stripped of citizenship*

26. The impact of citizenship deprivation on any individual cannot be overstated. Academics have described such deprivation as resulting in 'civic death' because the individual loses all the rights, entitlements and identity that come with being a citizen of a particular State.<sup>49</sup>
27. Depriving women living in the camps of their citizenship has an especially devastating impact on them and their children, for two primary reasons. First, it imposes an additional hurdle for them to overcome in challenging the UK government's decisions not to repatriate them and their children. This is because, by stripping women of citizenship, the UK government has distanced itself from any clearly established responsibilities toward them under international law. As a result, deprivation of citizenship in this context entrenches the abandonment of the women deprived and their children in the camps where they face serious harms and risks to their lives, as described above.

28. Second, even though international and domestic laws do not permit the deprivation of citizenship if this would render the person stateless *in law*,<sup>50</sup> the reality is that some of the women deprived of British citizenship whilst in the camps have been left stateless *in practice*. This is because the UK government has relied on the fact that, according to the government, they are entitled to alternative citizenship and that therefore the deprivation of British citizenship does not leave them stateless. However, in some cases the State of 'second citizenship' has made clear that it will not grant these women citizenship, leaving them stateless *in practice*.<sup>51</sup> This means that women are unable to request the assistance of their alleged State of 'second citizenship' to help them to leave the camps. In addition, in some cases, even if granted their 'second citizenship', women are not able to request assistance from that State due to a fear that they will face harm if transferred there.<sup>52</sup>

29. We recall in this context that as far as we are aware, most or all of the British and formerly British women and children in the camps have not been convicted of any relevant crime. The UK government's decisions to deprive the women of their British citizenship have come as these women have been detained without charge or trial and in a situation of serious vulnerability.
30. Compounding these harmful circumstances, following the UK Supreme Court's decision in *R (Begum) v Special Immigration Appeals Commission and Secretary of State for the Home Department*,<sup>53</sup> women in the camps who are deprived of citizenship and who are unable to conduct an effective appeal from the camps – as will be the case for most, if not all, women living there – are effectively denied the right to appeal the Home Secretary's decision to deprive them of citizenship.<sup>54</sup> This situation flouts the international<sup>55</sup> and domestic<sup>56</sup> legal rights to an appeal against the deprivation decision by way of fair hearing by a court of competent jurisdiction or other independent body. It denies the affected women the benefit of independent judicial oversight of an otherwise highly discretionary and potentially politicised exercise of executive power with deeply serious consequences for the individual and society.

*Impact on security of the region and the UK*

31. The UK government has yet to provide any factual, case-by-case, verifiable evidence that depriving women in the camps of their citizenship improves the security of the UK. The government also has not established, through objective evidence, that the deprivation of citizenship is a necessary or proportionate manner of mitigating any such risk, or that other, less intrusive methods are not available.

*Q18: What steps can the UK government take to guarantee the right to an effective and adequate remedy for the violations suffered by those detained in Northeast Syria?*

32. In our view, the only way to guarantee effective and adequate remedies for violations suffered by women and children in the camps, and prevent further harms, is to repatriate them so that they can receive appropriate post-return treatment and support, and so that the adult women can receive a fair trial where appropriate. Repatriation would also likely provide much greater protections from the risk of trafficking, re-trafficking or other exploitation.
33. It is highly doubtful that any remedies can be secured whilst women and children remain living in the camps. Lawyers representing third-country-national women and children in their home countries, including before UK courts, have attempted to obtain protections for their clients under international and domestic law.<sup>57</sup> However, there are a number of obstacles facing them. We list three of these.
34. First, our research suggests that women and children are being subjected, in practice, to incommunicado detention in the camps and are thus unable to communicate effectively – if at all – with their lawyers.<sup>58</sup> Our understanding is that mobile phones are prohibited in the camps and that women risk punishment if discovered with a phone. In addition, lawyers representing women in the camps have reported being denied entry to the camps, preventing them from visiting their clients.<sup>59</sup>
35. Second, the UK government and the governments of other European States have responded to lawyers' attempts to assert the rights that women and children in the camps have under the European Convention on

Human Rights (ECHR) by arguing that they lack jurisdiction over the women and children and thus have no obligation to act.<sup>60</sup> These claims remain the subject of ongoing challenges before the courts, including in a case pending before the European Court of Human Rights.<sup>61</sup>

36. Third, as discussed above, the *Begum* decision effectively precludes many women from challenging their citizenship deprivation as a matter of practice. Given how serious the consequences of citizenship deprivation are (see response to Q26), it is all the more critical that women and children are brought to the UK where they can communicate with their lawyers and participate in fair proceedings, including by facing prosecution where appropriate.

37. UN experts have repeatedly indicated that there is no realistic prospect of fair trials occurring in the region.<sup>62</sup> This situation persists despite repeated calls from the authorities in the region to establish a hybrid domestic-international tribunal<sup>63</sup> and indications that some home country governments – including the UK’s – would support this course of action.<sup>64</sup> Were such a tribunal ever to be established, we would have serious concerns regarding the fairness and legitimacy of trial by a non-State actor, the capacity of the local authorities to guarantee fair proceedings and other human rights, and the fate of those convicted or acquitted. We would also have serious concerns as to whether and how children would be tried and for what alleged offences. Moreover, we would have concerns about whether the status of the women or children as potential trafficking victims would be adequately considered, in line with evolving human rights norms.

38. For these reasons, women and children should be repatriated from the camps so that they can be treated appropriately under international law and the domestic law of the UK.

## **F. Discrimination**

*Q25: Has the UK government’s approach to UK nationals detained in Northeast Syria had a disproportionate impact on particular communities or groups within the UK?*

39. The UK government’s decision to effectively abandon British and former British children and women to extreme suffering and threats to life in the camps should be viewed in the wider context of concerns about the stereotyping of Muslims, as well as people who have been or are believed to be Muslim, in UK society at large and in the counter-terrorism context in particular. This context includes longstanding concerns about the arbitrary or disproportionate use of a range of counter-terrorism measures against people from Muslim communities in the UK.<sup>65</sup> The General Rapporteur on Combating Racism and Intolerance for the Parliamentary Assembly of the Council of Europe has observed that in general in Europe, ‘Muslims and those perceived as being Muslims are constantly and consistently scapegoated and presented as a threat to security’.<sup>66</sup>

40. Measures that UK civil society groups and others have particularly criticised for being discriminatory and lacking evidentiary bases include the addition of organisations associated with Muslim-majority countries to lists of proscribed organisations under the 2000 Terrorism Act; the extension of stop and search powers by removing the requirement of reasonable suspicion; and CONTEST’s Prevent workstream, which has reportedly led to a perception among UK Muslims of being targets of suspicion because of their faith.<sup>67</sup>

41. When viewed in this broader context of alleged bias against UK Muslims, real concerns arise that the government’s decision not to repatriate these children and women may be based on discriminatory assumptions grounded ultimately in xenophobia and Islamophobia. We note that to the best of our knowledge, the government’s assessment of whether any individual in the camps poses a potential threat of harm to themselves or others does not appear to rest on case-by-case, fact-based assessments by any independent, qualified medical professionals in an appropriate environment. Instead, the women continue to be confined in the camps on the basis of untested government beliefs about their roles in IS, or their presumed family relationships with male alleged IS members – beliefs the women and children have not had a meaningful opportunity to challenge in court, including by presenting any evidence that they were trafficked to or within Syria.<sup>68</sup>

42.RSI is therefore concerned that the decision not to repatriate women from the camps may be based on gendered or other biased assumptions, including assumptions about the dangers purportedly posed by people who hold, or are believed to hold, certain religious or political beliefs. If so, this would be discriminatory and contrary to international law.<sup>69</sup>

43.Similarly, the available information raises concerns that the UK government is choosing to leave children detained in the camps because they belong to families with alleged ties to IS, or because of beliefs about their purported dangerousness that are not based on individualised, expert assessments in an appropriate environment and are not subject to challenge. If this is true, these decisions would be discriminatory and contrary to international law. The UN Convention on the Rights of the Child explicitly bans discrimination against children based on their connection to their parents or other family members, meaning that governments are not entitled to treat children a certain way because someone in their family has expressed a certain belief or been accused of a crime.<sup>70</sup> Children, like adults, are also entitled to respect for their human rights without distinctions on bases such as race, colour, sex, religion, political or other opinion, or national origin.

44. The UK government's decisions not to repatriate children and women from the camps could further amount to a form of collective punishment, which is prohibited under international law.<sup>71</sup>

*Q26: What has been the impact, in terms of discrimination and marginalisation, of the use of specific tools by the UK Government such as citizenship-stripping?*

45. We are concerned about the disproportionate impact that the UK government's practice of citizenship deprivation appears to have on people from Muslim and migrant communities. As international and domestic law prohibits the deprivation of citizenship where this would render someone stateless *in law*,<sup>72</sup> the UK government has only deprived people of citizenship who either have dual nationality or who the UK government maintains have a claim to another nationality. This has effectively created a two-tier system of citizenship in which the British citizenship of people with a possible second nationality – mostly coming from migrant communities – is rendered precarious, unlike those with no claim to another nationality.

46. Many academics have pointed out that citizenship conferral and deprivation have long been used as tools of racist and colonial oppression.<sup>73</sup> One has further claimed that 'citizenship deprivation policies, reawakened after 2001, were operating in a policy landscape that had increasingly identified young Muslims as targets for policy intervention'.<sup>74</sup>

47. The impact of the UK's practice of citizenship deprivation may amount to direct discrimination. Direct discrimination occurs when a person is treated less favourably than others because of a protected characteristic.<sup>75</sup> An academic has noted that 'what has constituted an act worthy of denationalisation has long been profoundly shaped by the status or background of the person who undertook it'.<sup>76</sup> It is of potential legal significance that the UK government has not used citizenship stripping as a national security measure in the context of the conflict in Northern Ireland, but has increasingly used it as a counter-terrorism measure since 9/11.<sup>77</sup> Writing in 2017, another academic observes that 'whilst official statements note that [citizenship deprivation] is applied to all forms of terrorism and all forms of extremism, the powers have so far been used almost exclusively against British Muslim men'.<sup>78</sup> This observation raises real questions about whether there is direct discriminatory intent or impact when the UK deprives people now in Syria of their British citizenship. These questions are supported by an apparent lack of evidentiary demonstrations by the government that citizenship deprivation is necessary to and effective in achieving legitimate aims, rather than an arbitrary punitive measure.

48. The UK's practice of citizenship deprivation may also amount to indirect discrimination on the basis of race and/or religion. Indirect discrimination occurs when a provision, criterion or practice is neutral on its face but puts people who share a protected characteristic – including race or religion – at a particular disadvantage when compared with other people who do not share that protected characteristic.<sup>79</sup> The power under UK domestic law to deprive individuals of their citizenship, whilst neutral on its face, has mostly been used against people with a possible second nationality from a Muslim-majority country.<sup>80</sup> We are also concerned that the very broad degree of discretion conferred upon the Home Secretary under the law results in an

inherent and foreseeable risk of discriminatory or arbitrary decisions, and a lack of effective safeguards to mitigate this risk.

### **G. Repatriating UK and other nationals from Northeast Syria**

*Q28: What lessons can we draw from the recent operations by the US, Belgium, Italy, Germany, and other countries to repatriate their nationals from Northeast Syria?*

49. In our view, there are several lessons to be learnt from recent repatriation operations, including most recently by Sweden (eight children and three women on 20 October 2021),<sup>81</sup> Germany (23 children and eight women on 6 October 2021) and Denmark (14 children and three women on 6 October 2021).<sup>82</sup>
50. First, these repatriations demonstrate that it is possible for States to engage diplomatically with the authorities controlling the camps to reach the necessary agreements to conduct a repatriation operation.
51. Second, these repatriations demonstrate that States have the practical ability to conduct a repatriation operation.
52. Third, the repatriations suggest that other European States have considered that any alleged security risks posed by those repatriated can be appropriately managed during and after repatriation.
53. The fact that other States have repatriated both children and adult women casts further doubt on the necessity of the UK's practice of only repatriating unaccompanied minors and orphans.

*Q30: What is your assessment of any efforts to separate families detained in Northeast Syria, repatriating children separately from their parents detained there? What likely impact would this have on the children themselves?*

54. We are deeply concerned about efforts to separate children from their mothers or primary caregivers for the purpose of repatriating only the children. Separation from an attachment figure – in this case, mothers or primary caregivers in the camps – can have severe and permanent impacts on children's short- and long-term development. In other contexts, paediatricians, psychologists and other health experts have warned of the potentially catastrophic effects of forced separations, including physical changes in the brain structure capable of disrupting critical physiological functions and causing lasting psychological trauma.<sup>83</sup> These consequences could be exacerbated in situations such as this, where children have experienced – and are still experiencing – prolonged, repeated and intense early stress.<sup>84</sup>
55. In our view, separating children from their primary caregivers and repatriating them alone is highly likely to be contrary to the children's best interest and in violation of international law.<sup>85</sup> Under international law, interferences with family life are prohibited unless they are necessary to achieve a legitimate aim and are authorised by law; further, family separations should only occur when this is in the child's best interests<sup>86</sup> and where no less intrusive measures can be taken to protect the child.<sup>87</sup> Even then, the Committee on the Rights of the Child has explained that States must guarantee that the situation of the individual child is assessed by a multidisciplinary team of well-trained professionals.<sup>88</sup> We are not aware of any such assessments taking place in al Hol or Roj and doubt the possibility of conducting them effectively in the current environment in the camps.
56. We are also concerned about the prospect of States seeking the 'consent' of mothers for their children to be repatriated without them.<sup>89</sup> While women's agency to make such decisions should be respected, there is a real possibility that women in the camps are not able to give valid (i.e. free and informed) consent to such separations. The women in the camps are being held involuntarily in an extremely vulnerable position, are experiencing dire humanitarian conditions and have little or no access to legal representation. The power disparities between them and their home-country governments, including anyone who may approach them seeking their 'consent' to separation from their children, are vast. We further suggest that whether a mother



or caregiver has previously experienced trafficking or exploitation may impact their susceptibility to explicit or implicit pressure to provide ‘consent’.

57. In reaching our conclusion that children should be repatriated alongside their mothers or primary caregivers (as well as their other family members, such as siblings) rather than being repatriated alone, we are not suggesting that it would be acceptable in human rights terms

for governments to simply refrain from repatriating the children at all. Rather, the UK government should ensure that children *and* their mothers or primary caregivers, along with other family members, are repatriated together as a family unit. The needs of both mothers and children can then be assessed by qualified multidisciplinary teams that would determine, for example, whether anyone in the family is a victim of trafficking or other abuse. Appropriate services can then be provided. Where there is evidence of criminal offences by the part of adults, they could be tried according to law, as appropriate, and afforded their due process rights. If it is determined following such proper assessments and fair trial that a child should be separated from their mother or primary caregiver, then appropriate experts can ensure an approach that prioritises the child’s best interests. None of the above, in our view, can happen whilst children and women remain in the camps.

## Endnotes

<sup>1</sup> In the United Kingdom, see *Begum v Secretary of State for the Home Department* [2020] 2 WLUK 60 (Special Immigration Appeals Commission) [130]; *Begum v Special Immigration Appeals Commission* [2020] EWCA Civ 918 (Court of Appeal). In Belgium, see Tribunal de première instance francophone de Bruxelles, Section Civile (Francophone Tribunal of First Instance of Brussels, Civil Section), 19/129/C, 30 October 2019, [48] ff; Tribunal de première instance francophone de Bruxelles, Section Civile, (Francophone Tribunal of First Instance of Brussels, Civil Section), 19/87/C, 2 December 2019, [51]. In Germany, see Oververwaltungsgericht Berlin-Brandenburg (Higher Administrative Court of Berlin-Brandenburg), OVG 10 S 30/20, 7 July 2020 [17].

<sup>2</sup> Rights & Security International (‘RSI’), [Abandoned to Torture: Dehumanising rights violations against children and women in northeast Syria](#), October 2021 (‘Abandoned to Torture’).

<sup>3</sup> See: [International Covenant on Economic, Social and Cultural Rights](#) (‘ICESCR’), Article 11; [Guiding Principles on Internal Displacement](#) (‘IDP Principles’), Principle 18.

<sup>4</sup> Save the Children, [“When am I going to start to live?”: The urgent need to repatriate foreign children trapped in Al Hol and Roj Camps](#), September 2021, p. 12.

<sup>5</sup> [Northern Syria Flooding: thousands of children at risk of further displacement](#) (Save the Children, 20 December 2019).

<sup>6</sup> Human Rights Watch, [“Bring Me Back to Canada” Plight of Canadians Held in Northeast Syria for Alleged ISIS Links](#), 29 June 2020.

<sup>7</sup> *ibid.*; RSI, *Abandoned to Torture* (n 2), p. 18.

<sup>8</sup> *ibid.*

<sup>9</sup> Robert Edwards, [‘What next for children of Daesh detainees confined in Syrian camps?’](#) *Arab News* (London, 19 February 2021).

<sup>10</sup> [‘Syria: Child death rate triples in Al-Hol camp as medical access deteriorates’](#) (Save the Children, 13 August 2020).

<sup>11</sup> Gerrit Loots, Hannah Jamia & Nadia Fadil, [‘Een Jaar later. Belgische Kinderen in Lourdische detentiekampen in Noordoost-Syrie’](#), 3 July 2020;

<sup>12</sup> Délégué général aux droits de l’enfant, [‘Syrie L’Indispensable Rapatriement. Une Trilogie Arguments en Faveur du Retour des Enfants Belges et Leurs Meres’](#), January 2021, Vol 2 *Prends-En D’La Graine*; Gabriel Geiger, [‘She’s 4, Lives in Syria and Has PTSD. Her Country’s Debating If She Can Come Home’](#) *VICE* (10 February 2021); Malthe Sommerand & Puk Damsgård, [‘Ekspert til Udenrigsministeriet i ny undersøgelse: Fireårig dansk pige har PTSD og skal fjernes fra syrisk fangelejr’](#) *DR* (7 February 2021).

<sup>13</sup> RSI, *Abandoned to Torture* (n 2), p. 20; [“In Al-Hol camp, almost no healthcare is available”](#) (Médecins Sans Frontières, 27 August 2020).

<sup>14</sup> Malthe Sommerand & Puk Damsgård, [‘Ekspert til Udenrigsministeriet i ny undersøgelse: Fireårig dansk pige har PTSD og skal fjernes fra syrisk fangelejr’](#) *DR* (7 February 2021).

<sup>15</sup> An estimated 65% of third-country nationals living in al Hol camp are children under the age of 12, and 25% of all those living in al Hol camp (i.e. Syrian, Iraqi and third-country nationals, combined) are children under the age of five: Lead Inspector General to the United States Congress, [Operation Inherent Resolve](#), reporting period 1 April 2020 – 30 June 2020, p. 59; an estimated 64% of all the people living in Roj camp are children: [‘Camp Profile: Roj’](#) (REACH, October 2020).

<sup>16</sup> Wilson Fache & Chloe Sharrock, [‘En Syrie, le cimetière des enfants perdus du «califat’](#) *Libération* (4 May 2021).

<sup>17</sup> [‘Children abandoned by their governments are ‘wasting away’ in Syrian camps’](#) (Save the Children, 23 September 2021).

<sup>18</sup> RSI, *Abandoned to Torture* (n 2), p. 27.

<sup>19</sup> *ibid.*, p. 28.

<sup>20</sup> Suleiman Al-Khalidi, [‘Syria sees spike in COVID-19 cases as fears grow of new wave’](#) *Reuters* (Amman, 22 September 2021); [‘4 deaths, 273 new COVID 19 cases in NE, Syria’](#) *Hawar News Agency* (18 September 2021); [‘5 deaths, 187 new COVID 19 cases in NE, Syria’](#) *Hawar News Agency* (11 September 2021); [‘Northern Syria: COVID-19 claims a 20 day-old baby and a 17-year-old pregnant girl’](#) (Save the Children, 30 September 2021).

<sup>21</sup> [North East Syria: COVID-19 Spreads Through Camps as Ramadan Begins Under Emergency Lockdown’](#) (Save the Children, 15 April 2021); [‘Virus Fears Spread at Camps for ISIS Families in Syria’s North East’](#) (International Crisis Group, 7 April 2020).

<sup>22</sup> In October 2020, REACH reported insufficient handwashing facilities in both camps and the impossibility of social distancing in al Hol camp (‘[Camp Profile: Roj](#)’ (REACH, October 2020); ‘[Camp Profile: Al-Hol](#)’ (REACH, October 2020).

<sup>23</sup> [‘Northern Syria: COVID-19 claims a 20 day-old baby and a 17-year-old pregnant girl’](#) (Save the Children, 30 September 2021); [‘North East Syria: COVID-19 Spreads Through Camps as Ramadan Begins Under Emergency Lockdown’](#) (Save the Children, 15 April 2021).

<sup>24</sup> See: [Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (‘Declaration against Torture’), Article 1 (1); [Convention Against Torture](#) (‘CAT’), Article 1; [Rome Statute of the International Criminal Court](#) (‘Rome Statute’), art 7 (2) (e). The Declaration against Torture also distinguishes between ‘torture’ and ‘CIDT’ on the basis that torture is an aggravated form

of CIDT: Article 1 (2). The ECtHR has held that the main distinction between ‘torture’ and other forms of CIDT is a difference in the intensity of harm inflicted, and that ‘torture’ amounts to ‘very serious and cruel suffering’: *Ireland v. United Kingdom* (n 32), para. 167. Though some international treaties and declarations require an element of ‘intentionality’ or ‘purpose’ in defining what constitutes torture, our analysis highlights that the human impact of these rights violations is sufficiently severe to constitute torture. We thus do not examine intentionality or purpose, nor the identity of direct perpetrators.

<sup>25</sup> RSI, *Abandoned to Torture* (n 2), p. 23.

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

<sup>28</sup> [‘Women treated for gunshot wounds amidst violence and unrest in Al-Hol camp’](#) (Médecins Sans Frontières, 30 September 2019).

<sup>29</sup> RSI, *Abandoned to Torture* (n 2), p. 23.

<sup>30</sup> International Crisis Group, [Women and Children First: Repatriating the Westerners Affiliated with ISIS](#), Report no. 208, 18 November 2019.

<sup>31</sup> RSI, *Abandoned to Torture* (n 2), p. 32.

<sup>32</sup> Fionnuala Ní Aoláin, [‘Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria’](#) (United Nations Office of the High Commissioner for Human Rights, May 2021); Rojava Information Center, [Hidden Battlefields: Rehabilitating ISIS affiliates and building a democratic culture in their former territories](#), December 2020; Josie Ensor, [‘Child of the caliphate: Teenager pays for the sins of his Isil father’](#) *The Telegraph* (15 August 2019).

<sup>33</sup> [‘Islamic State children in Syria face a lifetime in prison’](#) *BBC News* (14 July 2021).

<sup>34</sup> RSI, *Abandoned to Torture* (n 2), p. 30.

<sup>35</sup> *Ibid.*

<sup>36</sup> See [International Convention for the Protection of All Persons from Enforced Disappearance](#) (‘CED’) Articles 1, 5; [ICRC Customary International Humanitarian Law database](#) (‘CIHL’) Rule 98; IDP Principles (n 3), Principle 10 (1) (d); Rome Statute (n 24), Article 7 (2) (i).

<sup>37</sup> See jurisprudence of the Human Rights Committee: *Mojica v Dominican Republic* (10 August 1994) Communication No 449/1991 CCPR/C/51/D/449/1991, para 5.7; *Atachahua v Peru* (16 April 1996) Communication No 540/1993 CCPR/C/56/D/540/1993, para 8.5.

<sup>38</sup> See *Campbell and Cosans v United Kingdom* [1982] ECHR 1, para 26.

<sup>39</sup> Bethan McKernan, Vera Mironova & Emma Graham-Harrison, [‘How women of Isis in Syrian camps are marrying their way to freedom’](#) *The Guardian* (2 July 2021).

<sup>40</sup> RSI, [Europe’s Guantanamo: The indefinite detention of European women and children in North East Syria](#), November 2020, (‘Europe’s Guantanamo’) p. 33.

<sup>41</sup> HL Deb 24 February 2020, vol 802, col 77.; HC Deb 14 January 2019, vol 652, col 792.

<sup>42</sup> [Rojava: Key Facts’](#) *Rojava Information Center* (2019); [‘Who are the Syrian Democratic Forces’](#) *Al Jazeera* (Turkey-Syria Border, 15 October 2019).

<sup>43</sup> Anthony Loyd, [‘Europe’s Guantanamo’ breeds new generation of Isis militants in Syria’](#) *The Times* (25 November 2020).

<sup>44</sup> Question for Foreign, Commonwealth and Development Office on Syria: Migrant Camps, UIN HL9983, tabled on 4 November 2020, available at: <https://questions-statements.parliament.uk/written-questions/detail/2020-11-04/HL9983/>

<sup>45</sup> Autonomous Administration of North and East Syria, [‘Press Release’](#), 18 March 2021 (‘AANES Press Release’).

<sup>46</sup> Abdulkarim Omar (@abdulkarimomar1), ‘Today, 21 November 2019, three British orphans from ISIS parents were handed over to a delegation representing the British Foreign Ministry...’, Twitter, 21 November 2019, < <https://twitter.com/abdulkarimomar1/status/1197560995117436928> >, accessed 4 November 2021.

<sup>47</sup> [‘Islamic State: British child rescued from Syria, foreign secretary says’](#), *BBC News* (16 September 2020).

<sup>48</sup> Andrei Popoviciu, [‘Syria: UK repatriates three British children from Islamic State camps’](#), *Middle East Eye* (19 October 2021).

<sup>49</sup> Matthew Gibney, [‘Denationalization and Discrimination’](#) (2020) 46(12) *Journal of Ethnic and Migration Studies*, p. 2.

<sup>50</sup> [UN Convention on the Reduction of Statelessness](#) (‘1961 Statelessness Convention’), Article 8(1); [British Nationality Act 1981](#) (‘BNA’), ss 40(4) & 40(4A).

<sup>51</sup> For example, in the case of Shamima Begum, Bangladesh has clearly and consistently stated that she is not a citizen and therefore will not be allowed to enter Bangladesh, see Areeb Ullah, [‘Bangladesh will not allow Shamima Begum into country amid UK appeal’](#), *Middle East Eye* (16 June 2020).

<sup>52</sup> *ibid.* (again in the case of Ms Begum, Bangladesh has said that she could face capital punishment if brought to Bangladesh).

<sup>53</sup> [2021] UKSC 7 (‘*Begum*’).

<sup>54</sup> The Special Immigration Appeals Commission (SIAC) accepted that Ms Begum’s appeal would not be fair and effective since she could not play a meaningful role due to her circumstances in the camp: *Begum v Secretary of State for the Home Department* [2020] 2 WLUK 60 (SIAC) [143]. The UK Supreme Court held that for this reason, her appeal against the deprivation decision should be stayed until she is in a position play an effective part in the appeal without compromising public safety: *Begum* (n 53) [85], [91], [135].

<sup>55</sup> 1961 Statelessness Convention (n 50) Article 8(4).

<sup>56</sup> BNA (n 50) ss 40(5)(c), 40(A)(1); [Special Immigration Appeals Commission Act 1997](#), s 2B.

<sup>57</sup> Examples: in the UK, see *Begum v Secretary of State for the Home Department* [2020] 2 WLUK 60 (Special Immigration Appeals Commission) [130]; *Begum v Special Immigration Appeals Commission* [2020] EWCA Civ 918 (Court of Appeal). In Belgium, see Tribunal de première instance francophone de Bruxelles, Section Civile (Francophone Tribunal of First Instance of Brussels, Civil Section), 19/129/C, 30 October 2019, [48] ff; Tribunal de première instance francophone de Bruxelles, Section Civile, (Francophone Tribunal of First Instance of Brussels, Civil Section), 19/87/C, 2 December 2019, [51]. In Germany, see Oververwaltungsgericht Berlin-Brandenburg (Higher Administrative Court of Berlin-Brandenburg), *OVG 10 S 30/20*, 7 July 2020 [17].

<sup>58</sup> RSI, *Abandoned to Torture* (n 2), p. 36.

<sup>59</sup> [‘Des avocats français interdits d’accès au Rojava’](#) (Collectif des Familles Unies, 22 December 2020); Christophe Ayad, [‘Pressions sur Emmanuel Macron pour repatrier en France les femmes et enfants de djihadistes détenus en Syrie’](#) *Le Monde* (1 March 2021).

<sup>60</sup> UK Mission Geneva, [Note Verbale No. 084 to the Special Procedures Branch, Office of the United Nations High Commissioner for Human Rights](#), 16 April 2021; Permanent Representative of the Kingdom of the Netherlands, [Letter to OHCHR Ref. No. GEV-PA-76/2021](#), 12 April 2021.

<sup>61</sup> See, for example, the communicated case of *H.F. et M.F. c. France* (App. no. 24384/19) currently pending before the Grand Chamber of the ECtHR.

<sup>62</sup> Fionnuala Ní Aoláin, [Press Conference: Syria: Repatriation of Women & Children](#) (Geneva, 8 February 2021); Paulo Sérgio Pinheiro, Karen Koning AbuZayd & Hanny Megally, [‘The world must bring children home from Syrian detention camps’](#) *The Times* (22 September 2021).

<sup>63</sup> AANES Press Release (n 45).

<sup>64</sup> UK Mission Geneva, [Note Verbale No. 084 to the Special Procedures Branch, Office of the United Nations High Commissioner for Human Rights](#), 16 April 2021; Nicky Harley, [‘Swedish female ISIS supporters may be tried in Syria for terrorism offences’](#) *The National News* (12 October 2020); Wladimir van Wilgenburg, [‘Swedish delegation concludes visit to northeast Syria’](#) *Kurdistan 24* (Erbil, 22 October 2020).

<sup>65</sup> Open Society Foundations and Amnesty International, [‘A Human Rights Guide for Researching Racial and Religious Discrimination in Counter-Terrorism in Europe’](#), February 2021, pp. 12-13.

<sup>66</sup> *ibid.*, p. 10.

<sup>67</sup> Tina G Patel, '[It's not about security, it's about racism: counter-terror strategies, civilizing processes and the post-race fiction](#)' (2017) Palgrave Communications, p. 4.

<sup>68</sup> Fionnuala Ní Aoláin, [Press Conference: Syria: Repatriation of Women & Children](#) (Geneva, 8 February 2021) (the UN Special Rapporteur on human rights and counterterrorism has warned that it would be discriminatory to put women in a category on the basis of their husbands' – or male family members' – beliefs, or on the basis of a presumed but unproven connection to an armed group).

<sup>69</sup> It is a fundamental principle of international law that everyone is entitled to their rights without discrimination of any kind based on race; colour; sex; language; religion; political or other opinion; national, ethnic or social origin; legal or social status; age; disability; property or birth. See [International Covenant on Civil and Political Rights](#) ('ICCPR'), Article 2 (1); ICESCR (n 3), Article 2 (2); [Convention on the Rights of the Child](#) ('CRC'), Article 2 (1); [Geneva Conventions of 1949](#) ('Geneva Conventions'), Common Article 3; [Additional Protocol \(II\) to the Geneva Conventions](#) ('APII'), Article 2 (1); IDP Principles (n 3), Principle 4.

<sup>70</sup> CRC (n 69) Article 2.

<sup>71</sup> The ICRC [defines collective punishment](#) as a situation in which a group is penalised or mistreated in retaliation for an act allegedly committed by a member of the group. Such punishment therefore targets people who bear no responsibility for having committed the alleged misdeed. Prohibition on collective punishment: CIHL (n 37), Rules 102, 103; APII (n 38), Articles 4 (2) (b); ECHR (n 37), Article 5 (1); ICCPR (n 37), Article 9 (1); Geneva Conventions (n 37), Common Article 3; CIHL (n 37), Rule 100; APII (n 38), Article 6; HRC '[General Comment No. 29: Article 4: Derogations during a State of Emergency](#)', 31 August 2001, CCPR/C/21/Rev.1/Add.11.

<sup>72</sup> 1961 Statelessness Convention (n 50), Article 8(1); BNA (n 50), ss 40(4) & 40(4A).

<sup>73</sup> Tufyal Choudhury, '[The Radicalisation of Citizenship Deprivation](#)' (2017) 37(2) Critical Social Policy 225; Gibney (n 48); James Goldston, 'Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens', *Ethics & International Affairs*, vol.20 no.3 (2006); Joanne Mariner, 'Racism, Citizenship and National Identity', *Development* 46, 64-70 (2003).

<sup>74</sup> Choudhury (n 73) p. 9.

<sup>75</sup> [Equality Act 2010](#) ('Equality Act'), s 13.

<sup>76</sup> Gibney (n 49), p. 3.

<sup>77</sup> Choudhury (n 73) p. 4.

<sup>78</sup> *ibid.*, p. 17.

<sup>79</sup> Equality Act (n 75), s 19.

<sup>80</sup> Choudhury (n 73); Gibney (n 49).

<sup>81</sup> Wladimir van Wilgenburd, '[Sweden repatriates 3 women accused of ties to ISIS, 8 children from Syria](#)', *Kurdistan24* (21 October 2021).

<sup>82</sup> '[Germany and Denmark repatriate women, children from Syria camp](#)', *Aljazeera* (7 October 2021).

<sup>83</sup> See: William Wan, 'What separation from parents does to children: 'The effect is catastrophic'' *The Washington Post* (18 June 2018); Michael Garcia Bochenek, 'US: Family Separation Harming Children, Families' (*Human Rights Watch*, 11 July 2019); Katherine Ellison & Hirokazu Yoshikawa, '[Treating the growing trauma of family separation](#)' (*Knowable Magazine*, 23 January 2020); Jacek Debiec, '[A sudden and lasting separation from a parent can permanently alter brain development](#)' (*The Conversation*, 21 June 2018); '[Medical group warns family separation policy may lead to lifetime of harm to children](#)' *CBS News* (20 June 2018); Jessica Lussenhop, '[The health impact of separating migrant children from parents](#)' *BBC News* (19 June 2018).

<sup>84</sup> Délégué général aux droits de l'enfant, '[Syrie L'Indispensable Rapatriement. Une Trilogie Arguments en Faveur du Retour des Enfants Belges et Leurs Meres](#)', January 2021, Vol 2 *Prends-En D'La Graine*.

<sup>85</sup> The Committee on the Rights of the Child (CommRC) has indicated that preservation of the child's family environment is a key consideration when determining what is in the best interests of the child: CommRC, '[General Comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#)', 29 May 2013, CRC/C/GC/14, paras. 58-70).

<sup>86</sup> CRC (n 69) Article 9.

<sup>87</sup> CommRC (n 85), '[General Comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#)', 29 May 2013, CRC/C/GC/14, para. 61.

<sup>87</sup> *ibid.*, para. 64.

<sup>88</sup> *ibid.*, para. 64.

<sup>89</sup> RSI, *Europe's Guantanamo* (n 40), pp. 59-60