

# Europe's Guantanamo:

The indefinite detention of  
European women and children  
in North East Syria



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# EXECUTIVE SUMMARY

**I'm afraid that the heating explodes in the tent and kills a child.  
But if we don't use it, they will die from cold.**

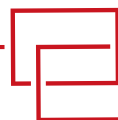
**A Dutch woman in detention  
in North East Syria (February 2020)**

**At present, we [the United Kingdom], the French and even the  
United States consistently talk with the likes of the Syrian  
Democratic Forces to ensure that prisons are still guarded and  
that we provide whatever support we can to help them with that**

**United Kingdom Secretary of State for  
Defence, Ben Wallace (7 January 2020)**

Tens of thousands of women and children captured from territories formerly controlled by the Islamic State of Iraq and the Levant ('ISIL') currently languish in detention camps in North East Syria run by the Syrian Democratic Forces ('SDF'), the military force of the Autonomous Administration of North East Syria ('AANES'). Hundreds of these women and children are nationals of the United Kingdom, Belgium, France, Germany, and the Netherlands. Well over half are children, most of whom are under the age of five. They are being detained without charge and, like those unlawfully detained for terrorist association at Guantanamo Bay, are afforded no legal rights and placed outside the protection of the law. The camps in which they are being held are fundamentally unsafe environments in which physical violence is common, the conditions are barbaric, and psychological trauma is rife. The camp authorities have no long-term plan, and there is a real risk that these camps, and the women and children detained there, may be caught up in a war with Turkey or renewed ISIL violence.

As with those detained at Guantanamo Bay, these women and children are subject to treatment and conditions that have been classified by international experts as amounting to cruel, inhuman and degrading treatment. In some cases, their treatment at the hands of the SDF is so serious that it arguably amounts to torture. In just one of the camps - the al Hol facility - an average of 25 detainees died from various causes every month in 2019 and 2020. And children are particularly hard hit. Children of various nationalities have died from war wounds, malnutrition, severe dehydration, respiratory illness, hypothermia, and carbon monoxide poisoning from tent heaters, or from tent fires caused by the same unsafe heating devices. As one European woman in the camps said 'last winter three young children burned alive.



We saw the bodies of the babies'. By early 2020, at least nine European children below the age of three had died in the camps, and by 10 August 2020 the death rate of all children in al Hol camp had tripled, with eight children under five dying in five days between 6 and 10 August 2020.

Rights and Security International ('RSI') also documented instances of severe abuse and violence in the detention camps. This ranges from camp guards opening fire on women and forcibly removing male children at night, to fights between detainees in crowded facilities where tensions are high and women who retain ISIL loyalties victimise others in a lawless environment. Children are subject to sexual abuse, and unaccompanied minors are abducted. One European mother of a three-year-old boy living in the al Hol Annex spoke to RSI about her son's assault. 'A boy sexually assaulted my son last year. It happened outside during the day. He was approximately 12 years old. My son pointed him [out] to me,' the mother said. Women are placed in internal 'gaols' including in solitary confinement for months at a time for alleged involvement in unrest or for having possession of a mobile phone. At times children are placed in confinement with their mothers and at other times children are left alone in the camp to fend for themselves. RSI recorded at least ten cases of Belgian, French, and German women being confined within the al Hol Annex, and in six instances children were detained alongside their mothers. A French woman told RSI of 'a Belgian woman who was in solitary confinement for a month with her five-year old daughter. They were in a room of the same size as toilets, in the dark.' There is minimal education or any form of stimulation for the children, and the camps lack any infrastructure to deal with the psycho-social impact of detention and post-traumatic stress. One European woman described the trauma exhibited by a three-year-old whose mother had died, "He doesn't make eye contact. He sits in a corner with his back towards us. In the night I sometimes wake up and he is awake, sitting and biting his hands and knuckles until bleeding. He beats and bites himself. He wakes up at night screaming. He takes faeces from his diaper - he still uses a diaper at three-and-a-half-year-old- and put it on the walls."

The AANES, Europe's ally against ISIL in North East Syria, has pressed European States to take back these women and children as the AANES does not have the infrastructure or capacity to indefinitely detain or prosecute them. But European States have refused to do so in any significant numbers. They consider that the possible security threat posed by these women and children is best managed outside of their countries and in this instance by the AANES and SDF in the detention camps in North East Syria. Accordingly, they have adopted a policy of consigning these detainees to indefinite unlawful detention in North East Syria rather than bringing them home to face justice and be dealt with properly according to law and in lawful conditions. Indeed, a number of the States which are the subject of this report have applied existing legislation in their countries to withdraw the citizenship of detainees *in absentia* creating further obstacles to repatriation and placing these women and children further outside the protection of the law.





European states also claim that the logistics of any possible repatriation efforts are acutely challenging and pose a considerable security risk for their officials. They note that they have no official presence in Syria in the form of an embassy or a consulate. However, this does not take account of the significant and ongoing military and political cooperation between European State authorities and the AANES in North East Syria. And, as this report reveals, there is a significant presence of European State diplomatic, military and intelligence personnel in the detention camps and some appear to have an influence over what happens to their nationals who are detained. European States have also affected the repatriation of some of their nationals from the detention camps in North East Syria over the last two years. It is our assessment that European States clearly have a capacity to repatriate their nationals.

In fact, European States have the sole ability to end the detention of their nationals. The AANES have made clear that they will not release women and children unless and until their States repatriate them. In line with this, on the basis of RSI's research, it is clear that not only have the SDF acquiesced on the few occasions that European States have requested to repatriate their nationals, but they have only ever permitted the removal of persons to, or with the explicit consent of, their States of nationality. Therefore, responsibility squarely falls with the States of nationality as the only authorities to whom the SDF will respond and that can bring an end to the arbitrary detention and gross mistreatment of their nationals.

European States are currently engaged in the same exercise of seeking to put detainees beyond the reach of courts and legal remedies as the United States authorities attempted with the Guantanamo Bay detainees. That bad faith attempt to avoid scrutiny by the United States was roundly decried in Europe, but it is being re-enacted for European citizens on Europe's doorstep in Syria. Counter-terrorism and security experts warn that, just as Guantanamo Bay has become synonymous with the worst excesses of the war on terror and a potent recruiting tool for terrorists in the past two decades, the detention of women and children in the camps in North East Syria risks developing into a long-running human rights disaster, a site of dangerous radicalisation to violence, and a symbol of European hypocrisy and violence which fuels the next generation of ISIL inspired terrorism. As one senior United States counter-terrorism official told RSI:

*'I think the question is do you deal with it now or do you wait until the situation is far worse. I think any national security professional would tell you that the situation on the ground is propitious for radicalization. It's a situation where people are ripe for further recruiting by terrorist organisations. This is especially true for their children ...'*



European States' refusal to take action is not only a profound moral failure and arguably a breach of their international obligations, but also a dangerous strategic blunder. Leaving these women and children out of sight in North East Syria invites catastrophe. European Governments must immediately repatriate all their women and children from the detention camps in North East Syria. It is logistically possible, morally and legally necessary, and the only effective security option.

RSI is a non-government organization which works to promote just and effective security. We advocate for a rights-based approach to national security, and to ensure that decisions taken in purported pursuit of national security always conform with the requirements of international and domestic law.



**Map showing location of al Hol and Roj camps in North East Syria**

Source: [The Times](#)



# METHODOLOGY

1. This report is the first of two reports by RSI to address the situation of detained in al Hol and Roj camps in North East Syria.
2. The second report to be titled, 'Closing Europe's Guantanamo,' will draw on the factual findings in this first report, as well as additional desk and field research, to provide a more detailed legal and gender analysis, and to address the policies and practices of European States with respect to those returning from the camps.
3. The findings of this report are based on extensive research conducted between November 2019 and November 2020 by RSI. RSI's analysis in this report focuses on nationals of five countries - Belgium, France, Germany, the Netherlands, and the United Kingdom ('UK') - and the implications of their situation for the governments of those nations. The reason for this is two-fold: first, nationals of these five Western European countries are among the most represented among the women and children currently detained in the camps of North East Syria; and second, the primary focus of RSI's existing expertise relates to the legal and policy arrangements of the UK and Western Europe.
4. While access to the al Hol and Roj camps is limited to external observers, RSI visited each camp twice in February 2020 with authority from camp officials. RSI interviewed 21 European women inside their tented accommodation and in areas surrounding their accommodation, as well as camp officials and politicians in North East Syria. Further, RSI conducted interviews from November 2019 to November 2020 in Syria, Belgium, France, Germany, the Netherlands, the UK, and the United States with 72 people, including a girl previously detained who was repatriated in October 2018, 27 immediate family relatives of women and children detained, lawyers, European government officials, officials in North East Syria, NGO and humanitarian organization staff, security and counter-terrorism experts, psychologists, and academics.
5. All interviewees were informed of the purpose of the interview and how their information might be used. None received compensation or other financial incentives. All interviews were conducted live, but due to interviewees' availability, interviews were conducted variously in person, by phone, and by messaging applications. Interviews were conducted directly in English and French, and a translator engaged by RSI provided translation from Kurdish to English where necessary.
6. This report also draws on extensive desk research conducted by RSI in relevant domestic and international legal standards, case law, and commentary, and advice received from UK-based leading academics and barristers specializing in public international law, international humanitarian law, and international human rights law.



7. On 17 November 2020, RSI raised its concerns with the governments of the United Kingdom, Belgium, France, Germany, and the Netherlands, and provided them with an opportunity to respond. Those responses are detailed in [Annex I](#) to this report.
8. RSI would like to thank the individuals and organizations who agreed to meet with us and whose insights and experiences inform this report. In particular, RSI wishes to thank the children and their families who shared their experiences and trusted RSI to raise their concerns. In this report, real names of interviewees are used where informed consent has been provided; otherwise names and other identifying information have been withheld for reasons of confidentiality.

## ACKNOWLEDGEMENTS

9. RSI has consulted widely in preparing this report with women and children detained in North East Syria, their families, government officials, and experts from a variety of fields. RSI thanks them all for their assistance, candour, and thoughtful contributions.
10. This report has been written by Marie Forestier, research consultant, Yasmine Ahmed, RSI's Executive Director, and Adriana Edmeades Jones, human rights consultant and former Legal and Policy Director of RSI. The authors wish to thank Gretta Schumacher, RSI's former Senior Legal Officer, for her extensive research and assistance, and the RSI team of Tufyal Choudhury, Emily Ramsden, Hayley Evans, Islam Abdelgadir, Alison Huyghe, and Sabah Hussain for their detailed input. The authors additionally wish to thank Khabbat Abbas for the photography for this report as well as providing excellent translation and other assistance in North East Syria.



Children in al Hol camp





# INTRODUCTION

11. Currently, thousands of women and children – including hundreds of UK and EU citizens – are detained indefinitely without charge or prospect of release in violent, unsanitary, and inhumane conditions in camps in North East Syria. The women and children currently held in these camps – separate from the prison facilities which house ISIL militants – have, with a small number of exceptions charged *in absentia*, not themselves been charged with any crimes of terrorism and have been afforded no legal rights and protections. They are associated with the ISIL regime in various ways – as direct participants, erstwhile supporters, wives or children of militants, or simply residents in former ISIL-controlled territories – and for various reasons – extremist sympathy, naiveté, poor judgment, or coercion.
12. This report is the first substantial research project based on interviews with detained women in the camps considering in detail the circumstances and conditions of detention for these women and children. This report establishes that European women and children are arbitrarily detained without legal basis, and are subject to inhuman and degrading treatment and that in some cases their treatment at the hands of the Syrian Democratic Forces ('SDF') militia is so serious as to amount to torture. This report establishes that the UK and EU States are directly implicated on the ground in North East Syria, and have a direct and specific power to bring an end to the suffering of these women and children. Yet European States are refusing to accept their responsibilities, relying on bad faith arguments about logistical and security hurdles and legal obstacles to justify not repatriating their nationals ([see Annex II](#) of this report for government's repatriation policies and practices). This inaction and acquiescence raises serious legal question of European State responsibility for the human tragedy taking place in North East Syria.

**In effect, European States are currently engaged in the same exercise of seeking to put detainees beyond the reach of courts and legal remedies as the United States authorities attempted with the Guantanamo Bay detainees.**

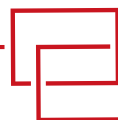
13. In effect, European States are currently engaged in the same exercise of seeking to put detainees beyond the reach of courts and legal remedies as the United States authorities attempted with the Guantanamo Bay detainees. That bad faith attempt to avoid scrutiny by the United States has been roundly decried in Europe, but it is being re-enacted for European citizens on Europe's doorstep in Syria. Counter-terrorism and security experts warn that, just as Guantanamo Bay has become a metonym for the worst excesses of the war on terror and a potent recruiting tool for terrorists in the past two decades, the detention of women and children in the North East Syrian camps risks developing into a long-running human rights disaster, a site of dangerous radicalization to violence, and a symbol of European hypocrisy which fuels the next generation of ISIL inspired terrorism.



**14.** This report – the first of two addressing the situation of the European nationals detained in North East Syria – sets out RSI's factual findings from extensive field and desk work. It establishes the conditions which detainees are subject to in the camps and the chain of responsibility for those conditions. It further raises a number of troubling questions of UK and EU States' legal responsibility and further argues that, given these European States' ability to bring the detention of their nationals to an end, their refusal to do so in the face of gross abuses amounts to wilful blindness and complicity.

**15. This report is comprised of eight sections:**

- 15.1.** The first section introduces the camps in North East Syria, explaining their structure, governance, mandate, and operations;
- 15.2.** The second section briefly sets out the nature of the conflict in North East Syria;
- 15.3.** The third section examines the circumstances in which the women and children held in the camps were detained, and how that fits within the international legal framework governing detention during conflict;
- 15.4.** The fourth section sets out the conditions on the ground in the camps which European States' inaction has allowed to persist;
- 15.5.** The fifth section sets out the degree of European States' influence over and involvement in the detention of women and children in the camps, and what unused powers European States have at their disposal to bring the detention to an end;
- 15.6.** The sixth section briefly sets out the concerns of security experts with European States' failure to repatriate;
- 15.7.** The seventh section briefly sets out the fundamental legal questions posed for European States by the detention of women and children in these camps, and the consequences of inaction; and
- 15.8.** The eighth section sets out RSI's conclusions.



# I. THE CAMPS IN NORTH EAST SYRIA

16. Since 2012, much of North East Syria has been autonomously controlled, having achieved *de facto* independence from the Syrian Arab Republic in the context of the long-running Syrian Civil War. The *de facto* autonomous region is typically known as the Autonomous Administration of North and East Syria ('AANES'), but enjoys no official diplomatic recognition.<sup>1</sup> The AANES claims to be a secular and multi-ethnic democratic republic, but in practice the region and its politics are dominated by the Kurdish ethnic group, and the AANES' military force, the SDF, is led by the mostly-Kurdish militia the People's Protection Units ('YPG'). Accordingly, the administration often uses the term Rojava, a term used by Kurdish nationalists to mean Western Kurdistan.

**Almost half the children (of all nationalities) living in the camps are under the age of 5 and the majority are younger than 12. More than 500 children are orphaned or otherwise unaccompanied.**

17. Within the AANES, the SDF operate the al Hol and Roj detention camps in the Al Hasakah Governorate close to the border with Iraq.<sup>2</sup> These camps - exclusively for women and children transported from the territories formerly under ISIL control - house more than 70,000 individuals, mostly Syrian and Iraqi nationals.<sup>3</sup> Some 11,000 foreign nationals are also detained, including approximately 640 children and 230 women from the UK/EU across the two camps. Almost half the children (of all nationalities) living in the camps are under the age of 5 and the majority are younger than 12. More than 500 children are orphaned or otherwise unaccompanied.



*Children and women in al Hol camp*



18. Originally established by the United Nations High Commissioner for Refugees as a refugee camp in 1991 and expanded during the Iraq war from 2003, the al Hol camp is a substantial facility which has been under SDF control following the capture of the region from ISIL in 2015. Following the effective defeat of ISIL in March 2019, the size of the camp has been increased dramatically to hold approximately 20,000 women and 50,000 children formerly living in the captured ISIL stronghold of Al Baghuz Fawqani. Al Hol - 'The Swamp' in Arabic - covers about 2.5 square kilometres (around the size of Monaco and larger than the City of London, but is much more crowded than either), with a population density of around 36,000 per square kilometre - over three times that of New York City.
19. More than a third of the total population of the al Hol camp is younger than 5 years old. The camp contains a self-contained section - referred to as the al Hol Annex - which houses foreign (non-Syrian or Iraqi) nationals: approximately 4,000 women and 7,000 children drawn from as many as 50 countries.
20. The majority of those foreign detainees in the al Hol Annex were formerly living in Al Baghuz Fawqani, the location of the territorial last stand of the ISIL forces in eastern Syria. Some have characterized the detainees as containing a proportion of women who were, and remain, deeply committed to the ISIL cause, and there have been reports of an atmosphere of fear in the camp, since compliance with ISIL's rules (on dress, for instance) is still enforced by some. RSI and has observed, and been repeatedly informed, that the atmosphere in the al Hol camp - particularly the al Hol Annex - is extremely tense, and there is a high level of violence, leading to particular restrictions imposed by SDF camp officials on access and delivery of services.

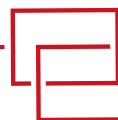


*Children playing in al Hol camp*



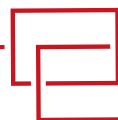


- 21.** The Roj camp is much smaller, holding some 1,800 women and children and covering around 10 hectares. A significant influx of detainees arrived in 2017 after fleeing ISIL-held territory and being taken into custody by SDF and other anti-ISIL coalition forces. In order to deal with the numbers in detention, and overcrowding experienced at the al Hol camp, an extension to the Roj camp, with the capacity to hold 395 households, was opened in August 2020. Following an initial transfer of 92 households (comprising around 270 individuals, more than half of these children), sporadic transfers of women and children from the main Roj camp and the al Hol Annex have taken place. Transfers to the Roj extension have, as far as RSI has been able to confirm, comprised only foreign country nationals. The reasons why particular individuals have been selected for transfer are not clear, and no official explanation has been given for any transfers to date.



## II. THE CONFLICT IN NORTH EAST SYRIA

- 22.** Women held by the SDF in the al Hol and Roj camps have been detained during and following a long-running armed conflict occurring within North East Syria. The Kurdish ethnic group - generally recognized as the largest ethnic minority worldwide - have long harboured ambitions of self-determination as part of a Kurdish-majority political entity in western Asia comprising territory currently located within the territorial borders of southeastern Turkey, northeastern Syria, northern Iraq, northwestern Iran, and the southern part of the South Caucasus. Following the commencement of the Syrian Civil War in 2011, and the weakening of Syrian military control over North East Syria, the SDF - led by the mostly-Kurdish YPG - have been involved in a substantial conflict in the region, first engaging Syrian forces and then ISIL forces.
- 23.** Depending upon the characteristics of a conflict, different legal rules may apply to how belligerent parties are entitled to behave, and what obligations they owe. While a considerable number of States have been involved, to a greater or lesser extent, in conflicts in Syria since the outbreak of the civil war, most legal experts agree that the conflict taking place in North East Syria between the SDF and ISIL was properly classified, for purposes of international law, as an armed conflict of a non-international character (a 'NIAC').
- 24.** The classification as a NIAC depends upon the conflict satisfying the criteria identified in an influential decision of the International Criminal Tribunal for the former Yugoslavia ('ICTY') of 'protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.'<sup>4</sup> That standard requires a minimum degree of intensity of fighting which is distinguished from lesser forms of collective violence such as civil unrest, riots, isolated acts of terrorism, or other sporadic violence.<sup>5</sup> It also requires a sufficient level of organization of the parties. The aspects of the broader Syrian conflict involving the SDF and taking place in North East Syria has been largely confined to a conflict between the SDF and ISIL (two non-State actors), with particular hostilities at times between those groups on the one hand and Syrian, Turkish, Iranian, and Russian forces on the other (expanding the NIAC to one between non-State actors and States, but not *between* States). For clarity, the involvement of international forces - known as the Global Coalition for the Defeat of Daesh/ISIL - did not of itself transform this NIAC between the SDF and ISIL into a full-blown *international* armed conflict under international law, given that international forces were supporting the fight against ISIL, rather than against official Syrian forces.
- 25.** The significance of classifying a conflict as a NIAC is that relevant principles of the law of war will apply. The law of war is typically more permissive as to the power it grants parties to respond to security threats, but it also demands that basic principles of international humanitarian law regarding civilian protection must be complied with, even by non-State actors, so long as the NIAC persists.

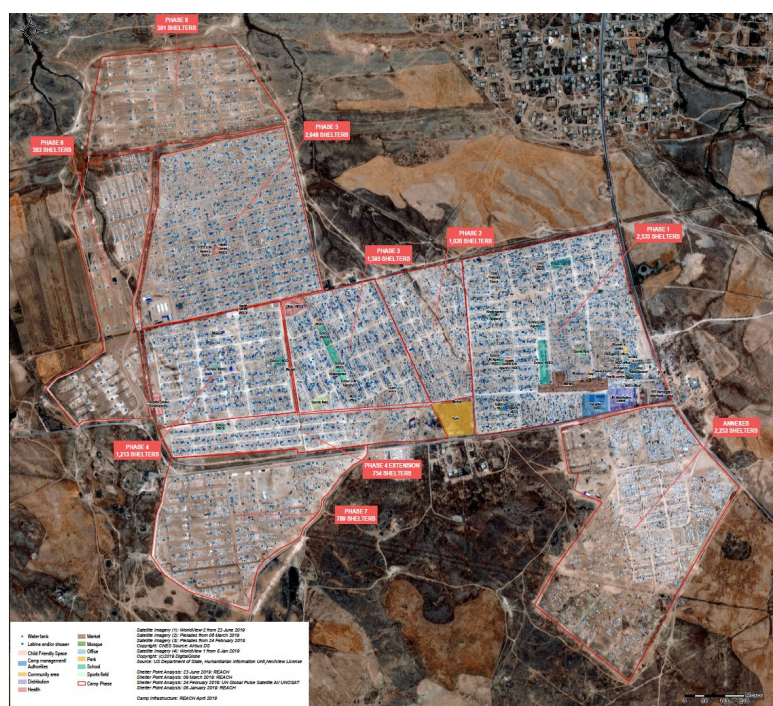


**26.** The legal question as to when a NIAC draws to a close - and whether it has entirely concluded in North East Syria - is complex and contested. There has in the past been a view - reflected by the jurisprudence of the ICTY - that a NIAC remains ongoing so long as there is *any* level of continuing violence, however sporadic, until a formal peace agreement is concluded.<sup>6</sup> But the better and more widely accepted view is that, once the criterion of 'protracted armed violence' is no longer fulfilled, and there is no real risk of the resumption of protracted armed violence, the conflict will lose its classification as a NIAC under international law.<sup>7</sup> The facts on the ground in North East Syria, following the effective defeat of ISIL in March 2019, lend some support to the view that the armed conflict has drawn to a close, but the security situation in the region remains uncertain and resumption of hostilities cannot be ruled out, as the more than 2,000 ISIL attacks in North East Syria from March 2019 onwards attest.



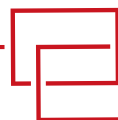
**Roj camp as of June 2020**

Source: [US Department of State, Humanitarian Information Unit](#)



**Al Hol camp as of June 2019**

Source: [US Department of State, Humanitarian Information Unit](#)



### III. CIRCUMSTANCES OF DETENTION

**There is no question that the women and children located in the al Hol and Roj camps are subject to forced detention there. The camps are enclosed by 2-3 metre high fences, with entry and exit via metal gates controlled by armed SDF personnel. When RSI visited, the entrance to the al Hol Annex was overseen by six armed guards.**

- 27.** There is no question that the women and children located in the al Hol and Roj camps are subject to forced detention there. The camps are enclosed by 2-3 metre high fences, with entry and exit via metal gates controlled by armed SDF personnel. When RSI visited, the entrance to the al Hol Annex was overseen by six armed guards. Further, RSI was told of instances where SDF guards shot at women and children attempting to escape the facilities, or in response to unrest.

**‘I know a Belgian woman who was in solitary confinement for a month with her five-year old daughter. They were in a room of the same size as toilets, in the dark,’ a French woman said.**

- 28.** Within the camps themselves, the SDF operate a series of additional restrictions, and have placed women and children in crowded internal ‘gaols,’ including in solitary confinement, for various alleged infractions. A Belgian woman told RSI, ‘Women are taken away at night, we don’t know where.’ RSI has recorded at least 10 cases of Belgian, French, and German women being gaoled within the al Hol Annex. Among these, in six instances children were detained alongside their mothers. ‘I know a Belgian woman who was in solitary confinement for a month with her five-year old daughter. They were in a room of the same size as toilets, in the dark,’ a French woman said. RSI has also learned of detention in a facility within, or next to the camp, or transport to a women’s prison near the town of Qamishli. Some women recounted being blindfolded in transit, and some described the prison as an underground facility without light. Despite requests, RSI was not granted access to any of these additional facilities during our time in North East Syria.

- 29.** In a further instance of detention in mid-2019, a mother of two was gaoled with her children for almost a month. She told RSI:

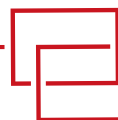
*‘I spent 26 days - I counted them one by one - in the prison that is opposite the camp. I was never told why I was jailed. It’s not a real prison, rather two small rooms with a very small courtyard in the middle. Many Syrian, Iraqi and foreign women were crammed there. Conditions were very, very harsh. We slept on the floor. It was so small that at night it was not possible to move along. They gave us little to eat and we all had diarrhoea. My children were sick too.’*



30. While women are often confined with their children, they are also on occasion separated. RSI was told of very young children being left without supervision or protection in the main camps while their mothers were placed in internal confinement. RSI received reports of children left alone in this way up to as recently as August 2020. In one case, a mother was separated from her baby she was still breastfeeding.
31. The women and children now detained in the al Hol and Roj camps by the SDF were captured and transported during the course of the SDF conflict against ISIL. During a NIAC such as that conflict, the legal position is that non-State actors such as the SDF are recognized as legitimate belligerents under the law of war, and are bound by the rules of international humanitarian law in how they treat enemy combatants and civilians. That said, non-State actors are not in precisely the same situation as State forces under the law of war, and there is considerable disagreement among international lawyers and military authorities as to whether non-State forces are entitled, within the context of a NIAC, to detain civilians at all.<sup>8</sup>
32. There is certainly no express basis in international humanitarian law for such detention by non-State actors, and, as was observed by senior British judges in the *Serdar Mohammed* case,<sup>9</sup> a reading of international humanitarian law as *implying* a power for non-State actors to detain civilians simply because they are under obligations of humane treatment towards those persons detained is a *non sequitur*.<sup>10</sup> Nor is there any domestic legal entitlement for the SDF to detain civilians in Syria – the AANES is, after all, not a recognized sovereign entity. And even if it were to be accepted that the SDF were in the abstract entitled to detain civilians during wartime, it is realistic that such a legal basis no longer persists if the conflict has ceased.
33. But the question of legal basis – if it could exist in theory – is rendered moot by the SDF’s own position. The SDF has never provided a legal basis for its ongoing detention of the women and children held, and does not seek to argue that it is entitled to continue to hold them. On the contrary, the SDF no longer wishes to have any responsibility for these detainees, and wishes to wind down the camps’ operation.

**Whether or not international humanitarian law applies, all forms of international law stipulate that persons cannot be detained arbitrarily and indefinitely without proper legal charge, or due process of law whereby they can challenge their detention.**

34. Whether or not international humanitarian law applies, *all* forms of international law stipulate that persons cannot be detained arbitrarily<sup>11</sup> and indefinitely without proper legal charge, or due process of law whereby they can challenge their detention. Even those who maintain that non-State forces are entitled to detain civilians under international humanitarian law insist that that detention must be necessary for ‘imperative reasons of security.’<sup>12</sup> That is a high threshold,<sup>13</sup> and would require a case-by-case assessment of the risks posed by each individual detained,<sup>14</sup> with the detainees afforded a right to review of their detention before some form of judicial or quasi-judicial authority.<sup>15</sup>



- 35.** More generally, the prohibition on arbitrary detention is so well-attested in international law that it forms part of customary international law<sup>16</sup> – those norms of international behaviour which have become generally accepted as binding legal standards. Certain norms – of which arbitrary detention is one – are so absolutely fundamental to international law that they are known as *jus cogens* norms, meaning that all actors, both State and non-State, must abide by them and cannot depart from them in any circumstances, even security emergencies. For detention to be acceptable, it must take place in accordance with a predictable legal framework,<sup>17</sup> with a legitimate justification,<sup>18</sup> extend no longer than is strictly necessary,<sup>19</sup> and must allow for the detained person to have the legality of their detention reviewed.<sup>20</sup>
- 36.** Another *jus cogens* norm governing the detention of the women and children in North East Syria is the prohibition against torture, which is generally understood in international law<sup>21</sup> as entailing the infliction of severe physical or mental pain or suffering for a purpose such as punishment by a person acting in an official capacity (including an official capacity as part of an organized non-State armed group).<sup>22</sup>
- 37.** As a matter of international law, all detainees are entitled, during any period of detention, to certain minimum guarantees as to their treatment and conditions. Under Common Article 3 of the Geneva Conventions – which applies during a NIAC and, some argue, in the period immediately following cessation of hostilities – all persons detained are entitled to be treated humanely<sup>23</sup> and to be free from ‘outrages upon personal dignity.’<sup>24</sup> Further, under customary international humanitarian law detainees must be held in premises which safeguard health and hygiene,<sup>25</sup> and detainees must be released as soon as the reasons for the deprivation of their liberty cease to exist.<sup>26</sup> Further, the specific protection, health, and assistance needs of female detainees must be respected,<sup>27</sup> and children are also entitled to special respect and protection.<sup>28</sup>
- 38.** Detainees are also provided protections under international human rights law. There is a good legal argument that non-State actors, such as the AANES, are bound by international human rights law, despite not being signatories to international treaties, particularly when those non-State actors control territory and operate as a *de facto* regional government aspiring to Statehood. But in any event the AANES – and its military organ, the SDF – have voluntarily accepted the obligation to uphold human rights standards within the territory under their control, and Article 21 of the Constitution of the AANES incorporates and guarantees the standards set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights and ‘other internationally recognized human rights conventions.’ International human rights law itself contains prohibitions on arbitrary detention<sup>29</sup> (with the detention of children prohibited except as a last resort),<sup>30</sup> torture and cruel or inhumane treatment,<sup>31</sup> and guarantees rights to life,<sup>32</sup> food and water,<sup>33</sup> health,<sup>34</sup> and education.<sup>35</sup>



## IV. CONDITIONS IN THE CAMPS

### Violence and Risk

**The al Hol and Roj camps are fundamentally unsafe environments in which physical violence is common and psychological trauma is endemic, giving rise to apparent breaches of the rights of detainees to life and security of the person, and the freedom from torture and inhumane treatment.**

- 39.** The al Hol and Roj camps are fundamentally unsafe environments in which physical violence is common and psychological trauma is endemic, giving rise to apparent breaches of the rights of detainees to life<sup>36</sup> and security of the person,<sup>37</sup> and the freedom from torture and inhumane treatment.<sup>38</sup>
- 40.** First-hand testimony provided to RSI paints a picture of poorly-supervised facilities where detainees suffer from attacks by SDF guards, and fight between themselves, with fatal consequences. In the twelve months from June 2019 to June 2020, on average 25 people a month have died in the al Hol camp.<sup>39</sup> Shockingly, in September 2019, SDF authorities responded to women and children in the al Hol Annex protesting the camp conditions by opening fire. At least four women were wounded, and Médecins sans Frontières ('MSF') medical teams and patients were forced to take cover to avoid gunfire. MSF suspended its activities in the al Hol Annex in the aftermath.<sup>40</sup> And, as set out above, SDF guards shot at women and children attempting to escape the facilities, or in response to unrest. A Belgian woman in the al Hol camp told RSI, 'We never feel safe here. My main worry is that my children are injured or die from gunshot wounds.' Several European women reported bullets landing near their tents. 'One day, a bullet landed between my neighbours' tents. I'm afraid that a bullet enters my tent and wounds one of us,' a French woman living in the al Hol camp said.
- 41.** The violence is not confined to SDF guards. Tensions run high between women in the camps. 'I almost got killed by a Tunisian woman who had a knife. She wanted to kill one of my friends and I got between them,' a European teenage girl said. Children have been assaulted. 'Once, a Russian woman threatened my daughter with a knife. Another time, a woman called my daughter "unbeliever" and pushed her to the floor because she had a puppy in her arms,' a French woman in the Roj camp said. A major reason for violence in both the al Hol Annex and the Roj camp appears to be conflict between those women who remain strongly committed to ISIL ideology and those who either are, or are perceived to be, less adherent. Multiple sources (detainees, a Kurdish security official, and an NGO worker familiar with the camps) have informed RSI that groups of women who fiercely defend ISIL ideology have set up their own 'court' in the al Hol Annex, issuing sentences against women who fail to follow their interpretation of Islamic law. RSI has heard that a 14-year-old Azerbaijani girl was strangled to death on a charge of failing to cover her face properly.

- 42.** Indeed, the Kurdish Red Crescent has documented 11 cases of women killed by fellow detainees in the al Hol Annex in 2019. As a Dutch woman told RSI:

*'They tried to burn my neighbour's tent. They attack with knives, they throw stones on tents, they beat us as well as the children outside. They say, "Women who want to go back to their countries are number one on the list, we will kill them." Because of that, we're really, really scared, even more scared than from the Assad's army or being sent to Iraq. These women are really extreme and threaten us. That's one of the main problems in the camp.'*

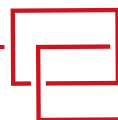
- 43.** A German woman explained how some detainees target women who do not comply with directives about clothing and behaviour implemented under ISIL rule:

*'They told me that they will burn my tent if I don't follow their religion. A year and a half ago, they put gasoline on my tent and tried to burn it. I think it's because I've been walking around wearing jeans. A friend gave me a message from them saying that I should stop being open about the fact I was anti-ISIL, otherwise they would burn my tent and kill my children.'*

- 44.** RSI has learned that a European woman in the al Hol Annex was beaten by a group of six French, Moroccan, and Russian women because she spoke to a male employee of the camp. A woman who sought the assistance of AANES authorities to have her children repatriated to their State of nationality was directly targeted by fellow detainees: her children were hit with stones and required medical treatment. The German grandmother of a child held in the al Hol Annex told RSI: 'One night, a woman came with a metal stick and hit the tent of my daughter-in-law, saying "I want to kill you!" She hit her on her face with her hands. Her neighbours had to come to stop her.'

**Some women reported to RSI exchanging sexual favours for money in order to purchase basic supplies for their families. There are also reports of pregnancy in the al Hol Annex which, given the absence of detained adult men, and the due dates of children, this raises the realistic likelihood of sexual exploitation by male SDF officers.**

- 45.** The women and children detained in the al Hol and Roj camps are vulnerable to all forms of violence. It is appalling, but not surprising, that officers of several humanitarian organisations posted in the camps have reported to RSI incidents of sexual violence and exploitation.<sup>41</sup> Perpetrators include camp residents, sometimes older children, and camp authorities. Some women reported to RSI exchanging sexual favours for money in order to purchase basic supplies for their families. There are also reports of pregnancy in the al Hol Annex which, given the absence of detained adult men, and the due dates of children, raises the realistic likelihood of sexual exploitation by male SDF officers.





- 46.** The relationship between women in camps and the SDF forces is generally tense. RSI has received numerous reports of beatings, verbal abuse, and coercive behaviour on the part of camp authorities. A European mother of a three-year-old said, 'During a large search operation, a man wearing a balaclava and carrying heavy weapons pointed his gun at me, while I was not doing anything and I was with my son.' She also reported that fellow detainees were beaten by camp managers. RSI has learned that infractions such as detainees being caught with mobile phones can lead to corporal punishment or solitary confinement.
- 47.** The constant physical threat has clear mental health effects. 'The context in al Hol is psychological stress, insecurity, and fear. It is hell,' said Professor Loots, a Belgian Professor of Psychology who travelled with a Belgian medical team to visit the camps in 2019. Some mothers have told RSI that they refuse to let their children play outside their tents due to their fear of what could happen to them. 'At night, when I'm sleeping, I'm afraid that security forces will enter and search my tent,' a French woman in the al Hol camp told RSI. Speaking to RSI of the atmosphere in the Roj camp over the summer of 2020, one woman noted, 'It's very frightening and intimidating. I've never felt so unsafe.'

## Particular Risks for Children

**The majority of the occupants of al Hol and Roj camps are children, and they are particularly at risk of serious harm. Of the 517 people recorded as dying in the al Hol camp in 2019, 371 were children.**

- 48.** The majority of the occupants of al Hol and Roj camps are children, and they are particularly at risk of serious harm. Of the 517 people recorded as dying in the al Hol camp in 2019, 371 were children.<sup>42</sup> RSI's findings indicate that children in the camps, together with their mothers, are not only subject to considerable physical and mental harm, but also suffer from specific risks, including the risk for male children of being forcibly removed from their families by SDF authorities as they grow older. This treatment arguably infringes children's rights to life, security, and humane treatment, as well as violating the key principle under international law that the best interests of the child must be the paramount consideration when officials make decisions affecting children.

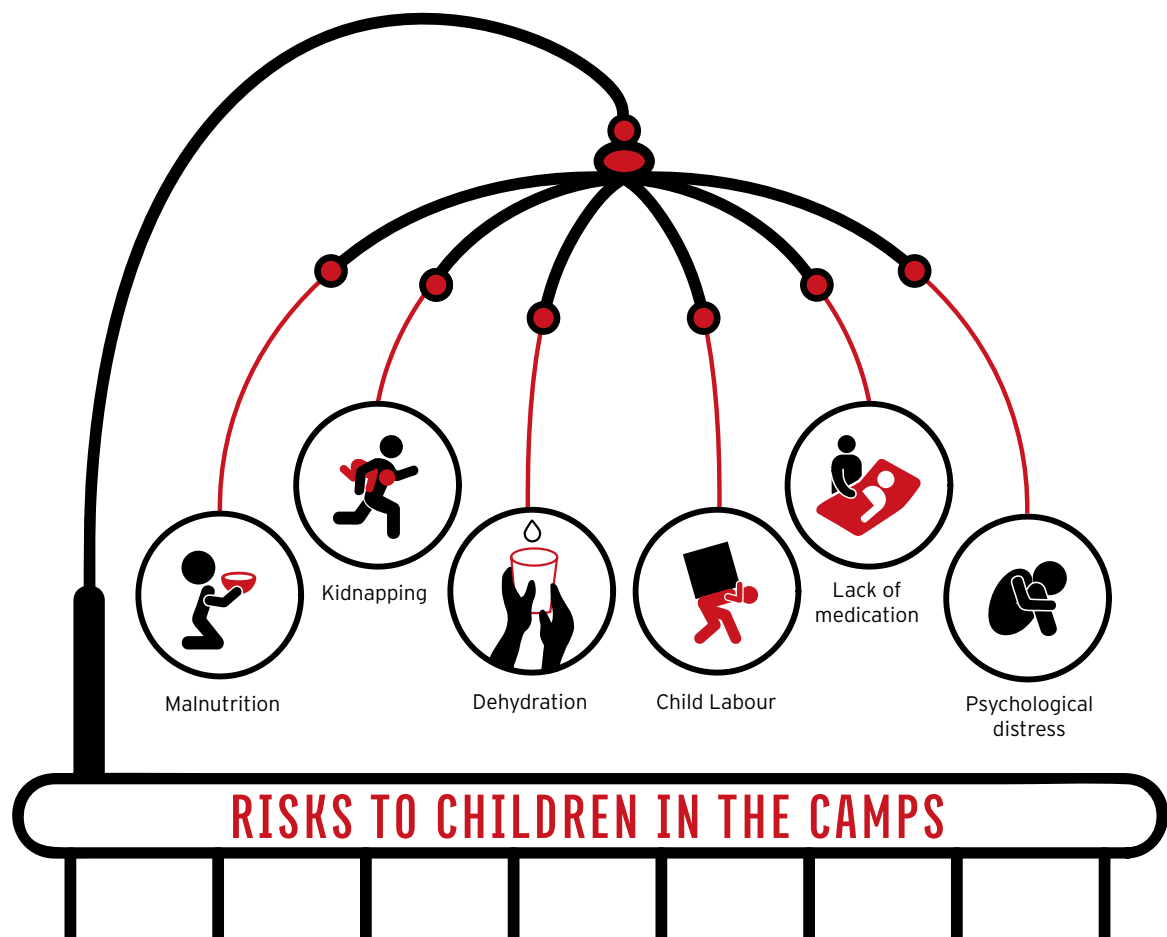
**"Last winter three young children burned alive. We saw the bodies of the babies."**

- 49.** RSI has recorded a number of instances where children of various nationalities have died in the al Hol Annex from war wounds, malnutrition, severe dehydration, respiratory illness, hypothermia, and carbon monoxide poisoning from tent heaters, or from tent fires caused by the same unsafe heating devices. 'Last winter three young children burned alive. We saw the bodies of the babies,' one European woman told RSI. In addition, RSI has been informed of the deaths of at least nine European children below the age of three across the camps, including five Belgian children (a one-year-old who died from malnutrition, one-

year-old twins who died of dehydration, an eight month old who died of a lung infection, and a stillborn baby), two Dutch children (a three-year-old from a war wound and newborn of unknown causes), one British child (a newborn, from a respiratory condition), and one French child (a one-year-old run over by an SDF military vehicle in the Roj camp).

## In December 2019, in the al Hol Annex, a ten-year-old Russian child was shot and killed when a stone he was playing with hit a camp guard.

- 50.** In December 2019, in the al Hol Annex, a ten-year-old Russian child was shot and killed when a stone he was playing with hit a camp guard. When the incident happened, the child's mother carried him to the entrance of the camp and was permitted to take him to the main camp for treatment, where he died of his injuries. To RSI's knowledge, no investigation of this matter has been carried out by SDF or AANES authorities.
- 51.** In late August 2020, humanitarian groups reported that the death rate of children in the al Hol camp had tripled, with eight children under five dying in five days between 6 and 10 August 2020.<sup>43</sup> Two of the children were Iraqi, one was Syrian, and at least three were foreign (the specific nationalities unknown). The deaths were linked variously to heart failure, internal bleeding, and severe malnutrition. The potential causes of harm are varied and constant. As one French mother of three young children in the al Hol camp summed it up, 'One of my main concerns is the children's security. I'm afraid that he disappears, I'm afraid he could be hit by a bullet, that he could be bitten by a dog, that he could be beaten by the Kurds.'



**‘A boy sexually assaulted my son last year. It happened outside during the day. He was approximately 12 years old. My son pointed him [out] to me,’ the mother said.**

- 52.** In addition, children are at risk of sexual violence and exploitation. One European mother of a three-year-old boy living in the al Hol Annex spoke to RSI about her son's assault. ‘A boy sexually assaulted my son last year. It happened outside during the day. He was approximately 12 years old. My son pointed him [out] to me,’ the mother said.

**‘Children are afraid and jump with surprise when they hear a loud noise or a plane,’ a French detainee said. RSI has learned that children are displaying clear signs of severe psychological distress such as epilepsy, bed-wetting, nightmares, and disordered sleep.**

- 53.** As for mental health, a very large number of children detained in the camps suffer from a degree of trauma or post-traumatic stress as a result of events they have witnessed. One British mother in the al Hol camp explained that her three-year-old son frequently recounts the day she was injured in a bombing. ‘Children are afraid and jump with surprise when they hear a loud noise or a plane,’ a French detainee said. RSI has learned that children are displaying clear signs of severe psychological distress such as epilepsy, bed-wetting, nightmares, and disordered sleep. One European woman described the behaviour of a three-year-old whose mother had died:

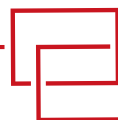
*‘He doesn’t make eye contact. He sits in a corner with his back towards us. In the night I sometimes wake up and he is awake, sitting and biting his hands and knuckles until bleeding. He beats and bites himself. He wakes up at night screaming. He takes faeces from his diaper – he still uses a diaper at three and a half years old – and puts it on the walls.’*

- 54.** There is no dedicated mental health infrastructure for children in the camps, and little room for doubt that prolonged detention in these conditions without appropriate treatment worsens the serious psychological conditions suffered by many child detainees.
- 55.** Orphans are in a particular position of vulnerability in the camps. A significant number of orphans and otherwise unaccompanied children live in the camps, comprising a variety of nationalities and ages (from new-borns to teenagers). RSI has been unable to obtain a comprehensive list or breakdown of nationality because numbers change very quickly and because there is no systematic effort to trace unaccompanied children in the camps. By July 2019, UNICEF had identified at least 520 unaccompanied or separated children in al Hol camp.<sup>44</sup> It is not uncommon for women in the camps to be looking after children who are not their own and with whom they have no formal familial relationship. RSI met a European mother who had two of her own children, and was also caring for two other European children – a three-year-old and a baby. Those were the children of a friend who had died in Al Baghuz Fawqani. The children's father is in prison in Syria.

- 56.** For some orphans in the camps, being taken into the care of detainee women holds additional risks. A French woman in the Roj camp told RSI, 'I know about a German orphan and a French orphan. Women take care of them. They hide them and pretend they are their own child.' 'Some women hide them because they don't want the children to be repatriated [to Europe] because of religion. They think it's better if they stay there. Children are camouflaged and we don't know where the tents are where they are hidden. Young girls wear a niqab and boys are sometimes dressed as girls,' a French woman living in the al Hol Annex said. 'They are women who took these children when their mothers died in [Al Baghuz Fawqani]. Nobody will be able to convince these women to let the orphans go.' SDF authorities told RSI that they suspect that the goal of some of these women is to foster the next generation of the ISIL caliphate.<sup>45</sup>
- 57.** Even where orphans are safely monitored, identifying them, confirming their nationality, and connecting them with relatives presents enormous challenges. UNICEF considers that a number of the unaccompanied children in the custody of Iraqi and Syrian women in the al Hol camp may be from a variety of other unknown nationalities.<sup>46</sup> These children are at risk of permanently being lost to their birth families in their country of nationality if the women in whose custody they currently reside are returned to Iraq or Syria. RSI spoke to the legal representatives of a German family who recognized their two-year-old German grandchild in a newspaper photograph. He was in the custody of a Syrian woman in the al Hol camp, and during the time it took for inquiries and arrangements to be made for reuniting the child with his family in Germany, camp officials lost track of the Syrian woman and the infant. 'No one knows where he is now. We have had no information since June,' the legal representative said. 'Maybe there are more [German] orphans in camps. It's possible.' RSI has been told there are indeed German, Dutch, and Belgian orphans in the same position - in the custody of Syrian and Iraqi women in the al Hol camp, with no certainty as to when, or if, they will ever be transferred to the care of their relatives in their countries of nationality.

**The SDF routinely disappears boys from 12 years of age, taking them to unknown locations and holding them without contact with their mothers. Typically, these removals take place in the middle of the night, and involve multiple children at once.**

- 58.** A particular risk for children in the camps is the forced removal of young boys as they grow older. The SDF routinely disappears boys from 12 years of age, taking them to unknown locations and holding them without contact with their mothers. Typically, these removals take place in the middle of the night, and involve multiple children at once. Reports corroborating these removals came from mothers themselves who had lost their sons and from neighbours who witnessed the removals. There have been several waves of removals: in August/September 2019 when 15 boys from 14 years and older were taken from the al Hol camp; in October 2019 in the Roj camp; and in January 2020 from the al Hol Annex, when approximately 30 teenaged boys from various nationalities were forcibly abducted.







**Children and women in Roj camp**

- 59.** The mother of a 16-year-old boy taken by the SDF spoke to RSI and explained the experience as follows:

*'I woke up at 2.30am because I heard a car. A woman with a scarf on her face and wearing military clothes entered the tent. She said: "Don't speak!" Then, two men in military uniform who also had their faces covered with a scarf and were carrying Kalashnikovs entered very fast. They took my son who was deeply asleep in their arms. I screamed. They said: "Don't scream or we will beat you." I was so afraid and it happened so fast.'*

- 60.** There has been no consistent explanation provided by SDF authorities to the mothers as to the reasons for the boys' removal, and no confirmation of where they have been taken. Mothers who have questioned camp authorities receive differing answers. Some were told the boys were taken to a school outside the camps, others were informed the boys were dangerous and had been taken to prison. There remains no contact with the children disappeared and no knowledge of their location or wellbeing. The events have exacerbated the already high levels of anxiety among the remaining women and children in the camps.
- 61.** When questioned by RSI, AANES officials admit they arrest teenagers. Dr Abdulkarim Omar, the Co-Head of the Department of Foreign Relations of the AANES said, 'The teenagers who are trouble-makes in camp, we bring them to the Houry centre,' The Houry centre is billed as a 'deradicalization centre' for teenagers. Humanitarian organizations previously granted access to the centre describe it as akin to a juvenile detention facility, with capacity limited



to around 110 detainees. It is not clear whether all removed children have been housed in the Houry centre, or whether some have been sent to adult male prison facilities, as the *New York Times* and *Le Monde* has reported is common in North East Syria.<sup>47</sup> Despite repeated requests, RSI was not granted access to the Houry centre or any other juvenile detention centre or prison run by the AANES administration while on the ground in North East Syria. A subsequent invitation has been impossible take up due to Covid-19 travel restrictions.

## Sanitation, Health, and Basic Living Conditions

- 62.** From the point of view of sanitation, basic living amenities, and healthcare, the North East Syrian camps also fall far below acceptable minimum standards, and accordingly appear to violate basic human rights to water, food, health, and humane treatment.
- 63.** Harsh winter weather, stifling summers, heavy rain, flooding, sandstorms, and a lack of dependable drinking water supplies make the basic conditions of life in the detention camps especially harsh, while aid and other humanitarian services are limited. Access to water is meant to be by way of collection from large plastic tanks filled daily with water delivered by truck. But according to detainees and humanitarian staff with access to the camps, water is often unclean and the camps lack sanitation facilities. 'We had to queue at 5am to get salty water with mould and worms in it. The ones who have no money have no drinking water,' a Belgian woman said. A French woman in the al Hol camp told RSI:

*'When we wake up, we go and fill our container from the main tank. We do it early before there is no more water left because there is limited water for the whole camp. Usually, tanks are empty by midday or, at the latest, by 5pm. During the summer it's worse. The water we drink is not clean. Not everyone has financial means to buy bottled water. There is another type of water available sometimes, but it's not drinkable. It's salty water that we use to wash clothes.'*

### Staff from the Kurdish Red Crescent attest that the water is not clean enough to clean the hospital's floor.

- 64.** Staff from the Kurdish Red Crescent attest that the water is not clean enough to clean the hospital's floor.<sup>48</sup> The UN Office for the Coordination of Humanitarian Affairs ('OCHA') in January 2019 had reported that water quality in the al Hol camp had improved, based on water testing,<sup>49</sup> but the women who spoke with RSI in early 2020 had noticed no improvement.
- 65.** For most of 2020, the camp water supply has been under particular strain given Turkey's disruption of water supplies into the AANES. The UN OCHA reported in July 2020 that, in the first six months of the year, flows from the Alouk water station were disrupted on average once a fortnight. The Alouk water station provides 50% of the water supply to the al Hol camp. The intermittent supply has interfered profoundly with water access in the camp.<sup>50</sup>

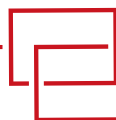


‘There is not enough to eat. The first eight months in the camp, I didn’t have money. We were very thin. My daughter is still very thin,’ a French mother of two told RSI. Doctors in a Belgian medical team estimated that 70% of the children they examined were malnourished.



*Women and children collecting water from tank in Roj camp*

66. Food supplies are inadequate and malnutrition widespread. Ration packages distributed by camp authorities contain dry foods: sugar, lentils, oil, and tinned goods. Fruit, vegetables, and meat are only available through markets accessible to those detainees with the funds. ‘There is not enough to eat. The first eight months in the camp, I didn’t have money. We were very thin. My daughter is still very thin,’ a French mother of two told RSI. Doctors in a Belgian medical team estimated that 70% of the children they examined were malnourished.<sup>51</sup>
67. Sanitation facilities are poor, leading to significant hygiene risks. Humanitarian staff have described the substandard latrines in the camps and women who have spoken to RSI have recounted dirty bathrooms overflowing with sewage. In order to wash, women create makeshift showers in their tents. ‘I made a shower with pieces of tarpaulin, a small tablecloth, and a pipe so that water can flow away. We shower inside the tent. But not everyone has the ability to do this in the camp. Those who can’t have to wash themselves in a big basin,’ a European mother of two children under five in the al Hol Annex said.



## Tent fires happen frequently – more than a dozen times last winter – killing young children.

- 68.** Extreme weather conditions make living conditions in the camps intolerable. Heavy rains in December 2019 caused serious flooding and damaged a large number of tents in the al Hol Annex. According to the UN OCHA, '200 tents were relocated within the Annex due to flooding.'<sup>52</sup> A Dutch detainee told RSI, 'My tent was flooded twice. I had to change tent each time and to buy everything again.' A major concern for women is the risk of fire due to the basic gas heaters supplied for the tented accommodation. Tent fires happen frequently – more than a dozen times last winter – killing young children. But, as one Dutch mother told RSI, 'I'm afraid that the heating explodes in the tent and kills a child. But if we don't use it, they will die from cold.'
- 69.** When women and children are sick or injured, medical care is inadequate. In the al Hol Annex, the UN OCHA has noted an 'inadequate coverage of health overall, particularly as the winter weather puts more residents, including young children, at risk of seasonal illnesses. In just one week in December 2019, mobile teams identified 2,000 medical cases – the majority children – in the Annex.'<sup>53</sup> Many detained women and children suffer from war wounds, such as imbedded shrapnel, and associated infections. According to Professor Loots, 'Several mothers and children displayed orthopaedic war wounds that had not healed and necessitated follow up care. This follow up care is not available.' Moreover, given the unsanitary living conditions, camp residents suffer from diarrhoea, gastroenteritis, malnutrition, and respiratory infections. Some women and children suffer from hepatitis, epilepsy, pertussis, measles, diabetes, and asthma.
- 70.** Currently, MSF operates a medical centre in the main al Hol camp (although the centre was closed between September 2019 and July 2020 in light of concerns over staff safety), and there are five smaller clinics operating (down from a pre-2020 number of 24). The Roj camp and the al Hol camp currently host one small clinic each, although the al Hol Annex clinic was not in operation for a number of months in 2019. Nevertheless, facilities are very constrained and access to medicine limited. In the Roj clinic, medical staff cannot treat conditions of any complexity, and have access only to antibiotics and basic pain relief. A Belgian woman told RSI, 'When I get sick, I didn't go to the hospital because they only gave you paracetamol.' A French girl aged six was at risk of serious complications associated with a congenital heart defect. Until her urgent compassionate repatriation to France in June 2020, she had received no adequate treatment, but is now doing well, her family in France have confirmed.





**Children and dog by litter in al Hol camp**

- 71.** Health consultations in the MSF clinic cease after 5pm. Emergency care is theoretically available at night in the main al Hol camp, but in several instances women reported not being able to access it. 'One night, my child stopped breathing. He was blue. I took him to the tent of my friend. Fortunately she helped me and gave him emergency care,' a French mother of three said.
- 72.** In principle, serious cases are escorted out of the camps to field hospitals for treatment. But SDF officials, without any medical training, have absolute discretion as to whether or not to allow patients to leave the Annex to access medical facilities in the main camp. A German woman told RSI, 'When we go to the entrance and tell the guards that we need to go to the hospital, they tell us "It's not necessary."' A German mother in [the al Hol Annex] told RSI that her one-year-old daughter suffered from a blood infection, but received no treatment in the camp. Instead, she had to persuade camp authorities to allow access to the Red Crescent hospital outside the camp in Hasakeh. 'It took a very long time and it was very difficult to have permission to go there. They examined her and gave me some antibiotics and said that she needs more treatment. But it's not available here.'
- 73.** Referrals to external hospitals have their own challenges. 'Children wounded by gunshot had to wait for a long time before being transferred to Hasakeh hospital,' a Belgian woman said. Women recounted the process of obtaining a medical transfer to hospital outside the camps: 'They search us, they take pictures of us, and they escort us to the hospital,' a 28-year-old French woman said.







Young boy on crutches in Roj camp

## RSI documented four cases of European women who gave birth in their tents without medical assistance.

- 74.** Maternal and reproductive health care are non-existent in both camps. RSI documented four cases of European women who gave birth in their tents without medical assistance. One European mother told RSI:

*'The delivery was very difficult. I was down to my last ounce of strength because I hadn't eaten for a day. I was freezing. I was not able to push. The woman who was helping me started to be scared because I lost consciousness at some point. After twelve hours like this I finally gave birth.'*

- 75.** Another women who had a C-section in a makeshift medical setting in ISIL-held territory prior to arriving in the camps was then not provided the necessary care upon arrival. 'I'm not recovered from it. It's very painful and I have a thick scar. I had an epidural. Until now I have electric shocks in my neck and spine and my left upper leg doesn't have any feeling,' she said.

- 76.** Given the lack of adequate care, and the unhygienic and cramped physical conditions, Covid-19 has been a significant concern. The first detainee case was recorded at the al Hol camp on 10 August 2020,<sup>54</sup> following three cases among healthcare staff on 6 August 2020. Current infection rates and numbers of cases are unknown, given significant gaps in detection and testing capacity both within the camps and across North East Syria more broadly. Further, the



risk posed by Covid-19 has worsened the existing health concerns of many camp residents, with significant numbers of detainees already suffering from pre-existing conditions such as diabetes, hypertension, asthma, and heart conditions. The UN OCHA has reported that medical and health screenings which would normally be offered in the camps, such as malnutrition screenings, have had to be curtailed as a result of the risk of further Covid-19 transmission.<sup>55</sup>

- 77.** In addition, the healthcare and logistical infrastructure of North East Syria generally has been placed under considerable strain by the pandemic. The closure of the Yaroubiya border crossing (between northern Iraq and the AANES) in January 2020 has resulted in severe disruption to services and closure of health facilities in the region, and has led to critical shortages of insulin, PPE, and ventilators. By mid-August 2020, only one of the three major field hospitals was still operating, running a reduced service. Recent estimates suggest that 75% of humanitarian facilities lack sufficient PPE to last the 2020/2021 winter, with healthcare workers forced to ration PPE, at significant risk of infection and spread of the disease.<sup>56</sup>

## Education and Development

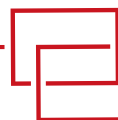
**The team observed delayed physical and cognitive development among the children it assessed: 'I saw a one-and-a-half-year-old girl who looked like a six-month-old baby. Some two-year-old children don't know how to walk'**

- 78.** Setting aside immediate risks, the adverse effects of detention in the camps for children's long-term development are clear, and undermine children's rights to education. A Belgian medical team visited the al Hol and Roj camps in 2018 and 2019 to assess 41 Belgian children under five years old. The team observed delayed physical and cognitive development among the children it assessed: 'I saw a one-and-a-half-year-old girl who looked like a six-month-old baby. Some two-year-old children don't know how to walk,' said one member of the team. The lack of stimulation and the stressful environment hampers cognitive development. As Professor Loots told RSI, 'They have no possibility to develop. They are not able to play and be curious. Another problem is that they are not stimulated, not challenged cognitively. No experience is possible. They sit there and survive. The eldest one we assessed had a cognitive and language delay.' One Belgian mother told RSI, 'My child is suffocating in his ignorance.'
- 79.** There are no formal schooling facilities in the camps. Some informal education is offered by NGOs for a few hours a day in the al Hol Annex. 'They attend class from 8am to 10.30am. They are currently learning the Arabic alphabet, the English alphabet, Arabic numbers, music, and they play. The class is crowded,' a British mother said. But with thousands of children detained, the NGOs with access to the facilities lack capacity to provide effective services.

**80.** In the al Hol Annex, Save the Children provides preschool activities to children from three to five years old. In the Roj camp, there is a temporary learning space accessible to children. But many women in the camps do not send their children to the learning space because they do not see the use. 'They go to a sort of school, but it has been two years and they don't know how to read and write. It's more after-school activities. It's not a good system. And home schooling is difficult because we have no books,' said a mother of four in the Roj camp.

**The children's lack of education is a long-term concern. 'They will become stupid if they stay too long in the camp,' said a Dutch mother of three who has been detained for more than two years.**

**81.** The children's lack of education is a long-term concern. 'They will become stupid if they stay too long in the camp,' said a Dutch mother of three who has been detained for more than two years. The lack of educational growth will make the transition for European children back home a particular challenge. 'You can't put a seven-year-old in preschool with a four-year-old,' said Professor Loots, referring to the return of children to Europe. 'But it is their level. Not because they lack capacity but because they lack stimulation. The longer they stay, the bigger the delay will be, and the more difficult integration will be.'



## V. EUROPEAN STATES' INFLUENCE, INVOLVEMENT, AND POWERS TO BRING THE DETENTION AND SUFFERING OF EUROPEAN WOMEN AND CHILDREN TO AN END

**82.** Under the auspices of the Global Coalition to Defeat Daesh/ISIL, formed in September 2014, 83 States, including Belgium, France, Germany, the Netherlands and the UK, have been cooperating militarily with the SDF in its fight against ISIL. Members of the Global Coalition have provided, and some continue to provide, military support to the SDF, including through the provision of fighter aircraft. Some members are also providing ongoing training to Iraqi and Kurdish security personnel, though it is unclear whether this is also provided to the SDF (this is the subject of ongoing research by RSI and will be addressed in further detail in the upcoming second report).<sup>57</sup> In addition, some sources have suggested that the Global Coalition may be providing financial support directly to the SDF and/or AANES for training and to support the holding of ISIL fighters in prisons and their family members in the camps, though the extent to which this is true is not yet clear and will be the subject of further investigation ahead of publication of our forthcoming second report.<sup>58</sup>

**83.** Among European States, France has gone furthest in establishing explicit political links with the AANES regime.<sup>59</sup> But the remainder of the European States participating in the Global Coalition nevertheless provide some degree of humanitarian assistance in the region, and participate in informal 'partnerships' with the SDF.<sup>60</sup> The UK Government has repeatedly expressed its commitment to assisting the SDF. On 14 January 2019, then Secretary of State for Defence, Gavin Williamson, stated 'I am continuing discussions ... to ensure that we do everything we can to continue to support the SDF,'<sup>61</sup> and on 24 February 2020, the Minister of State for the Foreign Office, Lord Ahmad of Wimbledon, repeated that 'we ... regard the SDF very much as a partner in this fight.'<sup>62</sup>

**A report in *The Times* by journalist Anthony Lloyd, who visited the camps in late October 2020, confirmed that he saw British Special Forces present on the ground in the Roj camp speaking with camp authorities.**

**84.** In addition, RSI's sources on the ground have revealed that most, if not all, of the European States the subject of this report have had, and some continue to have, a presence in the camps, either military, diplomatic, police, and/or intelligence.<sup>63</sup> Often this is denied by those States when questioned. For example, in response to a parliamentary question on the subject, the UK Minister of State for the Foreign Office, Lord Ahmad of Wimbledon, stated on 16 November 2020 that 'Her Majesty's Government does not have any presence in al Hol and Al [sic] Roj internally displaced persons camps in north-east Syria.'<sup>64</sup> This is directly contradicted by a report in *The Times* by journalist Anthony Lloyd, who visited the camps in late October 2020 and confirmed that he saw British Special Forces present on the ground in

the Roj camp speaking with camp authorities.<sup>65</sup> He also stated that the British Special Forces appeared to have an established protocol, suggesting that this was a regular occurrence. In an interview with RSI, Dr Abdulkarim Omar, Co-Head of the Department of Foreign Relations of the AANES, stated that '[a]lmost all European countries have intelligence services who conduct investigations and have all the information on people there.'<sup>66</sup> In addition, he directly confirmed that intelligence officers from the UK, Belgium, France, Germany, and the Netherlands, had had a presence in the camps.<sup>67</sup>

- 85.** Indeed, it appears that European States may have an influence over the camps to the extent that they are able to direct what happens on the ground from afar. For example, there are reports that the parents of French nationals detained in the camps were given authorisation by the Kurds to enter the camp, but upon arrival were denied entry on the basis of their nationality and told that a special prohibition was imposed upon her 'from high up'. In addition, RSI's research suggests that on some occasions when information obtained from individuals in the camps was shared with their State's Government, these individuals were searched within hours by camp authorities in an attempt to reveal the means of communication with the outside world.<sup>68</sup>

## **The European States that are the subject of this report have the sole ability to end the detention of their nationals.**

- 86.** The European States that are the subject of this report have the sole ability to end the detention of their nationals. The AANES have made repeated requests for foreign States to repatriate their nationals and have made clear that they will not release them unless and until these States repatriate them.<sup>69</sup> Contrary to what has been stated by some European politicians, repatriation of their nationals from the al Hol and Roj camps is logistically possible and does not pose an insurmountable safety risk to the State officials involved. This is evidenced by the fact that some repatriations have already been carried out by all five of the European States that are the subject of this report and that there is evidence of a number of States having had a presence on the ground.<sup>70</sup>

## **REPATRIATION PATHWAYS**



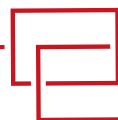


**Contrary to what has been stated by some European politicians, repatriation of their nationals from the al Hol and Roj camps is logistically possible and does not pose an insurmountable safety risk to the State officials involved.**

- 87.** In an interview with RSI, Anne Speckhard, Director of the International Center for the Study of Violent Extremism ('ICSVE') who has been involved in a number of repatriation processes, stated that she has never seen the SDF outright refuse to release individuals to their State of nationality for repatriation.<sup>71</sup> On the basis of RSI's research it is clear that the SDF have only ever permitted the removal of persons to States other than their State of nationality when explicit prior consent has been obtained from the State of nationality.<sup>72</sup> This is unsurprising given that the engagement of the State of nationality is required to ensure that the individual being removed has access to appropriate documentation, including replacement or emergency passports or travel documents. Accordingly, responsibility squarely falls with the States of nationality as the only authorities to whom the SDF are likely to respond.
- 88.** Past practice demonstrates that once a State decides to repatriate certain individuals, the State will avail itself of a pre-established and tested repatriation method. This entails a number of steps: first, State officials meet with AANES officials to discuss the transfer; second, identity checks (which can take the form of DNA testing) are carried out;<sup>73</sup> third, a formal agreement is typically signed by foreign State and AANES officials, as occurred in the agreements signed to repatriate Dutch and French children on 10 June 2019, British children on 21 November 2019, and Norwegian nationals in January 2020; fourth, nationals are then typically delivered to foreign State officials and then removed from AANES territory (often by military aircraft using foreign military bases (US or Russian) in Syria)<sup>74</sup> or from the city of Erbil in Kurdish-controlled Iraq, to where detainees may be transported by SDF officials.<sup>75</sup>
- 89.** Further, as detailed above, European States appear to have some form of military or intelligence presence on the ground which may facilitate repatriations in practice, and the United States has offered to facilitate repatriation efforts alongside transport of ISIL suspects to trial and detention outside Syria.<sup>76</sup>
- 90.** But rather than take steps to repatriate their nationals detained in the al Hol and Roj camps, European States have adopted a policy of consigning these detainees to indefinite unlawful detention in North East Syria rather than to bring them home to face justice and be dealt with properly according to law and in lawful conditions. Indeed, all five States which are the subject of this report have gone so far as to pass legislation permitting them to withdraw detainee nationals' citizenship *in absentia*,<sup>77</sup> creating new obstacles to repatriation and further complicating the question of State responsibility for those women and children as they remain in Syria.
- 91.** The asserted justification for doing so has been the alleged security threat posed by these detainees. In the case of the UK, this was confirmed by the Foreign Office Minister, Lord Ahmad, who stated on 16 November 2020 in response to a parliamentary question on the subject that 'Her Majesty's Government's assessment remains that risks posed by those adults who travelled to Syria are best managed outside the UK.'<sup>78</sup>

## VI. SECURITY CONCERNS ARISING FROM THE CAMPS

- 92.** Concerns that all detainees held in the camps are simply too dangerous to be returned are not convincing. First, the risk profile of the women and children detained in North East Syria is heterogeneous. RSI's research suggests that some women were deceived into joining ISIL and forced or otherwise manipulated into travel to Syria by their husbands or ISIL recruiters.<sup>79</sup> Some of the women and families to whom RSI spoke alleged kidnapping, others reported being tricked into thinking they were travelling to the region to undertake humanitarian work. In other cases, women felt a duty to follow their husbands, or felt obliged for financial reasons. It is also true that a significant proportion of the women who originally travelled to Syria did so knowing that they were joining ISIL, albeit that many of them have said that they did not fully understand the consequences of doing so, or the true nature of the ISIL regime. For many of the women interviewed by RSI, Islamophobic treatment in their countries of origin influenced their decision to travel to Syria, with many saying that they went there in search of somewhere they could live and practise their religion in peace. One detainee interviewed by RSI spoke of how 'it was difficult in Germany; someone spat on me because I was wearing a veil.' Another woman described how 'my husband felt that even living in an unstable country would be better than feeling foreign in our country because of a veil or a beard.' The International Centre for the Study of Violent Extremism ('ICSVE') has reported similar findings after speaking with 38 women associated with ISIL.<sup>80</sup>
- 93.** ICSVE's report explains that '[i]nternet recruiters often were seductive to these women, promising marriage, significance in ISIL and traditional lifestyles.'<sup>81</sup> It is widely acknowledged that at least some of the women who travelled to Syria were groomed by internet recruiters.<sup>82</sup> As noted above, a commonly cited influence on women's decision to travel to Syria came from their husbands. ICSVE reports that 'many women followed husbands, some fearing emotional or financial abandonment.'<sup>83</sup> Many of the women who RSI spoke to in the camps spoke of the decision as being pre-eminently that of their husbands.<sup>84</sup> Whilst some women actively supported this decision, others felt unable to resist out of a sense of duty to *inter alia* their husbands and/or families or for reasons of financial and/or emotional dependence.<sup>85</sup>
- 94.** It is significant that most of the women RSI spoke to in the camps had quickly become disillusioned by life under ISIL and some had attempted to escape. However, in most cases, escape proved impossible as women were prevented from doing so by either their husbands or ISIL itself. One family member that RSI interviewed explained that her daughter had tried to escape with her children, but that ISIL has caught them and sent them to prison, saying 'if you try to run away again we will kill you and your children.'
- 95.** A high proportion of women and children who travelled to Syria and have found themselves detained in the al Hol and Roj camps either never were, or are no longer, committed to the ISIL cause, and therefore pose no overwhelming security risk justifying lengthy detention at all, let alone detention without any proper legal process, investigation, or



charge. Each of the UK, Belgium, France, Germany, and the Netherlands have specific legal and policy frameworks in place to manage the return of women and children from the camps and the assessment, monitoring, and legal processing of returnees from Syria more generally.<sup>86</sup> The UK Government estimates that 40% of the 900 British nationals who originally travelled to Syria to join or support ISIL have, one way or another, returned to the UK, and that 'a significant proportion of these individuals are assessed as no longer being of national security concern.'<sup>87</sup> States are, where necessary, able to draw upon their experiences with rehabilitation, reintegration, and risk management of terrorist offenders in, and released from, domestic prisons. A US government official interviewed by RSI noted that 'this is not a new challenge that we're undertaking and this has been done for decades in various conflicts. There's a vast body of research to show that it's very possible to do this.'

## ■ The real security threat is represented by the camps themselves.

- 96.** The real security threat is represented by the camps themselves. Security experts harbour very serious concerns that the continued detention of women and children in the camps in North East Syria represents a long-term threat by way not only of radicalization to violence and trauma for those housed there but also the rallying impact of the abuses there for ISIL and ISIL inspired groups worldwide. According to the UN Security Council ISIL Sanctions Committee, 'the current improvised holding arrangements are a recipe for radicalization to violence and despair, especially in the case of minors.'<sup>88</sup> In the closed environment of the camps, with minimal educational or vocational opportunity or alternative stimulation, women and children are vulnerable to indoctrination from the proportion of detainees who remain committed to the ISIL cause.

**According to the UN Security Council ISIL Sanctions Committee,  
'the current improvised holding arrangements are a recipe for  
radicalization to violence and despair, especially in the case of minors.'**

- 97.** One senior United States counter-terrorism official described the North East Syrian camps to RSI as a 'powder-keg,' explaining:

*'I think the question is do you deal with it now or do you wait until the situation is far worse. I think any national security professional would tell you that the situation on the ground is propitious for radicalization. It's a situation where people are ripe for further recruiting by terrorist organizations. This is especially true for their children ...'*



“I think the question is do you deal with it now or do you wait until the situation is far worse. I think any national security professional would tell you that the situation on the ground is propitious for radicalization. It’s a situation where people are ripe for further recruiting by terrorist organizations. This is especially true for their children ...”

98. Another US official warned that ‘if countries aren’t willing to take back their citizens, especially the children, and give them a shot at a normal life and normal education, then the alternative is that they end up staying in Syria and becoming the next generation of ISIS.’

“The longer they stay without proper assessment of their mental and physical health or their attitudes towards their families, communities, and countries, the more unpredictable they will become. And the more difficult it will be to determine what they’re going to do.”

99. Similarly, Richard Barrett, the former MI6 Director of Global Counter-Terrorism told RSI that:

*‘The longer they stay without proper assessment of their mental and physical health or their attitudes towards their families, communities, and countries, the more unpredictable they will become. And the more difficult it will be to determine what they’re going to do.’*

100. The risk is recognised by the SDF itself. As SDF General Mazloum Kobani Abdi has stated, the SDF lack resources to administer the camps and as a result ‘Daesh are regrouping and reorganising in the camp. We can’t control them 100 percent, and the situation is grave.’<sup>89</sup>
101. The risks associated with radicalisation to violence within the camps are exacerbated by the uncertain security situation which pertains in North East Syria. Security officials worldwide retain significant concerns that an offensive by either Turkish or Assad-loyal Syrian forces against the AANES raises the possibility of reinvigorated conflict and the abandonment of camp positions by the SDF. Already, there have been numerous reports of escapes from the camps, and dozens of women left the al Hol camp in October 2019 with the assistance of smugglers. Their motivations and destinations are unknown.
102. With a traumatized population, some retaining links with ISIL and many at risk of radicalization to violence, the future of the region causes significant concern to security officials. As Nathan Sales, the US State Department’s Coordinator for Counterterrorism commented, ‘Today the situation with [foreign terrorist fighters] in Syria may seem relatively stable, but it’s Syria. We know that things can change in the blink of an eye. We think there should be a sense of urgency to repatriate now while we still can.’<sup>90</sup>



**103.** The policy alternatives to repatriation that have been proposed by States that are unwilling to repatriate are neither viable nor rights compliant. One option that has been proposed by the AANES authorities is that they charge and prosecute those currently detained.<sup>91</sup> Notwithstanding the evident absence of a legal basis for the AANES to conduct prosecutions, those authorities lack the requisite judicial infrastructure to guarantee detainees either humane detention facilities or their due process rights. Furthermore, such a policy does nothing to account for the hundreds of children whose mothers will be subject to detention, and simply postpones all security concerns to when they are eventually released (on acquittal or after serving a sentence). There has also been discussion about whether camp detainees could be transferred to Iraq to face prosecution.<sup>92</sup> However, Iraqi trials for those affiliated with ISIS are burdened with accusations of torture-confessions, violations of basic due process guarantees, and have frequently concluded in the death penalty - even for those charged with the most rudimentary support roles.<sup>93</sup> Accordingly, the only viable and rights compliant option is for States to repatriate their nationals.



## VII. FUNDAMENTAL LEGAL QUESTIONS

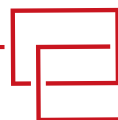
**104.** Given the questionable legality of the circumstances of the detention of women and children in the al Hol and Roj camps, and given the relationships between European States and the AANES/SDF authorities and the influence European States are able to wield in respect of their nationals in the camps, RSI considers that there are serious questions as to European States' legal responsibility for violations committed against the detained women and children. In this section, RSI briefly sets out some of the realistic arguments establishing European States' own legal responsibility for the ongoing detention and intolerable conditions experienced by their nationals in the North East Syria camps so as to underscore the imperative for European action. An exhaustive technical legal analysis of the situation will be provided in the forthcoming report 'Closing Europe's Guantanamo,' due for publication in early 2021.

### Obligations to Prevent Violations of Fundamental International Norms

**105.** The fact that the detainees in the camps are within the physical control of the SDF and the AANES does not mean that responsibility as a matter of international law would end with them. The principles of sovereignty and non-intervention which normally prevent foreign States from bearing responsibilities for what is occurring across borders are important, but are far from absolute as a matter of international law, especially where non-State actors and situations of compromised sovereignty are concerned. Basic standards of international humanitarian law justify, and indeed may well demand, intervention from bystander States. Basic norms of international law are binding *erga omnes* - that is, they are obligations which, as the International Court of Justice has consistently stated '[b]y their very nature ... are the concern of all States' and so '[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection.'<sup>94</sup>

**106.** States not only have a legal interest in the protection of these basic norms, they are also expected to comply with them. As a matter of international law generally, the International Court of Justice has noted that, once a situation has been determined to constitute a serious breach of international law, that situation 'cannot remain without consequence' and so 'there is an obligation [upon States] to bring that situation to an end.'<sup>95</sup> The International Law Commission - the most authoritative body of international legal experts tasked with codifying international law - has reiterated this obligation in Article 41 of the Articles on State Responsibility,<sup>96</sup> which have been repeatedly endorsed by the United Nations General Assembly.<sup>97</sup>

**107.** Where serious violations of international humanitarian law are concerned, customary international law<sup>98</sup> and Common Article 1 to the Geneva Conventions (to which all States are signatories) oblige States to refrain from encouraging violations of international humanitarian law by any party to an armed conflict, and also positively require States to exert their influence, to the degree possible, to bring violations of international humanitarian law



to an end. The Red Cross has consistently advised States that the obligation under Common Article 1 to 'ensure respect' for the Conventions is not limited to behaviour only by parties to the conflict, and requires that States internationally do everything lawfully in their power to ensure that international humanitarian law is respected and not violated.<sup>99</sup> In the context of international humanitarian law, the International Court of Justice has specifically stated that all States are 'under an obligation not to recognize [an] illegal situation' and 'also under an obligation not to render aid or assistance in maintaining the situation created...'<sup>100</sup> But, going further, the Court also held that all States have a positive obligation 'to see to it that any impediment, resulting from' the violation of international law 'is brought to an end.'<sup>101</sup>

108. Where international obligations are specifically defined as obligations to *prevent* harms to civilians it is well established that a State breaches its *own* legal obligations when non-State actors, which the State could have taken steps to influence, commit violations. In the *Bosnian Genocide* case, the International Court of Justice held that the Federal Republic of Yugoslavia ('FRY')<sup>102</sup> was responsible when it failed to take steps to prevent the Srebrenica massacre carried out by the non-State Republika Srpska ('VRS') forces, even though the massacre occurred outside FRY territory and there was no evidence that the FRY directed or controlled the VRS. States are expected to discharge a duty of *due diligence*, where they take all measures (if any) within their power which might contribute to the prevention or continuance of an illegal state of affairs.<sup>103</sup> As to this due diligence obligation, '[v]arious parameters operate when assessing whether a State has duly discharged the obligation concerned. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing' the fundamental breach.<sup>104</sup>
109. On the basis of RSI's factual investigations, it is clear that a series of fundamental breaches of international law are taking place in North East Syria. First and foremost, thousands of women and children are being held by the SDF without charge, without any apparent legal basis, and without even any proper individual consideration of the security risk (if any) each of them may pose. This detention is indefinite and the women and children held have no recourse to judicial authority to have the legality of their detention reviewed. Such unlawful and arbitrary detention violates a fundamental norm of international law, consistently prohibited across customary international law, international humanitarian law, and human rights law.
110. Further, the conditions in which the women and children are being held, and the treatment to which they are subject, including the pervasive atmosphere of physical violence, the general lawlessness of the camps, the threat of disappearances of male children, and the depravity of the living conditions, arguably constitutes inhumane treatment contrary to Common Article 3 of the Geneva Conventions and international human rights standards.
111. Further, there is a real argument that the extremity of the situation in the camps may qualify as torture under international law, given that physical violence is accompanied by inadequate basic living conditions, illness, the permanent fear for mothers of their male children being



disappeared without warning, and the psychological impact of there being no prospect that detention will be brought to an end. International legal bodies have, in other contexts, such as longstanding domestic violence, identified the cumulative psychological effects of physical mistreatment, threats, and the absence of escape as potentially satisfying the high threshold for classification as torture.<sup>105</sup> For treatment to constitute torture, it must also have a purposive element, which can be satisfied where the treatment is meted out to individuals as a form of punishment or intimidation,<sup>106</sup> or targeted at women and thus a form of discrimination.<sup>107</sup> And it is well-established that, while the definition of torture at international law requires some form of link to public officials rather than purely private violence,<sup>108</sup> the actions or omissions of non-State forces with regional *de facto* control can satisfy the definition.<sup>109</sup>

**Further, there is a real argument that the extremity of the situation in the camps may qualify as torture under international law, given that physical violence is accompanied by inadequate basic living conditions, illness, the permanent fear for mothers of their male children being disappeared without warning, and the psychological impact of there being no prospect that detention will be brought to an end.**

**112.** It is no answer to the charge of torture that the extreme risks and trauma to which women and children in the al Hol and Roj camps are subject are as much a product of the environment as of specific SDF actions. The UN Committee Against Torture has emphasized that, where authorities know or have reason to believe that severe harm is being suffered by individuals, those officials ‘should be considered as authors, complicit or otherwise, responsible under [international law] for consenting to or acquiescing in such impermissible acts.’<sup>110</sup> The failure of the SDF to prevent widespread physical violence, mental strain, and illness in the camps, to which the SDF’s positive actions of forcible removal of children and indefinite unlawful detention add a further layer of trauma, raises a *prima facie* charge of torture committed to punish these women and children for their prior links to ISIL. Such a fundamental breach of international law demands a response from those States within the international community capable of affecting the situation on the ground for at least that subset of the detainees which constitute their own nationals.

**113.** States are not entitled simply to sit by while such fundamental breaches of international law unfold. As set out in detail above, it appears that the arrangements both at the diplomatic level and on the ground mean that European states have a direct capacity to influence the SDF and the AANES authorities, and the direct means to bring the unlawful and intolerable detention of their nationals currently held in the al Hol and Roj camps to an end. European States can do so through consenting to repatriation of these women and children so that they can be dealt with according to law and in acceptable conditions at home. By refusing to request repatriation European States are failing in their basic duty of not to recognize or maintain a situation which constitutes a serious breach of international law.





## Responsibility for Violations of Human Rights Via Capacity to Effect Rights

- 114.** In addition, European States are at very real risk of liability for the human rights abuses suffered by their nationals in detention in North East Syria. While States are most commonly responsible for breaches of human rights which occur within their own territory,<sup>111</sup> international law recognises a variety of situations in which States may have broader responsibility for human rights violations occurring elsewhere. Two such situations are where a State: (a) exercises physical control or authority over persons extraterritorially (where they are, for instance, in the State's external custody or the custody of its agent, albeit on foreign soil);<sup>112</sup> or (b) exercises *effective control* over an area outside the State's territory (by, for instance, an external military presence in a war zone overseas).<sup>113</sup>
- 115.** Modern international lawyers argue that these various models of State responsibility are all ways of giving effect to a more basic question, namely whether or not a State has, as a matter of fact in any given situation, '*power or control over the enjoyment of*' relevant human rights.<sup>114</sup> That way of looking at things - dubbed the *functional approach*<sup>115</sup> - recognizes that there will be circumstances where, by dint of the arrangements between countries in a specific circumstance, a State will have the ability to affect compliance with (or violation of) human rights outside its territory.
- 116.** Thus, in the context of the fundamental human right to life, the UN Human Rights Committee has clarified that every State:

*'has an obligation to respect and to ensure the rights ... of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner.'*<sup>116</sup>

- 117.** As Judge Bonello of the European Court of Human Rights put it in his concurring opinion in the case of *Al-Skeini v United Kingdom*:

*'States ensure the observance of human rights in five primordial ways: firstly, by not violating ... human rights; secondly, by having in place systems which prevent breaches of human rights; thirdly, by investigating complaints of human rights abuses; fourthly, by scourging those of their agents who infringe human rights; and finally, by compensating the victims of breach of human rights. These constitute the basic minimum functions assumed by every State ...*

*Very simply put, a State has jurisdiction ... whenever the observance or the breach of any of these functions is within its authority and control...*



*Jurisdiction means no less and no more than “authority over” and “control of.” In relation to [human rights obligations], jurisdiction is neither territorial nor extra-territorial: it ought to be functional ...*

*The duties assumed [by States] go hand in hand with the duty to perform and observe them. Jurisdiction arises from the mere fact of having assumed those obligations and from having the capability to fulfill them (or not fulfill them).<sup>117</sup>*

- 118.** This way of looking at State responsibility for violations occurring overseas has recently been affirmed by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in her report on the investigation into the unlawful death of the Saudi journalist Jamal Khashoggi, which concluded that the State’s responsibility to protect the right to life ‘may be invoked extra-territorially in circumstances where that particular State has the capacities to protect the right to life of an individual against an immediate or foreseeable threat to his or her life.’<sup>118</sup>

**As such, European States arguably bear direct responsibility for those same human rights violations, and are obliged to bring them to an end by the means available to them – namely, repatriation so that the women and children detained can be dealt with according to law and in conditions which reflect their basic humanity.**

- 119.** The results of RSI’s research in North East Syria are clear: the al Hol and Roj camps are the site of widespread violations of basic human rights, from the right to life and right to freedom from arbitrary detention to rights of humane and dignified treatment, rights to food, water, and health, and the rights of children to education. Those violations are occurring outside European territory, and European military forces are not in direct effective control of the camps. But European States cannot continue to adopt the position they have done to date, that this is all better managed off their shores, and watch these violations being perpetrated in real time, especially when, by virtue of their special relationships with the SDF and AANES, European States have clear power to control their detained nationals’ enjoyment of rights by bringing the unlawful conditions of detention in the camps to an end through repatriation. Those powers are capable of being exercised – indeed repatriations have occurred throughout recent years on a sporadic basis – and European States’ persistent refusal to repatriate their nationals *en masse* directly and reasonably foreseeably prolongs and exacerbates the human rights violations suffered by women and children in the al Hol and Roj camps. As such, European States arguably bear direct responsibility for those same human rights violations, and are obliged to bring them to an end by the means available to them – namely, repatriation so that the women and children detained can be dealt with according to law and in conditions which reflect their basic humanity.

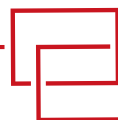
## VIII. CONCLUSIONS

- 120.** This report documents the legal black hole and dire conditions in which European women and children are detained in ISIL associated camps in North East Syria. Like the terrorism suspects detained at Guantanamo Bay, these women and children are afforded no legal rights or protections and are subjected to inhumane and brutal conditions. The numbers are staggering: these camps hold more European children – most under five years old – than the entire population of Guantanamo Bay at its peak. The report makes clear that European States have taken a decision to manage the possible security risk that these women and children pose by leaving them in detention camps in North East Syria, and it is they alone who have the ability to end it. Yet instead of complying with their moral and legal obligations by repatriating their nationals, European States have adopted policies and practices that maintain the legal black hole in which these women and children find themselves. In some cases, they have taken steps to place these women and children further outside the law.
- 121.** While European States claim that their security is best served by having these women and children detained by the Kurdish authorities in North East Syria, security experts have serious concerns about this policy. These security experts have stated that the real threat to state security comes from leaving people in a place where they are vulnerable to being radicalized to violence, especially in the case of minors, and where their dire situation can serve as a recruitment tool and rallying cry for ISIL and ISIL inspired groups worldwide. The most effective, and in fact only viable long-term solution, is for European States to safely manage the return of these women and children, using the same law and policies under which they have dealt with returnees from Syria and Iraq since the beginning of the conflict.
- 122.** European States rightly and roundly condemned the arbitrary detention of terrorism suspects by the United States in Guantanamo Bay. But European States are now re-enacting the United States' mistakes in Syria. European States have the means to bring this disaster to an end, and cannot ignore their responsibilities any further. Their refusal to do so is nothing short of a moral and legal aberration and poses a significant long-term security risk.
- 123.** RSI calls on the European States the subject of this report to repatriate their women and children from the camps in North East Syria without further delay.



# ENDNOTES

- 1 Individual States have accepted limited delegations from the AANES. The AANES opened a representation office in Russia in February 2016 and for the Benelux countries in The Hague in September 2016.
- 2 Prior to October 2019, a third, smaller camp was in operation at Ain Issa in the Raqqa Governorate close to the Turkish border. Following the Turkish incursion in September 2019, this camp was abandoned, and the women and children detained there fled to neighbouring towns or across the border into Turkey.
- 3 UNICEF Press Release, 'Unwanted, exploited and abused: Tens of thousands of children in Al-Hol camp and several parts of Syria in limbo amid dire humanitarian needs' (July 2019) UNICEF Press Release', available at: <https://www.unicef.org/press-releases/unwanted-exploited-and-abused-tens-thousands-children-al-hol-camp-and-several-parts>.
- 4 Case No IT-94-1 *Prosecutor v Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995 [70].
- 5 See: Rome Statute of the International Criminal Court (Rome, 17 July 1998) UN Doc. A/CONF.183/9 of 17 July 1998, entered into force 1 July 2002, Article 8(2)(d).
- 6 M Milanovic, 'The End of Application of International Humanitarian Law' (2014) 96(893) *International Review of the Red Cross* 163, 179-180. See also: *Tadic* (n 4), [70]; and Case No IT-04-84-T *Prosecutor v Haradinaj et al*, Judgment (Trial Chamber), 3 April 2008 [100].
- 7 Milanovic (n 6), 180-181; R Bartels, 'Temporal Scope of Application of IHL: When Do Non-International Armed Conflicts End? Part 2' (*Opinio Juris*, 19 February 2014), available at: <http://opiniojuris.org/2014/02/19/guest-post-bartels-temporal-scope-application-ihl-non-international-armed-conflicts-end-part-2/>; ICRC, 'Commentary of 2016: Article 3 [Geneva Convention I]' ('2016 ICRC Commentary'), [491].
- 8 According to the International Committee of the Red Cross ('ICRC'), '[t]he question of whether humanitarian law provides inherent authority or power to detain is, however, still subject to debate.' See: 2016 ICRC Commentary (n 7), [727]. See, for instance: L Hill-Cawthorne, *Detention in Non-International Armed Conflict* (OUP, 2016); D Murray, 'Non-State Armed Groups, Detention Authority in Non-International Armed Conflicts, and the Coherence of International Law: Searching for a Way Forward,' (2017) 30(2) *Leiden Journal of International Law* 1; A Clapham, 'Detention by Armed Groups under International Law' (2017) 93 *International Law Studies* 1.
- 9 *Serdar Mohammed v Secretary of State for Defence* [2017] UKSC 2, [2017] AC 821 (UKSC), [258]-[276] (Lord Reed); and at first instance in *Mohammed v Ministry of Defence* [2014] EWHC 1369 (QB), [241]-[251] (Leggatt J).
- 10 See L Hill-Cawthorne and D Akande, 'Does IHL Provide a Legal Basis for Detention in Non-International Armed Conflicts?' (*EJIL:Talk!*, 7 May 2014), available at: <https://www.ejiltalk.org/does-ihl-provide-a-legal-basis-for-detention-in-non-international-armed-conflicts/>.
- 11 J-M Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (CUP 2005) ('ICRC Rules'), Rule 99; and Working Group on Arbitrary Detention Report, UN Doc. A/HRCC/22/44 (24 December 2012) ('Working Group Report'), [43]-[45].
- 12 ICRC, *Internment in Armed Conflict: Basic Rules and Challenges* (Opinion Paper, November 2014) 8; ICRC, *Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence* (Vol 87 No 858, June 2005), 377.
- 13 ICRC, *Internment in Armed Conflict* (n 12) 9; ICRC, *Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence* (n 12) 380.
- 14 ICRC, *Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence* (n 12) 381, 382.
- 15 Ibid 385-6, 388-9.
- 16 Working Group Report (n 11), [43]-[45]. See also the decision of the International Court of Justice in *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)* [1980] ICJ Rep 42, [91].
- 17 Human Rights Committee, *Mukong v Cameroun*, UN Doc. CCPR/C/51/D/458/1991 (10 August 1994), [9.8].
- 18 Working Group Report (n 11), [63].
- 19 Human Rights Committee, *Abbassi and Madani v Algeria*, UN Doc. CCPR/C/89/D/1172/2003 (21 June 2007), [8.4].
- 20 Working Group Report (n 11), [47].
- 21 See Universal Declaration of Human Rights (10 Dec. 1948), UN GA Res 217 A (III) (1948) ('UDHR'), Article 5; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 10 Dec. 1984) 1465 UNTS 85, 23 I.L.M. 1027 (1984), as modified by 24 ILM 535 (1985), entered into force 26 June 1987. ('CAT'), Article 1; International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 UNTS 171 and 1057 UNTS 407, entered into force 23 Mar. 1976 ('ICCPR'), Article 7; and European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 Nov. 1950), 312 ETS 5 ('ECHR'), Article 3.
- 22 On non-State actor responsibility for torture, see: *Sadiq Shek Elmi v Australia*, CAT/C/22/D/120/1998, UN Committee Against Torture (CAT), 25 May 1999 ('*Elmi*'); and *HMNI v Australia*, CAT/C/28/D/177/2001, UN Committee Against Torture (CAT), 1 May 2002 ('*HMNI*').
- 23 ICRC, *Geneva Conventions I-IV*, Common Article 3.1(1).
- 24 Ibid art 3.1(1)(c). The additional standards often applicable to a NIAC under Additional Protocol II have no application as Additional Protocol II does not apply where the parties to the NIACs are non-State actors, or where the State party directly involved is not a signatory (as the Syrian Arab Republic is not in this case).
- 25 ICRC Rules (n 11), Rule 121.
- 26 ICRC Rules (n 11), Rule 128.
- 27 ICRC Rules (n 11), Rule 134.
- 28 ICRC Rules (n 11), Rule 135.
- 29 ICCPR (n 21), Article 9(1); and ECHR (n 21), Article 5(1).
- 30 Convention on the Rights of the Child (New York, 20 Nov. 1989) 1577 UNTS 3, entered into force 2 Sep. 1990 ('CRC'), Article 37.
- 31 ICCPR (n 21), Article 7; and ECHR (n 21), Article 3.
- 32 UNDHR (n 21), Article 3; and ICCPR (n 21), Article 6.

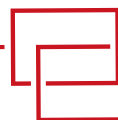


- 33 International Covenant on Economic, Social, and Cultural Rights (New York, 16 Dec. 1966) 999 UNTS 3, Article 11(1); and CRC (n 30), Article 27(1).
- 34 ICESCR (n 33), Article 12(1). See also the preamble to the 1946 Constitution of the World Health Organization.
- 35 ICESCR (n 33), Article 13; ECHR (n 21), Article 2 of the First Protocol; and CRC (n 30), Articles 28 and 29.
- 36 UDHR (n 21), Article 3; and ICCPR (n 21), Article 6.
- 37 UDHR (n 21), Article 3; and ICCPR (n 21), Article 9.
- 38 UDHR (n 21), Article 5; CAT (n 21), Article 1; and ICCPR (n 21), Article 7.
- 39 United Nations Office for the Coordinator of Humanitarian Affairs ('UN OCHA'), 'Syrian Arab Republic, North East Syria: Al Hol camp' (26 July 2020), available at: <https://reliefweb.int/report/syrian-arab-republic/syrian-arab-republic-north-east-syria-al-hol-camp-26-july-2020>.
- 40 RSI interview with Médecins sans Frontières, 11 February 2020.
- 41 RSI interviews with NGO workers in the camps, February 2020.
- 42 'More than 500 dead in Syria's Al-Hol in 2019: medics' *France 24* (16 January 2020), available at: <https://www.france24.com/en/20200116-more-than-500-dead-in-syria-s-al-hol-in-2019-medics>.
- 43 Save the Children, 'Syria: Child Death Rate Triples in Al-Hol Camp as Medical Access Deteriorates' (13 August 2020), available at: <https://www.savethechildren.org.uk/news/media-centre/press-releases/syria-al-hol-child-death-rate-triples>.
- 44 UNICEF Press Release (n 3).
- 45 RSI interviews with camp management, 12 February 2020.
- 46 UNICEF Press Release (n 3).
- 47 B Hubbard, 'What Is Going to Happen to Us?: Inside ISIS Prison, Children Ask Their Fate' *The New York Times* (Northeastern Syria, 23 October 2019), available at: <https://www.nytimes.com/2019/10/23/world/middleeast/what-is-going-to-happen-to-us-inside-isis-prison-children-ask-their-fate.html>; and A Kaval, 'Dans le nord-est de la Syrie, la mort lente des prisonniers jihadistes,' *Le Monde* (31 October 2019), available at: [https://www.lemonde.fr/international/article/2019/10/31/au-nord-est-de-la-syrie-dans-une-prison-de-djihadistes-de-l-ei-tous-les-jours-on-se-reveille-en-esperant-savoir-ce-qu-on-va-devenir\\_6017514\\_3210.html](https://www.lemonde.fr/international/article/2019/10/31/au-nord-est-de-la-syrie-dans-une-prison-de-djihadistes-de-l-ei-tous-les-jours-on-se-reveille-en-esperant-savoir-ce-qu-on-va-devenir_6017514_3210.html).
- 48 RSI interview with Kurdish Red Crescent, 3 February 2020.
- 49 UN OCHA, 'Syrian Arab Republic, North East Syria: Al Hol Camp Snapshot' (13 January 2019) ('al Hol Snapshot'), available at: <https://www.humanitarianresponse.info/en/operations/syria/infographic/syrian-arab-republic-north-east-syria-al-hol-camp-13-1-2020-en>.
- 50 UN OCHA, 'Syrian Arab Republic, North East Syria: Al Hol Camp Update' (26 July 2019), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/Al%20Hol%20Snapshot\\_26Jul2020.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Al%20Hol%20Snapshot_26Jul2020.pdf)
- 51 RSI interview with Professor Loots, a Belgian Professor of Psychology who travelled with a Belgian medical team to visit the camps in 2019, 18 December 2019.
- 52 al Hol Snapshot (n 49).
- 53 Ibid.
- 54 Save the Children, 'First Case of Coronavirus Appears Among Residents of Syrian Al Hol Camp' (10 August 2020), available at: <https://reliefweb.int/report/syrian-arab-republic/first-case-coronavirus-appears-among-residents-syrian-al-hol-camp>.
- 55 See: UN Resident Coordinator and Humanitarian Coordinator for Syria, 'Statement on the Humanitarian Situation in Al Hol' (13 August 2020), available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/Syria%20HC%20Statement%20on%20Humanitarian%20Situation%20in%20Al%20Hol\\_13Aug2020\\_English.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Syria%20HC%20Statement%20on%20Humanitarian%20Situation%20in%20Al%20Hol_13Aug2020_English.pdf)
- 56 International Rescue Committee, 'As COVID Cases Rise 1000% in Northeast Syria, IRC Calls on UN Security Council to Reopen Critical Yaroubiya Aid Crossing' (26 August 2020), available at: <https://reliefweb.int/report/syrian-arab-republic/covid-cases-rise-1000-northeast-syria-irc-calls-un-security-council>.
- 57 RSI interview with US foreign policy expert with extensive experience in North East Syria, 3 November 2020: the US have been providing training to the SDF.
- 58 RSI interview with Anne Speckhard, Director of the International Center for the Study of Violent Extremism (ICSVE), 29 October 2020; and RSI interview with US foreign policy expert with extensive experience in North East Syria, 3 November 2020.
- 59 In October 2019, President Emmanuel Macron hosted a senior SDF official at the Elysée Palace to show that France 'stands alongside' the SDF, see: 'France's Macron meets spokeswoman of Kurdish-led Syria forces, says he is 'very worried' *The New Arab* (9 October 2019), available at: <https://english.alaraby.co.uk/english/news/2019/10/9/frances-macron-very-worried-over-turkey-operation-in-syria>. In March 2019 France publicly thanked the SDF for its cooperation which enabled France to repatriate a number of children from the camps, see: Ministry for Europe and Foreign Affairs, 'Syria - Communiqué by the Ministry for Europe and Foreign Affairs' (15 March 2019), available at: <https://www.diplomatie.gouv.fr/en/country-files/syria/news/article/syria-communique-by-the-ministry-for-europe-and-foreign-affairs-15-03-19>. The French Government also sought to help mediate negotiations between different factions of the SDF, see: W van Wilgenburg, 'Syrian Democratic Forces (Syria),' available at: <https://ecfr.eu/special/mena-armed-groups/syrian-democratic-forces-syria/>. In March 2018, a delegation from the SDF met with President Emmanuel Macron to discuss the security and humanitarian situation in northern Syria and 'assured the SDF of France's support', see: Élysée, 'Entretien du Président de la République avec une délégation syrienne' (30 March 2018), available at: <https://www.elysee.fr/emmanuel-macron/2018/03/30/entretien-du-president-de-la-republique-avec-une-delegation-syrienne>. See also, in a recent case before the Committee on the Rights of the Child, the Committee stated that 'France exercises a military and political influence - not merely support - in this area with regard to the control of the situation of French children and their mothers detained by the SDF, which results from the treaty obligations binding France: Committee on the Rights of the Child, *LH et al v France* (Communication no 79/2019 and no 109/2019) UN Doc CRC/C/85/D/79/2019-CRC/C/85/D/109/2019, [2.15].
- 60 RSI interview with US foreign policy expert with extensive experience in North East Syria, 03 November 2020: defined the relationship between some European States, particular the UK and France, and the SDF as a 'partnership'; RSI interview with Anne Speckhard, Director of ICSVE, 29 October 2020: the SDF are cooperative with European States, for instance by allowing their intelligence officials to enter the prisons and camps to speak with their foreign nationals held there.
- 61 HC Deb 14 January 2019, vol 652, col 792.
- 62 HL Deb 24 February 2020, vol 802, col 77.



- 63 RSI interview with US foreign policy expert with extensive experience in North East Syria, 3 November 2020: a number of countries, including Sweden, Finland, Germany, the UK and France – probably Belgium and maybe the Netherlands – have sent people (diplomatic, intelligence, military, police) into the camps at various times.
- 64 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>.
- 65 A Lloyd, *The Times* (25 November 2020)
- 66 RSI interview with Dr Abdulkarim Omar, Co-Head of the Department of Foreign Relations of the AANES, 10 February 2020.
- 67 Ibid.
- 68 See also RSI interview with Anne Speckhard, Director of ICSVE, 29 October 2020: French nationals she spoke with in the camps explained that they were refusing media and research interviews because French security officials warned them not to speak with anyone in the media or this might stop them from getting home.
- 69 R Said, A McDowall, P Graff, 'Syrian Kurds say they cannot hold foreign jihadists indefinitely' *Reuters* (20 September 2018), available at: <https://www.reuters.com/article/us-mideast-crisis-syria-foreign-fighters/syrian-kurds-say-they-cannot-hold-foreign-jihadists-indefinitely-idUSKCN1M02LN>; A Kaval, 'Les Kurdes demandent le depart des djihadistes éstrangers détenus en Syrie' *Le Monde* (8 October 2018), available at: [https://www.lemonde.fr/international/article/2018/10/08/djihadistes-etranangers-detenus-en-syrie-les-kurdes-demandent-leur-rapatriement\\_5366374\\_3210.html](https://www.lemonde.fr/international/article/2018/10/08/djihadistes-etranangers-detenus-en-syrie-les-kurdes-demandent-leur-rapatriement_5366374_3210.html); L Dearden, 'Shamima Begum: Syrian Kurds demand UK repatriates British teenager and other Isis members' *The Independent* (15 February 2019), available at: <https://www.independent.co.uk/news/uk/home-news/shamima-begum-isis-bride-syria-return-uk-blocked-pregnant-bethnal-green-kurds-a8780941.html> accessed 22 November 2020; 'Les Kurdes de Syrie dénoncent le refus des pays de l'UE de reprendre leurs djihadistes' *Le Figaro* (3 October 2018), available at: <https://www.lefigaro.fr/flash-actu/2018/10/31/97001-20181031FILWWW00254-les-kurdes-de-syrie-denoncent-le-refus-des-pays-de-l-ue-de-reprendre-leurs-djihadistes.php>.
- 70 See Annex III to this Report for a summary of repatriation efforts to date as publicly verified.
- 71 Though sometimes they will attempt to put conditions in place, such as requiring letters of requests to come from the State's foreign ministry, actual visits to request releases, and other acts of recognition: RSI interview with Anne Speckhard, Director of ICSVE, 29 October 2020.
- 72 The French authorities facilitated the repatriation of two Dutch children to the Netherlands in June 2019. At the time, Dr Abdulkarim Omar announced that, 'At the request of the Dutch government, the self-administration of North and East Syria handed over on June 9<sup>th</sup>, 2019, two orphaned Dutch children from ISIL families to a delegation from the Dutch Ministry of Foreign Affairs in the town of Ain Issa' (Twitter, 10 June 2019), available at: <https://twitter.com/abdulkarimomar1/status/1137985518724112384?lang=en>.
- 73 For example Russia took DNA samples from 49 orphans in order to confirm their link to Russian citizens on 17 December 2019, an action followed by two repatriation operation in early 2020, see 'Russia Tests ISIS Orphans' DNA Ahead of Repatriation' *The Moscow Times* (14 November 2019) available at: <https://www.themoscowtimes.com/2019/11/14/russia-tests-isis-orphans-dna-ahead-of-repatriation-a68176>.
- 74 Serbeze Haxhijaj, 'Kosovo Faces Challenge in reintegrating Families of ISIS Fighters' *Balkan Insight* (5 September 2019), available at: <https://www.thedefensepost.com/2019/05/30/uzbekistan-repatriate-isis-women-children-syria/>; 'Russia Repatriates Islamic State-Linked Children from Syria' *The Moscow Times* (7 February 2020), available at: <https://www.themoscowtimes.com/2020/02/07/russia-repatriates-islamic-state-linked-children-from-syria-a69195>.
- 75 'Suspected Female ISIS Member Returned to Germany' *The Strait Times* (24 November 2019), available at: <https://www.straitstimes.com/world/europe/suspected-woman-isis-member-returned-to-germany>; and 'Norway Takes Steps to Repatriate 5 Children Born into ISIS Family' *Rüdaw* (3 June 2019), available at: <https://www.rudaw.net/english/world/03062019>.
- 76 In August 2020, Marine General Kenneth McKenzie, the top US general overseeing military efforts across the Middle East, reiterated that the US can and will assist any country which seeks to repatriate their nationals, see this offer to the Australian government in late 2019: Jane Norman, 'US offers to rescue Australian Islamic State families in Syria' *ABC News* (15 November 2020), available at: <https://www.abc.net.au/news/2019-11-16/us-offers-to-rescue-australian-islamic-state-families-in-syria/11710924>.
- 77 Belgium, the Netherlands, and the UK have used such laws against women in the North East Syria camps.
- 78 Question for Foreign, Commonwealth and Development Office, UIN HL9985, tabled on 4 November 2020, available at: <https://questions-statements.parliament.uk/written-questions/detail/2020-11-04/hl9985>.
- 79 RSI interviews with women in the camps and their families, November 2019-February 2020; ICSVE, 'ISIS in Their Own Words: Recruitment History, Motivations for Joining, Travel, Experiences in ISIS, and Disillusionment over Time – Analysis of 220 In-depth Interviews of ISIS Returnees, Defectors and Prisoners' (2020) 13(1) *Journal of Strategic Security* 82.
- 80 ICSVE, 'ISIS in their Own Words' (n 79), 96-97.
- 81 ICSVE, 'ISIS in their Own Words' (n 79), 100.
- 82 'Shamima Begum 'groomed' by IS – family lawyer' *BBC News* (31 May 2019), available at: <https://www.bbc.co.uk/news/av/uk-48469348>; Michael Segalov, 'Shamima Begum was groomed. She deserves the chance of rehabilitation' *The Guardian* (14 February 2019), available at: <https://www.theguardian.com/commentisfree/2019/feb/14/shamima-begum-grooming-islamic-state-pregnant-uk>.
- 83 ICSVE, 'ISIS in their Own Words' (n 79) 100.
- 84 RSI interviews with women in the camps, November 2019-February 2020.
- 85 ICSVE, 'ISIS in their Own Words' (n 79) 105.
- 86 See Annex IV to this Report for relevant domestic criminal and administrative measures.
- 87 Her Majesty's Government, 'Contest: The United Kingdom's Strategy for Countering Terrorism' (June 2018), [167].
- 88 Letter from the Chair of the Committee, UN Doc. S/2020/53 (20 January 2020), [89].
- 89 B McKernan, 'Inside al-Hawl camp, the incubator for Islamic State's resurgence' *The Guardian* (31 August 2019), available at: <https://www.theguardian.com/world/2019/aug/31/inside-al-hawl-camp-the-incubator-for-islamic-states-resurgence>; and L Sly, 'Syria camp is at risk of falling under ISIS control, Kurdish general says' *The Washington Post* (4 October 2019), available at: [https://www.washingtonpost.com/world/militant-women-poised-to-take-control-of-isis-camp-syrian-kurdish-general-says/2019/10/04/72985c18-e5ff-11e9-b0a6-3d03721b85ef\\_story.html](https://www.washingtonpost.com/world/militant-women-poised-to-take-control-of-isis-camp-syrian-kurdish-general-says/2019/10/04/72985c18-e5ff-11e9-b0a6-3d03721b85ef_story.html).
- 90 Remarks at US Department of State Press Conference, 14 November 2019. Video available at: <https://twitter.com/StateDept/status/1195065492668440577>.

- 91 On 6 February 2020, the AANES external affairs ministry unilaterally declared it would start putting people on trial and seek an internationally recognized tribunal to prosecute ISIS detainees. See: D Sabbagh, 'Syrian Kurds to put ISIS fighters from dozens of countries on trial' *The Guardian* (6 February 2020), available at: <https://www.theguardian.com/world/2020/feb/06/syrian-kurds-to-put-isis-fighters-from-dozens-of-countries-on-trial>.
- 92 B Wille, 'ISIS Suspect Transfers to Iraq Replete with Risks' *Just Security* (31 October 2019), available at: <https://www.justsecurity.org/66789/isis-suspect-transfers-to-iraq-replete-with-risks/>.
- 93 M Coker and F Hassan, 'A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects' *The New York Times* (17 April 2018), available at: <https://www.justsecurity.org/66725/northeastern-syria-complex-criminal-law-in-a-complicated-battlespace/>. See also: UN Assistance Mission for Iraq, 'Human Rights in the Administration of Justice in Iraq: Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL' (January 2020).
- 94 *Barcelona Traction, Light, and Power Co Ltd (Belgium v Spain)* [1970] ICJ Rep 3 [33].
- 95 *Advisory Opinion Concerning Legal Consequences of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* [1971] ICJ Rep 16 [117].
- 96 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 56<sup>th</sup> Session Supplement no 10, UN Doc. A/RES/56/83 (28 January 2002).
- 97 Most recently in the UN GA Res 68/104, UN Doc. A/RES/68/104 (18 December 2013).
- 98 ICRC Rules (n 11), Rule 144.
- 99 See, for instance: ICRC, *Commentary on the Third Geneva Convention Relative to the Treatment of Prisoners of War* (Pictet ed, 1960) 18; Y Sandoz, C Swinarski, and B Zimmermann (eds), *Commentary on the Additional Protocols* (1987), [45]; and ICRC Rules (n 11), 509-510. See also: *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* [2004] ICJ Rep 136 ('Wall Advisory Opinion') [159].
- 100 *Wall Advisory Opinion* (n 99), [159].
- 101 *Ibid.*
- 102 That is, the political entity founded in 1992 which in 2003 came to be called the State Union of Serbia and Montenegro and in 2006 dissolved into the separate States of Montenegro and the Republic of Serbia. The FRY is to be distinguished from the previous State known as the Socialist Federal Republic of Yugoslavia (1945-1963).
- 103 *Ibid.*
- 104 *Ibid.*
- 105 Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/HRC/31/57 (5 January 2016), [54]-[57].
- 106 Committee against Torture, *Mrs A v Bosnia and Herzegovina* (Communication no 854/2017), 22 August 2019, UN Doc CAT/C.67/D/854/2017.
- 107 Committee on the Elimination of Discrimination Against Women, *General Recommendation No 19: Violence Against Women*, UN Doc. A/47/38 (1992).
- 108 Human Rights Committee, *General Comment 20*, UN Doc. HRI/GEN/1/Rev.9 (10 March 1992), [2].
- 109 *Elmi* (n 22); *HMNI* (n 22).
- 110 Committee Against Torture, *General Comment 2*, UN Doc. CAT/C/GC/2 (24 January 2008), [18].
- 111 Territorial jurisdiction is recognized as the *primary* basis of State responsibility at human rights law: see *Bankovic v Belgium and ors* [2001] ECHR 890 (GC); (2007) 44 EHRR SE5, [59]; and *Ilascu and ors v Moldova and Russia* [2004] ECHR 318 (GC); (2005) 40 EHRR 46, [312].
- 112 *Al-Skeini v United Kingdom* [2011] ECHR 1093 (GC); (2011) 53 EHRR 18 ('*Al-Skeini*'), [134]; *Öcalan v Turkey* [2005] ECHR 282 (GC); (2003) 37 EHRR 10 ('*Öcalan*'), [91].
- 113 *Al-Skeini* (n 112) [138]. See also situations of external arrest of persons: *Öcalan* (n 112); *Hassan v United Kingdom* App no 29650/09 (ECtHR, 16 September 2014).
- 114 M Milanovic, 'The Murder of Jamal Khashoggi: Immunities, Inviolability, and the Human Right to Life' (2020) 20(1) *Human Rights Law Review* 1, 23; S Besson, 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to' (2012) 25 *Leiden Journal of International Law* 857, 874-876.
- 115 Y Shany, 'Taking Universality Seriously: A Functional Approach to Extraterritoriality in International Human Rights Law' (2013) 7 *The Law & Ethics of Human Rights* 47.
- 116 Human Rights Committee, *General Comment No 36*, UN Doc. CCPR/C/GC/36 (30 October 2018), [63].
- 117 *Al-Skeini* (n 112), Concurring Opinion of Judge Bonello, [10]-[13].
- 118 Human Rights Council, *Annex to the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Investigations into the Unlawful Death of Mr Jamal Khashoggi*, UN Doc. A/HRC/42/CRP.1 (19 June 2019), [360].



# ANNEX I: GOVERNMENT RESPONSES TO QUESTIONS POSED BY RSI

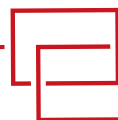
RSI contacted government officials from Belgium, France, Germany, the Netherlands and the UK on 17 and 18 November 2020 to pose a summary of the factual findings of RSI's research pertaining to each country and to provide the governments with a chance to comment or respond. RSI requested that the government officials respond by 20 November 2020 if possible. This annex details the factual findings that RSI posed to each government and summarises each government's response.

We will be providing governments with a further opportunity to comment once they have received a copy of the report and we look forward to continuing dialogue with them on this issue.

## BELGIUM

On 17 November 2020, RSI presented the following summary of factual findings to the Belgian Government:

1. RSI's research shows that there are an estimated 40 Belgian children and 21 Belgian women being arbitrarily detained in al Hol and Roj camps.
2. These women and children are being held in inhumane conditions, as noted by numerous humanitarian organisations and NGOs. Children are dying regularly from preventable and treatable causes, including malnutrition, pneumonia, dehydration and tent fires. Within five days between 6 to 10 August 2020, eight children under five years old died in al Hol camp alone. During its research, RSI was made aware of the death of at least five Belgian toddlers in the camps from causes including malnutrition and dehydration. RSI has also documented instances of children being killed, sexually abused and unaccompanied minors going missing. Women are subjected to physical punishment and solitary confinement for months at a time. Sometimes children are placed in solitary confinement with their mothers; at other times children are left alone in the tents to fend for themselves.
3. The Belgian Government has the sole ability to end the arbitrary detention of their nationals. The Autonomous Administration of North and East Syria ('AANES') has made repeated requests for foreign States to repatriate their nationals and has made clear that they will not release Belgian nationals unless and until Belgium repatriates them.
4. The Belgian Government's policy on repatriation of its nationals detained in al Hol or Roj camp currently consists of (a) repatriation of children under the age of 10 years with Belgian nationality, (b) ad hoc decisions on repatriation of Belgian children aged between 10 and 18 years, and (c) no active assistance for the repatriation of anyone aged over 18 years. However, if Belgian nationals reach a Belgian embassy, they will be issued travel documents to enable their return. To date, Belgium has repatriated five children and one woman from Ain Issa camp on 14 June 2019.



5. Contrary to what has been stated by some Belgian politicians, repatriation of all their nationals from al Hol and Roj camps is logistically possible and does not pose an insurmountable safety risk to Belgian officials. This is evidenced by the fact that some repatriations have already been carried out both by Belgium and other foreign States, including throughout the pandemic. RSI's research has revealed that a number of European governments have had a presence on the ground in the camps (diplomatic, intelligence, and/or military). Belgium has an ongoing relationship with the SDF as part of the Global Coalition to Defeat Daesh/ISIS. Additionally, the US maintains that it is willing to facilitate repatriation efforts.
6. To date, Belgium has deprived nine women of their citizenship.

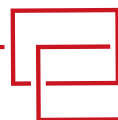
**On 19 November 2020, the Belgian Government responded to say, in summary:**

1. The Belgian Government is aware of 21 women and 38 children currently in al Hol and Roj camps who could potentially claim Belgian citizenship.
2. The Belgian Government considers RSI's statement about the death of five Belgian toddlers to be incorrect, though it did not want to be drawn into commenting on individual cases.
3. The Belgian Government has repatriated five children and one young adult who had been abducted as a child and who had turned 18 just before her repatriation.
4. The Belgian Government's policy on repatriation is correctly reflected by RSI (at point 4, above). The Belgian Government has attempted to repatriate all children with proven identity from al Hol and Roj camps, but without the adults. The Belgian Government stated that those attempts have failed so far as the children have turned out to be inseparable from their mothers, for reasons that totally escape the control of the Belgian authorities. Therefore, to state that 'the Belgian Government has the sole ability to end the arbitrary detention of their nationals' (as RSI stated in point 3, above) does not reflect the facts on the ground.
5. The Belgian Government was unable to confirm or deny RSI's reports that nine women have been deprived of their Belgian citizenship, as the loss of Belgian identity is the result of judicial procedures and the Belgian Government would need more time to check the facts.

## FRANCE

**On 17 November 2020, RSI presented the following summary of factual findings to the French Government:**

1. RSI's research shows that there are an estimated 250 French children and 80 French women being arbitrarily detained in al Hol and Roj camps.
2. These women and children are being held in inhumane conditions, as noted by numerous humanitarian organisations and NGOs. Children are dying regularly from preventable and treatable causes, including malnutrition, pneumonia, dehydration and tent fires. Within five days between 6 to 10 August 2020, eight children under five years old died in al Hol camp alone. During its research, RSI was made aware of the death of at least one French toddler in



Roj camp who was run over by the vehicle of a guard. RSI has also documented instances of children being killed, sexually abused and unaccompanied minors going missing. Women are subject to physical punishment and solitary confinement for months at a time. Sometimes children are placed in solitary confinement with their mothers; at other times children are left alone in the tents to fend for themselves.

3. The French Government has the sole ability to end the arbitrary detention of their nationals. The Autonomous Administration of North and East Syria ('AANES') has made repeated requests for foreign States to repatriate their nationals and has made clear that they will not release French nationals unless and until France repatriates them.
4. The French Government's policy on repatriation of its nationals detained in al Hol or Roj camp currently consists of (a) adult men and women to be judged on site or as close as possible to the area, (b) the most vulnerable children to be repatriated without their parents. French women are made to sign documents to allow for their children to be repatriated without them. To date, France has repatriated 28 children from the camps (five on 16 March 2019, 12 on 10 June 2019, one on 24 April 2020, and 10 on 20 June 2020).
5. Contrary to what has been stated by some French politicians, repatriation of all their nationals from al Hol and Roj camps is logistically possible and does not pose an insurmountable safety risk to French officials. This is evidenced by the fact that some repatriations have already been carried out both by France and other foreign States, including throughout the pandemic. RSI's research has revealed that France, like a number of European States, has had a presence on the ground in the camps (diplomatic, intelligence, and/or military). France has an ongoing relationship with the SDF as part of the Global Coalition to Defeat Daesh/ISIS. Additionally, the US maintains that it is willing to facilitate repatriation efforts.

**The French Government indicated that they have the intention of responding but were unable to do so in the timeframe provided.**

## GERMANY

**On 17 November 2020, RSI presented the following summary of factual findings to the German Government:**

1. RSI's research shows that there are an estimated 150 German children and 50 German women being arbitrarily detained in al Hol and Roj camps.
2. These women and children are being held in inhumane conditions, as noted by numerous humanitarian organisations and NGOs. Children are dying regularly from preventable and treatable causes, including malnutrition, pneumonia, dehydration and tent fires. Within five days between 6 to 10 August 2020, eight children under five years old died in al Hol camp alone. RSI has also documented instances of children being killed, sexually abused and unaccompanied minors going missing. Women are subject to physical punishment and solitary confinement for months at a time. Sometimes children are placed in solitary





confinement with their mothers; at other times children are left alone in the tents to fend for themselves.

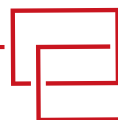
3. The German Government has the sole ability to end the arbitrary detention of their nationals. The Autonomous Administration of North and East Syria ('AANES') has made repeated requests for foreign States to repatriate their nationals and has made clear that they will not release German nationals unless and until Germany repatriates them.
4. The German Government's policy on repatriation of its nationals detained in al Hol or Roj camp currently consists of (a) repatriation of especially vulnerable children and (b) consular law granting Germans the right to rely on a "system" of support is being challenged in court because this is deemed not applicable in Syria due to the lack of consular offices there. To date, Germany has repatriated seven children and one woman from the camps (three children and their mother were repatriated on 22 November 2019, four children were repatriated on 19 August 2019).
5. Contrary to what has been stated by some German politicians, repatriation of all their nationals from al Hol and Roj camps is logistically possible and does not pose an insurmountable safety risk to German officials. This is evidenced by the fact that some repatriations have already been carried out both by Germany and other foreign States, including throughout the pandemic. RSI's research has revealed that Germany, like a number of European States, has had a presence on the ground in the camps (diplomatic, intelligence, and/or military). Germany has an ongoing relationship with the SDF as part of the Global Coalition to Defeat Daesh/ISIS. Additionally, the US maintains that it is willing to facilitate repatriation efforts.

A representative from the Permanent Mission of the Federal Republic of Germany to the United Nations responded on 20 November 2020 to explain that they were not in a position to comment on the issues raised and that they had forwarded RSI's request to the capital, but that given the sensitivity of the topic and the short timeframe, and without seeing the full report, they would be unable to provide substantive comments. They did, however, explain that it would be more accurate to delete the word 'vulnerable' in point 4 (above) as Germany does not have 'any sort of "ranking" of the vulnerability of children'.

## THE NETHERLANDS

On 17 November 2020, RSI presented the following summary of factual findings to the Dutch Government:

1. RSI's research shows that there are an estimated 75 Dutch children and 25 Dutch women being arbitrarily detained in al Hol and Roj camps.
2. These women and children are being held in inhumane conditions, as noted by numerous humanitarian organisations and NGOs. Children are dying regularly from preventable and treatable causes, including malnutrition, pneumonia, dehydration and tent fires. Within five days between 6 to 10 August 2020, eight children under five years old died in al Hol camp alone. During its research, RSI was made aware of the death of at least two Dutch toddlers in



the camps from causes including war wounds to the head. RSI has also documented instances of children being killed, sexually abused and unaccompanied minors going missing. Women are subject to physical punishment and solitary confinement for months at a time. Sometimes children are placed in solitary confinement with their mothers; at other times children are left alone in the tents to fend for themselves.

3. The Dutch Government has the sole ability to end the arbitrary detention of their nationals. The Autonomous Administration of North and East Syria ('AANES') has made repeated requests for foreign States to repatriate their nationals and has made clear that they will not release Dutch nationals unless and until the Netherlands repatriates them.
4. The Dutch Government's policy on repatriation of its nationals detained in al Hol or Roj camp currently consist of not providing consular support to its nationals in Syria, with the possibility of making an exception for "the left behind children of deceased Dutch fighters". To date, the Netherlands has repatriated two children from the camps with the aid of France on 10 June 2019.
5. Contrary to what has been stated by some Dutch politicians, repatriation of all their nationals from al Hol and Roj camps is logistically possible and does not pose an insurmountable safety risk to Dutch officials. This is evidenced by the fact that some repatriations have already been carried out both by the Netherlands and other foreign States, including throughout the pandemic. RSI's research has revealed that the Netherlands, like a number of European States, has had a presence on the ground in the camps (diplomatic, intelligence, and/or military). The Netherlands has an ongoing relationship with the AANES as part of the Global Coalition to Defeat Daesh/ISIS. Additionally, the US maintains that it is willing to facilitate repatriation efforts.
6. To date, the Netherlands has deprived one woman of her citizenship.

**On 20 November 2020, the Dutch Government responded to say, in summary:**

1. The Dutch Government is unable to provide consular assistance to Dutch citizens as they do not have any form of diplomatic representation in Syria. The Dutch Government is reluctant to enter into contact with the SDF because of its ties with the PKK, an organisation listed on the EU terrorism list.
2. The Dutch Government does not actively repatriate Dutch foreign terrorist fighters or their families from North East Syria on the basis that the security situation is highly unstable and unsafe, and repatriation of foreign terrorist fighters could have adverse consequences for both the Netherlands' national security and the security of its Schengen partners. However, if a Dutch foreign terrorist fighter reaches a Dutch diplomatic representation in the region, he or she can request consular assistance and will be escorted back to the Netherlands to face trial.

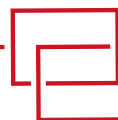


3. In the case of orphans with Dutch nationality, the Dutch Government assesses on a case-by-case basis whether and how they can return to the Netherlands.
4. With the help of a French repatriation mission, the Dutch Government repatriated two Dutch children to the Netherlands in June 2019.

## THE UNITED KINGDOM

On 18 November 2020, RSI presented the following summary of factual findings to the British Government:

1. RSI's research shows that there are an estimated 35 British children and 15 British women being arbitrarily detained in al Hol and Roj camps.
2. These women and children are being held in inhumane conditions, as noted by numerous humanitarian organisations and NGOs. Children are dying regularly from preventable and treatable causes, including malnutrition, pneumonia, dehydration and tent fires. Within five days between 6 to 10 August 2020, eight children under five years old died in al Hol camp alone. During its research, RSI was made aware of the death of at least one British child in the camps from respiratory problems. RSI has also documented instances of children being killed, sexually abused and unaccompanied minors going missing. Women are subject to physical punishment and solitary confinement for months at a time. Sometimes children are placed in solitary confinement with their mothers; at other times children are left alone in the tents to fend for themselves.
3. The British Government has the sole ability to end the arbitrary detention of their nationals. The Autonomous Administration of North and East Syria ('AANES') has made repeated requests for foreign States to repatriate their nationals and has made clear that they will not release British nationals unless and until the UK repatriates them.
4. The British Government's policy on repatriation of its nationals detained in al Hol or Roj camp currently consists of a willingness to repatriate only British orphans and unaccompanied minors and only if this can be done in a safe manner. Children who manage to escape al Hol or Roj and reach a British consulate may be given consular assistance subject to national security concerns. Otherwise, the British Government refuses to repatriate on the basis that it considers that the alleged security risk posed by those detained is best managed outside of the UK.
5. To date, the UK has repatriated 6 children from the camps (five on 21 November 2019 and one in September 2020).
6. Contrary to what has been stated by some British politicians, repatriation of all their nationals from al Hol and Roj camps is logistically possible and does not pose an insurmountable safety risk to British officials. This is evidenced by the fact that some repatriations have already been carried out both by the UK and other foreign States, including throughout the pandemic. RSI's research has revealed that the UK, like a number of European States, has



had a presence on the ground in the camps (diplomatic, intelligence, and/or military), though this is disputed by the British Government. The UK has an ongoing relationship with the SDF as part of the Global Coalition to Defeat Daesh/ISIS. Additionally, the US maintains that it is willing to facilitate repatriation efforts.

7. The UK has a systematic policy of depriving women in the camps of their citizenship. Up-to-date numbers on how many women have been deprived of their citizenship have not been made publicly available. This has rendered a number of women de facto stateless on the basis that no other country will take responsibility for them even if it is claimed that they have another nationality or can acquire one.

**On 20 November 2020, the British Government responded to say, in summary:**

1. The British Government does not recognise RSI's figure (at point 1, above) of 35 British children and 15 British women in al Hol and Roj camps, but due to the circumstances on the ground it is not in a position to make an accurate estimate of the number.
2. The British Government considers the safety and security of the facilities and wellbeing of those detained to be the responsibility of the AANES. It expects all parties to the Syrian conflict to respect their obligations under international humanitarian law, including to provide the necessary access for humanitarian organisations to reach those in need. The British Government has raised its concerns about humanitarian access and supply in North East Syria at several UN-level meetings and has spent over £3bn since February 2012 to help people in need within Syria and refugees in neighbouring countries.
3. The British Government considers any decision in relation to the continued detention, transfer or prosecution of detainees is ultimately a matter for the AANES. Its priority is to ensure the safety and security of the UK, and individuals who have fought for, or supported Daesh, should face justice and accountability often in the region where the crimes took place. The British Government continues to pursue available avenues with international and regional partners to this end. It considers that any internationally-supported justice mechanism must respect human rights and the rule of law, including fair trials and due process.
4. The British Government is sympathetic to the plight of British unaccompanied minors and orphans in Syria and will seek to facilitate the return of those children to the UK, subject to national security concerns and on a case-by-case basis. The British Government has already facilitated the return of a number of orphaned and unaccompanied British children to the UK but considers that the repatriation process is not straightforward as the UK has no consular presence within Syria from which to provide consular assistance, and difficulties are posed by COVID-19.
5. The British Government considers the threat posed to the UK by adults who travelled to Syria to be best managed outside the UK but considers each case on its own merits. Where individuals do return, the British Government will ensure that they are investigated and, where there is evidence that crimes have been committed, prosecuted. The British Government



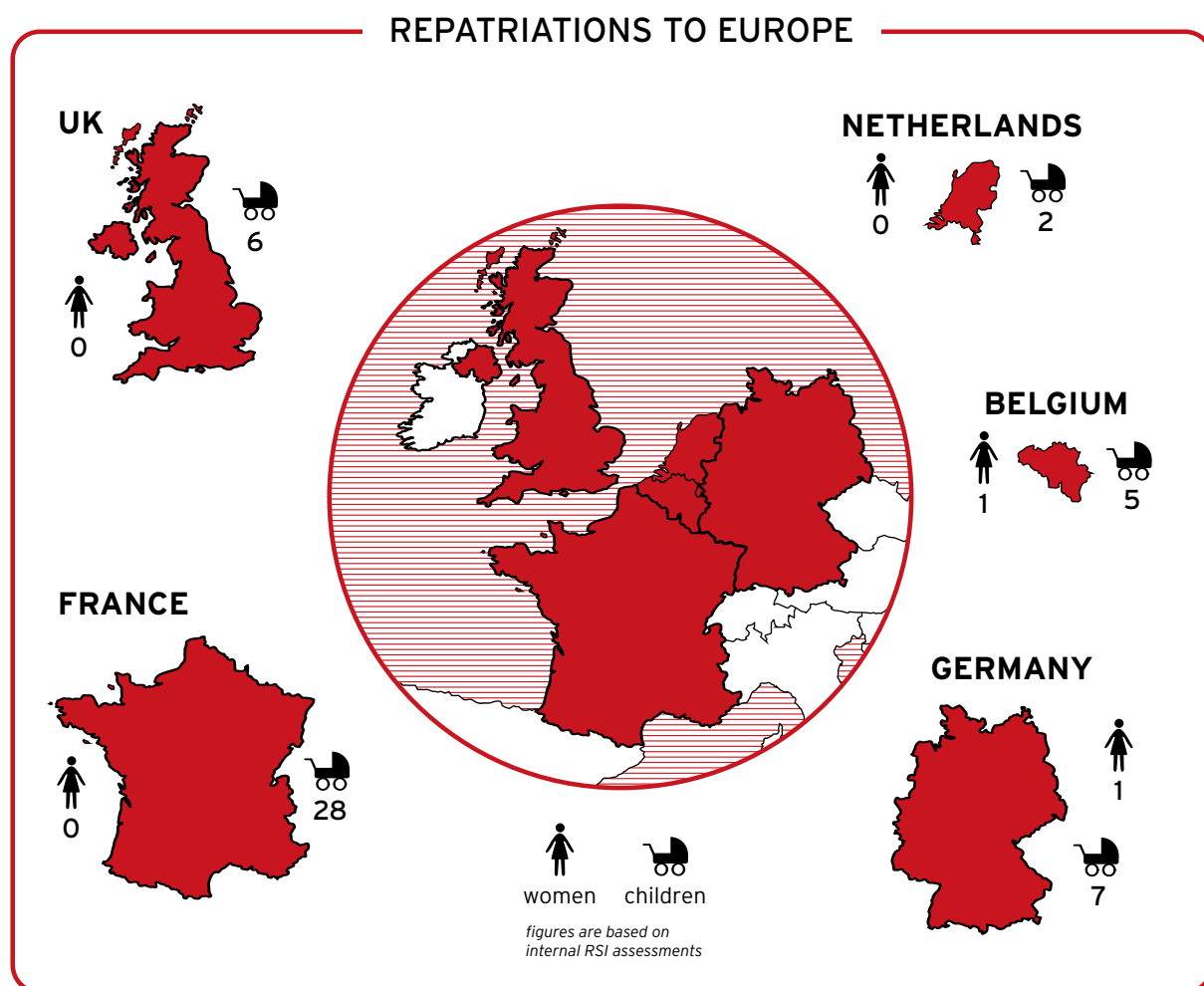


considers all requests for consular assistance to return to the UK on a case-by-case basis, taking into account all relevant circumstance, including, but not limited to, national security concerns.

6. The British Government does not recognise the numbers or dates of repatriations suggested by RSI (at point 5, above). However, owing to reporting restrictions and in the interests of the safety and wellbeing of the children, it is unable to comment on case specifics.
7. The British Government works with all concerned in Syria and at home to facilitate repatriations, but the process is not straightforward as the UK has no consular presence within Syria and North East Syria is an area on ongoing armed conflict.
8. The UK Home Secretary has the power to deprive individuals of their citizenship if satisfied that such action is 'conducive to the public good' where it would not render the individual stateless. Each case is individually considered based on the information available.



## ANNEX II: GOVERNMENT REPATRIATION POLICIES AND PRACTICES



### BELGIUM

#### Estimated number of women and children in the camps

It is estimated that there are around 38 Belgian children and 21 Belgian women detained in al Hol and Roj camps.<sup>1</sup> Almost all of these children are below ten years of age.

#### Government policy on repatriation

The Belgian Government confirmed to RSI in November 2020 that its policy is to permit repatriation of children under the age of 10 with confirmed Belgian nationality.<sup>2</sup> For children aged between ten and 18 years old, the Coordination Unit for Threat Analysis ('CUTA') will carry out a case-by-case assessment to determine whether the teenager represents a terrorist threat or not. The Belgian Government does not offer active assistance to adults for repatriation, however, if an adult Belgian national manages to reach a Belgian embassy, he or she will receive travel documents to enable their return.

In February 2020, the Belgian Minister of Foreign Affairs announced that Belgium planned to repatriate all children under 10 years of age from the camps without their mothers so long as the mothers agreed to the repatriation.<sup>3</sup> In November 2020, the Belgian Government said to RSI that it had attempted to repatriate all children with proven Belgian identity from the camps, however, these attempts had so far failed as 'the children have turned out to be inseparable from their mothers, for reasons that totally escape the control of the Belgian authorities'.<sup>4</sup>

## Repatriation practice

In June 2019, five children and an 18-year-old Belgian woman were repatriated from Ain Issa camp to Belgium.<sup>5</sup> The children were mostly over ten years old and were orphans or isolated children. The woman had been abducted and taken to Syria as a child and had turned 18 shortly before the repatriation took place.<sup>6</sup>

## FRANCE

### Estimated number of women and children in the camps

It is estimated that there are around 250 French children and 80 French women detained in al Hol and Roj camps.<sup>7</sup>

### Government policy on repatriation

RSI understands that the French Government's policy is to assess children based on a set of factors, such as the extent of their isolation and age, in order to determine whether to repatriate them. Priority has been given to the repatriation of young orphans. The French Government has been silent on its plans in respect of teenage children.

RSI understands that France actively seeks to return children without their mothers with their mothers' consent. RSI's research indicates that in October 2018, French officials travelled directly to Roj camp to meet with several French women and asked them whether they would consent to their children being repatriated without them. It is understood that very few women consented to this course of action.

RSI contacted the French Government to request clarification of its repatriation policy position, however, it was unable to do so within the timeframe provided.

## Repatriation practice

France have repatriated at least 28 young children from the camps, including five in March 2019, 12 in June 2019, one in May 2020 and ten in July 2020.<sup>8</sup> All were young children, the majority below six years old. Prior to 2020 most of those repatriated were orphans.

RSI understands that in May 2020, one child, who was gravely ill with a congenital heart defect, was repatriated from al Hol following a concerted advocacy effort on her behalf in France. Following her



repatriation, ten children, some of whom were orphans, but most of whom were separated from their mothers, were repatriated. It was anticipated that a larger group of children was to be repatriated in July 2020, but ultimately their mothers refused to allow the children to be separated from them.

## GERMANY

### Estimated number of women and children in the camps

It is estimated that there are around 150 German children and 50 German women detained in al Hol and Roj camps.<sup>9</sup> RSI understands that there are estimated to be fewer than ten orphans and that these are mainly under five years old. RSI has received reports of at least three German teenage boys being forcibly removed from their families in the camps by Kurdish authorities.<sup>10</sup>

### Government policy on repatriation

The German Government's policy on the repatriation of German nationals is unclear. Following the repatriation of four children in August 2019, the Foreign Affairs Minister stated that Germany has an obligation to bring back 'especially vulnerable children'. However, in an email to RSI on 20 November 2020, the German Government stated that they do not have any kind of system ranking the vulnerability of children.<sup>11</sup>

As regards adult nationals, the German interior ministry spokesperson stated in February 2019 that 'all German citizens, including those who are suspected of having been involved with the Islamic State have a fundamental right to be in Germany.'<sup>12</sup> However, it appears that no steps are being made to repatriate these individuals.

RSI contacted the German Government to request clarification of its repatriation policy position, however, it was unable to do so within the timeframe provided.<sup>13</sup>

### Repatriation practice

Germany has repatriated at least seven children and one woman in two operations.<sup>14</sup> It is the only State out of the five States considered in this report that has repatriated an adult woman.<sup>15</sup> In both instances, court proceedings in Germany were ongoing, though the court had not yet come to a decision on whether to order the repatriation of the children and woman concerned.

One woman and her three children were repatriated in November 2019. This was facilitated by an independent third-party mediator with a relationship with the Kurdish authorities. RSI understands that the German Government did not intend to repatriate the mother with the children but that this was permitted at the last moment. It is also understood that the mother had previously been asked for consent for and consented to her children being repatriated without her.

In August 2019, three orphans and a seriously ill six-month-old baby were repatriated. The mother of the baby gave her consent for the child to be repatriated without her. RSI understands that another child, the two-year-old brother of the orphans, was also supposed to be repatriated with them. He





was being held in the main al Hol camp under the care of a Syrian woman and not in the al Hol Annex with his siblings. However, owing to delays in Germany's repatriation effort, the family and lawyers lost contact with the Syrian woman. The German child therefore remains unaccounted for and his whereabouts is unknown.

## THE NETHERLANDS

### Estimated number of women and children in the camps

It is estimated that there are around 75 Dutch children and 25 Dutch women detained in al Hol and Roj camps.<sup>16</sup>

### Government policy on repatriation

The Dutch Government confirmed to RSI in November 2020 that its policy is not to actively repatriate its citizens from Syria on the basis that the security situation is highly unstable and unsafe, and repatriation could have adverse consequences for both the Netherlands' national security and for the security of its Schengen partners.<sup>17</sup> However, if a Dutch national reaches a Dutch diplomatic representation in the region, he or she can request consular assistance and will be escorted back to the Netherlands to face trial.<sup>18</sup> In the case of orphans with Dutch nationality, the Dutch Government confirmed that it assesses on a case-by-case basis whether and how they can return to the Netherlands.<sup>19</sup>

### Repatriation practice

Facilitated by a French delegation, two Dutch orphans were repatriated in June 2019.<sup>20</sup> RSI understands that the Dutch Government considered them to be an exceptional case. There are no known subsequent efforts to repatriate from the camps.

## THE UNITED KINGDOM

### Estimated number of women and children in the camps

It is estimated that there are around 35 British children and 15 British women detained in al Hol and Roj camps.<sup>21</sup> The British Government disputed this estimation in a letter to RSI in November 2020 but did not provide any alternative figure.<sup>22</sup>

The number of British citizens is particularly hard to ascertain due to the extensive policy of deprivation of nationality by the British Government. It is unclear whether those individuals who have been deprived of their citizenship but are appealing this decision are included in the above estimation.

### Government policy on repatriation

The British Government confirmed to RSI in November 2020 that it is willing to repatriate British orphans and unaccompanied minors, subject to national security concerns and on a case-by-case basis.<sup>23</sup> and only if this can be done in a safe manner. RSI understands that there are very few British unaccompanied minors or orphans and that the majority of British children are detained with their mothers,<sup>24</sup> the British



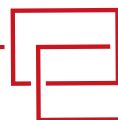
Government confirmed that they will not repatriate adult British nationals on the basis that the alleged threat they pose to the UK is best managed outside the UK. However, they stated that they consider each case on its own merits.<sup>25</sup>

## Repatriation practice

The UK has repatriated at least six children, including five in November 2019, and one in September 2020.<sup>26</sup> The British Government disputed these figures in a letter to RSI in November 2020, but did not provide any alternative figure. RSI understands that these children were repatriated mostly, if not exclusively, as a result of court orders declaring the children wards of the State.<sup>27</sup> A repatriation effort planned for October 2019 was reportedly prevented by political opposition on the part of the Home Secretary.<sup>28</sup>

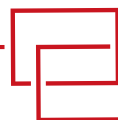


- 1 Thomas Renard and Rik Coolsaet, 'From Bad to Worse: the Fate of European Foreign Fighter and Families Detained in Syria, One Year After the Turkish Offensive' Egmont Institute, Security Policy Brief No. 130 (October 2020) ('Egmont Institute Security Policy Brief') 5, available at: [https://www.egmontinstitute.be/content/uploads/2020/10/SPB130\\_final.pdf?type=pdf](https://www.egmontinstitute.be/content/uploads/2020/10/SPB130_final.pdf?type=pdf). This was confirmed by the Belgian Government in an email to RSI on 19 November 2020.
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- 15 Apart from the exceptional case of the Belgian woman who had recently turned 18 year when she was repatriated (see above).
- 16 Egmont Institute Security Policy Brief (n 1) 5.
- 17 Dutch Government email to RSI on 20 November 2020.
- 18 Dutch Government email to RSI on 20 November 2020. The Government also confirmed that there is no form of diplomatic representation in Syria.
- 19 Dutch Government email to RSI on 20 November 2020.
- 20 See Annex III to this Report for a summary of repatriation efforts to date as publicly verified.
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- 22 British Government letter to RSI on 20 November 2020.
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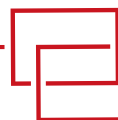


## ANNEX III: SUMMARY OF REPATRIATION EFFORTS TO DATE (AS PUBLICLY VERIFIED)

- Albania: four children and one women on 26 October 2020;<sup>1</sup>
- Australia: eight children on 23 June 2019;<sup>2</sup>
- Austria: two children on 2 October 2019;<sup>3</sup>
- Belgium: five children and one woman on 14 June 2019;<sup>4</sup>
- Bosnia and Herzegovina: 25 nationals on 19 December 2019<sup>5</sup> and one individual on 20 April 2019;<sup>6</sup>
- Canada: one child on 5 October 2020;<sup>7</sup>
- Denmark: one child on 23 June 2019;<sup>8</sup>
- Finland: two children on 23 December 2019<sup>9</sup> and a further 12 individuals on 31 May 2020;<sup>10</sup>
- France: five children on 16 March 2019,<sup>11</sup> 12 children on the 10 June 2019,<sup>12</sup> one child on the 24 April 2020,<sup>13</sup> 10 children on 20 June 2020;<sup>14</sup>
- Germany: three children and their mother on 22 November 2019,<sup>15</sup> four children on 19 August 2019;<sup>16</sup>
- Italy: one individual at the end of June 2019,<sup>17</sup> and a mother with her four children on 29 September 2020;<sup>18</sup>
- Kazakhstan: 548 individuals in 2019;<sup>19</sup>
- Kosovo: 110 individuals on 20 April 2019, and an additional 144 adults since then;<sup>20</sup>
- Netherlands: 2 children on 10 June 2019;<sup>21</sup>
- Nigeria: 3 children on 5 September 2019;<sup>22</sup>
- Norway: five children on 3 June 2019,<sup>23</sup> and a mother with two children on 15 January 2020;<sup>24</sup>
- Russia: 26 children on 7 January 2020,<sup>25</sup> 35 children on 6 February 2020,<sup>26</sup> three children on 25 March 2020,<sup>27</sup> 47 children on 15 October 2020<sup>28</sup> and 30-31 individuals on 12 November 2020.<sup>29</sup>
- Saudi Arabia: two children on 31 March 2019;<sup>30</sup>
- Sudan: five children in April 2019;<sup>31</sup>
- Sweden: seven children in June 2019;<sup>32</sup>
- Trinidad and Tobago: two children in January 2020;<sup>33</sup>
- The United Kingdom: 5 children on 21 November 2019,<sup>34</sup> one child in September 2020;<sup>35</sup>
- The United States: one woman and four children in early 2019,<sup>36</sup> a family of four in May 2019, two women and six children on 3 June 2019,<sup>37</sup> one child in November 2019<sup>38</sup> and 4 adults on 1 October 2020.<sup>39</sup>
- Uzbekistan: 148 women and children on 29 May 2019.<sup>40</sup>



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# ANNEX IV: DOMESTIC CRIMINAL AND ADMINISTRATIVE MEASURES

## THE UNITED KINGDOM

### Criminal measures

#### Terrorism Act 2000

- Criminalises the withholding of terror related information: Section 38(B): maximum sentence 10 years.
- Criminalises the membership and directing of a 'proscribed organisation': Part II, Section 11; and Part VI, Section 56; the maximum sentence is life imprisonment.
- Criminalises the expressions of support for a proscribed organisation, Part II, Section 12; the maximum sentence is 10 years.
- Publishing images picturing items of clothing or other articles that arouse suspicion that the one is a member of a proscribed organisation is an offence: Part II, Section 13; carrying a maximum sentence of six months.
- Criminalises the receiving, giving or inviting to weapons training: Part VI, Section 54; carrying a sentence of up to life.
- Criminalisation of financial support of terrorism, including fundraising for the (presumed) cause of terrorism: Part II, Section 16 and 17; and laundering of money: Part II, Section 18. This carries a maximum sentence of 14 years: Part II, Section 22.
- Possessing items suspected to be for use in terrorist acts is an offence: Part VI, Section 57.
- Criminalisation of collecting or possessing information likely to be used for an act of terrorism: Part VI, Section 58: carrying a sentence of up to 15 years imprisonment.
- Travelling to certain foreign areas is criminalised: Part VI, Section 58-58a.
- Individuals suspected of being a terrorist can be arrested by a constable or a member of the armed forces without warrant. Detention resulting from such an arrest can last up to 48h: Part V, Section 41. Searches of person, property, and vehicles are also permissible if terrorism is suspected: Part V, Sections 42- 43A and Part VII, Section 81-83.

#### Terrorism Act 2006

- Criminalisation of inducement or encouragement to terrorist acts: Part 1, Section 2.
- Receiving, giving, or inviting to skills training capable of being used for purposes of terrorism is an offence: Part 1, Section 6.
- Longer and more restrictive pre-trial detention applies to those arrested under Section 41 Terrorism Act 2000, the period can be extended to 28 days: Part II, Section 23.

#### Criminal Justice Act 2003

- Harsher sentences of terrorist offences including extended sentences and restricted eligibility for release (S 226A, 226B, 247A, 306, 19ZA).

#### Terrorist Offenders (restriction of Early Release) Act 2020

- Automatic early release no longer applies to those convicted of terrorist offences. Approval from the parole board is now required (s1, s2).



# Administrative measures

## Terrorism Prevention and Investigation Measures (TPIM) Act 2011

- TPIMs impose terrorism prevention and investigation measures on certain individuals, including:
  - An extensive range of monitoring measures: Section 12 (2).
  - Restriction on the possession of electronic communication devices: Schedule 1, Part1 (6A).
  - International travel restrictions: Schedule 1, Part 1 (2).
  - Restriction on movement domestically: Schedule 1, Part 1.
- TPIMs can be imposed for a maximum of two years: Part I, Chapter 1, Section 1.

## Counter-Terrorism and Security Act, 2015

- Ability to seize passports and other travel documents from persons suspected of involvement in terrorism: Part I, Chapter 1, Section 1.
- Ability to impose a 'Temporary Exclusion Orders' prohibiting an individual from re-entering the UK for up to two years if they are deemed to be a terrorist threat: Part I, Chapter 2, Section 2. This includes the possibility of invalidating passports or seizing passports at the border in order to investigate.
- 'Permits to return' can be issued to people who are subject to temporary exclusion orders to allow them to travel back to the UK. Specific conditions are attached to this: Part I, Chapter 2, Section 5.
- Specific obligations can be imposed on individuals who have returned to the UK and are subject to temporary exclusion orders: Part I, Chapter 2, Section 9.
- Individuals subject to a temporary exclusion order who return to the UK without permission are committing an offence: Part I, Chapter 2, Section 10.

## BELGIUM

# Criminal measures

## Criminal Code of 8 June 1867, as amended in 2020

- Higher sentences for crimes classed as having a 'terrorist purpose': Article 138, § 1.
- Criminalisation of membership/participation in a terrorist organisation: Article 139, 140 § 1, Article 140, § 1/1 and Article 140, § 2; maximum sentence 20 years.
- Criminalisation of terrorist incitement: Article 140bis, § 2 and Article 140ter, § 2; maximum sentence 15 years.
- Criminalisation of terrorist recruitment: Article 140bis, § 2 and Article 140ter, § 2; maximum sentence 15 years.
- Criminalisation of training for the purpose of committing terrorist acts: Article 140quater, § 1, Article 140quater, § 2 and Article 140quinquies; maximum sentence 15 years.

## **Law of 3 August 2016 on various provisions on the fight against terrorism**

- Abolishment of the usual criteria for issuance of a warrant in the case of terrorist acts: Article 6.



Ministerial circulars n° 1817 15 July 2015 and n°ET/SE-2bis of 26 November 2015

- Conditions of parole are altered in case of conviction for terrorist acts.

Law on the principles concerning the administration of penitentiary establishments and the status of detainees, 1 February 2005

- Individuals detained on terrorist charges face 'special conditions in detention'.

## Administrative measures

Royal Decree concerning the common database on Foreign Terrorist Fighters, 21 July 2016

- Creation of an FTF database that is exempt from general privacy and data protection safeguards. It is not possible for individuals to verify directly whether they are listed, nor can they request access to their information or ask for it to be corrected or removed.

New Circular on "Foreign Terrorist Fighters", 2015

- Enhanced monitoring and surveillance of individuals when evidence for prosecution is lacking, this includes electronic tagging monitored by CUTA.

Law relating to population registers, identity cards, foreigner's cards and residence document, 10 August 2015

- Allows the Minister of the Interior to withdraw, invalidate or refuse a Belgian identity card if there are indications an individual intends to travel abroad for terrorism-related purposes and the identity of the individual is shared with CUTA.

Consular Code of 21 December 2013, as amended by the Law of 10 August 2015

- Passports can be withheld/withdrawn from individuals who are the subject of: an arrest warrant (national/European/international); judicial measures restricting their freedom of movement or; an international alert for the purposes of arrest: Article 62-63.

## THE NETHERLANDS

### Criminal measures

Dutch Criminal Code 1881, as amended in 2020

- Specific definition of what makes a crime a terrorist act and what constitutes terrorist intent: Article 83 and 83a.
- Prison sentences for crimes committed with terrorist intent may be increased by between a third and a half: Articles 114; 120; 130; 138a; 176a; 197a; 205; 304a.
- Criminalisation of material aid to terrorism: Article 83b.
- Criminalisation of provision of information with the purpose of committing terrorist acts: Article 134a; Article 140, Article 140a; maximum life sentence.
- Criminalisation of hiding someone who committed terrorist acts from authorities: Article 189; maximum sentence five years.



- Criminalisation of recruitment: Article 205.
- Criminalisation of training for the purpose of committing terrorist acts: Article 134a.
- Displaying flags of banned terrorist organisations using violence against certain populations in conjunction with other supportive statements is punishable: Articles 137c -137e.

### Comprehensive Action Program to Counter Terrorism

- Individuals who travelled to Syria or Iraq to join extremist groups are subject to criminal investigation.
- Investigatory powers are wide in the context of terrorism, circumventing usual conditions.

### Dutch Regulations for the selection, placement and transfer of prisoners

- Those suspected or convicted of terrorism offences will be immediately transferred to the Terroristen Afdeling (TA), a specialised high-security detention centre as outlined under Article 20(a).
- In TAs, inmates are:
  - Isolated to prevent recruitment;
  - Subject to rights restrictions; and
  - "Are categorised under the 'Diversification policy' as either 'leaders,' 'followers,' or 'troublemakers'."

## Administrative measures

### Comprehensive Action Program to Counter Terrorism (2016)

- Individuals known to have joined terrorist organisations are placed on the national register of terrorists, this leads to the freezing of all their financial assets.
- "'Travellers', as defined by Dutch authorities, will be ineligible for social welfare benefits. This includes financial support for students.

### Temporary law on administrative measures to combat terrorism (2017)

- An obligation to report to a police chief or other organisation can be imposed on individuals associated with terrorist, at intervals determined by the Minister of Justice of Security: Article 2(2)(a).
- Measures to restrict movement domestically can be imposed: Article 2; Article 2(2)(b) and Article 2(2)(c); for a period of up to two years: Article 4.
- International travel restrictions may be imposed preventing individuals from leaving the Schengen Area: Article 3; for a period of up to six months: Article 4.

### Passport Act

- Passport may be withdrawn or withheld on the basis of suspicion: Article 23.





## Criminal measures

### French Penal Code, as amended 20 September 2020

- Certain crimes, when committed intentionally in connection with the purpose of to seriously disturb public order through intimidation or terror are classed as terrorist acts: Article 421-1.
- Offences classed as terrorist acts carry higher sentences: Article 421-3.
- Criminalisation of membership/participation in a terrorist organisation: Article 421-2-1; carrying a maximum sentence of two years: Article 421-5. Leading the group or act of terrorism carries a 30-year sentence: Article 421-5. If the acts result in death or destruction the maximum sentence is 30 years: Article 421-6. For participation and life for leading: Article 421-6.
- Criminalisation of financial support of terrorism: Article 421-2-2; carrying a sentence of up to seven years: Article 421-5 and Article 421-2-3. Using financial means to incite others to terrorism is criminalised; carries a maximum sentence of 10 years: Article 421-2-4.
- Criminalisation of enticement of terrorism and/or publicly defending terrorism: Article 421-2-5; carrying a maximum sentence of seven years.
- Criminalisation of material support for terrorism, including training and receiving training, carries a 10-year sentence: Article 421-5.
- Involving minors in terrorism in acts of terrorism: Article 421-2-4-1; carries as a maximum sentence of 15 years.
- Individuals suspected of terrorist-related offences can be detained pre-trial for up to three years, compared to two years for non-terrorist offences: Article 706-24-3.
- Individuals convicted for crimes classed as terrorist acts are sentenced to socio-judicial follow up; Article 421-8.

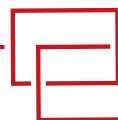
## Administrative measures

### Deliberation on the amendment of FIJAIT

- *Fichier judiciaire des auteurs d'infractions terroristes (FIJAIT)* is a national database of returnees charged with or convicted terror-related offences. Their name added at the discretion of judge or public prosecutor and is held in the database for 20 years.

### Law strengthening internal security and the fight against terrorism

- *A person suspected of posing a particularly serious threat to security and public order and who enters into regular contact with persons or organisations inciting, facilitating, or participating in acts of terrorism or advocates for these acts can be subject to electronic surveillance: Article L288-3; this can be imposed for a maximum of 12 months.*
- *In the alternative to domestic restrictions on movement, electronic monitoring may be imposed. This requires written consent from the suspect: Article L228-3.*
- *A person suspected of posing a particularly serious threat to security and public order can be obliged to report to the police daily and declare his residency: Article L228-2; domestic travel restrictions and location bans can also be imposed: Article L288-2; These measures cannot exceed 12 months.*



# GERMANY

## Criminal measures

### Criminal code

- Criminalisation of support for terrorist organisations: § 129a (5); maximum sentence 10 years.
- Criminalisation of financing terrorism: § 89c; maximum sentence 10 years.
- Criminalisation of recruitment: § 129a (5); maximum sentence five years.
- Criminalisation of training: § 89a (1)(1).
- Criminalisation of travel with the intent to receive training or committing crimes: § 89a-d.
- Criminalisation of membership of a terrorist organisation: § 129a (2); maximum sentence 10 years if the organisation if one is in a leading position.
- Criminalisation of incitement: § 130; maximum five years.
- Involvement of minors of terrorist organisations: § 129a (6); minors committing terrorist related crimes can face lesser sentences at the direction of the court.

### Prison Act

- No terror specific rules exist when it comes to solitary confinement. The Normal provisions apply; § 89.

## Administrative measures

### Criminal Code

- *Once convicted of a number of the terror related crimes listed above, a judge may order continued supervision such as electronic monitoring: § 68a.*

### Law on the Federal Criminal Police Office

- Individuals suspected of terrorism can be subjected to electronic monitoring on a Federal Level.
- Electronic monitoring as part of supervision of conduct is based on federal law but implemented at the state level. That said, in 2012 a Joint Electronic Monitoring Centre for the Länder was formed.

### Counter-Terrorism File Act - ATDG

- Federal database of individuals suspected to have links to terrorism, data privacy laws of the Basic Laws are curtailed: § 20z

### Passport Act of 1986

- Passports can be withdrawn or withheld from individuals suspected to pose a threat to the Federal Republic: § 7 and 8.
- Individuals who have been denied passports or other forms of identification or whose documents have been declared void are not allowed to enter or exit Germany: § 10.

### Law on Identity Cards and Electronic Identification

- ID cards can be refused on the same terms as passports: § 6a.
- Individuals whose identity documents have been declared void or who cannot obtain new ones, as specified above, are issued another type of ID: § 6A(2).



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