

Human Rights and Citizenship Abandoned in NE Syria: A special issue of the Global Justice Journal

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Human Rights and Citizenship Abandoned in NE Syria: A special issue of the Global Justice Journal

By: Alex Neve and Sharry Aiken

When we put plans in place for this issue of the Global Justice Journal focused on the many human rights and international legal concerns arising from the Canadian government's refusal to facilitate the repatriation of Canadian citizens detained in dangerous conditions in NE Syria, we knew that the topic was timely and urgent. We did not anticipate that when we came to the point of finalizing the tremendous articles written by our contributors, the context would be changing literally daily, including a groundbreaking Federal Court ruling. That has made this issue of the journal all the more timely and has certainly underscored the urgency.

The right to return to one's own country is enshrined in section 6 of the Charter of Rights and Freedoms, as well as in international human rights law, most directly article 12 of the International Covenant on Civil and Political Rights. Both reflect the fact that medieval notions of banishing and exiling a subject of the realm, for any reason, have long been rejected.

Yet that has precisely been the reality for some 50 Canadian citizens, more than half of whom are children, who have been imprisoned and stranded in Syria, and abandoned there by the Canadian government, for several years. Because their various stories have in some way been associated with allegations of connections to ISIS – even though most are mere children and others have never been charged with, let alone tried and convicted of, any offence – they have essentially been banished from Canada and exiled to Syria. All the while they have faced a range of grave human rights violations as they have endured life in harrowing conditions in prisons, detention camps and so-called rehabilitation centres in a notorious conflict zone.

Over the years they have made numerous direct requests themselves for Canadian government assistance to enable them to return home to Canada. Their families have also made impassioned pleas and, in some cases, mounted concerted public campaigns, for Canada to assist with the formal process of arranging their repatriation. These pleas were met either with stony silence or unconvincing assertions that Canada could not do anything because it was too dangerous to send diplomats to NE

Syria. Either way, Canada's refusal to intervene or assist in any way was abundantly clear. Meanwhile, a growing number of other countries moved forward with extricating their nationals from these terrible conditions. Canada increasingly seemed to be among a shrinking number of outlier nations willing to abandon and banish their citizens.

This issue of the Global Justice Journal grapples with the many dimensions to this deeply troubling situation, at the heart of which lies a tension that has been dominant in international affairs since the September 11th terrorist attacks in the United States, namely the relationship between human rights and national security. Considering that question from a range of backgrounds and lived experiences, the authors of the six articles in this issue all make it clear that human rights cannot and should not be sacrificed in the name of security, including when it comes to questions about the treatment and legal status of Canadians and other foreign nationals detained in NE Syria. Doing so serves only to deepen injustice, while at the same time creating further security challenges.

The two opening contributions from Sally Lane and Monia Mazigh both offer powerful personal perspectives. Sally Lane's son Jack Letts has been detained in NE Syria for close to six years. He is one of the four men who the Canadian government must now repatriate as soon as reasonably possible, following the recent Federal Court ruling. She poignantly describes how the official indifference and hostility to pleas for assistance for her son leave the feeling that he is somehow "less than human".

Monia Mazigh harkens back to campaigning on behalf of her husband Maher Arar, imprisoned in Syria for one year, two decades ago, also amidst allegations, later found to be groundless by a judicial inquiry, that he was supporting terrorist groups. Her article draws also on her experiences of providing support to many other families facing similar situations, over the twenty years since. She lays out the different phases she generally encounters in government attitudes in such cases involving national security allegations, before there is eventual acceptance that a prisoner's return home must indeed be supported.

Retired ambassador Gar Pardy, who once headed the consular affairs bureau with Global Affairs, unpacks the extent to which the archaic notion of crown prerogative has been interpreted and applied by government and by courts to hold that it is within the discretion of the federal government as to whether or not , and to what extent, they will offer consular assistance to a Canadian detained abroad. This unconstrained executive authority offers legal cover to officials when they refuse to intervene to assist the Canadians in NE Syria.

Three of the contributions draw on visits and interviews not only with families of detained Canadians, but with detainees themselves, stemming from on the ground research visits and other means of contact. All clearly convey the dire and dangerous conditions faced by detained Canadians.

Dave Jones and Amarnath Amarasingam lay out just how extensive the nonresponsive attitude of Canadian officials has been to detainees and their families, and pinpoints a notable policy shift in the

wake of a New York Times podcast in 2018 which included a young Canadian who had purportedly fought with ISIS in Syria and later returned to Canada on his own accord.

Jo Becker and Letta Tayler offer a compelling overview of Human Rights Watch's extensive research and reporting on the plight of detained foreign nationals in NE Syria, with a particular focus on the glaring human rights violations experienced by the large number of children who are being held there, primarily in the camps. Importantly they note as well that children who have been repatriated, to a range of countries, are for the most part successfully reintegrating into life back home.

Leah West evaluates the Canadian government's approach to these cases through a national security lens, using the government's own policy framework for carrying out security assessments of Canadians detained in NE Syria. She asserts that all detained Canadians should be repatriated under the terms of the framework. West also concludes that the policy framework is flawed and that quite simply, repatriation is in fact in the best interests of Canada's national security.

The articles were written before significant developments in the context of the Federal Court challenge launched by 23 detained Canadians, comprising 13 children, 6 women and 4 men. After several days of both public and secret hearings in the case in December 2022 and January 2023, but before the decision had been rendered, the Canadian government agreed, on January 19, that it will now facilitate the repatriation of the women and children, but maintained its opposition to assisting the men.

The following day Federal Court Justice Henry Brown rendered his judgement with respect to the remaining four men. Drawing on Canadian jurisprudence but also extensively on international human rights standards and reports and recommendations from international human rights bodies and experts, Justice Brown concludes that the federal government is constitutionally obligated to take a number of specific steps to facilitate their return to Canada. The decision is grounded in section 6(1) of the Charter of Rights and Freedoms, which guarantees to every Canadian citizen the "right to enter, remain in and leave Canada." Authors have had an opportunity to revise their articles to take account of this significant development.

Long-time human rights activist Matthew Behrens, who has campaigned extensively in support of repatriation for Canadians in NE Syria, has written a comprehensive overview of Justice Brown's ruling, which we recommend as a tremendous resource to help understand the scope and significance of the decision.

This is not the end of this human rights story, however. There are other Canadians still detained in NE Syria, who were not party to this court challenge. Will the Canadian government extend the same assistance to them? Furthermore it is not yet known whether the government intends to appeal Justice Brown's ruling with respect to the four men.

And more widely, as Becker and Tayler from Human Rights Watch note in their article, 42,000 foreign nationals remain detained in NE Syria, 27,000 of whom are Iraqis. Approximately 60% of those held in the camps are children. They all face the same grave human rights violations in the camps and

detention centres as the Canadians do. They all have the same rights under international law as the Canadians do, including not to be arbitrarily detained, not to be subject to torture and ill-treatment, to have access to healthcare and education, and to return to their country of nationality. The concerns highlighted, and analysis and recommendations advanced in these articles therefore remain of broad relevance and application.

Justice Brown, surveying previous jurisprudence dealing with section 6 of the Charter notes that the right of a citizen to be able to enter Canada, is a ""foundational" right because without the ability to enter one's country of citizenship, the "right to have rights" cannot be fully exercised." It is a powerful reminder of what is at stake. This is much more than a bureaucratic right tied to completing paperwork, booking travel and issuing passports. In so many ways it is the entry point, the very key, to human rights protection in its fullest sense. It must be upheld, for everyone.

Citation: Alex Neve and Sharry Aiken, "Editors' Introduction: Human Rights and Citizenship Abandoned in NE Syria" (2023) 7 PKI Global Justice Journal 2

No Longer Human: The Arbitrary Detention of my Son in NE Syria

By: Sally Lane

No Longer HumanOn January 19 2023, a momentous decision was announced by Justice Brown of the Canadian Federal Court. He held that the federal government must end the arbitrary detention of 23 Canadians - four men, six women, and 13 children - who have been exiled and isolated from the outside world for up to six years in northeast (NE) Syria. In his 85-page decision, Justice Brown declared that his ruling flowed from the "very dire circumstances" of the detainees (para 182), as well as the denial of their *Charter* and international treaty rights.

This ground-breaking ruling marked the resolution of the nine-year-long struggle by my husband and I to help our son Jack, escape from Syria. After Jack went to the country in 2014 as a naïve 18-year-old believing he was helping his fellow Muslims in their uprising against the dictator, Bashar al-Assad, he realised his mistake and tried to return home. As his parents, we contacted everyone we could think of to assist him with this, including the Foreign Office, police, charities, politicians, journalists, and academics. We were even criminalised in our efforts, by the British state, after we tried to send Jack funds to escape, and were given a suspended sentence of 15 months following a lengthy court case.

When the British Foreign Office stripped Jack of his British citizenship in August 2019, they informed me that there was no point in speaking to them any more as Jack was no longer British. They referred

me instead to the Canadian High Commission since Jack's only remaining citizenship was Canadian. The following year it was clear to me; I had no choice other than to move to Canada to continue our battle for Jack's return from Syria.

When Jack finally managed to escape Islamic State (ISIS)-controlled territories in May 2017, he was captured by Kurdish forces, who took him to a farm with a swimming pool near Qamishli, NE Syria. 'The Kurds are being good to me,' he messaged me. 'Except they keep offering me cigarettes…Apparently, my file is very, very good. It is very clear I was not a member of said group. I think the whole process of handing me over is starting.'

That optimistic thought - that Jack would soon be sent back to England - turned out to be misguided. Jack has remained in a Kurdish prison for almost six years, where the conditions have been condemned by the UN as 'akin to torture'. 'We have not heard his voice since July 2017, when Kurdish forces, under pressure from the British, stopped all his communication privileges. Our latest news via the Red Cross - our only, sporadic form of contact - was from September 2021. As per usual, the letter was heavily redacted to erase any mention of conditions. Jack's ending message was, 'Never give up, Mum, never think that things don't change. Sometimes what we see as humiliation is a way of teaching us and purifying us.'

In the absence of any other recent information passed on to us from the Canadian or British governments, journalists, non-governmental organizations, or Kurdish contacts, this 16-month-old letter is my only indicator of Jack's current well-being or state of mind. Although there was a flurry of media interest in him when he was first captured, and then again when his citizenship was stripped, no news of his circumstances or his physical or mental health has emerged since.

Ironically, our fullest and most enduring picture of Jack's conditions derives from a freak phone call in 2018, arranged by the Kurdish detaining authorities. At the time, the Canadian government was claiming that it was unable to contact Jack and was still attempting to ascertain his whereabouts. A British journalist, David Rose, however, had a better idea. On 9 January 2018, he phoned the press office of the Kurdish administration, demanding immediate proof of life. Sure enough, the following day, Jack was put on the phone by his place of detention with Global Affairs Canada ("GAC"), and an hour-long conversation with a consular office in Ottawa ensued.

From this conversation, we learned that Jack was in a room with 30 other people, but with only 8 beds most people slept on the floor. He was rarely allowed out of his cell, and then only for 20 minutes. He was fed regularly, but allowed no exercise. He had inflammation and cysts in his kidneys and had convulsed twice from the pain. He had been put in solitary confinement for 35 days in a room that had no toilet and was 'about as tall as I am and about half that in width,' as punishment for 'leaking details' to the press. He had tried to hang himself because 'dying was better than my mother seeing me insane.' However, the guards had cut him down before this happened. He begged to be taken to Canada, and the consular officer replied that she could not make any promises, but that the government was 'working on his case.'

According to Human Rights Watch, which attempted to visit Jack in May 2022, the Kurdish authorities cite ‘security reasons’ as the justification for not allowing access to him. It is unclear how a young man, who is locked up under armed guard for at least 23 hours per day, could possibly present a security risk. However, as family members, we have not been in a position to question the logic of this. It has been clear for a very long time now that - despite the condemnation of several human rights and humanitarian organisations, such as Human Rights Watch, Médecins Sans Frontières, the Red Cross, Save the Children, and Reprieve - the dire conditions of Jack’s arbitrary detention are a result of an unholy alliance between the international coalition of 84 countries against Daesh, which include Canada and Britain, and the Kurdish authorities themselves.

Over the years, the situation has become an excruciating stalemate. The U.S. State Department has been ‘urging’ its international coalition allies to repatriate its citizens via press statements of successive military officials, and the allies - not surprisingly - have been dragging their feet in response to such feeble official language. Kurdish representatives have admitted to me in private messages that the Americans only care about the Kurdish administration when the latter perform the function of looking after the American prisoners.

As Jack’s desperate parents, our only recourse to save our son has been via government, and not individual action. The Kurdish authorities have been clear that they will only organise the release of foreign detainees if a member of each relevant government, or its delegate, personally attends the handover to sign the necessary paperwork. All that family members have been able to do is echo the words of the U.S. State Department and ‘urge’ our government to follow this procedure to release our loved ones from their present torturous conditions.

In February 2021, Canada launched a global initiative ‘against arbitrary detention in state-to-state relations’, to which 58 countries signed up. Marc Garneau, then Foreign Minister, declared that arbitrary detention was an ‘illegal and immoral practice [that] puts citizens of all countries at risk and it undermines the rule of law.’ ‘It is unacceptable and it must stop,’ he added. When I wrote to Mr. Garneau soon after his public announcement, asking for government assistance for my arbitrarily detained son, I did not receive a reply. It was, and is, my strong suspicion that the phrase ‘state-to-state relations’ had been deliberately added to this declaration in order to disqualify the 50 or so Canadian prisoners, including 23 children, who have been detained in appalling conditions in Syria. I have, after all, been repeatedly told by a Canadian consular official in Ottawa that ‘the Kurds are a *non-state actor* and don’t have laws like we do.’

My hope, when moving to Ottawa in 2020 to fight for Jack’s release by the country of his remaining citizenship, had been that Canada, unlike Britain, possesses a Constitution and *Charter of Rights and Freedoms*. Surely this Charter - and specifically, section 6, which stipulates that “every citizen of Canada has the right to enter, remain in and leave Canada” - would ensure that the Canadian government would do the right thing and rescue Jack and other detainees from inhumane treatment?

Despite the government itself having direct access to Jack's 2018 testimony, the answer to this question had, until Justice Brown's recent ruling, been a bone-crushing 'no'. Although family members have followed the advice of our group's lawyer, Lawrence Greenspon, in writing to GAC, giving them details of our loved ones' plight, and of the current dire political and humanitarian situation in NE Syria, the Canadian government has remained intransigent in its refusal to act. Stories of children dying from malnutrition, tent fires, camp guards firing live ammunition on detainees, sewage flooding the camps, men in the prisons dying in their hundreds from tuberculosis, and young boys taken to adult male prisons at the age of 10 to prevent them from procreating, have had absolutely no effect on the bureaucrats in Ottawa. 'We urge the Kurdish authorities to treat the detainees in accordance with international humanitarian law', is the only response we have ever received from our GAC case worker. Such a robotic response has largely gone unchallenged by either the media or academia, who have preferred to focus on the possible guilt of the detainees - even children - or the risk they might pose upon their return.

It is clear that human rights in this situation are seen in opposition to national security, as if, as a developed society, we are unable to have both. Fear and the assumption of guilt have displaced all norms of civil, political, and human rights, so that protests regarding egregious abuse are drowned out by claims that these detainees have put themselves outside the realm of humanity. For myself, and for Jack, the normal rights of a parent, or of an arbitrarily detained person presumed on no evidence to be guilty, are seen - in such exceptional, fearful circumstances - to no longer apply.

Jack himself wrote in a 2019 Red Cross letter: 'After two years here I realize that I'm no longer considered human and have become a new, more despicable creature, with far less rights, in the eyes of the supposedly civilised world.' His sentiment was given sinister confirmation by a U.S. extremism expert, interviewed in Washington by International Crisis Group in November 2019, who said, "[t]he problem is that we've expended all this effort promoting [what has become] the Western counter-terrorism paradigm and dehumanising these people to mobilise against the ISIS threat. Now we have to humanise the population to convince countries that they can and should get them home."

It is noteworthy that this deliberate dehumanisation of detainees - carried out at the highest levels of government - has been applied with a broad brush targeting not just 'ISIS-linked suspects', but also those caught up in the wide-ranging conflict, including: civilians fleeing ISIS; coerced wives; trafficked schoolgirls; those presumed to be ISIS members because they are male and of fighting age; humanitarian workers, academics, and anti-Assad protesters trapped under ISIS control; local people critical of the Kurdish administration; and children. From history, we know that where such dehumanisation occurs, persecution, injustice, and killing often follow.

Now that the families of Canadian detainees have received our longed-for repatriation declaration from the federal judge, the question remains as to how this ruling will be implemented. While the timeframe for the return of the women and children was outlined in the settlement offered by the government - and believed to be within the next few months - no such timeframe was specified for the men. Instead, it was only required by the Judge to be "as soon as reasonably possible" (para 143). Meanwhile,

Prime Minister Trudeau is quoted saying he is “reviewing the decision.” It is the fervent hope of the families of the Canadian detainees, and of those around the world with detained relatives, that the Canadian government will indeed comply immediately with this ruling and that our loved ones will, after so long, be finally returned to us.

Citation: Sally Lane, "No Longer Human: The Arbitrary Detention of my Son in NE Syria" in *Human Rights and Citizenship Abandoned in NE Syria: A special issue of the Global Justice Journal* (2023) 7 PKI Global Justice Journal 2.

Sally LaneAbout the Author:

Sally Lane is the mother of Jack Letts, a Canadian citizen who has been arbitrarily detained in NE Syria for almost 6 years. She has a BA hon in French and History from the University of Western Ontario. Her book, ‘Reasonable Cause to Suspect’, to be published by Dundurn Press in February 2023, details her 9-year-long struggle to free her son.

Canada has not learned from its past mistakes: Why Canadians detained in Northeast Syria need to be repatriated

By: Monia Mazigh

> Canada has not learned from its past mistakes
> *Image taken by: Dr. Leah West*

On September 26 2002, my husband, Maher Arar, was arrested by American authorities at JFK airport in New York City on his way to Montreal. He is a Canadian citizen who immigrated with his parents from Syria to Canada in 1987. Earlier that summer, we had travelled to Tunisia with our two young children and stayed at my parents’ home.

The day he was arrested, Maher took a flight from Tunis to New York via Zurich, Switzerland. He was going back to his consultancy business and promised me to come back to Tunis in about a month, so we could all travel back to Ottawa. He couldn’t keep that promise.

I couldn’t even hear his voice nor talk to him over the phone for over a year. Our quiet and somehow predictable lives came to an abrupt end. Within thirteen months, he metamorphosed from a successful

and ambitious telecommunication engineer to a suspected terrorist associated with al-Qaeda and, eventually, ended up being described as a torture survivor.

My situation was much better as I was able to remain safe with both of my two children. Yet, I also transformed from a young academic into a single mother thrown into the world of activism, human rights, and contentious politics in a post-9/11 context. I became known as the wife of the terrorist.

Sometime in October 2002, Maher was flown by the American authorities in one of their ghost planes, subcontracted by the American government to shady private companies, in the early hours of the morning. He was shackled and blindfolded all the way from American soil to Amman, Jordan. From there, he was transported by a military jeep to the Syrian border, where he was taken to a prison in Damascus.

It took me and our supporters more than one year to finally see my husband back in Canada, safe and free. From the day my husband disappeared until a few weeks before he was repatriated, the Canadian government refused to take any responsibility for what had happened to him.

I remember someone rightly using the following metaphor to describe his case: “it is like you push someone from a building and into the void, and later claim that you weren’t responsible for what happened to them. Rather they blame the force of gravity for their fall”. As sarcastic and tragic as this image may be, it unfortunately represented how I felt towards the response of the Canadian government to my husband’s case.

In 2004, after Maher was home, and after months of advocacy by politicians and human rights organizations, the Canadian government ordered a public commission of inquiry into the actions of the Canadian government related to Maher Arar.

In 2006, the commission, headed by Justice Denis O’Connor, cleared my husband of any association with terrorism and recommended that the government apologize and provide compensation to my husband and our family.

During the public campaign that I conducted to obtain the release of my husband and his subsequent repatriation, and whenever I asked the Canadian government about the measures it was taking to repatriate him, the response I received over and over was twofold, both of which were problematic:

1. Your husband, Maher Arar, is a Syrian citizen. So, his dual citizen status is hurting him as Syrian laws will prevail over his Canadian citizenship: *jus sanguinis* over *jus soli*.
2. The Americans rendered Maher Arar to Syria and thus any decision related to his repatriation needs to be greenlighted by them.

Both of these arguments essentially stripped my husband of his constitutional Canadian rights. In other words, his Canadian citizenship became useless, and the Canadian government portrayed themselves as having neither responsibility nor agency to bring one of their citizens back home. They

washed their hands of the case both in front of the law and in front of the public.

But not for long.

I vividly remember how during a conference call with the late Clayton Ruby, trying to hire him to defend my husband's rights, he candidly replied to me, "This is a political case. In reality, there is no legal basis to help you here."

This was the ultimate and unspoken objective of the "rendition process". Put someone in a situation of legal limbo. No laws, no rights, no courts. Indefinite detention. In the air, the ghost plane disappears from radar and air traffic control authorities.

At home, intelligence officials hide behind companies used as "subcontractors" to torture "rendered" citizens. The officials then use that problematic information to justify a legal agenda of privacy invasion, and to convince the public that those citizens deserve no rights and no help.

Black holes, operated by the CIA onboard ships in the middle of international waters or on the soil of rogue states who were willing to play the dirty role of a proxy in the torture business, were swallowing up our constitutional laws and our humanity. This is the core principle behind the existence of places like Guantánamo or the total disdain shown by countries towards the Geneva Convention.

Over the past two decades, those techniques, which were supposed to remain secret and unknown to the public, have been slowly discovered either by investigative journalists, by survivors who, against all odds, came back alive from their ordeals and talked about what happened to them, or by human rights advocates and organizations around the world who denounced these horrible techniques. Gradually, these tactics lost their attraction and *raison d'être*. However, they have been replaced by other methods, no less cruel or problematic.

In 2015, the so-called Islamic State (IS) became infamously known around the world. The atrocities committed by some groups associated or claiming to be part of IS made the headlines in many countries. Canada was no exception. The so-called 'war on terror' did not stop. On the ground, it shifted from Afghanistan to Iraq and Syria, which became the main targets of these operations. The civilian populations in these countries suffered on multiple fronts: the extremist violent groups of IS, the Syrian militias defending the ruthless Bashar Al Assad regime, the Russian forces who came to the rescue of their ally, the Assad regime, so as to maintain him in power, and the Western coalition forces who were bombing the areas that needed to be freed from IS control.

After the collapse of IS, many of the Canadian Muslims, both men and women, who had gone to Syria for either humanitarian purposes to help civilians or for political purposes to join some of the military groups, found themselves arrested in camps, which the Western coalitions helped Syrian Kurdish authorities to establish and manage.

These camps became the new “Guantánamo”, where foreigners, regardless of their guilt or innocence, were dumped and left without assistance from their own governments. Men, women, and children were incarcerated in Al-Hol and al-roj, to name the two primary locations. Situated in Northeast Syria, these camps house people displaced following the collapse of the Islamic State. According to the organization, Save the Children, almost 7,000 children of foreign nationality remain trapped in these camps, at risk of attacks and violence and urgently in need of being repatriated to their home countries.

In 2019, I became personally involved in advocating for the return of Canadians detained in Northeast Syria. Indeed, since the case of my husband, I have become a human rights activist. Over the years, I have been involved in many cases of Canadians unjustly detained abroad. These cases are difficult and complex. Most of the time they have a political component that is missing from public knowledge and debate. Some of these cases become high profile, while others remain under the radar, known only for the families and some activists.

Over the years, I have learned that keeping a low profile is rarely a successful strategy. Nevertheless, speaking out and waging a public campaign comes with some personal costs and may carry risks.

One has to remember that these cases are brought to the attention of a public that is saturated with news representing Muslims or Islam in a very unfavourable light. Welcome to the new post-9/11 Islamophobia.

By contrast, when Michael Kovrig and Michael Spavor, two Canadians, were arrested, charged, and incarcerated by China in retaliation for the arrest on an extradition warrant by Canada of the CFO of the Chinese Huawei telecommunication company, the Canadian public came to understand these two cases as simply and as rightly as they should. It was seen as being about the arbitrariness of the Chinese regime versus the principle of due process and prevalence of law in the Canadian system. The question of guilt or innocence of the two Michaels was rarely discussed. It was unambiguously understood by Canadians that the two Michaels should be returned home. The Canadian government had no choice, it had to pursue all possible diplomatic and other channels to bring these two Canadians safely back to Canada, and it did. As a consequence, the two Michaels were released and returned home.

In the case of my husband, rather, the presumption of innocence was turned upside down. Maher was buried in an underground dungeon, a confession was extracted from him under torture, exactly like the two Michaels, but unlike them, I found myself playing the role of the lawyer that my husband was deprived of. I was forced to try to distance him from allegations that were never presented to him nor me, not even on paper. The role of Canada as a government standing up for the rights of its citizen, as we would later see forcefully on display with the two Michaels, was totally absent. I was told repeatedly, over and over, that there was little Canada could do.

In fact, for many Muslim Canadians arrested in the so-called ‘war on terror’, guilt precedes innocence, as it had become ingrained in the minds of many and disseminated widely in the public. In a desperate and ultimate move, I had to turn to the public for its judgement and verdict, in an effort to convince them and prove to them that my husband was innocent. I had to appeal to people’s rationality and remind them of our *Charter of Rights and Freedom*s and its application to *all* Canadians. I had to unequivocally remind the Canadian government of its duty to protect the rights of one of its own.

Every right became a battle. Every right became a luxury. The right to a consular visit. The right to medical assistance. The right to a fair trial. The right to legal representation. They were all gone.

Until the information about Maher’s torture surfaced, the Canadian government was burying its head in the sand. Worse, individuals inside the government, police, and intelligence agencies, were even trying to push that head in even deeper.

Things started to move positively forward for my husband when a letter drafted by the Prime Minister, Jean Chrétien, was hand-delivered to his counterpart, Bashar Al Assad, by the late Senator Pierre de Bané. That letter was highly symbolic as it showed that Canada cared about the rights of Maher Arar, and that despite all the rumours and allegations, the presumption of innocence mattered.

In all the cases I have been involved in related to Canadians detained abroad, the same dynamics are always at work. There is an initial period of “denial” when the Canadian government is looking away. There appears to be little concern for the fate of their citizens: their rights, their well-being, and even their existence, are forgotten.

Later in the process, there is a phase where the government awakens (either due to public pressure or other external factors) from its denial, and instead pretends it can do nothing. I call this phase the “victim blaming” phase. Usually, the blame is put on those who are detained abroad. Their dual citizenship is presented as a problem (for my husband and Abdullah Al Malki detained in Syria, for Ahmed El Maati detained in Egypt, for Abusoufian Abdurazik detained in Sudan, for Khaled Al Qazzaz, a Canadian permanent resident detained in Egypt). More broadly, the insinuating question of “why did they go there in the first place” inevitably comes up.

For the Canadian men, women, and children still detained in Northeast Syria, I was recently shocked to hear a government lawyer’s recent argument that these 23 children, 19 women, and 8 men have basically no Charter rights and Canada has no responsibility to repatriate them. Further, the lawyer argued that Canada was not responsible for detaining them and did not request their detention. According to her, they were detained by Kurdish forces – "we are not part of the causal chain," and Canada should therefore not be compelled to intervene to repatriate them.

It is reminiscent of two of the arguments I heard from the Canadian government when campaigning for my husband. One was that because he was a dual citizen, the Canadian government has little if any leverage to bring him back from Syria, and the other put the entire blame on the shoulders of American officials in an effort to slip out of the case unscathed.

It appears that in 2023, more than 20 years later, Canada is still in this mentality of “nothing seen, nothing heard, nothing said”. Have they forgotten that Kurdish forces are funded by the Western coalition, including Canada? Are they not aware of what Dr. Abdulkarim Omar, Co-Chair of the Kurdish Administration’s foreign office in Northeast Syria, has been saying for years, namely that, “Every country should take its citizens back.” And do they need to be reminded that on January 31, 2022, the US State Department called on its partners to “urgently repatriate their nationals and other detainees remaining in northeast Syria”.

There are so many troubling similarities in the attitude exhibited by Canadian officials over the past two decades when it comes to Canadians detained abroad, attitudes that are totally wrong and unacceptable.

There is also a phase of fighting back, at which time the government will try to portray its citizens detained abroad as “bad citizens”. They will be accused of choosing violence and barbarism instead of peace and goodness. They will be tarred as being ungrateful for living in a country like Canada. According to this logic, these “bad citizens” don’t deserve to be assisted by their own government.

Today, the narrative about Canadians detained in Northeast Syria is largely lodged in the mindset of most of the Canadian public as being about a “bunch of terrorists” who we should not feel sorry for. Following the same rationale as the government lawyer, this faraway group of Canadians should be forgotten.

Is that not a form of forced exile? Aren’t we done with this inhuman and arbitrary practice, that in centuries long ago left many people barred from returning to their homes, crimes committed and crimes not committed? Those barbaric methods to get rid of “unwanted” people belong to a past full of injustices and mistakes. Most of all, it belongs to a past where there was no place for due process nor the rule of law.

Over the years, Canadians realized that the rendition process was illegal and didn’t work. Maher Arar was brought back and cleared from all the allegations against him.

Over the years, Canada realized that keeping a teenager in Guantánamo for over a decade and sending Canadian officials to interrogate him there was a blatant violations of his rights. Omar Khadr was able to be repatriated to Canada and later was provided compensation and an apology for his terrible ordeal.

If it were not for the *Charter of Rights and Freedoms*, and my belief that every Canadian has the right to defend themself and deserves to be helped by their government institutions to have a decent life, I would have lost my faith in Canada.

The 26 children who are abandoned by the Canadian government with no education, no healthcare and no security are still Canadian children who deserve to be treated as all other Canadian children. The women and men who went to Syria for various reasons, be that humanitarian, or personal

purposes, or joining military groups, deserve to be defended even if we do not necessarily condone or agree with their choices. Keeping them in exile and pretending that we have no responsibility for them is morally wrong and unconstitutional. Other countries, less privileged than Canada, have brought their citizens home from these dangerous places. What is Canada is waiting for?

During my many experiences of campaigning on behalf of Canadians unjustly detained abroad, I have learned that there is usually a phase when the Canadian government feels that it is losing the battle. This is generally when the public comes to see the “true picture”. It is not a question of guilt or innocence. It is a question of rights and the Constitution.

Last week, this particular phase started to unfold. The Canadian government publicly announced that it was finally prepared to start the repatriation process for some of the women and children detained in these horrible camps. The following day, Federal Court Justice Henry Brown ordered the Canadian government to repatriate four of the Canadian men who are arbitrarily detained in NE Syria “as soon as reasonably possible”.

This court decision is a ground-breaking judgment that will have consequences not only in Canada, but also around the world in other countries which are still resisting the call to repatriate their citizens.

I think that with his decision, Justice Brown clearly understood that the picture is bigger than the characterization of these individuals as being a group of ‘undesirable’ citizens without rights. It is about respect for the *Charter of Rights and Freedoms* and its application to *all* Canadians. It is about Canada’s important international human rights obligations.

As they come to understand that true picture, many Canadians will, I am confident, increase pressure on their government to do the right thing. The right thing is to bring them all home.

Citation: Monia Mazigh, "Canada has not learned from its past mistakes: Why Canadians detained in Northeast Syria need to be repatriated" in *Human Rights and Citizenship Abandoned in NE Syria: A special issue of the Global Justice Journa*l (2023) 7 PKI Global Justice Journal 2

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Monia currently sits on several boards of non-profit and charitable organizations, among others: the Rideau Institute, the Ottawa Muslim Women's Organization, the Canadian Centre for Policy Alternatives and the Association des Auteures et Auteurs de l'Ontario français. Monia is a member of the International Advisory Council for the Institute for Canadian citizenship and sits of the advisory board of Justice for All.

The Crown and its Prerogatives

by: Gar Pardy

The CrownThe Crown, or more accurately the British Crown, dominates global entertainment. Its activities, both royal, and often common, have provided a useful foil of daily titillations for the tribulations of a troubled world. To audiences everywhere, it provides an embarrassing and welcomed modernity to the ancient concept of monarchy and, in doing so, its lingering acceptance by many as an essential element of government.

In Canada, this "essential element" found current expression again in the government's January 2021 policy paper, which it used it to justify its lack of action in assisting a group of Canadians detained in northeast Syria. In this paper, the government stated it "has no positive obligation under domestic or international law to provide consular assistance, including repatriation" of the detained Canadians. It went on to state, "officials may provide consular assistance to Canadian citizens in distress abroad . . . pursuant to the government's royal prerogative over international relations."

The government again relied on this policy two years later, in January 2023, before the Federal Court of Canada. There, the government used it as a defence in the case of 23 detained Canadians, mainly children, who sought the Court's authority to order Canada to make arrangements for their return from northeastern Syria. The government argued that neither the *Charter of Rights and Freedoms* nor international law required it to do so.

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For Canada, and several other countries conquered during the 500 years of British imperialism, there remains significant retentions of common constitutional norms, involving the monarchy, with the United Kingdom. There are, as well, ongoing actions to see those historical connections constrained if not eliminated.

Fourteen members of the Commonwealth of Nations, created largely to soften British angst following the loss of empire, retain significant historical British connections by accepting the British monarch as head of state. But 42 of its 55 members have become republics or have made other constitutional arrangements for heads of state.

That connective number is fading and in recent years Barbados, Dominica, Guyana, and Trinidad and Tobago, soon to be joined by Belize, the Bahamas, Jamaica, Grenada, Antigua & Barbuda, and St. Kitts & Nevis have established other arrangements for their head of state function. In Canada, Australia, and New Zealand there are ongoing debates to do so as well.

A more substantial remnant of British imperialism, globally, has been the continued use of many aspects of English common law. Its use has been significantly modified by time and local conditions, but the "royal or crown prerogative" element has been retained by many commonwealth countries as an important feature of government. While the "royal or crown" may have been eliminated from its use, the retention of the concept has been found valuable as an instrument of executive authority by many constitutional governments.

Prerogative powers have had a long history of use within both England and its successor, the United Kingdom. Henry VIII found them useful in changing his bed mates as part of his efforts to provide a male successor. In doing so, he created his own church resulting in his excommunication by Pope Clement VII.

In the late 19th century, the United Kingdom and in the newly created dominions of Canada, Australia, New Zealand, South Africa and Newfoundland, the crown prerogative powers were converted to powers exercised solely by elected executives. In that process such powers have been largely confined to areas of governance not constrained by statute law.

In Canada, and in other common law countries, these "crown powers" are largely exercised in the conduct of foreign relations. Most recently the Supreme Court of Canada, in a decision (Canada (Prime Minister) v. Khadr, 2010 SCC 3 at para. 44) wrote, "[i]t would not be appropriate for the court to give direction as to the diplomatic steps necessary to address breaches of Mr. Khadr's *Charter* rights."

The Court went on to write at paragraph 36:

[I]t is for the executive and not the courts to decide whether and how to exercise its power [and] *the government must have flexibility in deciding how its duties under the power [foreign affairs] are to be discharged.*

In unintended irony, the Supreme Court decision noted it did not have sufficient information available to provide comment on the conditions affecting Omar Khadr but did write, "[he] has not been moved from Guantanamo Bay in over seven years, his legal predicament continues to evolve" (para 45). The comment is particularly self-serving in that the Court can command the production of the necessary information.

The *Charter* rights in question were fundamental to the relationship of the citizen and state. Its section 7 states, "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The 2010 Supreme Court decision is of significance in that it did represent the Court's willingness to apply the provisions of the *Charter of Rights and Freedoms* to the action of Canadian officials acting outside of Canada. It did acknowledge that Mr. Khadr's *Charter* rights had been violated by officials but then limited the application by refusing to provide a remedy. In the curious world created by this decision, there is acknowledgement of a violation of the most central element of the written Canadian constitution – the right to life, liberty and security of the person – but constrained by the ages old unwritten royal prerogative over foreign affairs.

The 2010 Supreme Court decision reflects the policy of Canada since the days it assumed responsibility for the protection of its citizens abroad in the aftermath of the Statute of Westminster. In its Manual of Consular Instructions, the Department of Foreign Affairs late in the 1940s wrote:

Extent of Protection: Most consular services are provided as a matter of discretion by virtue of the royal prerogative except as provided by statute; no one is entitled to claim such services as a matter of legal right. Strictly speaking, protection and assistance can therefore be withheld by the Secretary of State for External Affairs at his or her discretion (although this in fact is rarely done). The nature and extent of protection and assistance is governed by these instructions and by the judgement of consular officers exercised in the particular circumstances of each case [emphasis added]. (Chapter 1, p.1)

The emphasis on "discretion" as a result of the "royal prerogative" remains an essential feature in the Canadian policy on assistance to Canadians in foreign countries. The policy was reiterated in January 2021 when the public policy document referred to above was issued.

The 2010 decision of the Supreme Court was unanimous. However, a few months before the decision, in September 2009, the Chief Justice, Beverley McLachin, spoke publicly of her concerns about government policies and actions to counter international terrorism. In an Ottawa speech, the Chief Justice stated, "[t]he fear and anger that terrorism produces may cause leaders to make war on targets that may or may not be connected with the terrorist incident." She went on to say, "[o]r perhaps it may lead governments to curtail civil liberties and seek recourse in tactics they might otherwise deplore . . . that may not, in the clear light of retrospect, be necessary of defensible."

Evidently, the "clear light of retrospect" has not yet influenced the Court in its decisions, nor the actions of the government in its responsibility to protect Canadians in danger overseas. The government's reiteration of its policy of discretion in 2021 is a strong re-confirmation of its historical policy of exercising discretion in providing assistance.

The situation that created the 2021 governmental public statement involved a group of Canadians, mainly women and children, in northeast Syria detained by the local authorities. The government has been largely incoherent and ineffective in providing protection for these Canadians. The reasons for inaction were emphasized in its 2021 paper and included:

- complex security situation in northeast Syria and lack of diplomatic presence;

- Canadians are in the custody of a non-state actor;
- Canada has restricted access;
- threats from others as a result of “alleged affiliation” with the Islamic State;
- travel restriction once outside of Syria; and
- lack of documentation to establish Canadian citizenship.

The United Nations in 2021 published a list of 57 countries with nationals in the detention camps of northeast Syria. To date more that 35 countries, ranging from Albania to Uzbekistan have made arrangements to repatriate hundreds of their nationals from the camps without serious incidents or problems. These countries involve some of Canada’s closest partners including the United States, the United Kingdom, France, Germany, Denmark, Italy, the Netherlands, Sweden and Norway.

To date Canada has seen four citizens returned, two of which returned with the assistance of a former American diplomat.

This lack of action by the government led family members of 23 detained Canadians, among the more than 40 estimated to be held in Syria, to file a case with the Federal Court. The case attempts to force the government to take appropriate action on behalf of the 23 detained Canadians, six of whom are women, four men and 13 children. In reaction to the publicity, the government decided on January 18 that they will repatriate the 19 women and children, but not the four men.

The following day, on January 20, the Federal Court ordered the government to repatriate the four Canadian men as well. The Court in its written statement stated that “the conditions of the men . . . are even more dire than those of the women and children” and “there is no evidence any of them have been tried or convicted, let alone tried in a manner recognized or sanctioned by international law."

A further element in the provision of protection for Canadians facing difficulties overseas, is the requirement for travelling Canadians to pay in advance for the service. In 1996, a Consular Service Fee of $25 was legislated as part of the budget act for that year. Since then, close to two billion dollars in such fees have been collected, covering all the costs inherent in the services.

The fee is mandatory and paid at the time a Canadian applies for a passport. Despite this, the government continues to maintain that the pre-paid service is discretionary. As such, the Consular Service Fee is probably the only fee that is collected by the government for a discretionary service.

The continued insistence by the government of the discretionary nature of the service is completely unacceptable especially in light of the changing nature of Canadian society. The 2016 Census reported that 7.5 million people, representing over 21.9% of Canada’s total population, were born outside of Canada. With present immigration policy, it is expected that by 2036 the foreign-born component could reach 24.5 to 30%. Complicating matters even further, in 2021, 3.7 million Canadians or 11.2% of the total population reported more than one country of citizenship.

Another aspect of the issue is the number of Canadians living outside of Canada. The Asia Pacific Foundation and the Canadian Expat Association report that more than 2.8 million Canadian citizens live in other countries, representing 9% of all Canadian citizens. That number is more than the populations of six of Canada's provinces.

The origins of today's Canadians and where they may live or visit creates a significant and increasing important need for changes in Canada's protection policy. As recent court cases have demonstrated, Canadians need the protection and it is unconscionable for the Government to maintain that this protection is discretionary.

This was emphasized in a 2004 Federal Court case, again involving Omar Khadr. In that case Judge von Finckenstein wrote:

Indeed, Canadians abroad would be surprised, if not shocked, to learn that the provision of consular services in an individual case is left to the complete and unreviewable discretion of the Minister. (para 22)

It is more than time for the government to review its policy of retaining discretion in assisting Canadians outside of Canada. Migration into Canada is no longer a one-way trip as it was historically. Today, increasing numbers of Canadians retain significant connections of family, social, education and business ties to the world.

This is tragically illustrated by the Canadians detained in northeast Syria. The need for unconditional assistance from their Canadian government is sadly missing and to withhold it for spurious reasons devalues the citizenship of all. Today, it is an essential part of the Canadian mosaic. The government should not be an obstacle in this very Canadian endeavour of maintaining large and meaningful connections with the world.

Citation: Gar Pardy, "The Crown and its Prerogatives" in *Human Rights and Citizenship Abandoned in NE Syria: A special issue of the Global Justice Journal* (2023) 7 PKI Global Justice Journal 2.

Gar Pardy About the Author:

Gar Pardy is a son of the Rock and his early work took him to Gander, Goose Bay and Frobisher Bay as part of the Meteorological Service of Canada. He joined the Canadian foreign service in 1967 and had postings to India, Kenya, Washington, DC., and Central America. In Central America he was ambassador to Costa Rica, El Salvador, Honduras, Nicaragua and Panama. His last decade with the foreign service from 1992 to 2003 he was Director and Director General of the consular service. Since retirement he has written extensively on issues of foreign and public policy all being published by numerous publications. He has also written reports on issues of border security with the United States, hostages and kidnappings and the needed reform for consular services. In 2015 he published "Afterwords From a Foreign Service Odyssey"; in 2020 "China in a Changing World"; and in 2023 "The Scary World of Nuclear Weapons - Agenda for Elimination." All are available from Books on

Beechwood in Ottawa and from all online book retailers. He lives in Ottawa with fellow author Laurel Pardy.

Left on Read: Global Affairs Canada's Provision of Consular Services to Canadians Detained in Syria and their Families at Home

By: Dave Jones and Amarnath Amarasingam

Left on Read: Global Affairs Canada's ProvisionBeginning in May 2018 and continuing through January 2023, Global Affairs Canada ("GAC") adopted a strategy of non-responsiveness and delay in an effort to avoid making any progress on facilitating the departure of Canadians – none of whom have been convicted of a crime in Canada or abroad – from Syria home to Canada. Repatriation now appears imminent in the aftermath of, first, an agreement between GAC and a lawyer representing several of the families, and second, a Federal Court decision ordering the government to facilitate repatriation. However, the way in which GAC neglected not only the Canadians detained in Syria, but also their families in Canada, is a dark mark on the department, and one that deserves closer scrutiny. Based on conversations with both Canadians detained in Syria and their families in Canada, it is our hope that this short paper memorializes the saga these Canadians went through.

In early 2018, half a world away in a Kurdish-run detainee camp in northeastern Syria, two Canadian women were in contact with Canadian consular officials – discussing their return to Canada and filling out travel documents. In the coming months, the calls went silent and all their plans for return were indefinitely shelved. This, according to our own sources in government, seems largely to have been caused by a popular podcast produced by the *New York Times* and the political fallout it caused in Canada.

From April to June 2018, Rukmini Callimachi, then a national security reporter with the *New York Times*, published a 10-part podcast series discussing her reporting on Islamic State (ISIS) fighters as well as her numerous trips to Syria and Iraq. According to Callimachi, the podcast has been downloaded over 25 million times. Many in the Canadian public were shocked to hear the voice of a young Canadian on the podcast, who claimed to have fought for ISIS and then returned home to Canada. "Abu Huzayfah," his *kunya* or nom de guerre, at times sounded reflective and regretful, but at other times, seemed to betray his ongoing admiration of jihadism and the ISIS caliphate. Even worse, he claimed to Callimachi that he had carried out executions while a member of IS. Inevitably, the Canadian political establishment erupted. "The media are reporting this individual is in Toronto, right now, as we speak," said Conservative House Leader Candice Bergen in the House of Commons,

demanding answers from the Liberal Party of Canada. “Can the government confirm it? Why isn’t this government doing something?” she asked to the applause of her party members.

Suddenly, as Canadian media became seized with the Abu Huzaifa story, GAC staff contact with the detained women fell silent. This timing was not a coincidence, and several of our government sources later confirmed to one of the authors that the spotlight on potential repatriations brought by the podcast effectively halted all progress. Kurdish officials also noted a cessation of productive conversations between their administration and the Canadian government around this time. Silence and non-responsiveness came to define the relationship between Canadian consular officials and both Canadian detainees in Syria, and their families in Canada.

The consular crisis mounted after the fall of Baghouz, the last stronghold of Daesh, in March of 2019. At this point, a number of additional Canadians entered Kurdish custody. The men were placed in several prisons in northeastern Syria and the women and children were sent to either Al Roj camp or Al Hol camp. All told, more than 50 Canadians – the vast majority of whom were children under the age of 10 – were arbitrarily detained and stranded by their government.

Life in these camps can only be described as an emergency situation. Al Roj camp, for instance, housed 2 615 individuals as of May 2022, and has steadily grown in size as some women from the Al Hol camp were relocated there for their own safety. There remain ongoing issues related to child protection, freedom of movement, gender-based violence, sanitation and hygiene, as well as food security related to life in the camp. Al Hol camp, to put it mildly, is a different situation altogether. Compared to the 2615 individuals at Al Roj camp, Al Hol housed 55 116 people as of June 2022. At the time of writing, the population of foreigners has dropped from close to 10 000 in October 2020, to just under 3 000 – thanks to repatriation of their citizens by several Central Asian and Western countries. What is most shocking about Al Hol is the number of children one sees when visiting the camp. Around 34 000 (56%) of the camp’s residents are under the age of 17, with 30% of them being between the ages of 5-11.

All of these children have experienced a host of challenges while living under ISIS as well as after entering the camps: from interrupted education, to witnessing the death of a parent or sibling; early exposure to violence (including executions, drone strikes, and beheadings); as well as repeated displacement. UNICEF and Save the Children have repeatedly called for restorative justice, repatriation, and mental health support for these children to little avail.

From this point onward, individuals in these camps and prisons, along with their families, were unable to obtain basic information, simple advocacy or even recognition of a message from the federal government. With respect to communications with family members, conversations – when they occurred – with members of GAC’s consular team would almost always end with an encouragement on their part to send along information directly related to the health and safety of the family’s loved one abroad. This often-included requests that families provide copies of medical or other records relating to the situation facing their loved one(s).

Unsurprisingly, given the danger in the camps and the dire living conditions, families attempted to provide updates regularly. Often, these updates contained sensitive and distressing information, for instance: gunfire outside a Canadian's tent or a Canadian child having trouble breathing and being unable to access healthcare. Acutely aware of the reality of life in the camps, it is both telling and distressing that GAC would seek and appear to rely on some type of official documentation, when healthcare was nowhere to be found, and the camp guards presumably were not in habit of giving out contact information to the detainees.

Messages from families were rarely responded to, and when they were, it contained no specific information about how the government was working to provide either direct support in relation to the event described, or more general updates on negotiations between Canada and the Kurds. One parent described how: "[t]heir contact is sporadic to say the least and the caseworkers using the usual copy paste replies if they send any."

The same was true when GAC caseworkers would intermittently get in touch directly with Canadians in the camps over WhatsApp. A caseworker would send a message, the Canadians would respond as soon as possible, the message would be delivered, read, and never responded to. Time and again, the faint hope created by a flurry of GAC activity would never result in any substantive developments, and the Canadians and their families would not be informed about what was occurring.

Further to this, as it became clear that the Canadians, and citizens of other nations, would be in-situ for a prolonged period, an infrastructure of international non-governmental organizations (INGOs) began to materialize in the camps. A number of large, sophisticated INGOs, such as Save the Children and UNICEF, had a presence in either Al Hol or Al Roj and, at least to the knowledge of the family members that we spoke with, Canada made no efforts to leverage the presence of these organizations in an effort to attend to the needs of Canadians. This problem was particularly acute in Al Hol.

The federal government's non-responsiveness extended beyond the Canadians and their families, and included the lawyers eventually retained to try and compel government progress on repatriation. In his decision, Justice Brown recounted GAC's repeated non-responses to the families' lawyer, Lawrence Greenspon. GAC went so far as to not only ignore repeated communications from Mr. Greenspon, but also failed to communicate to the affected Canadians in Syria, their legal counsel, and their families of the existence of a policy framework under which their files were being adjudicated. The framework was introduced in January of 2021, and families only became aware of its existence in late 2021, after the legal action against the government had commenced. This again is evidence of a pattern of behavior by GAC that falls well below what Canadians should reasonably expect from their government.

To be sure, there were obviously limits on what GAC could do directly or indirectly to help the Canadians detained in northeastern Syria, as political and security realities render the region challenging to work in. However, GAC failed to meet even the most basic expectations that citizens

have of their government: mere acknowledgement of a plea for help, and an effort to act. Instead, time and again, these Canadians and their families were ‘left on read’.

Citation: Dave Jones & Amarnath Amarasingam, "Left on Read: Global Affairs Canada’s Provision of Consular Services to Canadians Detained in Syria and their Families at Home" in *Human Rights and Citizenship Abandoned in NE Syria: A special issue of the Global Justice Journal* (2023) 7 PKI Global Justice Journal 2.

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Revictimizing the Victims: Children Unlawfully Detained in Northeast Syria

By: Jo Becker and Letta Tayler

Introduction

Revictimizing the Victim Of the nearly 42,000 foreign Islamic State (ISIS) suspects and family members from 60 countries currently detained in northeast Syria, most are children. Many were taken to Syria by parents who sought to join ISIS or live in the “caliphate.” Others were born in Syria under areas of ISIS control or in the camps where families with alleged ISIS links are detained. Nearly 80 percent of the children are under the age of 12, and far too young to have played an active role in ISIS, yet many

governments refuse to take these young nationals back, citing national security concerns or fearing public backlash.

As the detention of most of the foreign nationals will soon enter its fifth year, with some held even longer, children remaining in the camps are trapped in an indefinite limbo. They are held in conditions so dire they may amount to torture, and face escalating risks of becoming victims of violence or susceptible to recruitment by ISIS. In visits to northeast Syria, we found their despair to be palpable, and in some cases, suicidal. Many United Nations, counterterrorism, and security experts warn that abandoning these children in the camps and prisons carries greater national security risks than bringing them home.

Our research at Human Rights Watch has found that many of the children detained in the camps who were subsequently repatriated or returned to their countries are reintegrating successfully. Yet, apart from Iraq, which to date has repatriated nearly 2,850 children, 35 other governments have collectively accepted the return of only about 1,600 children to date, leaving nearly 23,000 others to languish in northeast Syria. Canada has brought home only four children. Although the government agreed in January 2023 to bring home 13 more, at least 30 Canadian children remained detained at the time of writing.

Detainee Population

In March 2019, the Syrian Democratic Forces (SDF), a Kurdish-led, regional force backed by a United States-led military coalition, rounded up tens of thousands of Syrian and foreign ISIS suspects and family members as they toppled the last remnant of ISIS's self-declared "caliphate" in northeast Syria. The SDF detained these Syrians and foreigners in camps, prisons, and makeshift detention centers, where they were already holding several thousand others for suspected ISIS links.

As of January 23, 2023, nearly 42,000 foreigners remain held in the region along with more than 23,000 Syrians. Nearly 37,000 foreign nationals are detained in al-Hol and Roj, two locked, sprawling camps primarily holding the wives, other adult female relatives, and children of male ISIS suspects. Nearly 27,000 foreigners in the camps are from neighboring Iraq, while nearly 10,000 others are from about 60 other countries. More than 60 percent of the camp detainees are children. Nearly 80 percent of the children are under the age of 12, and 30 percent are age 5 or younger. Approximately 5,000 other foreigners are held in prisons and "rehabilitation" centers, including up to several hundred children.

Conditions of Detention

Neither the children nor the adults detained in northeast Syria have been brought before a judicial authority to determine the necessity and legality of their detention, making their detention arbitrary and unlawful. Detention based solely on family ties is a form of collective punishment, which is a war crime. Governments that knowingly and significantly contribute to this abusive confinement may be

complicit in the foreigners' unlawful detention.

Human Rights Watch has visited al-Hol and Roj camps and other detention centers in northeast Syria several times since 2019, most recently in May 2022. Conditions for the children are life-threatening, deeply degrading, and in many cases, inhuman; their cumulative psychological impact may amount to torture. Medical care, clean water, and shelter, as well as education and recreation for children are grossly inadequate.

According to the Kurdish Red Crescent, at least 371 children died in 2019 in al-Hol, the larger of the two camps, many from preventable diseases or hypothermia. Children have also drowned in sewage pits, died in tent fires, and been hit and killed by water trucks. Children who have died in al-Hol and Roj come from at least 24 countries, according to media reports and data we received from the Rojava Information Center.

Several mothers in Roj told Human Rights Watch their children suffered from severe asthma, which they attributed to fumes from an adjacent oil field, but that they could not obtain sufficient oxygen or other medicine. "He can't breathe properly," one Canadian mother said of her 4-year-old son. "A few months ago when he had an attack he went blue."

Some younger children attend informal preschool, but most children have no access to education and have missed out on years of schooling.

The camps have become increasingly dangerous and violent, as detainees, including many loyal to ISIS, have carried out attacks against other detainees, camp authorities, and aid workers. The UN reported that 90 people were murdered in al-Hol in 2021, and 42 from January to mid-November 2022. In November 2022, two Egyptian sisters, both under 15, were found dead in a sewage canal in al-Hol after being raped and stabbed. Mothers interviewed by Human Rights Watch said they hid their children in their tents to protect them from sexual predators, abusive camp guards, and ISIS recruiters and fighters. One Canadian mother detained in Roj camp told Human Rights Watch in May 2022, "When we were under the Islamic State, we had to find a safe place to protect our children from the bombs. Now we have to find them a safe place to protect them from other people in the camps."

Like many women, the mother said she also needed to protect her children from increasing traumatization as the years passed by in the camps. Days earlier, she said, her young son had tried to hang himself with a tent rope.

Conditions are even worse in the prisons and makeshift detention centers where the SDF is holding up to 1,000 detainees, from about 20 countries, who are boys or who were apprehended before they turned 18. Most of the boys are ages 14 to 17, though detainees and aid workers have told Human Rights Watch that some may be as young as 12. In the prisons, overcrowding initially was so severe that many of the detainees slept shoulder to shoulder. Many imprisoned Syrian and foreign boys were initially held in cells with men.

In January 2022, ISIS attacked one prison holding about 700 boys in the city of al-Haskah, sparking a 10-day battle with SDF fighters backed by US and UK forces. More than 500 people died, including 374 detainees and ISIS attackers, according to the SDF. Detainees inside the prison during the battle told Human Rights Watch that the dead and wounded included several children. At least one youth was wounded in the prison siege, an Australian who was brought to Syria when he was 11, and died in the days or months after the battle. But the northeast Syrian authorities have not disclosed any details, underscoring the information and accountability vacuum surrounding these children.

Sources including aid groups estimated that hundreds of detained boys who were transferred from al-Sina'a to a new, adjacent prison called Panorama after ISIS's attempted prison break in January have tuberculosis that was untreated for months, and that several needed specialized surgery or advanced treatment for wounds or other medical conditions.

A few hundred foreign boys are also held in so-called rehabilitation centers such as Houry, a locked, heavily-guarded building with dormitories and a courtyard. The boys told Human Rights Watch that they are allowed to play football and learn keyboards and guitar at certain hours. But in visits in May 2022 and June 2019, Human Rights Watch observed the boys mostly sitting with vacant stares or walking restlessly around the courtyard. Many said that most of the time, they had nothing to do. In the Alaya prison for men, Human Rights Watch spoke in May 2022 with four youths who were among about 30 older boys and young men who were held in what the prison director called a "rehabilitation" ward. The four youths said they were detained in a single cell for 23 hours per day.

Separating Boys from Mothers and Siblings

The SDF placed many foreign boys in prisons immediately after they were captured. "I haven't seen my sons in nearly four years," said one Trinidadian mother in Roj camp whose two sons, then 14 and 15, were taken by the SDF when the family fled ISIS in January 2019. "Do you know what that does to a mother? Nothing you eat tastes the same without them." For several months after the boys were taken away, the mother told Human Rights Watch in May 2022, authorities in northeast Syria would not tell her where they were held. Two years passed before local security agents gave her a photo of them. Since her sons were taken, she said, she has only received three letters. "They said they are okay," she said. "But how do I know?"

When foreign boys living with their mothers and siblings in the camps approach or reach adolescence, many are taken by armed guards and transferred to "rehabilitation centers" such as Houry, or to military prisons for men. Those taken, often without warning, reportedly include scores of boys reportedly as young as 10 and 12. Mothers are often not told for weeks or months where their sons are taken or held, if at all. Families can visit imprisoned Syrian boys, but imprisoned foreign boys are rarely allowed in-person or phone contact with their mothers and siblings in the camps, mothers and detained boys told Human Rights Watch.

“Bader,” a boy at the Houry Center who said he was 15 and a US citizen, said in May 2022 that armed guards took him from al-Hol in December 2020, when he was at the camp market, “without my family even knowing.” He told Human Rights Watch that his captors detained him for a month incommunicado in a latrine with 18 other boys and men, then took him to the Houry Center:

I went out shopping and they just picked me up from the middle of the store. We were four kids. They sent us to little jails, two rooms. It was a toilet [latrine]… They kept me there for one month. … We told them, “Why? We didn’t do anything.” And they said, “If you guys are bigger than 12 years old, 13 years old, you are not allowed to stay in the camp.” It was actually cold in that time, and they didn’t let us get our bags or anything, our clothes. And then they brought us here.

“Abar,” an Egyptian mother held in Roj, burst into tears as she told Human Rights Watch in May 2022 that her son, then 14, was among four boys who had been taken without warning eight months earlier. “Please, please, can you help me find him?” she begged. Camp officials later told the mother that her son was brought to the prison that ISIS attacked in January. For months, Abar thought her son might be among the dead. In July, camp officials gave Abar a brief audio message and a photo of her son. But as of December, she still had not seen him, a family member told us.

Fionnuala Ní Aoláin, the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has said that “The de facto culling, separation, and warehousing of adolescent boys from their mothers is an abhorrent practice inconsistent with the dignity of the child and inconsistent with the most essential of rights any child is entitled to in any circumstances.”

Repatriations Lag Despite Recent Increases

Since 2019, approximately 36 countries have accepted the return of approximately 6,600 citizens, according to the Autonomous Administration of Northeast Syria and aid groups. Of these, about 4,450 are children – nearly 2,850 from neighboring Iraq and just over 1,600 from the other 35 countries.

Repatriations overall increased in 2022 with more than 3,100 foreigners taken home, the Autonomous Administration and aid groups told us. From October 2022 to January 14, 2023, at least 10 countries brought some or more nationals home: 1,245 (more than half of them children) to Iraq, 4 women and 13 children to Australia, 1 woman and 2 children to Barbados, 2 women and 2 children to Canada, 16 women and 42 children to France, 5 women and 7 children to Germany, 12 women and 28 children to the Netherlands, 38 children to Russia, 1 woman and 1 child to the United Kingdom, and 2 women and 13 children to Spain. France repatriated an additional 15 women and 32 children on January 24, 2023.

Some countries, including Denmark, Finland, Germany, Kazakhstan, Kosovo, Russia, Sweden, Tajikistan, Ukraine, the US, and Uzbekistan, have now repatriated many or most of their nationals who are children and women. But others have allowed home only a token few, most often orphans,

unaccompanied minors, or children who are gravely ill. As the children's rights group Save the Children noted in December 2022, at current rates, repatriating the more than 23,000 foreign children still held in northeast Syria could take up to three decades.

In some cases, governments have repatriated nationals detained in northeast Syria under court order or in an apparent effort to evade such rulings. Canada is a case in point. On January 19, 2023, the government reached an out-of-court settlement with families of loved ones detained in northeast Syria in which it agreed to bring home 19 Canadians (13 children and 6 women) within a mutually agreed-upon time frame. It acted as a federal court ruling loomed on whether the government's failure to return these detainees violated the Canadian Charter of Rights and Freedoms.

But the government did not formally agree to bring back the 17 other children estimated to remain in northeast Syria, much less another Canadian mother and 6 Canadian men who at time of writing were also held in the region. Four of the men were also applicants in the lawsuit. Amid court hearings on the repatriations case, the government of Canada said Canadian children and a Canadian mother who were not part of the lawsuit met its initial criteria for repatriation under that policy, but stopped short of a promise to repatriate. But for the 10 children born to Canadian fathers but foreign mothers – four mothers in total -- Ottawa said it would only bring home the children without their mothers, according to Alexandra Bain, director of Families Against Violent Extremism, a group assisting several Canadian families seeking repatriation.

That settlement did not satisfy the judge in the case, who in a potentially groundbreaking decision a day later, ordered the Canadian government to repatriate the four men named in the lawsuit as well. The judge said that "the legal principles applicable to the Canadian men are the same as those applicable to the Canadian women and children" whom the government had just agreed to bring home, and that "[t]he conditions of the … men are even more dire than those of the women and children who Canada has just agreed to repatriate." Families of the detainees and their lawyers were optimistic that the ruling could make it difficult for Canada to stall on repatriating the rest of the Canadians detained in northeast Syria.

Prior to that settlement and ruling, the government of Prime Minister Justin Trudeau had allowed the returns of only four Canadian children and two of their mothers, as well as a third Canadian woman. One child was an orphan. Another was a 4-year-old Canadian girl whom the Canadian authorities repatriated on the condition that she repatriate without her mother, whom they only allowed to come home eight months later. Separating children from their parents, absent an expert and independent evaluation determining that severing family unity is in the child's best interest, flouts the Convention on the Rights of the Child.

In January 2021, Canada adopted a secretive policy on repatriations stating that "due to the training and operational experience they may have acquired while abroad … CETs [Canadian Extremist Travellers] could pose a serious threat to national security and public safety if they were to return to Canada." The policy said Canada would "consider" providing assistance to unaccompanied children;

children separated from their parent(s) who are now de facto unaccompanied; and detainees whose situation has "changed significantly since the adoption of the policy framework," for example if they were "at risk of torture and other mistreatment and could face the death penalty in neighboring countries."

The Canadian government did not disclose that policy for a year, until Canadian families brought it to court. Moreover, in February 2022, Canada turned down an offer from a former US diplomat to bring home a Canadian child and woman who were both reported to need life-saving medical care, even though the retired envoy had extracted a 4-year-old Canadian girl and her mother from northeast Syria in 2021, as well as several other foreign women and children. At the time that Canada rebuffed the offer, the diplomat was in the region, poised to bring the Canadian child and woman to a consulate in neighboring Iraq.

In a few other countries, domestic courts similarly compelled some governments to change their approach. Germany, for example, initially refused to repatriate several women with their children, citing security concerns, but German courts ruled that repatriating children without their mothers would violate German laws protecting family unity. Germany subsequently repatriated 26 women and 76 children, and German officials told Human Rights Watch in October 2022 that this number represents nearly all of the women and children in the camps who were willing to return. The Netherlands repatriated 12 women and 28 children in October 2022, after Dutch courts ruled that the government could not proceed with criminal cases filed *in absentia* against several women in the camps, unless the women were returned to the Netherlands. France stepped up repatriations shortly before a long-anticipated European Court of Human Rights ruling in September that instructed it to reevaluate its blanket rejections of repatriation requests for children and their mothers.

Top United Nations officials, US military officials, and security experts have repeatedly called on governments to repatriate their nationals from northeast Syria as soon as possible, arguing that leaving them in the camps and prisons carries greater risks – including escape and vulnerability to ISIS recruitment – than bringing them home. The Kurdish-led regional authority, called the Autonomous Administration of Northeast Syria, has sounded the same alarm. Autonomous Administration officials have implored countries, including Canada, to repatriate their nationals and increase aid to improve their conditions of detention in the meantime, saying that detaining them is a "burden."

Finland's former special envoy for repatriations, Jussi Tanner, has stated that Finland's commitment to repatriate all Finnish children and women from the camps reflected both the government's constitutional obligation to guarantee the rights of children, as well as Finland's security interests. "We very much feel that the longer children remain in the camps, the harder it will be to counter violent extremism and radicalization," he said. The UN's under-secretary-general for counterterrorism, Vladimir Voronkov, has said that inaction on repatriation threatened to "bring about the very outcomes we intend to prevent," including "the radicalization and recruitment of a new generation of terrorists, and the strengthening of terrorist groups in the region and around the world."

Reintegration

In 2022, Human Rights Watch conducted research to examine how well children who have been repatriated or returned to their home country are reintegrating. We interviewed family members of returned children, lawyers, psychologists, social workers, legal guardians, and case managers. We also conducted online surveys of approximately 80 family members, social workers, and teachers. In total, we gathered information on about 100 children, ages 2 to 17, who have been repatriated or returned to 7 different countries: France, Germany, Kazakhstan, the Netherlands, Sweden, the UK, and Uzbekistan.

We found that, notwithstanding the ordeals they survived both under ISIS and subsequently in captivity in the northeast Syrian camps, many of the children are reintegrating remarkably well in their new communities. Most are in school, making friends, and enjoying the kinds of activities that many children enjoy – playing football or with Lego, riding scooters, and enjoying music, dance, art, sleepovers, and trips to the zoo. Family members remarked at how eager the children are to learn about the new world around them, and how quickly many of them caught up with their peers in school. A grandfather of several children who were repatriated to Sweden in 2019 said: “It is possible, fully possible, for reintegration and recovery of children. My grandchildren are evidence of this. They have recovered in the most incredible way.”

When asked how the child is adjusting overall to their new country of residence, 89 percent of respondents to the online survey—comprised of family members, teachers, and social workers—reported that the child was doing “very well” or “quite well.” Only 4 percent said the child was having difficulties.

Seventy-three percent of survey respondents said the child was performing “very well” or “quite well” in school. A family member of a girl in the UK said, “In Syria, she had zero access to education, so it’s remarkable how she excels now. She’s learning so fast, her teachers love her.” Seven percent of respondents reported that the child was having difficulties in school. These tended to be older children who had missed more years of education than younger children and were now struggling to catch up to their peers.

Eighty-two percent of survey respondents described the child’s emotional and psychological well-being as “very good” or “quite good.” A French psychologist who assessed a dozen returned children, ages 3 to 15, said that nearly all the children were doing well. Case managers working with more than 50 repatriated children in Germany similarly said that the majority of the children are doing well and that cases of children experiencing trauma-related difficulty are rare.

Understandably, some repatriated children struggle and need ongoing psychosocial support. Many witnessed violence while living under ISIS and endured life-threatening conditions in the camps. Many of their fathers were killed in fighting or are imprisoned in northeast Syria. Some children have lost their mothers as well. But mental health professionals emphasize that the experiences of children

returned from northeast Syria are in many ways similar to other children who have endured unimaginable conditions, such as children who are refugees or victims of trafficking.

In a bitter irony, many of the same countries with nationals languishing in the camps have accepted thousands of refugee children, who, like children in the camps, have often survived displacement, conflict-related violence, family separation or loss, and interrupted schooling. Canada, for example, accepted approximately 20,000 child refugees from Syria in 2015-2016, and resettled over 3,800 school-aged children from Afghanistan after the Taliban retook power. It has also offered refuge for thousands of children fleeing the war in Ukraine.

Our research also identified policy choices by repatriating governments that made it more difficult for children to reintegrate, and in some cases, even caused additional harm. In some countries – including Belgium, France, the Netherlands, and Sweden – authorities have immediately separated children from their mothers if the mother is being investigated or charged with ISIS-related offenses, without evaluating whether doing so is in the child's best interests. In many cases, this causes the children significant emotional and psychological distress.

We also found that in some countries, extended family members, such as grandparents, face lengthy investigations before they are allowed to care for returned children or have contact with them, even if they have been in contact with the authorities for years. In one case, for example, a girl arrived in France at age 5 but spent three years in foster care, even though her grandparents had sought custody even before she came home.

Interviewees and survey respondents also said governments could improve children’s reintegration by quickly providing birth certificates, identity cards, and other documents necessary to access education, health, and other services, and by providing tutoring and extra classes to help children catch up to their peers in school.

International Legal Standards

Under international law, all individuals have the rights to life, to a nationality and to enter one’s country , to be free from torture and other ill-treatment, including in detention, to fair trials, and to freedom from arbitrary deprivation. Governments have obligations to take all reasonable measures to protect the rights of their nationals, including abroad, when they face life-threatening risks or torture. In all actions concerning children, the best interests of the child shall be a primary consideration. Enforced disappearances, which include the refusal by authorities to provide information on what became of a person they detained or where they were being held, are also strictly prohibited. If widespread or systematic, and part of a state or organizational policy, enforced disappearances are crimes against humanity. Detention based solely on family ties is a form of collective punishment, which is a war crime.

Binding UN Security Council resolutions, including Resolution 2396 of 2017, call on all UN member states to prosecute those who have committed ISIS-related crimes, an impossibility at present in northeast Syria, which has no local courts for foreign ISIS suspects. These resolutions emphasize the importance of assisting women and children associated with groups like ISIS who may themselves be victims of terrorism, including through rehabilitation and reintegration.

In separate rulings in February and October 2022, the UN Committee on the Rights of the Child found that France and Finland violated the rights to life and to freedom from inhuman treatment of children they had not repatriated from northeast Syria. In September, the European Court of Human Rights found that France violated the rights of women and children seeking repatriation by failing to adequately and fairly examine their requests for repatriation.

Ní Aoláin, the UN special rapporteur on countering terrorism, has repeatedly stated that the urgent repatriation of suspected foreign fighters and their families from conflict zones is "the only international law-compliant response" to the detention crisis. "The evidence that third country nationals—children and women—are being abandoned by their governments in the face of incontrovertible evidence showing avoidable harm is overwhelming," she said. "The legal responsibility of those States is undeniable."

Conclusion

The unlawful detention in northeast Syria of 23,000 foreign children from dozens of countries has deprived them of their basic rights as children, including the rights to a nationality, health, education, family unity, and freedom from mistreatment and arbitrary detention. Those who have died because of the conditions or circumstances of their detention have been denied the right to life itself. Although several countries have increased repatriations of their child nationals, the rate remains indefensibly low. Governments that continue to outsource responsibility for their child nationals to non-state actors inside northeast Syria, a theater of armed conflict, may enable ISIS's efforts to recruit these children. In the process, the children's countries of origin are revictimizing children who have already endured unimaginable horrors, first at the hands of ISIS and then in detention in squalid and locked tent cities, so-called rehabilitation centers that offer no meaningful rehabilitation, and military prisons.

These children should not be collectively punished for the apparent crimes of their parents. The only durable solution is for governments to repatriate these children or help them transfer to third countries. Only then, with access to rehabilitation and reintegration services, can they start to rebuild their lives, as many of the children already brought home have done.

Citation: Jo Becker & Letta Tayler, "Revictimizing the Victims: Children Unlawfully Detained in Northeast Syria" in *Human Rights and Citizenship Abandoned in NE Syria: A special issue of the Global Justice Journal* (2023) 7 PKI Global Justice Journal 2

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Shortsighted Security: Canada's Policy on Repatriating Canadians Detained in North East Syria

By: Leah West, SJD, Assistant Professor, Norman Patterson School of International Affairs, Carleton University

Introduction

Shortsighted SecurityFor more than three and a half years, dozens of Canadians have been detained in horrific conditions by Syrian Democratic Forces (SDF) in North East Syria. They are held in makeshift prisons and open-air camps overseen by the Autonomous Administration of North and East Syria (AANES) for their alleged involvement or support of ISIS. The Canadians are known to include at least 4 men, 6 women, and 13 children, but one report places the number closer to 8, 13, and 26, respectively. None have been charged with a criminal offence, either by the AANES or Canadian authorities, and none have been visited by Canadian consular officials or law enforcement. The AANES does not want to continue detaining these Canadians; the Administration has repeatedly made clear that it wants the Government of Canada (GoC) to repatriate its citizens.

On January 19th, the lawyer representing the 23 identified Canadians announced that a deal had been reached with the GoC to repatriate the women and children. A day later, the Federal Court of Canada ordered that the GoC must ask the AANES to release the four men into the custody of a Canadian

representative or delegate for their repatriation (para 124). At the time of writing, it is unknown whether the GoC plans to appeal this decision.

Before the Federal Court, it was the position of the GoC that Canada has no legal obligation to repatriate any Canadian in Syria. However, in 2020 and 2022, Global Affairs Canada (GAC) repatriated three children, including an orphan and two women, from SDF custody. GAC also facilitated the return of one other woman and her daughter, who were escorted separately by a third party from a detention camp to the Canadian mission in Erbil, Iraq.

Except in the case of the orphaned girl, the GoC has never explained why some adults and children are worthy of repatriation and not others. The consistent rationale offered for not repatriating Canadians is that the GoC has limited consular services in Syria and that repatriation operations put Canadian officials at risk. Yet, Canada has successfully conducted two such operations. Moreover, since 2018, hundreds of detainees have been repatriated from Syria without incident by Albania, Australia, Austria, Belgium, Bosnia and Herzegovina, Denmark, Finland, France, Germany, Italy, Kazakhstan, Kosovo, Macedonia, Morocco, Netherlands, Nigeria, Norway, Russia, Saudi Arabia, Sudan, Sweden, Trinidad and Tobago, the United Kingdom, the United States and Uzbekistan.

Documents filed in response to an Application for Judicial Review in Federal Court, brought by the families of a number of detainees, are the first to outline the official GoC policy on repatriation. The "Policy Framework to Evaluate the Provision of Extraordinary Measures to Assist Canadian Citizens detained in North-Eastern Syria" (Policy Framework) was established in January of 2021, at least two years after the first Canadians arrived in SDF custody. The policy starts from the position that Canadians will not be repatriated, as any such request constitutes extraordinary consular assistance. It then lays out three criteria that may trigger the reconsideration of this position and a set of six guiding principles that must inform any recommendation regarding repatriation.

This paper begins by briefly outlining the Policy Framework set out in the affidavits of two GoC officials prepared for the aforementioned Judicial Review application. I then break down why the core preoccupation of the policy is security, namely the security of GoC employees, and the threat a returnee may pose to Canadian public safety and security upon their return. I then articulate why legal uncertainty surrounding the extraterritorial application of the *Charter* negatively impacts the ability of Canadian security services to provide an accurate threat assessment of the detainees, and may also hamper the availability of some criminal law mitigation measures. Nevertheless, I explain why recent precedent supports the argument that sufficient measures exist to mitigate that threat. Finally, I argue that the overall Policy Framework is flawed because it is built on an overly narrow and shortsighted view of the threat posed by the ISIS detainee problem to national and global security.

The Policy Framework

The GoC's Policy Framework starts with the presumption that GAC will not repatriate Canadians from SDF custody, regardless of their circumstances. Under this policy, three instances merit reconsideration of the presumption against repatriation:

1) The individual is a child who is unaccompanied;

2) Extraordinary circumstances make it necessary for a child who is accompanied to be separated from their parent(s), leaving the child in a de facto unaccompanied state; and /or

3) The Government of Canada has received credible information indicating that the individual's situation has significantly changed since the adoption of the Policy Framework (Affidavit of CT).

On November 24, 2022, GAC informed counsel representing 19 women and children that, after close to three years in detention, they had met one of the threshold criteria for reconsideration (FC T-1483-21, Agreed Statement of Facts, 1 Dec 2022). As there are presently no known unaccompanied children in detention, de facto or otherwise, the basis for this reconsideration must be the third instance above, a significant change in their situation since January 2021.

Counsel was also informed that GAC had initiated assessments under the Policy Framework to determine whether to extend extraordinary assistance. Those in custody were given 30 days to provide comments or supporting documentation related to the six guiding principles upon which GAC will conduct its evaluation. We now know that those principles favoured their repatriation for the women and children. I contend that they also support the return of the Canadian men in detention, and any other women and children presently detained in North East Syria.

Under the Policy Framework, the guiding principles are as follows:

A) Unaccompanied children will be prioritized.

B) Children will not be separated from their parents except in extraordinary circumstances.

C) The individual's identity and claim of Canadian citizenship must be established.

D) Canadian government officials must not be put in harm's way.

E) Canadian government actions must not worsen the situation of the individual.

F) The threat to public safety and national security, if any, posed by the individual during transit and on arrival in Canada can be mitigated (Affidavit of CT).

Under the Policy Framework, subject matter experts within the government use available information to evaluate each of these principles. Based on their evaluation, officials consider whether to recommend the provision of assistance to the Ministers of Foreign Affairs and Public Safety. If approved in principle by the Ministers, GAC and Public Safety develop a detailed concept of operation

(CONOP) in consultation with other implicated departments and agencies. The CONOP is also subject to approval by both Ministers before a repatriation is formally approved.

Setting aside principles A and C, which are binary issues, all other principles emphasize security. Additionally, when broken down, it becomes clear that only two factors will determine whether repatriation is recommended: principal D, the potential risk to Canadian officials, and F, the threat to national security stemming from an adult's return.

Let us look first at Principles B and E, which ask whether the individual's circumstances, be they a child or an adult, would be made worse by repatriation. (For B, the specific question is whether separation from a mother remaining in Syria is in the best interests of the child.) These assessments are made against the "baseline risks" individuals face due to their ongoing detention (FC T-1483-21, Affidavit of Cynthia Termorshuizen, para 86). These baseline risks include overcrowding, lack of education, malnutrition, dehydration, poor sanitation and hygiene, inadequate shelter, inadequate medical care, fires, riots, stabbings, shootings by guards and prisoners, and ISIS executions. Every day, detainees in Syria stare down death. But for a highly targeted threat against an individual's life (that could not be executed inside a detention camp or prison) or a detainee's refusal to return to Canada, it is difficult to conceive of a risk that merits leaving an adult in Syria based on principle E. Next, it is hard to imagine a significant change in circumstance warranting reconsideration under the policy that has not already increased the "baseline risk" of a Canadian's continued detention except, of course, a court order. Finally, it is unfathomable that, in this situation, a change of circumstances for a detained mother would not similarly alter the circumstances of her child or vice versa. Thus, Principal B would arguably only be a question where security concerns weigh against a mother's repatriation.

Principal D considers the risk of sending government officials into North East Syria. While the security situation throughout Syria is unstable, and employee safety is always an important and necessary consideration, there is no need for officials to travel into the country or to visit the camps or prisons. Repatriations between the AANES and government officials typically occur at an AANES facility located at the border between Syria and Iraq. Over the years, dozens, if not hundreds, of repatriations have happened at this facility between numerous countries, including two with Canada. In that time, there have been no reports of security incidents during repatriation from the region. Thus, as long as this status quo persists, the only real question for decision-makers is the threat the adults pose to Canadian national security and public safety during transit or upon their return.

Assessing the Threat

An assessment of a person's threat to national security should always be individualized. Still, as Jessica Davis explains, context and precedent can inform assessments about a returnee's potential for future threat activity and the state's capacity to mitigate that threat. The next section situates principle F, which considers repatriation risk and threat mitigation within the broader context of the modern Canadian Extremist Travelers (CETs) phenomenon.

According to Public Safety Canada, 250 CETs travelled overseas before 2019, half to Syria, Iraq and Turkey. Of them, 60 returned to Canada between 2015 and 2019; however, only a few of the 60 had returned from the conflict in Syria and Iraq. Most others who fought with or against ISIS are presumed dead, although some may have travelled elsewhere. According to Amarasingam and Carvin, these statistics are similar to other Western nations, although the overall numbers vary.

Returning CETs are generally viewed as a security concern “due to the training and operational experience they may have acquired while abroad, as well as the unique conflict environments to which they have been exposed to” (FC T-1483-21, Affidavit of Dominic Rochon, para 7). Internationally, studies show that returnees account for 18-23% of terrorist attacks, and attacks perpetrated by returnees are significantly deadlier than those without experience abroad. That said, at the time of writing, no one who successfully travelled abroad to join or support a terrorist group in Syria or elsewhere has returned to Canada and carried out a terrorist attack. Still, returnees could also engage in non-violent terrorist activity, including recruitment, incitement, fundraising and travelling to rejoin or support a terrorist movement.

Under the GoC Policy Framework, the Royal Canadian Mounted Police (RMCP) and the Canadian Security Intelligence Service (CSIS) are responsible for conducting security assessments of the Canadians in SDF custody (Affidavit of DR, para 18). These agencies will examine a variety of factors as part of their analysis, including the

a. Nature and extent of involvement with extremism and extremist groups;

b. Capability and intent to conduct acts of terrorism during transit or in Canada;

c. Commitment to extremism and connection to extremist networks; and

d. Personal factors. (Affidavit of DR, para 22)

To conduct their assessment, the RCMP will search internal records and consult with domestic and international law enforcement partners. Based on this information, a risk level (low to high) is assigned and available mitigation measures are identified (Affidavit of DR, para 20). CSIS would similarly assess the threat based on searches of internal records and information from partners, and work with the RCMP to inform criminal investigations and other law enforcement action (Affidavit of DR, para 21).

Importantly, the RCMP and CSIS have never interviewed any Canadians while in detention in North East Syria, invariably impacting the accuracy of their assessment of a person’s current capabilities, intent and commitment. While we know foreign law enforcement and intelligence agencies interviewed Canadian detainees in the year following their capture, it is unlikely that those have continued for everyone, if at all. Therefore, the only current information likely available is telephone and electronic communications of shared or gathered under lawful surveillance. Even then, this source of information would not apply to the imprisoned men who have no access to electronic devices; GAC has not

provided proof of life of the men to their families since 2019.

Why have Canadian security officials not interviewed detainees in Syria? Security concerns may offer one reason. Unlike consular officials conducting repatriations, RCMP officers would need to travel into North East Syria to the camps, prisons or facilities run by the SDF to interview Canadians. Although, we know that Canadian officials have travelled into the region both before and after November 2021 (para 65). I suspect another major reason is uncertainty surrounding the extraterritorial reach of the *Canadian Charter of Rights and Freedoms* (*Charter*).

The Impact of Legal Uncertainty

The leading cases on the issue of the geographic reach of the *Charter* are *R v Hape* and *R v Khadr.* In *Hape*, the Supreme Court of Canada found that without the host state's consent, the *Charter* will not apply to extraterritorial state conduct barring one exception, "clear violations of international law and fundamental human rights" (para 52). The Supreme Court affirmed this exception in *Khadr.*

Omar Khadr, a 15-year-old Canadian citizen, was detained in 2002 by US forces in Afghanistan for allegedly throwing a grenade that killed an American soldier. US personnel transferred him to the military detention center at Guantanamo Bay, where they mistreated him. In detention, Canadian officials from the Department of Foreign Affairs and International Trade (DFAIT) and CSIS interviewed Mr. Khadr on several occasions. Subsequently, they shared the product of those interviews with the Americans. In 2005, the Americans charged Mr. Khadr under US law with war crimes. He later brought an application in the Federal Court of Canada for disclosure of the information stemming from his interviews with the DFAIT and CSIS. Mr. Khadr argued that under s. 7 of the *Charter,* which protects life, liberty and security of the person*,* he was entitled to the disclosure of all GoC documents relevant to the charges he faced.

In brief but unanimous reasons, the Supreme Court relied on the exception enunciated in *Hape*. It reaffirmed that "The principles of international law and comity of nations, which normally require that Canadian officials operating abroad comply with local law, do not extend to participation in processes that violate Canada's international human rights obligations" (para 2). If, by interviewing Mr. Khadr in Cuba, "Canada was participating in a process that was violative of Canada's binding obligations under international law, the *Charter* applies to the extent of that participation" (para 19).

In its analysis, the Supreme Court did not consider the extent of Canada's participation or whether the conduct of the DFAIT or CSIS officers violated Canada's binding obligations under international law. Instead, the Court relied on the US Supreme Court's finding that the process, to which detainees like Mr. Khadr were subjected by American authorities, violated Common Article 3 of the *Geneva Conventions*. As Canada is a signatory to the *Geneva Conventions*, the Court held that "participation in the Guantanamo Bay process" was contrary to "Canada's binding international obligations" (para 25).

Having concluded that the *Charter* governed the actions of DFAIT and CSIS, the Supreme Court found that disclosure was required to remedy the effect of Canada's "breach of a constitutional duty that arose when Canadian agents became participants in a process that violates Canada's international obligations" (para 36). The Court's invocation of the *Hape* exception in *Khadr* confirmed its existence and made clear that the actions of Canadian officials need not violate international law or human rights for the exception to apply. Mere participation in a foreign process that violates international law is enough to extend the application of the *Charter* overseas.

However, what "participation" entails remains entirely unclear outside the specific facts of Mr. Khadr's case. Rather than clarify what a finding of participation requires, the Supreme Court remarked that "merely conducting interviews with a Canadian citizen held abroad under a violative process may not constitute participation in that process. Indeed, it may often be essential that Canadian officials interview citizens being held by violative regimes to provide assistance to them" (para 27). The Supreme Court went on to find that it was not "necessary to conclude that handing over the fruits of the interviews in this case to US officials constituted a breach of Mr. Khadr's s. 7 rights" (para 27).

What are we to make of this? Interviewing Canadians detained abroad may or may not constitute participation in a foreign process, thus triggering the *Charter*. Arguably, participation depends on the intent of the Canadian officials conducting the interview and what they do with the information obtained. If, for example, an interview is meant merely to provide consular assistance, it would be difficult to assert that this constitutes participation. However, if the aim is to obtain intelligence to conduct a threat assessment or evidence of a criminal offence, it is unclear whether it would trigger the *Charter*.

In 2010, the Supreme Court again considered Canada's *Charter* obligations vis-à-vis Mr. Khadr's detention in Guantanamo. The Supreme Court found that Canadian officials obtained his statements by participating "in a regime which was known at the time to have refused detainees the right to challenge the legality of detention by way of habeas corpus," and without access to counsel (para 24). These findings established Canada's "participation in state conduct that violates the principles of fundamental justice" (para 25). The Supreme Court never addressed how the Canadian officials' interrogation of Mr. Khadr violated his s. 7 rights. This meant that Canadian participation in an American process was both the basis for the *Charter*'s application and its violation.

Having found an infringement of Mr. Khadr's s. 7 rights, the Supreme Court provided declaratory relief. Based on this declaration, Mr. Khadr brought a civil lawsuit against the GoC, which the Trudeau government settled in 2017 for 10.5 million dollars.

Regrettably, in its decisions, the Supreme Court provides no guidance on what the *Charter* requires of Canadian officials operating abroad once a foreign process triggers its application. Moreover, it is completely unknown whether the *Khadr* exception applies if the foreign actor is either (a) a non-state actor; or (b) not governed by the same international obligations as Canada. This uncertainty leaves Canadian officials in the unenviable position of not knowing whether the *Charter* will apply to

interviews abroad or what the *Charter* requires. Consequently, the option of interviewing Canadians detained in SDF custody, while arguably being the best way of gathering timely information, intelligence, and evidence, could simultaneously jeopardize criminal proceedings in Canada and give rise to future lawsuits.

The disturbing irony is that, because of the legal ambiguity caused by the Supreme Court's efforts to preserve human rights, there may be no way for Canadian officials to prevent the application and violation of the *Charter* should they conduct interviews in Syria. As such, Canadians may continue to languish in makeshift prisons and overcrowded detention camps because of an inaccurate assessment of their capability, intent and commitment to terrorist activity or violence, or because of a lack of evidence that could be used to support criminal law mitigation measures.

Threat Mitigation

Once the RCMP and CSIS assess the potential risk a detainee poses to Canadian public safety and national security— again, an assessment based on incomplete information — they must then consider the extent to which that threat can be mitigated. Key mitigation measures include surveillance, peace bonds, laying criminal charges, and prosecution. Other administrative measures, such as revoking or denying a passport or adding someone to the Secure Air Travel Act list (Canada's "no fly list"), are also available. The likelihood that mitigation measures are sufficient to counter the assessed threat also requires an individualized assessment, but precedent provides essential context.

Surveillance

As noted above, no returned CET from the conflict in Syria has carried out a terrorist attack. One mitigation measure that may be responsible for this statistic is that security services have heavily surveilled CETs upon their return.

Surveillance of a large number of people is unquestionably resource intensive. However, it need not be indefinite. A study by Malet and Hayes found that "among foreign fighter returnees who do become or attempt to become domestic terrorists, the median lag time between return and plot or arrest is less than six months for most returnees, the majority of attacks occur within one year, and nearly all attempts occur within three years." In other words, security services should monitor returnees believed to pose a security threat for at least six months.

Terrorism Peace Bonds

Another available mitigation measure is the imposition of a terrorism peace bond. Under s. 810.011 of the *Criminal Code* "[a] person who fears on reasonable grounds that another person may commit . . . a terrorism offence may, with the consent of the Attorney General, lay an information before a provincial court judge." Fear on reasonable grounds is one of the lowest standards of proof in Canadian law.

Once that fear is established, a Court will order the defendant to “enter into a recognizance . . . to keep the peace and be of good behaviour” for up to twelve months and may impose other conditions to “secure the good conduct of the defendant.” The phrase “good conduct” accommodates far more than conditions to prevent a terrorism offence, although there must be some nexus to the defendant’s situation and the feared conduct. Yet, when referring to terrorism offences, the feared conduct may be vast and amorphous, or never carefully articulated, giving the Crown and the Court substantial discretion to craft conditions.

Examples of conditions a Court may impose include: a curfew, wearing an electronic monitoring device, participation in a treatment program, abstaining from consuming intoxicants, limits on accessing the internet or communicating with certain people, and a bar on possessing weapons and explosives. A refusal by the accused to enter into the recognizance is punishable by imprisonment for up to twelve months. A breach of a recognizance is also a criminal offence punishable by up to four years imprisonment. In short, a peace bond is "a government-crafted, judicially-imposed set of behavioural standards tailored to individual persons. Onerous conditions imposed as a part of the bond may be easily breached, permitting the subsequent incarceration of a feared security risk for behaviour that is benign (even commonplace) for most people.”

In recent years, a handful of returnees and failed terrorist travelers have been placed on terrorism peace bonds. The most recent are Kimberly Polman, who was repatriated from North East Syria by the GoC in October 2022, and another Canadian woman whose return to Canada from SDF detention was secured by an American diplomat in November 2021. In both cases, the Crown did not even need to meet its low evidentiary threshold; both women consented to the peace bond and various conditions to avoid court proceedings.

Peace bonds are not a guaranteed deterrent and may be too weak for highly motivated terrorists. Mohammed Ali Dirie, a convicted terrorist, was subject to a peace bond. He, nevertheless, absconded and was reportedly killed fighting in Syria. More notoriously, Aaron Driver acquired the makings of an explosive device while on a peace bond in Southern Ontario. Police intercepted him on his way to commit an attack and detonated the device, wounding his cab driver. Still, at the time of writing, there are no reports of a CET returnee on a peace bond subsequently engaging in activity leading to charges for terrorist activity.

Criminal Charges and Prosecution

The most robust mitigation measure is laying criminal charges and their prosecution. The SDF are detaining Canadian adult men and women for their alleged support or participation in ISIS. Should evidence support these allegations, their conduct could trigger a number of terrorism offences. Once charges are laid, an individual may be detained pending trial or released on bail, subject to a variety of measures designed to limit their ability to engage in criminal activity.

As noted above, a small percentage of Canada's 60 CET returnees travelled to Syria. Of them, Kevin Mohammed, and cousins Hussein and Jamal Borhot, were charged with offences related to their activities abroad. It is hard to know what percentage of CET returnees these three make up without confirmation from the GoC. The RCMP also laid seven charges in absentia against Canadians for their terrorist activities in Syria; most, if not all, are presumed dead.

Despite these charges, the challenge of establishing an evidentiary basis for crimes committed by ISIS abroad is well-accepted, in part because of the scope and scale of the conflict. This problem is especially true for women whose activities were less prominently documented online because of gender roles imposed by ISIS. What is more, the aforementioned legal uncertainty limiting RCMP interviews abroad poses additional challenges for Canadian investigators.

Fortunately, there is an alternative. Since 2013, it has been a crime to leave Canada to commit an offence for a terrorist group or to commit terrorist activity. These provisions were added to the *Criminal Code* in response to the rise of ISIS and the CET phenomenon, and would apply to all detainees who travelled to Syria from Canada with that intent after April 2013. Travelling offences carry a maximum sentence of 14 years in prison, and prosecutions have been very successful. Since 2016, ten Canadians who attempted to travel to Syria to join ISIS (and failed) have been charged. Seven of the ten, Ikar Mao, Rehab Dughmosh, Pamir Hakimzadah, Ismael Habib, Carlos Honor Larmond, and a Quebec Teen were convicted. Charges against Heleema Mustafa were stayed when her husband (Mao) pleaded guilty. Only El Mahdi Jamali and Sabrine Djermane were acquitted after trial.

So far, three women detained by the SDF have returned to Canada. Two are on a terrorism peace bond and the third, Oumaima Choua, was charged with four terrorism offences upon her return, including leaving Canada to participate in the activity of a terrorist group and participation in the activity of ISIS. The only Canadian male to leave SDF detention, Mohammed Khalifa was taken into custody and charged by American authorities. He pleaded guilty and is serving a life sentence for his prominent role in ISIS's media wing and for executing Syrian soldiers in a propaganda video. Court records reveal that the RCMP was preparing charges for Khalifa when the US arrested him.

Conclusion on "Guiding Principles"

Under the GoC Policy Framework, once there is a significant change in circumstances, the critical question for determining whether to recommend extending extraordinary assistance to a Canadian detained in Syria is whether the threat they pose upon their return to Canada can be mitigated.

It bears repeating that every threat assessment must be individualized. Regrettably, the accuracy of any assessment is questionable, given the information available to the RCMP and CSIS is unlikely to include recent interviews with the detainees. This inaccuracy could lead security services to under or overestimate the threat they pose to Canadian security. Fortunately, there is clear evidence that the mitigation measures available to the GoC can effectively limit serious threats to national security and public safety. If mitigation is possible, as I believe the precedent supports, the Policy Framework

favours a recommendation for repatriation.

Narrow Security Considerations

Based on the above, I believe the Policy Framework favours the repatriation of the 19 women and children who are currently under reconsideration for extraordinary assistance. Nevertheless, the framework as a whole remains fundamentally flawed in two respects.

The first flaw is that the policy starts from the presumption that GAC will not repatriate any Canadian detained in Syria, regardless of their circumstances. The human rights implications of this policy are canvassed by other articles in this special edition, and I commend them to you. But it is worth emphasizing that the rationale behind this position is not explained in the written evidence submitted in response to the Application for Judicial Review. It has also never been articulated to the Canadian public.

Instead, the GoC has argued that it is too dangerous to repatriate Canadians and that they have limited consular relations within Syria. But as we have seen in the Policy Framework, employee and detainee security is a barrier or factor that weighs into a policy decision; it should not serve as a substitute for GoC policy. The fact that Canada has successfully conducted two repatriation operations without incident belies these assertions.

The GoC also consistently maintained that it has no legal obligation to repatriate Canadians in SDF custody (Affidavit of CT, para 78). The lack of a legal obligation to do something is not a solid policy reason for not doing it. Moreover, the Federal Court disagreed with the GoC's position. The Court found that a citizen's right to return to Canada protected under s. 6 of the *Charter of Rights and Freedoms* prevents the GoC from frustrating their return (para 128). The Court found that, in this case, a detainee's exercise of the right of return is contingent on Canada first asking the AANES to allow their repatriation (para 155) and appointing someone to facilitate their release from custody (para 161).

The second major flaw in the policy is that it relies on an overly narrow and shortsighted conception of national security. As evidenced by the Affidavit of Dominic Rochon, Senior Deputy Minister of the National and Cyber Security Branch at Public Safety Canada, "protecting Canada from the threat of terrorism is a critical priority for the Government of Canada" (Affidavit of DR, para 5). Yet, the only terrorism threat addressed in the policy is the threat posed by a CET on route or after their return to Canada. There is no consideration of the wider security threat posed by the indefinite detention of ISIS fighters and supporters in make-shift and under-resourced camps and prisons maintained by a precariously positioned non-state actor.

To be sure, ISIS lost control of its remaining territory in 2019, but the group continues to operate as an insurgency in Syria and Iraq and has affiliates across Africa. CSIS assesses that ISIS retains the aim of capturing and holding territory, "raising the possibility of future reincorporation of foreign extremists

including CETs." CSIS also expects the group will "continue to attempt to inspire and enable attacks in Western countries while it gradually rebuilds its direct attack capabilities."

A core priority for ISIS is liberating its fighters in SDF detention, which US military officials have dubbed "an ISIS Army in waiting." This fact was made evident by the group's sophisticated attack in January of 2022 against the al-Sina'a prison, which holds 3500 militants. Two hundred ISIS fighters with state-of-the-art equipment breached the prison walls in one arm of a broader three-part offensive. Eight hundred prisoners escaped. It took a week for SDF forces to regain control of the prison and round up the escapees with the assistance of US forces and air support. In the end, more than 150 prisoners, fighters and SDF members were killed.

In a 2019 statement to his followers, then-ISIS leader Abu-Bakr al-Baghdadi also ordered that every effort be made to free the women and children in the Al-Hawl detention camp. Since then, there has been a marked increase in women and children smuggled out of or missing from Al-Hawl, including at least one Canadian woman and her children (Agreed Statement of Facts, 1 Dec 2022).

ISIS supporters also retain control over much of the population inside the detention camps that continue to house nearly 60,000 women and children. ISIS insurgents funnel money, phones, and weapons to women in Al-Hawl. They are in "constant communication with them in order to assure them that they are not forgotten and they have a task to undertake: prepare for ISIS's future resurgence." Hardline supporters of ISIS have also formed their own religious policing units to enforce ISIS's "laws" on other detainees and administer punishment. In 2019, I witnessed a riot in the foreigner section of Al-Hawl after guards broke up an attempt to punish a woman, resulting in 7 women being shot and one killed.

Worse, the thousands of innocent children living in SDF detention are at risk of being radicalized if their governments do not repatriate them. As General McKenzie, Commander of US Central Command warned, "we're giving ourselves the gift of fighters five to seven years down the road, and that is a profound problem." Charles Lister, the director of the Countering Terrorism and Extremism programs at the Middle East Institute explained that "We are doing nothing to prevent the current generation of detainees from wanting to continue to fight if they get out, and creating a melting pot for the next generation." This is not a hypothetical problem. Prisons have long played an important role in the radicalization of prominent jihadist leaders, including Abu Zarqawi, the founder of Al Qaeda in Iraq and the "ideological godfather" of ISIS.

The reconstitution and resurgence of ISIS in the Middle East is a major threat to regional and international security. The risk that a repatriated Canadian may pose to national security should be weighed against their potential escape and re-engagement with ISIS, their migration to other conflict zones, and the indoctrination and radicalization of their children. Timothy Betts, the US Special Envoy for the Global Coalition to Defeat ISIS, said it best: "we cannot ignore the serious risks posed by the detainee and displaced person populations in northeast Syria, because those risks will not ignore us."

Conclusion

In 2015, after the Conservative government revoked the citizenship of a convicted terrorist, Liberal leader Justin Trudeau famously said, "a Canadian is a Canadian is a Canadian." Now in power for eight years, the Trudeau Government has often affirmed that its "first priority… is to protect the safety and security of Canadians both at home and abroad."

Yet, there are currently dozens of Canadians, mostly innocent children under the age of 6, subject to arbitrary and unlawful detention in horrific conditions in North East Syria. Those children do not pose a credible threat to the security of Canada, but the GoC's presumption against repatriation is unquestionably threatening their safety and security. Their parents and the other adults in SDF custody may pose a threat to public safety should they return to Canada. Legal uncertainty about the *Charter*'s extraterritorial application regrettably limits an investigator's capacity to accurately assess that threat and collect evidence that could be used to prosecute them for their crimes on behalf of ISIS. Fortunately, precedent strongly suggests that other measures, such as surveillance, peace bonds, and charges for travelling offences, can successfully mitigate the threat the adult detainees may pose upon their return to Canada.

Repatriation is the only way to guarantee the safety and security of detained Canadians. It is also the only way to ensure they do not reengage with ISIS in Syria or elsewhere, and the best way to ensure the children are not indoctrinated and radicalized into a life of extremism. Repatriation also reduces the greater risk to Canadian and global security: the resurgence of ISIS.

No, the return of every Canadian will not eliminate the threat of ISIS, but Canada cannot contribute to the security solution while its policies continue to exacerbate the problem. Canada should adjust its Policy Framework to reflect a more comprehensive understanding of the long-term risks posed by the continued and precarious detention of thousands of ISIS militants and supporters by the SDF. Doing so would flip the Policy Framework's starting presumption on its head: repatriation is in the best interests of Canadian national security.

Citation: Leah West, "Shortsighted Security: Canada's Policy on Repatriating Canadians Detained in North East Syria" in *Human Rights and Citizenship Abandoned in NE Syria: A Special issue of the Global Justice Journal* (2023) 7 PKI Global Justice Journal 2

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