



Royal United Services Institute  
for Defence and Security Studies

Occasional Paper

# Resolving the Stalemate

Foreign Fighters and Family  
Members in Syria

Sabin Khan and Imogen Parsons



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RUSI Occasional Paper, December 2021



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# Executive Summary

**T**HE COLLAPSE OF the Islamic State caliphate in March 2019, while a positive development overall for international security, has created an enduring security challenge in the form of tens of thousands of Islamic State fighters and family members from some 60 countries who are still in northeast Syria. Held by the Autonomous Administration of North and East Syria (AANES) and the Syrian Democratic Forces (SDF) in a number of camps and prisons, often in appalling conditions, there is currently little prospect of those who have committed abuses being tried and convicted, either in Syria or in their countries of origin.

The current international response is one of containment, but this is not sustainable. As well as denying justice to those who have suffered abuses, there is a growing security threat as the AANES and the SDF cannot continue to securely hold these people indefinitely. Few countries have repatriated significant numbers of their citizens, with most Western European countries only allowing a small number of children (and in some cases mothers) to return. The dire conditions in which many are held will likely lead to further radicalisation, while the US withdrawal from Afghanistan creates possibilities for the mobilisation of foreign fighters.

This Occasional Paper charts a way forward on this complex and contested issue. It proposes concerted global action, including setting up an international task force to coordinate and drive progress, pushing for prosecution of those fighters who have committed crimes (including war crimes and terrorism-related offences), prioritising children for repatriation and support, and strengthening national public protection tools, including deradicalisation, disengagement and reintegration capabilities.

Global leadership, resolve and courage is required to address these urgent security, human rights, legal and humanitarian challenges. Failure to act would not only be a repeat of the mistakes made prior to 9/11 and subsequent terrorist attacks, but there would be generational consequences for global peace, security and prosperity.





# Introduction

**T**HIS PAPER MARKS the culmination of a two-year RUSI initiative seeking to investigate and make recommendations on how the international community should deal with the potential security risks posed by foreign terrorist fighters and their family members<sup>1</sup> in northeast Syria.<sup>2</sup> The recommendations chart a way forward on this difficult issue, with a view to upholding national and transnational security, in accordance with human rights and international law.

The collapse of the Islamic State caliphate in March 2019, while significant, was only a short-term military victory. Global jihadism has not been defeated. The Islamic State caliphate and the Syria conflict mobilised the largest number of foreign terrorist fighters seen since the emergence of the global jihadist movement in the 1980s, with a new generation of family members. Today, thousands of foreign terrorist fighters, who are widely considered to pose a major long-term global threat,<sup>3</sup> remain in arbitrary and indefinite detention in northeast Syria, along with their family members, including women – some of whom are highly radicalised – and children from some 60 countries.

There has been no resolution either at the international level, or, except in a minority of cases, at a national level, on what to do with these individuals in the long term. In January 2021, UN Secretary-General António Guterres said that ‘addressing the protracted issue of ISIL fighters, including foreign terrorist fighters, and their family members in Iraq and the Syrian Arab Republic remains an urgent, strategic imperative for international peace and security’.<sup>4</sup> The

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1. The authors use the terms ‘foreign terrorist fighters’, ‘family members’ and ‘supporters’ but recognise that this terminology is problematic. Foreign terrorist fighters are not exclusively men, as women can also be perpetrators of violence and terrorist acts, or play important facilitator and supporter roles. Similarly, some women may be victims (or, in especially complex cases, both). Children should, according to the UN Convention on the Rights of the Child, be primarily considered as victims, while also recognising that some older children could have been indoctrinated and committed violent atrocities. For each individual, the potential security risks they pose will be different, and therefore the language to describe them will vary, as will the solutions to deal with them.
  2. The paper focuses on northeast Syria, where most foreign terrorist fighters and family members are situated. Some foreign nationals, predominantly men and boys, are also in Iraqi prisons.
  3. UN Security Council, ‘Twelfth Report of the Secretary-General on the Threat Posed by ISIL (Da’esh) to International Peace and Security and the Range of United Nations Efforts in Support of Member States in Countering the Threat’, S/2021/98, 29 January 2021.
  4. *Ibid.*

issue of displaced foreign terrorist fighters and family members continues to grow more serious with neglect and poses an increasing security threat.<sup>5</sup>

The Islamic State has been complicit in terrorism, war crimes, genocide and crimes against humanity. Yet, despite the heinous nature of the crimes committed, many Islamic State members detained in camps in Syria have effective impunity from prosecution. Neither at the international level nor in national jurisdictions are there satisfactory legal and prosecutorial mechanisms to hold Islamic State members to account for the crimes they have committed against the Yazidis, Muslims, Jews, Christians, Turkmen, other minorities in Syria and Iraq, Western hostages, and citizens of foreign countries. Thousands of victims are still awaiting justice.

While it may be tempting to believe that detainment in northeast Syria is the least bad option as the threat is contained, this is an overly short-term perspective in security terms, and disregards the immediate legal and human rights concerns around the treatment of these people. There are several complications. First, the camps and prisons in northeast Syria are administered by the Kurdish-led self-declared Autonomous Administration of North and East Syria (AANES) and its military wing, the Syrian Democratic Forces (SDF). The AANES and the SDF are not officially recognised by the international community, thus their status as non-state actors limits official international engagement. Second, security is far from watertight in these camps and prisons. There is a high risk of escape, and within them radicalisation and recruitment are actively taking place.

Amid these conditions, foreign nationals – many of them children<sup>6</sup> – are in limbo, held without charge, and in the absence of due process and judicial consideration of their status.<sup>7</sup> They are 'exposed to violence, exploitation, abuse, and deprivation in conditions and treatment that may well amount to torture or other cruel, inhuman or degrading treatment or punishment

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5. UN Security Council, 'Letter Dated 21 January 2021 from the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities Addressed to the President of the Security Council', S/2021/68.

6. According to Save the Children, there are children present in northeast Syria from the following countries: Afghanistan, Albania, Algeria, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Bosnia & Herzegovina, Canada, China, Denmark, Egypt, France, Georgia, Germany, Indonesia, Iraq, Ireland, Italy, Jordan, Kazakhstan, Kosovo, Kuwait, Kyrgyzstan, Lebanon, Libya, Macedonia, Malaysia, Morocco, the Netherlands, Norway, Pakistan, Portugal, Russia, Saudi Arabia, Republic of Seychelles, Somalia, South Africa, Spain, Sudan, Sweden, Switzerland, Syria, Tajikistan, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Ukraine, the UK, the US, Uzbekistan and Yemen. See Save the Children, 'A Children's Crisis: Update on Al Hol Camp and COVID-19 Concerns', 2020.

7. For further reading, see Fionnuala Ní Aoláin, 'Position of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism on the Human Rights of Adolescents/Juveniles Being Detained in North-East Syria', UN Human Rights Special Procedures, May 2021.

under international law’.<sup>8</sup> They are situated in a conflict zone where numerous jihadist groups operate, in a permissive environment for further radicalisation, disenfranchisement and trauma, ‘an alarming development with potentially dangerous generational implications’.<sup>9</sup> Without early intervention in both deradicalisation and addressing trauma, an extremist mindset and psychological trauma is likely to become more entrenched, potentially creating the next generation of jihadist fighters.

For many countries, this is considered more acceptable than the real risk to national security which individuals could pose if they return, in addition to the likely resource requirement to manage that risk. Equally, however, policymakers should consider that no country wants to be in a position where it transpires that a foreign national who was left inadequately managed in northeast Syria was subsequently responsible for a terrorist attack in their country, an increasingly likely outcome over the mid to long term. To mitigate this risk, the relevant countries will need collectively to play their part in taking responsibility for their citizens. This will require immediate planning and preparation.

One immediate priority must be taking steps to rehabilitate young children, given that keeping them in these conditions is likely creating a radicalisation problem that could stretch decades into the future, along with increasing prosecutions to regularise imprisonment where justified, to protect the public and to provide justice for people who have suffered at the hands of the Islamic State. Together, these actions will help to break the cycle of violence, and mitigate the risk of managing a larger, more costly and potentially more dangerous cohort of individuals in the future.

Neither national governments nor multilateral organisations are able to resolve this alone. The current stalemate will only be resolved if it is accepted at the international and national levels that a new collective and collaborative approach is required. This will take political will, global leadership and a mandate. This paper does not underestimate the scale of the challenge, particularly at a time when governments are under pressure from the coronavirus pandemic and there is considerable international geopolitical change, economic uncertainty and tension in a ‘more contested international environment’.<sup>10</sup> However, it is precisely because of these complexities and the potential ramifications for global security that a proactive approach needs to be forged now.

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8. UN Human Rights Office of the High Commissioner, ‘Syria: UN Experts Urge 57 States to Repatriate Women and Children from Squalid Camps’, 8 February 2021.

9. US Central Command, ‘General Kenneth F. McKenzie Jr. Remarks as Delivered to the National Council on US-Arab Relations’, 19 November 2020, <<https://www.centcom.mil/MEDIA/Transcripts/Article/2421604/general-kenneth-f-mckenzie-jr-remarks-as-delivered-to-the-national-council-on-u/>>, accessed 7 December 2021.

10. HM Government, *Global Britain in a Competitive Age: The Integrated Review of Security, Defence, Development and Foreign Policy*, CP 403 (London: The Stationery Office, 2021), p. 28.

The challenge is made more urgent because of the recent US and NATO military withdrawal from Afghanistan, and the risk of the country becoming a failed state and a base for global jihadists from Syria (and elsewhere). The call from the ministers of the Global Coalition against Daesh is worth repeating – ‘a comprehensive, coordinated and multifaceted’ effort remains necessary to achieve a full and enduring defeat of the Islamic State worldwide.<sup>11</sup>

This paper draws on publicly available literature, and a series of roundtables<sup>12</sup> and interviews convened by RUSI with leading academics, multilateral organisations, operational partners, lawyers, policymakers, NGOs and civil society practitioners. The paper analyses the risks to national and transnational security, and highlights the key practical challenges for governments. It recommends the following actions:

- Build comprehensive multilateral and national strategies.
- Ensure governments have robust risk assessments of their citizens.
- Prosecute foreign terrorist fighters to deliver international justice and accountability, and address impunity.
- Prioritise children and uphold international human rights law and obligations, including issues of nationality.
- Accelerate and advance deradicalisation, disengagement and reintegration programmes, capabilities and standards.

These recommendations will require a concerted effort to consolidate and coordinate national and multilateral counterterrorism capabilities. A step change is vital not only to mitigate the risks posed by this cohort of individuals, but also existing domestic terrorist threats and the enduring global threat.

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11. Global Coalition, ‘Ministerial Meeting of the Global Coalition to Defeat Daesh/ISIS’, 28 June 2021, <<https://theglobalcoalition.org/en/rome-ministerial-coalition-communique/>>, accessed 7 December 2021.

12. For an overview of the range of topics discussed in the expert-led working roundtables, see Michael Jones, ‘Dealing with the Legacies of the Islamic State: Foreign Terrorist Fighters and Family Members’, RUSI Conference Report, 16 December 2021.

# I. The Global Context

**T**HERE ARE INCREASING security concerns about the global resurgence of the Islamic State in Syria, Iraq and Afghanistan, and their expanding influence in Africa and Southeast Asia. In the wake of the collapse of the caliphate, the Islamic State has become a decentralised movement.<sup>13</sup> For many Western countries, Islamist terrorism remains a significant terrorist threat.<sup>14</sup>

Recent developments in Afghanistan have raised further questions about US foreign policy. For jihadists, the withdrawal of US forces is a victory for their cause. The Islamic State – Khorasan Province, the group with the largest global jihadist presence,<sup>15</sup> is recruiting fighters from Syria, and there are growing concerns about the possible relocation of foreign terrorist fighters from Syria to Afghanistan.<sup>16</sup> The US intelligence community has assessed that the Islamic State – Khorasan Province has the intent to conduct operations abroad and could have the capability in the next six to 12 months.<sup>17</sup>

The US withdrawal from Afghanistan raises questions about future strategies for northeast Syria. While Syria may not be a vital US interest,<sup>18</sup> it exerts significant influence on the terrorist threat for many Western countries.<sup>19</sup> The US continues to have a small presence in the country and is unlikely to expand its limited military, counterterrorism and stabilisation roles.<sup>20</sup>

Moreover, Western countries are generally pivoting their foreign policy to focus more on great power competition, and less on the threats associated with Islamist terrorism. This

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13. Ben Knight, 'German Spy Chief Warns of Islamic State's Strength', *DW*, 13 July 2021.

14. MI5, 'International Terrorism', < <https://www.mi5.gov.uk/international-terrorism>>, accessed 9 December 2021.

15. UN Security Council, 'Letter Dated 15 July 2021 from the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities Addressed to the President of the Security Council', S/2021/655, p. 14/22.

16. Helen Warrell, 'MI5 Chief Warns of New Terrorist Risks in Afghanistan as Allies Withdraw', *Financial Times*, 14 July 2021.

17. *The Guardian*, 'Islamic State in Afghanistan Could Have Capacity to Strike US Next Year', 26 October 2021.

18. Neil Quilliam, 'The Middle East Is Preparing for the United States' Exit From Syria', *Foreign Policy*, 25 August 2021.

19. MI5, 'Director General Ken McCallum Gives Annual Threat Update 2021', 14 July 2021.

20. Abdulrahman Al-Masri, 'On the Way Out Like Afghanistan? The Biden Administration's Syria Policy Labyrinth', Atlantic Council, 1 September 2021.

has meant a shift away from tackling ‘upstream’ threats to dealing primarily with immediate security problems.

Some Muslim majority countries (such as Kazakhstan, Uzbekistan and Kosovo)<sup>21</sup> have been more proactive in dealing with their citizens who have gone to Syria, perhaps reflecting the large number of nationals who went, or the less febrile domestic atmosphere around religion and immigration. However, other Muslim majority countries (such as Indonesia and Egypt) have taken a similar stance to many Western countries, and may have equally complex, albeit different, political concerns.<sup>22</sup>

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21. For further reading, see Adrian Shtuni, ‘Rehabilitation and Reintegration Path of Kosovar Minors and Women Repatriated from Syria’, International Republican Institute, 2021.

22. See, for instance, Amr Emam, ‘Egypt’s Security Establishment Divided Over ISIS Returnees’, *Arab Weekly*, 14 April 2019.

## II. The Unsustainable Situation in Northeast Syria

**T**WO YEARS AFTER the collapse of the Islamic State caliphate, there are estimated to be approximately 10,000 fighters operating in small cells between Syria and Iraq.<sup>23</sup>

**Figure 1:** Map Showing SDF/AANES Control of Northeastern Syria and Major Camps and Prisons



Source: Unicef, 'Syria Conflict 10 Years on: 90 Per Cent of Children Need Support as Violence, Economic Crisis and COVID-19 Pandemic Push Families to the Brink', 10 March 2021.

The SDF are overseeing the detention of a further 10,000 captured fighters in prisons in northeast Syria, including approximately 2,000 foreign fighters,<sup>24</sup> of which 150 are European men.<sup>25</sup> In addition, they are separately holding over 60,000 detainees in the Al-Hol and Al-Roj

23. UN, 'Repatriating Detained Foreign Fighters, Their Families Key to Combating Threat Posed by Islamic State, Counter-Terrorism Officials Warn Security Council', press release, 24 August 2020, <<https://www.un.org/press/en/2020/sc14282.doc.htm>>, accessed 7 December.

24. US Government, 'Operation Inherent Resolve: Lead Inspector General Report to the United States Congress, 1 April 2021–30 June 2021', 30 July 2021, p. 6.

25. Nikolaj Nielsen, 'Hundreds of European Children Remain Stuck in Syria', *EUobserver*, 16 March 2021.



camps. The majority are Syrians and Iraqis. Ninety percent are women and children, of which it is estimated that 40,000 are children.<sup>26</sup>

There are approximately 27,500 foreign children in the camps and prisons, of at least 60 nationalities.<sup>27</sup> There are thought to be approximately 230 women and 600 children of EU or UK nationality in the Al-Hol camp.<sup>28</sup> More than 90% of the children are under the age of 12, and more than half are under the age of five. Many children have spent their formative years in these camps, and suffer from malnourishment, lack of basic facilities, stigmatisation, poor health, trauma and post-traumatic stress disorder. Children under the age of five have died due to malnutrition, dehydration and other preventable conditions. Hundreds of children, mostly boys, have been removed from Al-Hol and are now incarcerated in adult prisons in northeast Syria.<sup>29</sup> The president of the ICRC, Peter Maurer, said:

It is one of the largest, if not the largest, child protection crises with which we are confronted today. It is a scandal that the international community is allowing such a place to continue ... because of political divergences which prevent finding a durable solution for those who have been stranded in northeast Syria.<sup>30</sup>

Compounding the humanitarian crisis, the Danish Security and Intelligence Service assessed that 'the risk of indoctrination and influence generally increases the longer the children stay in a radicalised environment, including in the camps in north-eastern Syria'.<sup>31</sup> Al-Hol is described as a 'major security threat', and a 'mini-caliphate', where radicalisation, recruitment, training, people and weapons smuggling, and incitement of external operations have been reported,<sup>32</sup>

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26. International Committee of the Red Cross (ICRC), 'Remarks by Fabrizio Carboni, ICRC Near and Middle East Regional Director', 30 June 2021.
  27. Unicef, 'Syria Conflict 10 Years on: 90 Per Cent of Children Need Support as Violence, Economic Crisis and COVID-19 Pandemic Push Families to the Brink', 10 March 2021.
  28. Nielsen, 'Hundreds of European Children Remain Stuck in Syria'.
  29. For further reading, see Heather Murdock, 'Foreign Children of IS Detained in Northeast Syria Face Bleak Future', VOA, 4 November 2021.
  30. ICRC, 'Syria: ICRC President Urges "New Approach" by International Community After Decade of Brutal Crisis', press release, 29 March 2021.
  31. Danish Security and Intelligence Service, 'Vurdering af terrortruslen mod Danmark' ['Assessment of the Terrorist Threat Against Denmark'], March 2020, <<https://www.pet.dk/~media/VTD%202020/VTD2020DKMARTSpdf.ashx>>, accessed 16 November 2021.
  32. UN Security Council, 'Letter Dated 21 January 2021 from the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities Addressed to the President of the Security Council', p. 19.

often supported by alternative money transmittal services (*hawalas*).<sup>33</sup> The Islamic State's members have 'relative freedom of movement and extensive influence' within these camps.<sup>34</sup>

The security situation in Al-Hol has deteriorated, and more than 70 people have been brutally killed since the start of this year.<sup>35</sup> Most of the victims were killed by Islamic State supporters for collaborating with camp authorities, or for not abiding by their version of Sharia law. Islamic State-affiliated women at Al-Hol are engaged in 'violence, intimidation and indoctrination'.<sup>36</sup> In addition, foreign women are marrying men they have met online and are being smuggled out of the camps.<sup>37</sup> The Islamic State is also smuggling boys out of these camps to training locations in the Syrian desert.<sup>38</sup>

The security measures in the 14 SDF-run prisons and detention centres have generated increasing international concern over the last year. In March and May 2020, Islamic State fighters briefly took control of the Hasakah prison in northern Syria, which holds approximately 5,000 fighters, including foreigners and high-ranking leaders.<sup>39</sup> In 2020, the Inspector General Report to the US Congress noted that prisoners pose 'one of the most significant risks to the success of the [defeat of the Islamic State] mission', as well as a threat to US and coalition partner national security interests.<sup>40</sup>

The Global Coalition against Daesh is funding an expansion of the large detention facility at Hasakah to double its size and reduce the chance of breakouts.<sup>41</sup> However, as General Kenneth McKenzie Jr noted, efforts to train and equip prison guards and construct prison structures are 'a tactical-level Band-Aid, not a long-term solution. Military solutions do not exist for the issues of de-radicalization and repatriation of [foreign terrorist fighters]. They are international problems requiring international solutions'.<sup>42</sup> US officials have repeatedly claimed that these detention

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33. *Ibid.*, p. 18.

34. US Government, 'Operation Inherent Resolve: Lead Inspector General Report to the United States Congress, 1 April 2021–30 June 2021', 30 July 2021, p. 12.

35. Louisa Loveluck, 'Syrian Detention Camp Rocked by Dozens of Killings Blamed on Islamic State Women', *Washington Post*, 19 September 2021.

36. James F Jeffrey, 'Part 2: ISIS Prisoners and Families', Wilson Center, 22 December 2020.

37. Bethan McKernan, Vera Mironova and Emma Graham-Harrison, 'How Women of Isis in Syrian Camps Are Marrying Their Way to Freedom', *The Guardian*, 2 July 2021.

38. US Government, 'Operation Inherent Resolve: Lead Inspector General Report to the United States Congress, 1 April 2021–30 June 2021', p. 12.

39. Matthias von Hein, 'Syria Prison Riot Highlights Kurdish Forces' Struggle with IS Combatants', *DW*, 4 April 2020.

40. US Government, 'Operation Inherent Resolve: Lead Inspector General Report to the United States Congress, 1 January 2020–31 March 2020', 11 May 2020, p. 6.

41. Katie Bo Williams, 'Coalition Plans to Expand Giant ISIS Prison in Syria', *Defense One*, 24 February 2021.

42. US Government, 'Operation Inherent Resolve: Lead Inspector General Report to the United States Congress, 1 January 2020–31 March 2020', p. 58.

facilities are not long-term solutions, and the 'risk of riots, breakouts, or other disturbances that could return ISIS fighters to the organization's ranks remains'.<sup>43</sup>

These urgent security risks exist in a region beset with a long history of fragility, proxy wars and instability. After 10 years of conflict, the Syrian government, Russia, Iran, Turkey and the SDF are vying for influence. Aside from the Islamic State, other jihadist groups continue to operate. Hay'at Tahrir Al-Sham remains the dominant militant group in northwest Syria, with approximately 10,000 fighters, most of them Syrian, including a cadre of foreign terrorist fighters.<sup>44</sup> The other major Al-Qa'ida affiliate in the Idlib area is Hurras Al-Din, with approximately 2,500 fighters.<sup>45</sup>

The oversight of detained Islamic State fighters and foreign nationals has been left to the SDF, who have repeatedly affirmed they will not be able to manage these detainees effectively for the long term. The AANES have stated that managing foreign nationals is not sustainable.<sup>46</sup> Their commander, Mazloum Abdi, reiterated the SDF's call to repatriate the 'tens of thousands of women, children, and ISIS fighters remain[ing] in SDF-NES IDP camps and detention centers'.<sup>47</sup> According to recent media reports, the SDF have also released some detainees in exchange for a payment and promise not to rejoin armed groups, although the SDF protest they have not released any fighters.<sup>48</sup>

The politics of this are complicated. The SDF have made a huge contribution to the reduction of the threat from the Islamic State and continue to do so. They are acutely aware of the impact on them of a reduction in US interest in the region, so, while these warnings must be taken seriously, they are also infused with a desire to maintain US engagement. The AANES is anxious about the US withdrawal from Afghanistan and the potential implications for US policy on Syria and their political future in the region.<sup>49</sup> In July, the AANES reiterated its call to the UN for international recognition<sup>50</sup>, but there is no indication that this will be granted, and the AANES

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43. US Government, 'Operation Inherent Resolve: Lead Inspector General Report to the United States Congress, 1 April 2021–30 June 2021', p. 72.

44. UN Security Council, 'Letter Dated 21 January 2021 from the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities Addressed to the President of the Security Council', p. 7/23.

45. *Ibid.*

46. Beatrice Eriksson, 'A Visit to Northeast Syria Shows the Urgency for Governments to Repatriate Their Citizens, Many of Them Children, to Thwart ISIS', *Just Security*, 2 September 2021.

47. Dilan Sirwan, 'SDF Chief Calls for Repatriation of Foreign Nationals Ahead of Coalition Meeting', *RUDAW*, 28 June 2021.

48. Bethan McKernan and Hussam Hammoud, 'Former IS Fighters Say They Paid Way out of Kurdish Jail in "Reconciliation" Scheme', *The Guardian*, 22 November 2021.

49. Richard Spencer, 'Biden Has Promised He Won't Abandon Us Like He Did the Afghans, Says Kurdish Leader Mazloum Abdi', *The Times*, 27 September 2021.

50. William Christou, 'What Would Official Recognition of the Kurdish Autonomous Region Mean for Northeast Syria?', *New Arab*, 20 July 2021.

continues to be excluded from the largely moribund UN constitutional committee seeking to produce a new constitution for Syria.



# III. A Justice Vacuum: Impunity for Terrorists

**G**IVEN THE SERIOUSNESS of the crimes committed by many foreign terrorist fighters, the obvious way to manage the security risks they present – and to achieve justice for their victims – would be to put them on trial and sentence those found guilty to imprisonment. This chapter sets out why this is not as simple as it sounds, either in the countries where the crimes have been committed or upon repatriation to countries of origin.

National prosecutors, in fighters' countries of origin, still generally lack sufficient evidence to prosecute and imprison most foreign terrorist fighters, making repatriation highly unattractive to many politicians and policymakers in those countries.

Prosecution in the countries where crimes were committed is no easier. There are currently no clear pathways in northeast Syria for prosecution, nor for long-term detention, given the SDF and AANES are not internationally recognised. There are also concerns about relying purely on Syrian (or Iraqi) courts as they do not meet international human rights standards and are unlikely to have the capacity to manage these prosecutions, with a paucity of legislation allowing detainees to be charged with international crimes. For some countries, the potential use of the death penalty is an issue. Furthermore, the international community should not expect courts in Syria or Iraq to be able to prosecute individuals on the basis of evidence which would not be deemed sufficient for a prosecution in Western courts.

While there has been progress in the collection, analysis and use of battlefield evidence in recent years,<sup>51</sup> there are still significant practical, resourcing and operational challenges<sup>52</sup> in ensuring that battlefield evidence is admissible and can secure successful national prosecutions. There is a backlog of material in Syria and Iraq that needs to be processed, including scientific evidence collected by Coalition countries. Islamic State paper documentation in northeast Syria requires collection and digitisation. The coronavirus pandemic has delayed efforts in this space.

Disclosure, which is essential for a fair trial, remains one of the most complex challenges. Furthermore, victims and witnesses who are scattered across the region and in different countries (where they have sought asylum) will have seen multiple criminal acts by multiple

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51. This is due to the efforts of Operation *Gallant Phoenix*, the UN Investigative Team for Accountability of Da'esh/ISIL (UNITAD), the International, Impartial and Independent Mechanism (IIIM), the Independent International Commission of Inquiry on the Syrian Arab Republic (COI), the Commission for International Justice and Accountability (CIJA), Interpol, Europol, the International Institute for Justice and the Rule of Law, Eurojust, and The Genocide Network, among others.

52. Eurojust, 'Eurojust Memorandum on Battlefield Evidence', 29 September 2020.

offenders of multiple nationalities. Many foreign terrorist fighters will not be subject to prosecution wherever they finish their journey, because of a lack of useable evidence.

Moreover, prosecutions often result in short or suspended prison sentences. Radicalisation in prisons and the release of dangerous offenders remain ‘acute concerns’,<sup>53</sup> and deradicalisation, disengagement and reintegration programmes for foreign terrorist fighters, women and children are still relatively new and in the process of being designed, and the evidence base on ‘what works’ is under-developed.<sup>54</sup> There continue to be knowledge gaps, and policy approaches are still being developed related to the effective management of radicalised women. There have been instances of some highly radicalised women returning with no accountability or suspended sentences in Uzbekistan and the Western Balkans.<sup>55</sup>

This results in a vacuum of justice for the victims and survivors of their crimes. The UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD) concluded that the Islamic State committed genocide and numerous other international crimes against the Yazidi community.<sup>56</sup> There is also documented evidence of the widespread involvement of Western Islamic State foreign terrorist fighters in the mass rape and enslavement of Yazidi women and children.<sup>57</sup>

There have been some successes, albeit still a small number. In the last few years, Germany, France, the Netherlands and other European countries, with support from Eurojust and the Genocide Network, have successfully prosecuted individuals for war crimes or crimes against humanity committed beyond their borders.<sup>58</sup> In public trials held in third countries, convictions have been achieved for specific cruel and brutal acts committed in Syria because of the legal recognition of extraterritorial jurisdiction for core international crimes. German prosecutors, for example, have looked at the role of some Islamic State spouses, and convicted them for slavery, pillaging and enlisting child soldiers (in the case of one mother who handed over her

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53. UN Security Council, ‘Twelfth Report of the Secretary-General on the Threat Posed by ISIL (Da’esh) to International Peace and Security and the Range of United Nations Efforts in Support of Member States in Countering the Threat’, 29 January 2021, p. 14/23.

54. Martine Zeuthen, ‘Reintegration: Disengaging Violent Extremists’, RUSI, Ministry of Foreign Affairs of the Netherlands, February 2021.

55. Vera Mironova, ‘Impunity for Repatriated Islamic State Members’, *Lawfare*, 3 August 2021.

56. UN Security Council, ‘Letter Dated 1 May 2021 from the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/Islamic State in Iraq and the Levant Addressed to the President of the Security Council’, p. 2/25.

57. Counter Extremism Project, ‘Western Foreign Fighters and the Yazidi Genocide’, 5 March 2021.

58. To date, no one who has returned to the UK after joining Islamist terrorist groups has been charged with offences under war crimes or torture legislation.

child to an Islamic State training camp).<sup>59</sup> In November, in a landmark German trial, an Islamic State member received the first conviction for genocide against the Yazidis.<sup>60</sup>

For any significant number of prosecutions to take place, and anything close to justice to be served, a major increase in international effort is required.

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59. Eurojust, Genocide Network, *Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences* (The Hague: Eurojust, 2020).

60. Doughty Street Chambers, 'German Court Hands Down First Genocide Conviction Against ISIS Member', 30 November 2021.





## IV. The International Response: Containment in a Conflict Zone

**T**HE INTERNATIONAL RESPONSE has, for want of a better solution, largely sought to contain the problem in northeast Syria. Domestic security and political concerns are the major drivers of this approach. While the precise dynamics vary across national contexts, many countries still face the challenge of how to effectively manage foreign terrorist fighters and family members at home. Many are already dealing with significant domestic risks, with thousands of individuals of concern, and are ill equipped to deal with additional numbers, including a potentially more dangerous and complex cohort of individuals. For many Western countries, repatriating foreign terrorist fighters without sufficient preparation and capacity to deal with them could raise the terrorism threat level, and governments may fear wider societal implications such as increased national tensions and hate crime. Other governments may have different complex political reasons to hesitate before bringing these people back, fearing they may, for instance, support insurgencies.

But the current situation is not sustainable. As the previous chapter demonstrated, the SDF cannot and will not hold foreign terrorist fighters indefinitely. Furthermore, conditions continue to worsen in the camps and prisons, meaning they are likely to be fostering further radicalisation, as well as being unacceptable in humanitarian and human rights terms. In the last two years there have been increasing calls by the US, the UN, security experts and humanitarian organisations for the repatriation of foreign terrorist fighters and family members. Some countries have already carried out mass repatriations, including Kazakhstan (700), Uzbekistan (435), Kosovo (261) and Russia (341), prioritising women and children on the basis that the latter should be primarily treated as victims.<sup>61</sup> The US has repatriated 27<sup>62</sup> nationals ‘against whom criminal charges have been lodged for offenses related to their support for ISIS’,<sup>63</sup> and stated that in doing so, it is leading by example, and out of moral responsibility to the American and Syrian

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61. UN Security Council, ‘Letter Dated 15 July 2021 from the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and Associated Individuals, Groups, Undertakings and Entities Addressed to the President of the Security Council’, p. 20/22. These are approximate figures – there are no comprehensive accurate figures on the number of foreign nationals who have been repatriated or those who remain in Syria and Iraq.

62. It is not clear if there are any US nationals still in Syria. See Lila Hassan, ‘Repatriating ISIS Foreign Fighters Is Key to Stemming Radicalization, Experts Say, but Many Countries Don’t Want Their Citizens Back’, *PBS Frontline*, 6 April 2021.

63. US Department of Justice, ‘The United States Has Repatriated 27 Americans from Syria and Iraq Including Ten Charged with Terrorism-Related Offenses for Their Support to ISIS’, press release, 1 October 2020.

people. President Joe Biden has reaffirmed former President Donald Trump's position that all countries should repatriate their citizens, in order to mitigate the risks to global security.<sup>64</sup>

Most European foreign terrorist fighters and family members, in contrast, remain in Syria, including large numbers of nationals from France, Germany, the Netherlands, Sweden and Belgium.<sup>65</sup> The numbers repatriated are small, though they do appear to show some recognition of the benefits and moral case for repatriation, if only for children. In July 2021, Finland announced it would repatriate a mother and her two children, because of both a constitutional obligation and security concerns – 'the longer the children remain in those camps, the harder it will be to counter violent extremism and radicalisation'.<sup>66</sup> In January 2021, France repatriated seven children,<sup>67</sup> with approximately 200 French children remaining in Syria.<sup>68</sup>

In May 2021, Denmark announced it would repatriate 22 Danish citizens (three women and 19 children) based on an assessment by the Danish Security and Intelligence Service (PET), and a special task force.<sup>69</sup> The PET assessed that the returning women would pose a security risk because of their radicalising influence, but that they would pose a greater threat in Syria than in Denmark where the authorities could manage the risks.<sup>70</sup> In March 2021, the Belgian prime minister stated they would 'do everything' to repatriate children under the age of 12, and in July Belgium repatriated 10 children and six mothers.<sup>71</sup> In October 2021, Germany and Denmark repatriated 11 women and 37 children.<sup>72</sup> In October 2021, the UK repatriated three British children.<sup>73</sup> The former foreign secretary said: 'Safely facilitating the return of orphans or unaccompanied British children, where possible, is the right thing to do. These innocent,

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64. Missy Ryan and Louisa Loveluck, 'Biden Administration Attempts to Overcome Reluctance of Nations to Repatriate Islamic State Fighters from Syria', *The Washington Post*, 15 October 2021.

65. Thomas Renard and Rik Coolset, 'From Bad to Worse: The Fate of European Foreign Fighters and Families Detained in Syria, One Year After the Turkish Offensive', Egmont Royal Institute for International Relations, 28 October 2020.

66. Wladimir van Wilgenburg and Joanne Stocker-Kelly, 'Finland Repatriates Women and Children with Links to ISIS from Northeast Syria', *Kurdistan24*, 17 July 2021.

67. France 24, 'France Repatriates Seven Children from Jihadist Camp in Syria', 13 January 2021.

68. Clara Bauer-Babef, 'French Delegation Calls for "Emergency" Repatriation of Children in Syria as Winter Nears', *Euractiv*, 23 November 2021.

69. Jacob Gronholt-Pederson and Tim Barsow, 'Denmark to Repatriate Women, Children from Syrian Camps', *Reuters*, 18 May 2021.

70. Christian W, 'Denmark to Bring Back Children and Mothers from Syrian Camps', *CPH Post Online*, 19 May 2021.

71. *BBC News*, 'Belgium Takes Back Mothers and Children from Syria Jihadist Camps', 16 July 2021.

72. *BBC News*, 'Germany and Denmark Repatriate 37 Children and 11 "IS Women" from Syria', 7 October 2021.

73. Rights & Security International, 'UK Must Repatriate All British Children and Women from Detention Camps in Northeast Syria Now', 20 October 2021.

orphaned, children should never have been subjected to the horrors of war'.<sup>74</sup> It is estimated that there are more than 60 British children,<sup>75</sup> many of them under five years of age, in northeast Syria.<sup>76</sup>

Overall, the international response has been to seek to contain the threat these individuals are deemed to pose by leaving them in Syria. Some governments (the UK, the US, Australia and Belgium) have also used citizenship deprivation as a means to prevent the return of some individuals,<sup>77</sup> with a number of legal challenges to this going through the courts.<sup>78</sup> There does not appear to be any political appetite to repatriate adults – described by Thomas Renard of the Egmont Royal Institute for International Relations as 'political suicide'<sup>79</sup> – or to provide consular advice to some of the most vulnerable individuals (such as children) in Syria.

At the global diplomatic level, this issue is also stuck. In September 2020, a UN Security Council Resolution calling for the prosecution, rehabilitation and reintegration of foreign terrorist fighters collapsed. The US (ultimately the sole dissenter) and Russia both objected, saying that the resolution did not call for repatriation,<sup>80</sup> while the European countries on the Council made clear that including the word 'repatriation' in the draft resolution was a red line for them.<sup>81</sup> The original proposer, Indonesia, has also stated they would not repatriate adult fighters.<sup>82</sup>

The reality has been an 'out of sight, out of mind' containment approach in one of the world's most unstable regions. Major General Kevin Copsey, the former deputy commander of Operation *Inherent Resolve*, has stressed that if the conundrum of foreign terrorist fighters and family members is not addressed within the next two years, a new form of the Islamic State will emerge.<sup>83</sup>

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74. HM Government, 'Repatriating Orphans from Syria: Foreign Secretary's Statement', press release, 21 November 2019.

75. Approximately 950 Britons travelled to Syria. See MI5, 'Director General Ken McCallum Gives Annual Threat Update 2021'.

76. Save the Children, 'More than 60 British Children Trapped in North East Syria', 21 October 2019.

77. Maarten P Bolhuis and Joris van Wijk, 'Citizenship Deprivation as a Counterterrorism Measure in Europe: Possible Follow-Up Scenarios, Human Rights Infringements and the Effect on Counterterrorism', *European Journal of Migration and Law* (Vol. 22, No. 3, 2020), pp. 338–65.

78. Elizabeth Schumacher, 'Revoking Citizenship: How it Works Across the EU', *DW*, 5 March 2021.

79. Lila Hassan, 'Repatriating ISIS Foreign Fighters Is Key to Stemming Radicalization, Experts Say, But Many Countries Don't Want Their Citizens Back', *PBS Frontline*, 6 April 2021.

80. US Mission to the UN, 'Explanation of Vote on a UN Security Council Draft Resolution on Threats to International Peace and Security Caused by Terrorist Acts', 31 August 2020.

81. Security Council Report, 'Counter-Terrorism: Vote on Draft Resolution', 30 August 2020.

82. Michael Sullivan, 'Indonesia Bans Ex-ISIS Fighters from Returning Home', *NPR*, 19 February 2020.

83. RUSI, 'Lessons from Operation Inherent Resolve: From Ensuring the Enduring Defeat of ISIS to Stabilising the Region', 7 April 2021, <[https://www.youtube.com/watch?v=FvP7JqY7Xsk&ab\\_channel=RUSI](https://www.youtube.com/watch?v=FvP7JqY7Xsk&ab_channel=RUSI)>, accessed 16 November 2021.



# V. Moving Forward: Recommendations

**U**RGENT EFFORTS SHOULD be made to build a comprehensive, robust and coordinated strategy that proactively addresses the different risks and challenges which are currently preventing the effective management of foreign terrorist fighters and family members. This chapter makes a series of recommendations that should be addressed by the relevant multilateral bodies and national governments. The recommendations will require political and organisational resolve as well as a significant increase in resourcing.

## 1. Build Comprehensive Multilateral and National Strategies

A new international task force should be established. This could be under the auspices of the UN Secretary-General, or the Global Counterterrorism Forum (which would avoid the need for UN Security Council approval). The task force should catalyse action on a new multilateral management strategy for foreign terrorist fighters and family members. It should include a team of global experts (including non-governmental), and address the strategic priorities and obstacles to implementation identified in this paper.

The task force will need to consider how best to secure agreement at the UN Security Council for any recommendations which require its approval. Countries who have nationals detained in northeast Syria (and Iraq) should also set up a dedicated national task force (including non-governmental actors), which focuses on domestic considerations while coordinating with the international task force.

## 2. Ensure Governments Have Robust Risk and Needs Assessments of Their Citizens

Foreign nationals currently being held in camps in northeast Syria present hugely varying degrees of security risk, and concern over genuinely high-risk individuals is preventing repatriation of those who may be innocent, as well as increasing the chances of further radicalisation. While there is no perfect system to assess risk, it is nonetheless necessary to establish a system for the robust audit and risk assessment of these individuals, in order to support governments' decisions about repatriations and/or prosecutions, or the provision of support such as mental health interventions or family reunifications.

This could be a new operational capability developed as part of existing infrastructures, such as the US-led Operation *Inherent Resolve* in partnership with the 83-member Global Coalition. The sorting mechanism should support countries with prioritising and triaging a managed and controlled return of the most vulnerable children (and in some cases mothers), since they pose

the lowest risk to national security and in many cases none. Assessments of women should not assume they are victims,<sup>84</sup> although this may be the case in some instances.<sup>85</sup>

Assessments of older children who are highly radicalised and violent will be especially complex, and will need special care to ensure the security risk profile and individual vulnerabilities are well understood.

### **3. Prosecute Foreign Terrorist Fighters, Deliver International Justice and Accountability, and Address Impunity**

There are several interconnected challenges and barriers to prosecuting foreign terrorist fighters. This section outlines areas where activity will be needed.

First, the new international task force should scope and seek to establish an international accountability mechanism (most likely a hybrid tribunal that is equally national and international in nature)<sup>86</sup> to prosecute foreign terrorist fighters,<sup>87</sup> including women.

There are numerous challenges in relation to resourcing, timescales, due process, the death penalty and logistical security issues. However, 'the challenges are significant but not insurmountable'.<sup>88</sup> While a former International Criminal Court (ICC) prosecutor ruled out its role in investigating Islamic State fighters, Sweden has been calling for a hybrid tribunal,<sup>89</sup> as have the Kurds.<sup>90</sup>

Foreign terrorist fighters (and supporters) allegedly responsible for the most serious crimes should be prioritised for prosecution, with sentences to be served in their country of origin.

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84. The Islamic State's propaganda includes narratives about victimhood which should be properly understood. For further reading on Islamist ideology, see HM Government, *CONTEST*, pp.16, 18.

85. UN Security Council Resolution 2396 (2017) recognises the roles played by women as victims, supporters, facilitators or perpetrators of terrorist acts and requests member states to develop comprehensive, tailored and gender-sensitive prosecution, rehabilitation and reintegration strategies. For further reading, see UN Counter-Terrorism Committee Executive Directorate, 'CTED Analytical Brief: The Prosecution of ISIL-Associated Women', 20 July 2020.

86. For further reading, see Asser Institute, 'Hybrid Courts', <<https://www.asser.nl/nexus/international-criminal-law/the-history-of-icl/hybrid-courts/>>, accessed 30 November 2021.

87. See P A Nollkaemper, 'Advies Internationaal Tribunaal ISIS' ['Advice to the International Tribunal on ISIS'], University of Amsterdam, 22 July 2019.

88. Roger Lu Phillips, 'A Tribunal for ISIS Fighters – A National Security and Human Rights Emergency', *Just Security*, 30 March 2021. For further reading on the practical challenges of a hybrid tribunal, see Jones, 'Dealing with the Legacies of the Islamic State'.

89. Helen Warrell, 'Sweden Proposes International Tribunal to Try ISIS Fighters', *Financial Times*, 19 May 2019.

90. *Al Jazeera*, 'SDF Calls for International Tribunal for ISIL Detainees', 25 March 2019.

These efforts should complement wider efforts to hold to account all those responsible for atrocities committed in the region, including crimes committed by non-state and state actors.<sup>91</sup>

A hybrid tribunal would elevate the standards of justice and due process, while ensuring international accountability and prosecution. There are opportunities to be creative in identifying a model, deciding the remit and narrowly crafting the statute, while also incorporating key lessons (including costings) from Rwanda, Sierra Leone, Cambodia and the former Yugoslavia. Expecting the region to host such a tribunal is asking a lot from those who have already borne the brunt of the violence. But holding the tribunal in the region is likely to be the most effective solution, as it allows the greatest access to evidence and testimonies because of the proximity to the victims. However, it is not the only option.

Where evidence exists to the requisite standard, the remaining cadre of foreign terrorist fighters should be dealt with through national prosecutions supervised by dedicated units within national independent prosecution authorities. Scoping and agreeing to an international legal mechanism will take time and is not likely to be used for all cases. National investigative and prosecutorial frameworks should therefore also be strengthened. While charging decisions should be left in the hands of independent prosecuting authorities, in jurisdictions where there is a significant caseload, new units should be established dedicated to foreign terrorist fighters. Furthermore, there will still potentially be a large cohort of individuals where there will not be sufficient evidence for prosecutions, so alternative public protection tools<sup>92</sup> should be reviewed to address this risk.

Second, prosecutions of foreign terrorist fighters by national authorities and the new international tribunal should be expanded to include war crimes, crimes against humanity and the crime of genocide.

Certain acts, such as inhumane treatment of dead persons, pillaging, enlisting child soldiers and slavery are well defined as war crimes or crimes against humanity and are not directly encompassed by counterterrorism legislation. The emerging jurisprudence from EU countries proves that it is possible to prosecute foreign terrorist fighters cumulatively for terrorism offences and core international crimes.<sup>93</sup> Cumulative prosecutions have an advantage as they include all acts committed by an individual, joining a terrorist organisation (plus possible recruitment or propaganda) and acts against the civilian population in the territory under their control. This

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91. For example, the Popular Mobilisation Forces (Iraq/Iran) the Fatemiyoun Division (Syria/Iran), Hezbollah, and the Assad regime.

92. For example, in the UK, Terrorism Prevention and Investigation Measures, monitoring regimes, non-custodial civil court orders and civil orders with wardship.

93. Eurojust, Genocide Network, *Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences*.



could potentially increase prison sentences, provide more comprehensive layers of justice and accountability, and shift towards a more victim-centric approach.

Countries should review the level of collaboration between counterterrorism, and where applicable, war crimes teams, from information sharing and case management, to building the capability, skill set and expertise of prosecutors, analysts and investigators to better analyse and use evidence of core international crimes when prosecuting foreign terrorist fighters. Similarly, countries that do not have designated war crimes units should look at how their capabilities can better integrate these wider crimes to become the norm at all levels, from the collection of evidence and behavioural analysis, to immigration, asylum and police authorities triaging and interviewing asylum seekers (who may have evidence of war crimes) at the border.

Third, the use of evidence should be improved through the establishment of a global investigative task force/joint investigative team.

The international task force, working with national jurisdictions, can play an important role in reviewing existing national and international evidence-gathering mechanisms to propose how the existing architecture could become a better coordinated and resourced global investigative effort. This would enable more successful prosecutions (for all Islamic State atrocity crimes), both at the international level and for individual jurisdictions. Allowing investigators to work together and share evidence across jurisdictions would bring together all the relevant partners to work on investigative, evidentiary and legal issues (with an approach capable of satisfying different legal systems and consistent with international law).

Improvements should include mutually agreed quality standards across all relevant evidence-gathering agencies so that the evidence is preserved and analysed to acceptable standards. The two main international evidence-gathering mechanisms, UNITAD and the IIIM, as well as other evidence-gathering bodies, should establish new units dedicated to foreign terrorist fighter-related cases. Donors would need to be willing to pay for these additional costs.

Fourth, and finally, the quality of victim and witness statements must be improved to enhance battlefield evidence, secure convictions and deliver restorative justice.

A UN report in April 2020 recommended better and more sustained coordination to support victims, to be developed by each member state through a National Comprehensive Assistance Plan (NCAP).<sup>94</sup> National jurisdictions should develop or review their NCAPs to deliver more sustained support for victims of terrorism, including building confidence and cooperation with prosecutions. This should include agreeing common standards on how victim and witness testimony can be taken to a criminal standard of proof which could lead to prosecutions of foreign fighters (and supporters) for terrorist offences as well as enslavement, sexual violence in conflict and crimes against humanity. As countries have different legal frameworks, the principle

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94. UN General Assembly, 'Progress Made by the United Nations System in Supporting Member States in Assisting Victims of Terrorism', 8 April 2020, p. 14/17.

of hybridisation rather than harmonisation is more realistic for delivering real outcomes, including a common set of professional standards.

Improving the collection and retention of battlefield evidence to ensure high standards of integrity is crucial, as is treating victims with dignity. Some victims and witnesses may face the possibility of repeated interviews, having seen multiple criminal acts by multiple offenders of multiple nationalities. This could lead to scenarios where, for example, a rape victim is interviewed multiple times for different jurisdictional investigative processes. This could be improved by processes similar to that of the UK's Achieving Best Evidence statements, which are made in the presence of independent appropriate adults, and could help avoid repeated statement-taking which can traumatise victims. As part of this process, consideration should be given to statement-taking and permitting evidence to be pre-recorded and/or given online.

There are examples of witness statement evidence being taken to a criminal standard of proof from Yazidi refugees in Europe which could lead to prosecutions of foreign terrorist fighters for enslavement, sexual violence in conflict and war crimes (as well as terrorist offences).<sup>95</sup>

The following tools might help encourage people to come forward, to give them some recompense and restore some form of justice through reparations:

- Civil litigation, class actions, private prosecutions and trusts to enable redress, reparations, and recover compensation for the Islamic State's victims. Some legal firms have already started to work in this area, but there is scope for more to be done.
- A non-fault international regulatory framework to enable victims' compensation via a global compensation scheme, such as an International Criminal Injuries Compensation Authority and/or a re-insurance system analogous to the UK's PoolRe. Alternatively, existing mechanisms such as the ICC's Trust Fund for Victims and the Global Survivors Fund could be developed to deliver redress for victims. The new international task force could play an important role here in developing options and securing agreement from governments to put them into practice.
- When renewing its sanctions regime resolutions in December, the UN Security Council should require member states to be more transparent about the Islamic State's assets that have been frozen and consider enabling the use of frozen funds to compensate victims of terrorism.<sup>96</sup> In 2020, the UK and the EU adopted global human rights ('Magnitsky-style') sanctions regimes. The UK also recently adopted the global anti-corruption sanctions regime. There should be consideration for whether sanctions and terrorist-financing legislation could be adapted to enable a proportion of the Islamic State's assets of designated persons that have been frozen and not claimed for a defined period, to be repurposed to fund victims' reparations. Additionally, fines and penalties imposed for breaching of terrorist-financing sanctions and legislation could be a source of reparations.

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95. *The Times*, 'Yazidis Claim Damages for Isis Fighter's "Persecution"', 4 March 2019.

96. For further reading, see Hogan Lovells, 'Finance for Restorative Justice: Volume II', 19 June 2021.

#### 4. Prioritise Children and Uphold International Human Rights Law/Obligations Including Issues of Nationality

The risks of further radicalisation and trauma for children are both time-sensitive and urgent. The international task force should work with the SDF and humanitarian organisations to ensure the needs of children in camps are accurately assessed and to improve the provision of emergency food, healthcare, shelter, water, sanitation, education and protection.

In line with Recommendation 2 on setting up an audit and risk-management mechanism, governments should lead an urgent effort to triage, prioritise and support a managed and controlled return, prioritising the most vulnerable children (and in some cases mothers who pose minimal risk to security) in the first instance. The mechanism should agree an approach that is compatible with international law and avoids people being left stateless. Basic documentation would need to be facilitated, such as birth certificates and registering citizenship of children when passports and other documentary evidence have been destroyed.

Where possible, in line with good practice in family management, families should be kept together, with separation only taking place where a high level of radicalisation and associated security risks are identified. Safeguarding mechanisms will be required, such as making vulnerable minors wards of court, or equivalent tools.<sup>97</sup> Dynamic assessment processes will be needed to constantly assess circumstances within the wider family network. The wider unintended consequences of separating families should be taken into account, including the impact on success rates of deradicalisation, disengagement and reintegration programmes.

When it comes to addressing trauma and the health of children, early interventions in a humanitarian emergency context are essential and a good investment. There is a body of evidence emerging which finds that positive changes to mental health can be achieved when programmes address the layers of social psychology, sense of security, social connections, family support and individual trauma, while building attachment and positive civil engagement opportunities.<sup>98</sup> With the right package of multi-level interventions,<sup>99</sup> many children can respond well, meaning a transition from mass trauma exposure is achievable. However, if children experience prolonged consistent trauma and no mental health treatment or support, it will continue to dominate their cognitive awareness, emotions and behaviours, and account for sustained security risks.

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97. For further reading, see James Munby, 'Radicalisation Cases in the Family Courts', 8 October 2015, <<https://www.judiciary.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf>>, accessed 16 November 2021.

98. M G Wessells, 'Children and Armed Conflict: Interventions for Supporting War-Affected Children', *Peace and Conflict: Journal of Peace Psychology* (Vol. 23, No. 1, 2017), pp. 4–13.

99. Stevan Weine et al., 'Rapid Review to Inform the Rehabilitation and Reintegration of Child Returnees from the Islamic State', *Annals of Global Health* (Vol. 86, No. 1), p. 64.

## 5. Accelerate and Advance Deradicalisation, Disengagement and Reintegration Programmes and Standards

Not all foreign terrorist fighters (and relevant family members) can be successfully prosecuted, and as such other public protection tools will be needed, including stronger capabilities in preventing and countering violent extremism (P/CVE), and deradicalisation, disengagement and reintegration. Indeed, even where prosecutions are successful, deradicalisation, disengagement and reintegration programmes are needed to prevent further radicalisation in prisons and to prepare people for a return to civilian life once sentences have been served.

P/CVE programmes have become a vital pillar of counterterrorism strategies across the globe. These programmes remain important to:

- Prevent people from becoming radicalised and supporting terrorism.
- Manage the deradicalisation, rehabilitation and disengagement of those already involved in terrorism.
- Enable individuals who have left violent extremist groups the opportunity to reintegrate into society.

Evidence of what works remains weak. This area will require a significant increase in resources, while recognising the vicious circle that until there is evidence that these programmes work, countries will be reluctant to invest. Some key recommendations identified for strengthening deradicalisation, disengagement and reintegration programmes during this project include:

### *Invest in Data and Evidence*

- Governments should improve transparency and data sharing related to state-led programmes to address urgent knowledge gaps and inform good practice. There is a paucity of evidence on ‘what works’, but equally a lack of independent rigorous evaluation of the initiatives that have taken place to date.
- Governments should increase investment in a collective understanding of, and subject matter expertise in, counter-ideological interventions. This includes better integrating theological linguistic analysis<sup>100</sup> to enhance understanding of the Islamist radicalising ecosystem, and the development of more effective risk assessments and targeted interventions.

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100. During the 2016 High Court case of *Shakeel Begg v BBC*, Justice Haddon-Cave stated it had been necessary for the Court to conduct a detailed syntactical and theological analysis of each of Begg’s speeches. The Court concluded that a variety of rhetorical, historical and metaphorical devices, including Salafi Jihadist ideological tenets, were used to radicalise and promote violent and extremist ideology to young Muslims. See *Shakeel Begg v British Broadcasting Corporation* [2016] EWHC 2688 (QB).

- Urgent focus needs to be deployed to address the knowledge gaps on effective risk assessments for female offenders, and to develop good practice across the range of interventions for radicalised women, with new research programmes filling the gap.
- Governments should review the evidence base of good practice (and failures) related to the release and reintegration of convicted terrorists. This effort should define all the potential gaps and weaknesses in the mechanisms from custody, release and community supervision of radicalised offenders, to post-prison rehabilitation.<sup>101</sup>
- Further longitudinal research should be conducted into the deradicalisation, disengagement and reintegration of children, young people and adults to better understand the long-term impact and sustainability of interventions. This remains a significant gap in the existing evidence base, which governments and research institutions will need to invest in addressing.

#### *Promote Multi-Disciplinary Programmes*

- Governments and programme implementers should ensure a better fusion of different disciplines in deradicalisation, disengagement and reintegration programmes. For example, depending on the case, counter-ideological interventions alone are unlikely to be effective if wider vulnerabilities are not also addressed. Likewise, providing psycho-social support without counter-ideological mentoring<sup>102</sup> is unlikely to be effective in changing extremist attitudes and behaviours.<sup>103</sup> Western governments (in particular, but likely elsewhere as well) will want assurances that the programmes being offered are actively addressing extremist ideologies that are contrary to national democratic and social norms.
- Governments and programme implementers should put in place protocols that integrate a more inclusive and effective multidisciplinary, multi-actor collaboration between counterterrorism policymakers, operational partners, academics, health professionals and civil society practitioners.

#### *Invest in Skills and Training*

- Governments and programme implementers should improve training for policy officials, prison staff and practitioners who are overseeing counter-ideological programmes (in community and prison settings) to ensure they are being implemented effectively. There are currently no formal qualifications or regulation of practice for counter-ideological

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101. See RUSI, 'Literature Studies – Counterterrorism and Preventing and Countering Violent Extremism', Netherlands Ministry of Foreign Affairs, 2021, <<https://english.iob-evaluatie.nl/publications/sub-studies/2021/02/01/literature-studies-%E2%80%93-counterterrorism-and-preventing-and-countering-violent-extremism>>, accessed 16 November 2021.

102. Some vulnerabilities should not be simply characterised as non-ideological. Addressing identity, self-esteem, 'them and us' mentality, masculinity and camaraderie could have an ideological element depending on the individual and context.

103. HM Government, *CONTEST*.

interventions. At present, staff may not fully recognise all the theological and ideological nuances involved, nor mitigate against all the risks when operating in this space, especially in Western contexts.

- Relevant authorities should improve the knowledge and training of professional staff dealing with high-risk terrorist offenders in prison settings. This includes strengthening case management procedures, information-sharing mechanisms, and increasing understanding of extremist ideologies and mental health conditions. Prison staff need to be better equipped to recognise the crucial difference between an individual who has genuinely deradicalised and one who has simply learned to say the right words.

#### *Invest in Long-Term Programming*

- Policymakers should consider how to address the experience of frontline practitioners that effective interventions can only be achieved through adopting a long-term commitment with funding and continuity, which is contrary to current short-term programme spend. This is likely to involve a change in funding models, stronger links between different organisations involved in delivering these interventions, and mechanisms for continuation of support even after individuals have completed formal programmes.



# Conclusion

**T**WENTY YEARS AFTER 9/11, the global jihadist movement has demonstrated resilience, expanded its operational capability, and recruited a larger and more diverse generation of followers than ever before.<sup>104</sup> It is important to think creatively about how the threat might develop, and to manage the consequences of conflicts which have drawn in jihadi fighters, which were shortcomings of the actions taken by the international community in the years preceding 9/11.<sup>105</sup> A repeat of these mistakes would have wide-ranging generational implications for global security and prosperity.

This paper set out to investigate and make practical recommendations on how the international community should deal with the potential security risks posed by foreign terrorist fighters and their family members in northeast Syria. It has argued that the current situation – a stalemate in which the SDF holds tens of thousands of fighters and family members from almost 60 countries in camps and prisons in northeast Syria – is not sustainable. The current containment approach is not an effective long-term counterterrorism solution. The recent military withdrawal from Afghanistan also increases the risk of the country again becoming a base for global jihadists, and foreign nationals in Syria could travel to Afghanistan if not prevented. This is especially worrying given the recent assessment of The Islamic State – Khorasan Province.

The paper also recognises the many reasons why governments are reluctant to repatriate foreign fighters, and the serious security risks of doing so, particularly while prosecution remains so difficult and evidence on what works in deradicalisation, disengagement and reintegration is weak. These are genuinely difficult challenges, but cannot be insurmountable, even given wider global pressures such as the coronavirus pandemic.

The only way to unblock this stalemate is for urgent action to be taken now, both multilaterally and individually by the countries affected. Investment will be needed in gathering evidence, enabling greater information sharing, and creating new structures to enable prosecution. Greater collaboration and enhanced capabilities will be required in any case to manage high-risk Islamist terrorist offenders and extremists already at home and should be fully integrated into national resilience planning. A step change in deradicalisation, disengagement and reintegration programmes, including efforts to gather evidence on their effectiveness, is essential.

Both international and national bodies will need to step up and work together – these issues cannot be dealt with at a national or international level alone. Neither can they continue to be

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104. See Thomas Hegghammer, 'The Rise of Muslim Foreign Fighters: Islam and the Globalization of Jihad', *International Security* (Vol. 35, No. 3, 2010/11), pp. 53–94.

105. For further reading, see Jytte Klausen, *Western Jihadism: A Thirty-Year History* (Oxford: Oxford University Press, 2021).



addressed in a piecemeal manner. This requires a genuine improvement in partnerships. Each country needs to play its part in protecting all global citizens from further terrorist attacks.

This calls for substantial political will and global leadership to face up to one of the most difficult policy challenges of our time. The upside of doing so is that it could make a real difference to reducing future terrorist threats many countries – including the UK and those in Europe – may face, as well as helping bring justice to victims of some of the most heinous crimes seen in recent years.

# About the Authors

**Sabin Khan** is a Senior Associate Fellow in RUSI's Terrorism and Conflict group. Sabin's expertise is counterterrorism and she has led innovation in knowledge and policy development since 9/11. Sabin is on secondment from the Homeland Security Group at the Home Office, where she has advised ministers and senior officials since 2009.

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# Annex

## Full List of Experts

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**Fionnuala Ní Aoláin.** UN Special Rapporteur on the Protection and Promotion of Human Rights While Countering Terrorism.

**Sareta Ashraph.** Principal Legal Officer, Office of Field Investigations at the UN Investigative Team to Promote Accountability for Crimes Committed by Daesh/ISIL.

**John Bonning.** Detective Inspector in the Metropolitan Police's Counter Terrorism Command (SO15), former Head of the War Crimes Team.

**Chris Bosley.** Senior Program Officer, US Institute of Peace.

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**Edward Grant Martin Davis.** Former UK Governor and Commander-in-Chief of Gibraltar.

**Matthew Dixon.** Senior Research Analyst, National Security Research Group, UK Foreign and Commonwealth Office.

**Anthony Dworkin.** Senior Policy Fellow, European Council on Foreign Relations.

**Maria Elliott.** Director, Office of Terrorist Detentions, US Department of State.

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**Kimberly Prost.** Former Ombudsperson for the 1267 Committee.

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**Thomas Renard.** Senior Research Fellow, Egmont Institute.

**Jörg Roofthoof.** Project Manager Analysis Project on Core International Crimes, Europol.

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*The views and conclusions expressed in this paper do not necessarily correspond with the views of the experts consulted during the process.*