

# What next for the children of Daesh detainees?



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*Dr. Azeem Ibrahim is a Director at the Center for Global Policy and author of “The Rohingyas: Inside Myanmar’s Genocide” (Hurst, 2017). Twitter: @AzeemIbrahim*

## EXECUTIVE SUMMARY

The attempt by Daesh to create an Islamic state in Syria and Iraq attracted volunteers from many nations. The children of these volunteers, many of whom were born in Syria, now pose a unique dilemma for those nations.

It is estimated that about 70,000 women and children are detained in the refugee camps in Northern Syria. Of that number, at least 12,000 are foreign nationals. Two-thirds of the children held there are under the age of 12, with the majority under five years old, according to a report by the UNHCR<sup>1</sup>. More than 500 people died in the camps in 2019 and researchers found that 371 of them were children.

These youngsters are, first and foremost, a vulnerable group in need of urgent assistance in a volatile and war-torn region. The urgency of resolving the question of how to manage their cases cannot be overstated, given the instability in the region and the ongoing threat posed by COVID-19. If not dealt with, the challenge these children present runs a serious risk of developing from an easily solved welfare issue into a possible security and counterterrorism issue.

It is in the short and long-term interests of all nations to take action over the children left behind in areas once held by the vanquished “caliphate.” Moreover, it is ethically and legally a certain and necessary course of action. Under international law, children are the responsibility of their home countries, and the authorities there need to address their future welfare and rehabilitation prospects.

To begin with, diplomatic and financial resources need to be invested in the development of infrastructure to provide for the needs of the remaining populations

in the camps (including health services, housing, clothing and food) until a long-term solution has been decided. Such small investments should be seen as the first step toward avoiding the expenditure of greater resources — on measures such as possible military action, expensive repatriations and incarceration — in the future.

Secondly, the creation of a UN body to investigate the actions of Daesh supporters would benefit their children. It would serve to share information about suspects, and work closely with child-protection services in their countries of origin to determine the best outcome for the youngsters.

Thirdly, the children of Daesh supporters must receive secular education, as per international law, to ensure they have a viable future. Religious education must be provided by Muslim-led welfare groups to reinforce a positive religious identity — to counter propaganda — and a sense that detainees do not need to renounce their religion to move forward with their lives (as Daesh propaganda would have them believe).

Finally, juvenile rehabilitation facilities that are already operating in northeastern Syria need resources and expertise from donor states and international nongovernmental organizations (NGOs). These facilities offer a way to immediately reduce the risks to European children while efforts to find longer-term solutions, such as repatriation, continue.

Several NGOs are already carrying out safeguarding and rehabilitation efforts in neighboring countries, including Iraq and Turkey. International support would vastly increase the capacities of such facilities.



*There is a group of children that most Western states are ignoring, despite the requirements of their legal systems*



## INTRODUCTION

**T**he principle that a child cannot be guilty of a criminal offense is a concept enshrined in almost every legal system. There is, predictably, a wide variation in how it is applied, with countries such as Jordan and Lebanon setting the minimum age of criminal responsibility as low as 7, while in Germany, for example, it can be as high as 21<sup>2</sup>.

Equally, many nations have specialist juvenile courts to deal with older children who are deemed to lack full responsibility for their actions (across most of the world this threshold is set at between 16 and 18 years old).

This is not to say that young children cannot commit crimes. They can and do, and are often exploited by criminal gangs and political extremists due to the relative legal protections that apply. The key is that they are considered to lack the intellectual capacity to make their own choices and, instead, are being manipulated by others<sup>3</sup>.

Thus, uncomfortably, children who are being sexually abused often display highly sexualized, sometimes abusive, behavior. Children who fall under the influence of criminals or extremists will normalize their behavior and respond to directions. Both forms of abuse tend to affect the individual into adulthood as a result of the mental-

health problems and traumas they create<sup>4 5</sup>. In combination, this creates a challenging area for criminal-justice systems, where public outrage (usually stoked by the tabloid press or online media) can be at odds with judicial norms.

But there is a group of children that most Western states are ignoring, despite the requirements of their legal systems. It is estimated that the collapse of Daesh in Syria and Iraq has left at least 7,000 children under the age of 12 living in Al-Hol internment camp in northern Syria<sup>6</sup>.

On one level, this problem has an easy solution. In all other aspects of our criminal-justice systems, the rights and needs of a child are considered to dominate other requirements. But politically, the outrage from the right wing (in particular politicians and their media supporters) means that few governments are prepared to consider repatriation of these children.

The conditions in the camps are dire and these children, who in many cases are citizens of Western countries, are dying. This leaves us with a choice: to stand aside, let this happen and allow a new generation of Daesh sympathizers to emerge; or to act as we should, remembering that while children can indeed commit crimes (or embrace uncomfortable ideologies), they are still children, first and foremost.

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## TAKING THE FAMILY TO JIHAD

Traveling to another country to take part in Jihad has been a standard part of modern Islamic extremism<sup>7</sup>. Helped by Western intelligence agencies and Pakistan, Afghanistan both set the template for this and created the intellectual melting pot that brought together all the various strands of militant Islamism to create the ideology and strategic approach of Al-Qaeda. This pattern was repeated in Bosnia in the 1990s and in Iraq after 2003.

Equally, many potential militants increasingly had the choice of traveling to a given war zone or carrying out attacks in their host country<sup>8</sup>. However, Daesh's sudden gains in Iraq and Syria brought a new form of jihadi tourism<sup>9</sup>, which involved

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either women moving to the new caliphate or complete families opting to do so<sup>10 11</sup>. This meant a substantial number of young children became involved, sometimes as fighters<sup>12</sup> but always vulnerable to Daesh propaganda and what passed for its education system<sup>13</sup>.

So when the Daesh rule started to collapse from 2017, and effectively ended in late 2019, the result was not only the problem of what to do with non-Syrian, non-Iraqi male fighters but also what to do with the many families who had gone to live under the regime. All the evidence suggests that a substantial number, perhaps even the majority, retain their ideological affinity to the regime<sup>14</sup>, even if others now accept they were misled and seek a route back to their old lives.

## REFUGEES OR PRISONERS?

So far, for obvious reasons, most Western governments have shown little sympathy for the plight of such people and seem content to leave the poorly maintained refugee camps for the Kurds to administer<sup>15</sup>. Some of the women involved probably are every bit as guilty as the men in the crimes committed by Daesh, and most are complicit in having offered support. Equally, and uncomfortably, many of these women were lured to Syria by false promises when they were under the age of consent and not adults (in the eyes of the laws of their countries of origin). As a measure of the lack of attention being paid by Western states, we are not even sure how many non-Syrian, non-Iraqi nationals are in the camps but estimates suggest as many as 6,000 of the women and children are citizens of European states, Canada or the US.

Unlike many governments, and in the face of domestic resistance, France has steadily repatriated small numbers of children<sup>16</sup> designated as “orphans or humanitarian cases,” but is doing so on a case-by-case basis. This is at least something but it is inadequate as it appears to have separated children from their mothers and, in at least one instance, a child from siblings. Also the system is arbitrary, with no judicial oversight<sup>17</sup>.

Gareth Browne, an award-winning journalist who has spent time in Syria and Iraq, notes that the Kurds are unable to provide either local support or effective security<sup>18</sup>. Save the Children is one of the few major charities that is active in the camps, and in terms of security the only approach is to limit cellphone signals and to rely on sustaining the incarceration of the refugees. For those in Al-Hol camp this is akin to leaving them under the control of Daesh. Some might welcome this but there are reports of beatings and killing of those who want to escape from Daesh ideology.

However, to return to the point made at the start of this paper, in any criminal-justice system, children are innocent of crimes. And, because they often possess dual nationality, we cannot just ignore them.

## THE LEGAL SITUATION

The legal situation for the Daesh refugees is complex but some things are clear. John Packer, an associate professor of law and



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director of the Human Rights Research and Education Center at the University of Ottawa, has noted two key issues.

Firstly, a state cannot declare someone stateless — so if an individual holds only a single nationality this cannot be removed. Secondly, children have specific rights under Article 7 of the Convention on the Rights of the Child (only the US, which signed the convention in 1995 but has yet to ratify it, is not a party to it). In particular, this means that children cannot be made stateless due to the circumstances of their birth or state policy.

The problem for children whose parents are associated with Daesh lies in determining which state is responsible for them. Domestic law varies across legal systems as to when someone gains nationality: the place of birth is often important but the origin and nationality of parents, as well as processes such as naturalization, might also be taken into account. In the case of children living in the camps whose parents came from Europe or North America, there is little doubt that they are entitled to be treated as citizens of those countries.

In effect, what matters is whether a state accepts responsibility for these children in the first place, and then acts on the basis of that responsibility. In cases involving childless adults who went to live under Daesh rule (as combatants or adherents), a state can to some extent, and with some reason, decide not to extend any protection. This raises further problems, not the least of which is the question of what will then happen to those adults and the likelihood that at some stage they will rejoin Daesh<sup>19</sup>.

However, different standards must apply to children, both those who were taken to Syria and those born there. They are citizens of the relevant state and there is both a legal and strategic obligation to respond.

The status of the parents is more complex. In the main, domestic family law argues for keeping family units together. But some are guilty of appalling crimes and safeguarding their children might require separating young people from their birth parents. This is a matter for domestic legal systems to decide. All states have specific judicial approaches to family law and the rights of children, in part to balance all these complexities, and that is what we should be applying.

## RECOMMENDATIONS

The choice of doing nothing fits with the political views of many Western governments, and readily finds support in the media and probably among electorates. But if we adopt such a stance we are guilty not only of reneging on our legal obligations but also of compromising our long-term national security. What, then, should we do?

Firstly, about 20 percent of the refugees in Al-Hol have passports issued by the US, Canada or nations in Western Europe, so these countries need to provide the overstretched Kurds with the necessary tools to hold and prosecute those who have committed crimes.

Linked to this, one of the great advances in post-1945 human-rights law was the adoption of the concept of universal rights that are not mediated by class, gender, ethnicity or religious orientation. This is something from which we all gain, and if disagreeing with someone means they lose their rights, who is to protect us from suffering as a result of a similar mindset?

Yes, it can be uncomfortable, but for this concept of universal human rights to retain any meaning, we must extend it to those with whom we disagree and ensure that any applicable legal process meets the highest international standards.

Secondly, what do we think is going to happen to these people? Extremist movements thrive in prison environments; they have ideologies that prepare their militants for such an outcome and often take control of the livelihoods of the inhabitants. Those in Al-Hol who still support Daesh will have considerable influence over the

children in the camp. Given the enduring chaos in Syria, some resurgence of Daesh cannot be ruled out, and by doing nothing we will be providing them with a whole new generation of brainwashed radicals.

What can we expect to become of the children if they remain in the camps? They have been educated under Daesh, they are suffering on a daily basis, they watch their friends and relatives die. So when they grow up, do we expect their goodwill — or will they see us as their implacable foes?

Thirdly, and to return to the point made at the start of this paper, children cannot be guilty of criminal behavior. They are innocent, even if they have participated in horrible activities. Just because their parents believed in Daesh does not change this fact. The longer they remain in the camps, the deeper they will become entrenched in Daesh ideology. It is in our own national-security interests to extricate an entire generation of potential Daesh recruits at the earliest possible opportunity.

So we have a legal and strategic duty to repatriate the children from Al-Hol. We know who they are, we know the states of which they are nationals. Certainly, such a process needs to be handled with great care and, yes, any adults must be tried for the crimes they committed in the country where they committed them.

But the children are victims of abuse and deserve to be treated as such. Some will be permanently damaged, similar to the way that childhood sexual abuse leaves scars, but they are still children and must be treated as such.

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**Children play in the Umm Jurn camp for the displaced, near the village of Kafr Uruq, in Syria's northern rebel-held Idlib province, on January 17, 2021.**  
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