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RIGHTS  
WATCH

## “Bring Me Back to Canada”

Plight of Canadians Held in Northeast Syria for Alleged ISIS Links



## **“Bring Me Back to Canada”**

Plight of Canadians Held in Northeast Syria for Alleged  
ISIS Links

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# “Bring Me Back to Canada”

## Plight of Canadians Held in Northeast Syria for Alleged ISIS Links

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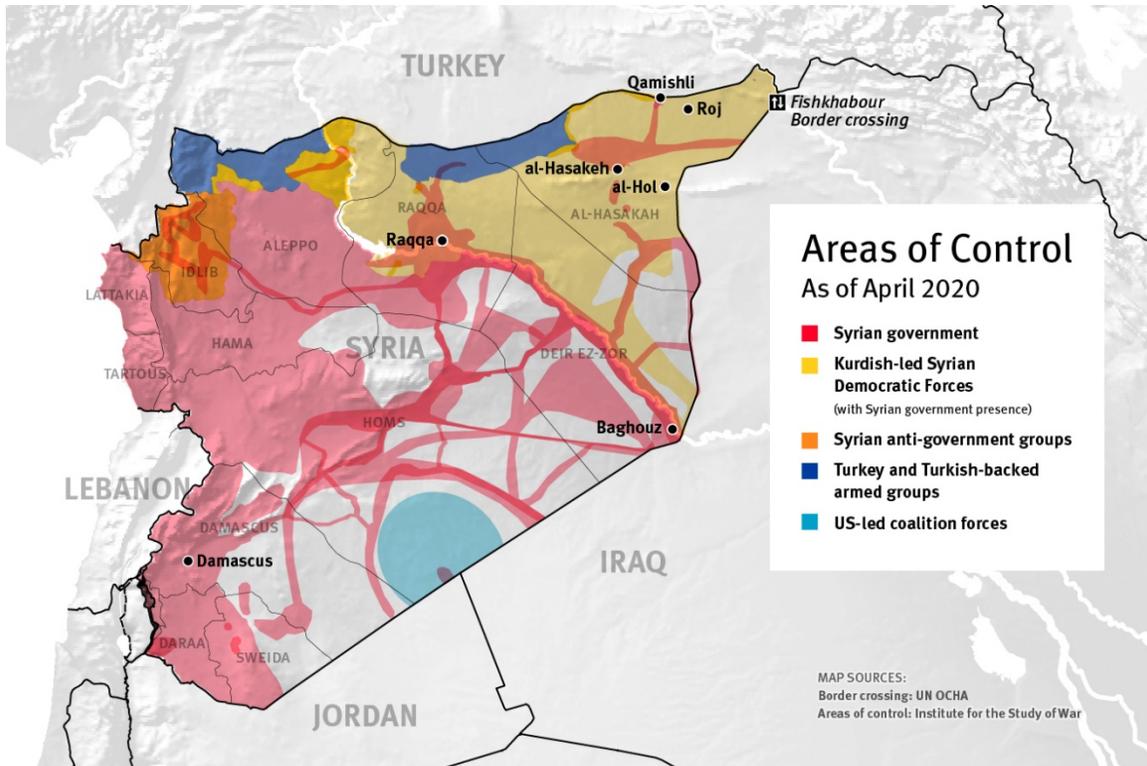
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# Map





## Summary

“Please, bring me back to Canada. ... Please, forgive me. Let me be who I am, a Canadian.”

—Kimberly Polman, Canadian detained in camp for ISIS family members in Northeast Syria

More than one year ago, in March 2019, local fighters aided by a US-led, international coalition routed the Islamic State (ISIS) from the Syrian town of Baghouz, the last holdout of the group’s self-declared caliphate. In addition to capturing Syrians, the US-backed fighters, called the Syrian Democratic Forces (SDF), rounded up thousands of others who had been living under ISIS—men, women, and children from more than 60 countries. Since then, these foreigners have been arbitrarily detained in filthy and often inhuman and life-threatening conditions by authorities in northeast Syria, with the tacit approval of the Global Coalition Against ISIS, whose members include Canada. The detainees include at least 47 Canadians.

Like the other foreigners, the Canadians—8 men, 13 women, and 26 children, most under age 6—have not been charged with any crime. Nor have northeast Syrian authorities brought them before a judge to review the legality and necessity of their detention. The innocent, such as the children who never chose to be born or live under ISIS, have no hope of leaving. Meanwhile, any detainees potentially implicated in ISIS crimes may never face justice.

In makeshift prisons for men and adolescent boys, food is scarce and overcrowding is so severe that many of the detainees must sleep shoulder to shoulder. More than 100 prisoners and possibly several hundred have died, many from lack of care, since mid-2019. In locked camps for women, girls, and younger boys, tents collapse in strong winds or flood with rain or sewage. Some women, including at least one Canadian, say they are on an ISIS “kill list” for not supporting the group. Drinking water is often contaminated or in short supply. Latrines are overflowing, wild dogs scavenge mounds of garbage littering the grounds, and illnesses including viral infections are rampant. Medical care is grossly inadequate. The Kurdish Red Crescent reported that at least 517 people, 371 of them

children, died in 2019, many from preventable diseases, in al-Hol—the larger of two camps for women and children, with about 65,000 detainees.

For months and in some cases years, the detained Canadians have been begging to come home, with many of the adults among them saying they are ready to stand trial for any suspected ISIS crimes. At the same time, family members in Canada have been beseeching the Canadian government to help them bring home their relatives. Four relatives even traveled to northeast Syria in failed quests to help their detained loved ones. The Kurdish-led Autonomous Administration for Northeast Syria, which is detaining the foreigners, has repeatedly called on all countries to repatriate their nationals or provide them with funds to investigate and prosecute suspects locally.

Canadian officials met the Autonomous Administration in 2018 to discuss repatriations, but Canada has yet to bring home or facilitate the return of any of its citizens—not even children like Amira, a 5-year-old orphan who said her parents and three siblings were killed in Baghouz during a 2019 air strike.

This report finds that the government of Canada is flouting its international human rights obligations toward Canadians who are arbitrarily detained in northeast Syria and providing inadequate support to family members seeking to provide their loved ones with essentials such as food and medicine, and to bring them home. The obligations that Canada has breached include taking necessary and reasonable steps to assist nationals abroad facing serious abuses including risks to life, torture, and inhuman and degrading treatment.

The report also finds that the Canadian government may be unlawfully withholding or limiting effective consular assistance to its citizens detained in northeast Syria based on their suspected links to ISIS—a transnational, Islamist armed group that has committed countless atrocities including war crimes, crimes against humanity, and apparent genocide. International law forbids withholding consular services in a discriminatory or arbitrary manner because of factors such as a person’s religion or their political or other views.

Family members of detainees told Human Rights Watch that Canadian authorities have not even contacted their detained relatives, much less improved their conditions of detention. Nor has Canada facilitated verification of citizenship for the 20 or more children born in

Syria to Canadian parents, leaving them without an officially recognized nationality. Family members said the government will not even tell them whether they will be charged with support for terrorism if they send money to their detained relatives for food, medicine, and warm clothes.

“Kiran,” a family member in Canada, burst into tears as she described her fear over not knowing if she would be punished if she sent aid to her three grandchildren:

Do they just want them to die? That’s what it seems like. ... These children, where are they going to get food, medicine, vitamins? ... You’re not helping them survive, and you’re not letting me help them.

Families’ fears have been compounded by the spread to Syria of the deadly Covid-19 virus, which thrives on overcrowding, poor sanitation, and the physically frail. Because of Covid-19, “Jack’s life is more at risk than ever before,” Sally Lane, the mother of imprisoned Canadian Jack Letts, wrote in an email to Global Affairs Canada—the government’s foreign office—that she shared with Human Rights Watch. “Is the government of Canada going to allow our son to die in prison in NE Syria?”

At time of writing, Canada had repatriated or assisted the returns of more than 40,000 citizens and permanent residents from 100 countries in response to Covid-19, including 29 from Syria—but not one of at least 47 citizens held without charge in northeast Syria.

Canadian officials say security risks and the lack of a consular presence in Syria have precluded them from doing more for the detainees. “Given the security situation and the lack of a physical presence on the ground, the Government of Canada’s ability to provide consular assistance in any part of Syria is extremely limited,” Canadian Foreign Affairs Minister François-Philippe Champagne wrote in a letter to Human Rights Watch in June 2020. “Nevertheless, Canadian consular officials are engaged directly with the Canadians in the custody of the [Autonomous Administration] ... or their family members in Canada, to monitor their location and well-being.” Champagne also said Global Affairs has established a communication channel with regional authorities in northeast Syria “to advocate for the [detainees’] well-being to the extent possible.”

Yet at least 20 countries have repatriated anywhere from one to hundreds of their citizens from the same camps and prisons in northeast Syria including, since mid-October 2019, Denmark, Finland, France, Germany, Norway, the United Kingdom, and the United States. France repatriated 10 children as recently as June 2020.

Global Affairs has told family members that they will help detainees who reach their consulates abroad. But short of escaping locked camps and prisons, traversing a war zone, and crossing borders, all without funds or identification papers, these detained citizens have no way to reach Canadian consulates that are hundreds of kilometers away in neighboring Iraq or Turkey unless Canada acts.

This report is based on Human Rights Watch research including interviews between December 2019 and April 2020 with 11 family members of Canadians detained in northeast Syria. The family members were based in Canada or abroad and are related to 19 Canadians held in northeast Syria, from 10 different families. Human Rights Watch researchers also interviewed four Canadian detainees—one in northeast Syria in February 2019, two in northeast Syria in June 2019, and one by telephone in April 2020. In addition, Human Rights Watch spoke with Canadian government officials, members of the Autonomous Administration, humanitarian aid groups working in northeast Syria, and lawyers, civil society members, and others seeking to repatriate the detainees. We also reviewed communications from the detainees to family members and Canadian officials. Human Rights Watch researchers have interviewed dozens of detainees during visits to the northeast Syrian camps in 2018 and in February and June of 2019.

At time of writing, no local, regional, or international options for investigations and prosecutions of the foreigners were under active consideration by governments with citizens detained in northeast Syria. In 2019, Western governments discussed, but did not pursue the idea of establishing a criminal tribunal in the region to prosecute foreign ISIS suspects. In February 2020, an increasingly frustrated Autonomous Administration announced that it would prosecute foreign ISIS suspects itself, but two months later, said it had indefinitely suspended the plan.

In two binding resolutions on so-called “foreign terrorist fighters” since 2014, resolution 2178 of 2014 and 2396 of 2017, the United Nations Security Council called on member states—which include Canada—to ensure that any person who “participates in the

financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice.” Resolution 2396 also requires countries to “develop and implement comprehensive and tailored prosecution, rehabilitation, and reintegration strategies and protocols, in accordance with their obligations under international law, including with respect to foreign terrorist fighters and [their] spouses and children.”

Given the absence of options for credible accountability in northeast Syria, the only way to potentially hold to account any Canadians implicated in serious ISIS crimes is for Canada to bring them home for investigation and, if warranted, prosecution. Leaving ISIS suspects and family members in indefinite, arbitrary detention, with no means to legally challenge their deprivation of liberty, also constitutes a form of collective punishment—one for which Canada, through its failure to help its citizens, is partially responsible.

Rehabilitation is also impossible in northeast Syria given the lack of psychosocial and medical services in the camps and prisons holding the foreigners. Reintegration is impossible as well, given that the Canadians are detained in a desert nearly 9,000 kilometers from their homeland. This leaves repatriation as the only way that UN member states can fulfill the Security Council requirement to rehabilitate and reintegrate their nationals. Repatriation would also fulfil Canada’s duty to make all necessary and feasible efforts to protect its citizens from torture or other inhuman or degrading treatment, and risks to life, and to help children fulfil their right to a nationality.

For all these reasons, Canada should, as a matter of urgent priority, repatriate all Canadians detained in northeast Syria for rehabilitation, reintegration, and, if appropriate, prosecution. Repatriation measures that Canada should take include promptly verifying citizenship, issuing citizens travel documents, and providing or coordinating safe passage from northeast Syria to Canadian consulates or territory. In keeping with the rights of the child, which Canada has championed at multiple UN fora, the government should prioritize the repatriation of the Canadian children and recognize them first and foremost as victims of ISIS. Children who may have been affiliated with ISIS should be considered victims and only prosecuted in exceptional cases as a last resort. Children should not be repatriated without their mothers—who may themselves be victims of ISIS—absent compelling evidence that separation is in the best interest of the child.

In the meantime, Canada should ensure that all of its citizens held in northeast Syria have an effective means to request consular assistance such as obtaining passports or other identity cards, and to contest their arbitrary detention and inhuman and degrading conditions of confinement. It should also increase humanitarian assistance to address the dire conditions for its nationals detained in northeast Syria.

Human Rights Watch deplores armed extremist attacks and recognizes that Canada has a legal obligation to protect individuals on its territory. We also recognize that Canada faces security challenges in visiting its citizens in person or helping bring them home. But abandoning citizens, most of them young children, to indefinite, unlawful detention in deeply degrading conditions will not make Canada safer. Instead, it denies ISIS victims and their families their day in court, while creating grievances that risk aiding ISIS recruitment drives and perpetuating cycles of violence.

# Recommendations

## To the Government of Canada

*Including Prime Minister's Office, Global Affairs Canada, Public Safety Canada, the Department of Justice, and Parliament:*

- Repatriate, as a matter of urgent priority, all Canadian citizens detained in northeast Syria, giving priority to children, persons requiring urgent medical assistance, and other particularly vulnerable detainees. Bring home mothers or other adult guardians with their children absent compelling evidence that separation is in the best interest of the child, in line with international legal obligations with respect to family unity. Repatriation measures that Canada should take include promptly verifying citizenship, issuing citizens travel documents, and providing or coordinating safe passage from northeast Syria to Canadian consulates or territory;
- Pending repatriations, work with humanitarian agencies and local authorities to help improve conditions in the northeast Syria camps and prisons, including overcrowding and lack of hygiene and medical care, and to create a system whereby families can send funds to detainees in northeast Syria to use exclusively for essential provisions such as food, medicine, and clothing;
- Upon detainees' return, offer them rehabilitation and reintegration services and, as appropriate, investigate and prosecute those suspected of serious crimes in line with international fair trial standards;
- Ensure that the Crimes Against Humanity and War Crimes Program, including the Sensitive and International Investigations Section of the Royal Canadian Mounted Police, is adequately resourced and staffed, including for investigations of any Canadians suspected of involvement in serious international crimes committed abroad;
- Investigate all allegations of torture and inhuman treatment of Canadians detained in northeast Syria. Press for accountability for detaining authorities responsible for any confirmed ill-treatment;
- Enact into Canadian law a right to effective consular assistance;
- Establish an office to independently review consular services with the aim of advocating on behalf of citizens and ensuring full compliance with the

international legal obligation to provide consular assistance without discrimination;

- Support adoption of a universal set of standards on consular support by countries for their foreigners detained abroad that emphasizes the obligation to provide adequate and effective assistance.

*Global Affairs Canada:*

- Pending repatriations, immediately provide effective and robust consular assistance to Canadian citizens arbitrarily detained in northeast Syria and take all feasible measures to ensure their humane treatment. As part of this effort, ensure all detained citizens have an effective means to communicate with consular officials, promptly respond to requests for consular assistance from the detainees as well as from their family members in Canada or elsewhere, clarify policies on verification of Canadian citizenship, and regularly provide Canadian families with timely information about their detained relatives;
- Enforce a zero-tolerance policy toward discriminatory provision of consular services.

*Department of Justice, Public Prosecution Service of Canada, and Public Safety Canada, including the Royal Canadian Mounted Police:*

- Prioritize, as appropriate, investigations and prosecutions of returned detainees who may be implicated in serious international crimes—namely, war crimes, crimes against humanity, and potential acts of genocide;
- In determining criminal justice responses for all suspects, including women and children, consider the different roles that they may have served in ISIS as well as their potential roles as victims, whether of ISIS—including as women and children who were trafficked or otherwise lured, groomed, or pressured by ISIS to join the group—or of detaining authorities in northeast Syria.
- Where convictions are secured, consider alternatives to incarceration for women caring for young children. In cases of incarceration, make all feasible efforts to locate the women in facilities where their children can regularly visit them;
- Treat children affiliated with ISIS first and foremost as victims, recognizing that any recruitment or use of children below the age of 18 by non-state armed groups is a violation of international law. Prosecute and detain children only as an exceptional measure of last resort, in line with the Convention on the Rights of the Child, its optional protocol on the involvement of children in armed conflict, and juvenile

- justice standards. Raise the age of criminal responsibility in Canada for all crimes from 12 years old to at least 14 to 16 years old, in line with United Nations recommendations;
- Regularly review any use of monitoring or preventive measures for returned ISIS suspects, such as “peace bonds” and travel bans, to ensure that they are not disproportionate;
  - Provide returned detainees with rehabilitation and reintegration services including medical and psychosocial support. Tailor programs for gender, age, educational needs, cultural background, and each returnees’ circumstances, including their potential status as victims of ISIS.

### **To the Autonomous Administration of Northeast Syria, including the Syrian Democratic Council and the Syrian Democratic Forces**

- Absent or pending repatriations, promptly bring detained foreign nationals before a credible court to determine the necessity and legality of their detention. Release all detainees who are not charged with a prosecutable offense or those whose detention has not been approved by a court;
- Immediately improve conditions such as overcrowded and unsanitary prison cells and camps, insufficient outdoor time for prisoners, and inadequate healthcare, in line with international standards including the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”). Grant access to humanitarian actors to promptly provide life-saving assistance;
- Detain children only as an exceptional measure of last resort and ensure any detained children are held separately from adults;
- Publish a list of prisoners who died in detention and share information with families including name, nationality, cause of death, and where they are buried;
- Arrange for the safe release of the most vulnerable prisoners on humanitarian grounds, including the physically disabled and terminally ill;
- Ensure detainees are informed of their right to request consular assistance and have a means to communicate with consular officials;
- Facilitate communications between detainees and their family members based abroad as well as family members detained separately in northeast Syria for suspected ISIS links;

- Assist countries and families seeking to repatriate detained foreigners to their home countries where they are not at risk of torture, ill-treatment, or unfair trials. Investigate allegations of torture or ill-treatment of detainees and hold those responsible to account.

## To United Nations Entities

*Including the Secretary General, the Security Council, the High Commissioner for Refugees (UNHCR), the UN Children’s Fund (UNICEF), the UN Office of Counter-Terrorism (UNOCT), and the UN Office of Drugs and Crime (UNODC)*

- Press the Canadian government to repatriate its citizens, first and foremost the detained Canadian children.
- Increase efforts to coordinate a prompt and robust international response to the indefinite, arbitrary detentions of foreign ISIS suspects and family members, in line with international human rights standards, binding UN Security Council Resolution 2178 of 2014 and Resolution 2396 of 2017, as well as the Mandela Rules and the Madrid Guiding Principles of 2015 and Addendum of 2018 on responses to the foreign fighter phenomenon. This response should include:
  - Immediate repatriations of all citizens to their home countries provided they do not face risk of torture or other inhuman treatment upon return, prioritizing the returns of children, persons requiring urgent medical assistance, and other particularly vulnerable individuals;
  - Rehabilitation and reintegration programs for returnees;
  - Prosecutions as appropriate in home countries that can provide fair trials;
  - Third-country resettlement and, if appropriate, prosecutions for detainees facing risk of torture or other inhuman treatment, or unfair trials, if returned home;
  - Immediate increases in humanitarian access and aid to northeast Syria camps and prisons with the goal of ending dire and often life-threatening conditions;
  - Assistance to detaining authorities in northeast Syria to create a credible court to promptly and fairly review the legality and necessity of detentions.

## To Donors and Members of the Global Coalition Against ISIS, including Canada

- Press for and provide support to home countries to bring home foreigners detained in northeast Syria in cases where returnees are not at risk of torture, ill-treatment, and unfair trials upon return, giving urgent priority to children, persons requiring urgent medical assistance, and other particularly vulnerable individuals;
- Press home countries to rehabilitate, reintegrate and, as appropriate, investigate and prosecute returnees from northeast Syria in line with international fair trial and juvenile justice standards;
- Assist in resettlement and, if appropriate and feasible, prosecutions in third countries for detainees facing risk of torture or other inhuman treatment, or unfair trials if returned home.

### *Pending repatriations and resettlements:*

- Immediately increase humanitarian aid to the camps and prisons in northeast Syria with the goal of ending dire and often life-threatening conditions, and ensuring adequate health care including prevention, testing, and treatment for Covid-19, tuberculosis, scabies, and other diseases, as well as to shelter, clean water, sanitation, and, for children, education;
- Coordinate humanitarian assistance from foreign donors and the Global Coalition Against ISIS with relevant humanitarian actors in northeast Syria;
- Press the Autonomous Administration of northeast Syria and the Syrian Democratic Forces (SDF) to facilitate regular and effective communication between detainees and their family members—both relatives abroad and those detained separately in northeast Syria for suspected ISIS links—and provide technical and financial assistance for such communication;
- Promptly assist detaining authorities in northeast Syria in setting up a credible court to fairly and impartially review of the legality and necessity of detentions of foreigners in camps and prisons;
- Provide financial and technical support to the detaining authorities in northeast Syria to ensure all prisoners are held in official detention centers built to accommodate detainees and meet basic international standards, including juvenile justice standards.

## Methodology

This report is based on Human Rights Watch research between February 2019 and May 2020 including interviews with Canadians held in northeast Syria and with Canadian detainees' family members in Canada and elsewhere, as well as multiple trips to detention camps for ISIS suspects and relatives in northeast Syria. Between December 2019 and June 2020, two Human Rights Watch researchers interviewed 11 Canadians in Canada or other countries who were related to 19 Canadians held in northeast Syria. The interviews were conducted in person in Canada or by telephone to Canada and elsewhere. Human Rights Watch researchers interviewed four Canadian detainees—three during trips to northeast Syria in February and June 2019 and a fourth by telephone in April 2020.

Human Rights Watch researchers interviewed dozens of women and children of different nationalities who were held as family members of ISIS suspects during visits to al-Hol and Ain Issa, two camps in northeast Syria, in February 2019, and in three return visits to al-Hol camp in June 2019. We also reviewed several communications between family members and Canadian consular officials, as well as text messages between detainees and family members, that were shared by relatives of the detainees.

Most family members or detainees requested that Human Rights Watch withhold identifying information such as their names and locations, fearing harassment from members of the public in Canada, or reprisals against their detained relatives by prison or camp authorities, or other detainees. All pseudonyms appear in quotation marks on first reference.

Human Rights Watch also interviewed members of Canada-based non-governmental organizations and Canadian lawyers seeking to bring home Canadians from northeast Syria. We spoke with Canadian journalists as well as members of humanitarian organizations working in al-Hol and Roj, the camps holding Canadians and other foreigners. In addition, Human Rights Watch interviewed officials from Global Affairs Canada, Public Safety Canada, and the Canadian Prime Minister's office in Ottawa, as well as the co-chair of the Foreign Relations Commission for the Autonomous Administration of Northeast Syria.

Interviews were conducted in English, French, or Arabic. All interviews were voluntary. Interviewees received no compensation beyond reimbursement for travel expenses to those who traveled to meet with us.

In January 2020 and again in February, Human Rights Watch submitted our preliminary findings and requests for comment to the Canadian Prime Minister's Office, Global Affairs Canada, and Public Safety Canada. In June, Human Rights Watch received one reply, a letter from Foreign Affairs Minister François-Philippe Champagne that included partial responses.

In June, Human Rights Watch repeatedly wrote to the Syrian Democratic Council and the Syrian Democratic Forces, the Autonomous Administration's highest political authority and its armed force, respectively, requesting comment on the conditions in prisons detaining foreign ISIS suspects. We did not receive a reply.

# I. Detainees and Conditions

## 47 Canadians Including 26 Children

Since the fall of the Islamic State (ISIS) in Syria in 2019, the regional, Kurdish-led authority called the Autonomous Administration of Northeast Syria has been detaining some 100,000 ISIS suspects and family members in prisons and camps throughout its triangle of territory bordering Turkey to the north and Iraq to the east. The detainees are guarded by the region's main militia, the Syrian Democratic Forces (SDF), which is backed by the US-led Global Coalition Against ISIS, of which Canada is a member.<sup>1</sup> The SDF served as the main ground force against ISIS in northeast Syria. The SDF has no known prior experience in prison management.

Most of the detainees are Syrians and Iraqis, but the Autonomous Administration is also holding about 14,000 non-Iraqi foreigners from more than 60 other countries—8,000 children and 4,000 women in camps and about 2,000 men and boys in prisons.<sup>2</sup> At least 47 Canadians—8 men, 13 women, and 26 children from 17 families—are among them, according to Alexandra Bain, the founder of Families Against Violent Extremism (FAVE), a Canadian non-profit organization that is helping families try to repatriate their loved ones.<sup>3</sup>

The two oldest Canadians are in their late 40s and the youngest is a 1-year-old infant.<sup>4</sup> The oldest Canadian child is a 17-year-old boy detained in a northeast Syria prison, according to Bain.<sup>5</sup> The other children are detained in camps—24 in tents with their mothers and one, 5-year-old orphan Amira, in a center for unaccompanied children.<sup>6</sup> Eighteen of the children

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<sup>1</sup> See, e.g., “Minister Champagne reaffirms Canada’s commitment to the Global Coalition against Daesh,” Global Affairs Canada, news release, June 4, 2020, <https://www.canada.ca/en/global-affairs/news/2020/06/minister-champagne-reaffirms-canadas-commitment-to-the-global-coalition-against-daesh.html> (accessed June 4, 2020).

<sup>2</sup> Human Rights Watch telephone interviews and emails with humanitarian aid workers, May-June 2020; Lead Inspector General Report for Operation Inherent Resolve, Quarterly Report to the US Congress, January 1-March 31, 2020 (“Inspector General Report”), May 13, 2020, <https://www.dodig.mil/Reports/Lead-Inspector-General-Reports/Article/2185122/lead-inspector-general-for-operation-inherent-resolve-i-quarterly-report-to-the/> (accessed May 20, 2020), p. 57.

<sup>3</sup> Human Rights Watch online communication with Alexandra Bain, founder of Families Against Violent Extremism (FAVE), April 8, 2020, and 11 family members, December 2019 to May 2020.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid., and Human Rights Watch interview with “Karim” (pseudonym), Canada, December 16, 2019.

are 6 years of age or younger and were born in Syria, Bain and family members said.<sup>7</sup>

Three dozen Canadians surrendered in February and March 2019 to the SDF during the fall of Baghouz, a town in eastern Deir al-Zour governorate that was ISIS's last stand in Syria, Bain said.<sup>8</sup> Eleven others, including seven children, were detained earlier, some since 2017, Bain and family members said. At time of writing, the government of Canada had yet to bring even one of its detained citizens home.

Like the other foreigners, none of the Canadians has been charged with any crime by the Autonomous Administration. Nor have the Canadians been brought before a judge to review the legality and necessity of their detention, making their continuing captivity arbitrary and unlawful. Their detentions without judicial review also amount to a form of collective punishment, particularly for suspects' detained family members.

Nearly all the adult detainees come from the Canadian provinces of Alberta, British Columbia, Ontario, and Quebec. One man, Jack Letts, was raised in England and was a dual British-Canadian national until April 2019, when the UK revoked his citizenship for traveling to Syria in 2014.<sup>9</sup> At least three other Canadian adults had dual citizenship or the potential to obtain a second nationality, but lacked strong ties to their second country, according to FAVE and family members.<sup>10</sup>

At least five of the children were born to one foreign as well as one Canadian parent. Under Canadian law, children born abroad are Canadian citizens provided that at least one of their parents was a Canadian citizen at the time of their birth.<sup>11</sup>

Five Canadian children, all young, have medical conditions—two have asthma, one has neck tumors, one is anemic, and one is autistic—Bain and family members said.<sup>12</sup> Human

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<sup>7</sup> Human Rights Watch online communication with Bain, April 8, 2020, as well as multiple family members, December 2019 to May 2020.

<sup>8</sup> *Ibid.*

<sup>9</sup> "Jihadi Jack: IS recruit Jack Letts loses UK citizenship," *BBC*, August 18, 2019, <https://www.bbc.com/news/uk-49385376> (accessed March 10, 2020).

<sup>10</sup> Human Rights Watch interview with Bain, April 8, 2020, and family members, December 2019-May 2020.

<sup>11</sup> Citizenship Act, R.S.C., 1985, c. C-29, <https://laws-lois.justice.gc.ca/eng/acts/c-29/page-1.html#h-81636>, section 3(1)(b).

<sup>12</sup> *Ibid.*

Rights Watch is not able to independently verify all of the detainees' health conditions. Some of their fathers are imprisoned but most are believed to be dead.

One Canadian man, Mohammed Khalifa, is a suspected ISIS propagandist and the reported narrator of *Flames of War*, a 2014 ISIS video that showed captured Syrian soldiers digging their own graves before being executed by gunfire.<sup>13</sup> Another, Mohammad Ali Saeed, posted horrific pro-ISIS messages on social media soon after arriving in Syria in 2014 and said he had worked as a sniper trainer, but told Human Rights Watch he became disillusioned and had “pretty much stopped showing up at work.”<sup>14</sup> At least three detained Canadian adults have struggled with various mental health conditions and allege they were imprisoned by ISIS for disobeying or trying to leave the group, their family members said.<sup>15</sup>

While Human Rights Watch cannot confirm the veracity of detainees' statements, many of the detainees told us or their families that they regretted traveling to Syria soon after arriving there but once under ISIS rule could find no way out. One woman, a mother held in a camp with two young children born in Syria to her Canadian husband, who is detained in a northeast Syria prison, told Human Rights Watch:

I thought, “Now I’ll be able to practice my religion and cover my face without being harassed the way I am at home.” I heard there was bombing and stuff but I didn’t think I’d be living under it. But then I got here and realized how dangerous it was. My husband became disillusioned, too. A year ago, we found a smuggler to take us out. We wanted to start over. But then Kurdish [SDF] forces took us.<sup>16</sup>

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<sup>13</sup> Stewart Bell, *Global News*, “Canadian captured in Syria admits to role in gruesome ISIS execution videos,” February 16, 2019, <https://globalnews.ca/news/4966956/canadian-admits-narrated-isis-execution-video/> (accessed May 12, 2020).

<sup>14</sup> Human Rights Watch interview with Mohammed Ali Saeed, northeast Syria, June 26, 2019. Saeed was brought by the SDF to a northeast Syria administrative office to speak with Human Rights Watch. Location withheld at SDF’s request.

See also Jane Arraf, “Canadian Government Won’t Repatriate Toronto Man Who Joined ISIS,” National Public Radio, May 14, 2019, <https://www.npr.org/2019/05/14/723134981/canadian-government-won-t-repatriate-toronto-man-who-joined-isis> (accessed April 13, 2019).

<sup>15</sup> Human Rights Watch telephone interviews with “Maryanne” (pseudonym) December 23, 2019; John Letts, February 7, 2020, and “Maya” (pseudonym) February 27, 2020.

<sup>16</sup> Human Rights Watch interview with “Miriam” (pseudonym), al-Hol camp, northeast Syria, June 23, 2019.

The identity papers the Canadians had were confiscated by ISIS or, upon capture or surrender, by the SDF. Children born in ISIS-held territory had only ISIS birth certificates at most, leaving them without any without official documents to verify their nationality.

Human Rights Watch did not receive a response from Global Affairs Canada or Public Safety Canada—the government’s foreign office and national security agency, respectively—to its written requests for the number of Canadian men, women, and children detained in prisons or camps in northeast Syria. Global Affairs and Public Safety also did not respond to Human Rights Watch’s request for information on how many detained Canadians the government considers to be high security risks, or whether it considers any of them to be victims of ISIS. In addition, Global Affairs and Public Safety did not respond to requests for information on whether the government has pressed detaining authorities in northeast Syria to provide judicial review of the detentions of Canadian citizens.

In a letter to Human Rights Watch in June 2020, Foreign Affairs Minister François-Philippe Champagne cited security concerns for not providing such details.<sup>17</sup> Public Safety Canada did not reply.

## **Dire Conditions in Camps and Prisons**

The conditions of detention for Canadians and other ISIS suspects and family members in northeast Syria are appalling and, in many cases, inhuman and life-threatening. In prisons for men and boys converted from former schools and government buildings, overcrowding is severe and medical care is grossly inadequate, according to Human Rights Watch interviews and media reports. Al-Hol and Roj, the two open-air camps detaining women and children, are locked, encircled by barbed wire, and heavily guarded by SDF and local police known as the Asayish. Conditions in the camp annexes for non-Iraqi foreigners are particularly harsh.<sup>18</sup>

The illness, filth and overcrowding in the camps and prisons have created a prime environment for the spread of Covid-19 and are increasing the despair of detainees and

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<sup>17</sup> Letter to Human Rights Watch from Foreign Affairs Minister François-Philippe Champagne, June 9, 2020. Copy on file with Human Rights Watch.

<sup>18</sup> “Syria: Dire Conditions for Families,” Human Rights Watch news release, July 23, 2019, <https://www.hrw.org/news/2019/07/23/syria-dire-conditions-isis-suspects-families>.

their families.

Since Covid-19, “Jack's life is more at risk than ever before,” wrote Sally Lane, the mother of Jack Letts, a Canadian detained in one of the northeast Syrian prisons, in an email to Global Affairs. “Is the government of Canada going to allow our son to die in prison in NE Syria?”<sup>19</sup>

UN High Commissioner for Human Rights Michelle Bachelet in March called on governments to take urgent action to prevent Covid-19 from “rampaging through places of detention,” calling the consequences of neglect “potentially catastrophic” from a health perspective as well as risking “a boomerang effect on the global community's efforts to counter terrorism in the region.”<sup>20</sup> The UN Subcommittee on the Prevention of Torture called on governments to “reduce prison populations...wherever possible by implementing schemes of early, provisional or temporary release.” The UN Children’s Fund (UNICEF) in April urged all detaining authorities to immediately release children in detention, including those held in relation to armed conflict, “who can safely return to families or an appropriate alternative” including members of extended families.<sup>21</sup>

At time of writing, only six cases of Covid-19 had been reported in northeast Syria, one of them fatal.<sup>22</sup> None involved camp or prison detainees. But the numbers could be far higher as testing for the coronavirus in northeast Syria is scant.

In April, the Global Coalition Against ISIS said it gave hygiene and medical supplies to detention facilities across northeastern Syria, including hand-washing stations,

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<sup>19</sup> Email from Sally Lane to Global Affairs, March 27, 2020. Copy on file with Human Rights Watch.

<sup>20</sup> “Urgent action needed to prevent Covid19 ‘rampaging through places of detention’” – Bachelet,” UN Office of the High Commissioner for Human Rights (OHCHR) news release, March 25, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E> (accessed March 25, 2020); and “Bachelet urges States to help their nationals stranded in Syrian camps,” OHCHR news release, June 22, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25986&LangID=E> (accessed June 23, 2020)

<sup>21</sup> “Children in detention are at heightened risk of contracting Covid-19 and should be released,” UNICEF news release, April 13, 2020, <https://www.unicef.org/press-releases/children-detention-are-heightened-risk-contracting-covid-19-and-should-be-released> (accessed May 25, 2020).

<sup>22</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA) and World Health Organization (WHO), Syrian Arab Republic: COVID-19 Humanitarian Update No. 12 (“Covid-19 Update 12), June 14, 2020, [https://reliefweb.int/sites/reliefweb.int/files/resources/Syria\\_COVID-19\\_Humanitarian%20Update%20No%2012\\_14June2020\\_FINAL.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Syria_COVID-19_Humanitarian%20Update%20No%2012_14June2020_FINAL.pdf) (accessed June 15, 2020).

disinfectant wipes, face masks, and examination gloves.<sup>23</sup> The UN World Health Organization has also sent supplies including personal protective gear to al-Hol camp and aid groups have launched awareness campaigns in al-Hol.<sup>24</sup> But officials from the Syrian Democratic Council, the Autonomous Administration's highest political authority, called the supplies insufficient.<sup>25</sup> And three Canadian women detained separately in Roj and al-Hol said they had seen no sign of most Covid-19 supplies.

"Not even for their few medical staff," one woman wrote in reference to masks in one of several text messages from Canadian detainees shared by FAVE with Human Rights Watch. "Pets in Canada get more [medical] treatment than us," wrote another. "For days we don't have doctor. No[t] even a nurse sometimes."<sup>26</sup>

The one clinic inside the foreigners' annex has been closed for months. The International Committee of the Red Cross (ICRC) has a field hospital "but you don't get access to them unless you are dying," said "Charlotte," a Canadian detainee. "There are [northeast] Syrian medical teams with mobile vehicles but their supplies are really low. Sometimes they don't even have paracetamol."<sup>27</sup>

Charlotte laughed when asked about social distancing:

Everybody is basically mingling with each other. It really blows my mind. They don't give us any masks or gloves. The only thing they did do, they didn't call it [a] Covid [response], but they put laminated papers on the water tanks saying, "Protect yourself and wash your hands." That's it. It's really scary.<sup>28</sup>

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<sup>23</sup> Bassem Mroue, "Islamic State prisoners agree to end riot in Syria jail," AP, May 3, 2020, <https://apnews.com/729e249f1e441f2a97d9d27803875e94> (accessed May 10, 2020).

<sup>24</sup> OCHA and WHO, Covid-19 Update 12, June 14, 2020.

<sup>25</sup> Jeff Seldin, "US Moves to Bolster Prisons Holding Captured Islamic State Fighters," *Voice of America*, April 4, 2020, <https://www.voanews.com/middle-east/us-moves-bolster-prisons-holding-captured-islamic-state-fighters> (accessed May 10, 2020).

<sup>26</sup> Text messages from three Canadian women in al-Hol and Roj camps from late April 2020, shared by Alex Bain of FAVE. Copies on file with Human Rights Watch.

<sup>27</sup> Human Rights Watch telephone interview with "Charlotte" (pseudonym), New York to northeast Syria, April 30, 2020.

<sup>28</sup> *Ibid.*

On April 30, the International Rescue Committee warned that in al-Hol, the larger of the two camps holding about 65,000 people, “There is absolutely no way for people to practice social distancing” given the population density.<sup>29</sup>

The embattled Autonomous Administration has repeatedly issued appeals for more foreign funding, warning that it lacks the resources to properly care for the detainees without further assistance.<sup>30</sup>

Further compromising sanitation and the well-being of detainees, al-Hol camp and the prisons for ISIS suspects in al-Hasakeh governorate have suffered intermittent water shortages since neighboring Turkey, which invaded areas of northeast Syria in October 2019, began periodically interrupting pumping at a water station serving 460,000 people in areas controlled by the Autonomous Administration.<sup>31</sup> Restrictions on aid deliveries from Damascus, the Syrian capital, as well as through the neighboring Kurdistan Region of Iraq are preventing urgently needed medical supplies and personnel from reaching northeast Syria, including to protect against the Covid-19 pandemic.<sup>32</sup>

The Autonomous Administration did not respond to requests from Human Rights Watch in May and June for updates on conditions in the camps and prisons. In his letter to Human Rights Watch, Foreign Affairs Minister Champagne wrote that Canada has spent more than Canadian \$333 million (US \$245 million) in humanitarian assistance in Syria, but did not say how much, if any, went to the prisons and camps holding Canadians.<sup>33</sup>

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<sup>29</sup> International Rescue Committee, “Hundreds of thousands will be at risk if COVID-19 spreads in northeast Syria,” <https://reliefweb.int/report/syrian-arab-republic/hundreds-thousands-will-be-risk-if-covid-19-spreads-northeast-syria>. See also Save the Children, “A Children’s Crisis: Update on Al Hol camp and COVID-19 concerns,” <https://reliefweb.int/report/syrian-arab-republic/childrens-crisis-update-al-hol-camp-and-covid-19-concerns> (accessed May 25, 2020).

<sup>30</sup> Human Rights Watch interview with Dr. Abdulkarim Omar, co-chair of the Foreign Relations Commission for the Autonomous Administration, Qamishli, June 21, 2019.

<sup>31</sup> “Turkey/Syria: Weaponizing Water in Global Pandemic?,” Human Rights Watch news release, March 31, 2020, <https://www.hrw.org/news/2020/03/31/turkey/syria-weaponizing-water-global-pandemic#>

<sup>32</sup> “Syria: Aid Restrictions Hinder Covid-19 Response,” Human Rights Watch news release, April 28, 2020, <https://www.hrw.org/news/2020/04/28/syria-aid-restrictions-hinder-covid-19-response>. See also Colum Lynch, “Bowling to Russia, U.N. Halts Funding for Pandemic Relief in Northeastern Syria,” *Foreign Policy*, May 13, 2020, <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-syria-russia-united-nations-relief-agencies/> (accessed May 13, 2020).

<sup>33</sup> Letter to Human Rights Watch from Foreign Affairs Minister Champagne, June 9, 2020.

### *Camps: Overflowing Latrines, Preventable Deaths*

During three visits to al-Hol camp in June 2019, Human Rights Watch found women and children living in tents that collapsed in strong winds or had flooded with rain or sewage, and saw worms in the water that children were drinking and pouring over their heads to keep cool. The rations did not include fresh food, even for children. Latrines were overflowing, garbage littered the grounds, medical care and basic provisions such as diapers and sanitary towels were insufficient, and respiratory and gastrointestinal infections, as well as child malnutrition, were rampant.<sup>34</sup> Those conditions continued at time of writing, aid workers and detainees said.<sup>35</sup>

“Kids are suffering from bouts of diarrhea and vomiting,” Charlotte told Human Rights Watch. “I think it has to do with the water in the tanks. They are putting a lot of chlorine in it, but the [camp] kids, they throw diapers inside the tanks. They have nothing else to do.”<sup>36</sup>

Fires caused by cooking and heating fuel periodically sweep through tents and are sometimes deadly.<sup>37</sup> Wild dogs roam the grounds at night and children have periodically fallen into open pits and cesspools. Ten camp residents told Human Rights Watch in June that a young boy had drowned days earlier in an open cesspool; camp officials denied any deaths but the Kurdish Red Crescent reported that at least 517 people, 371 of them children, died in 2019 in al-Hol, the larger camp, many from preventable diseases.<sup>38</sup>

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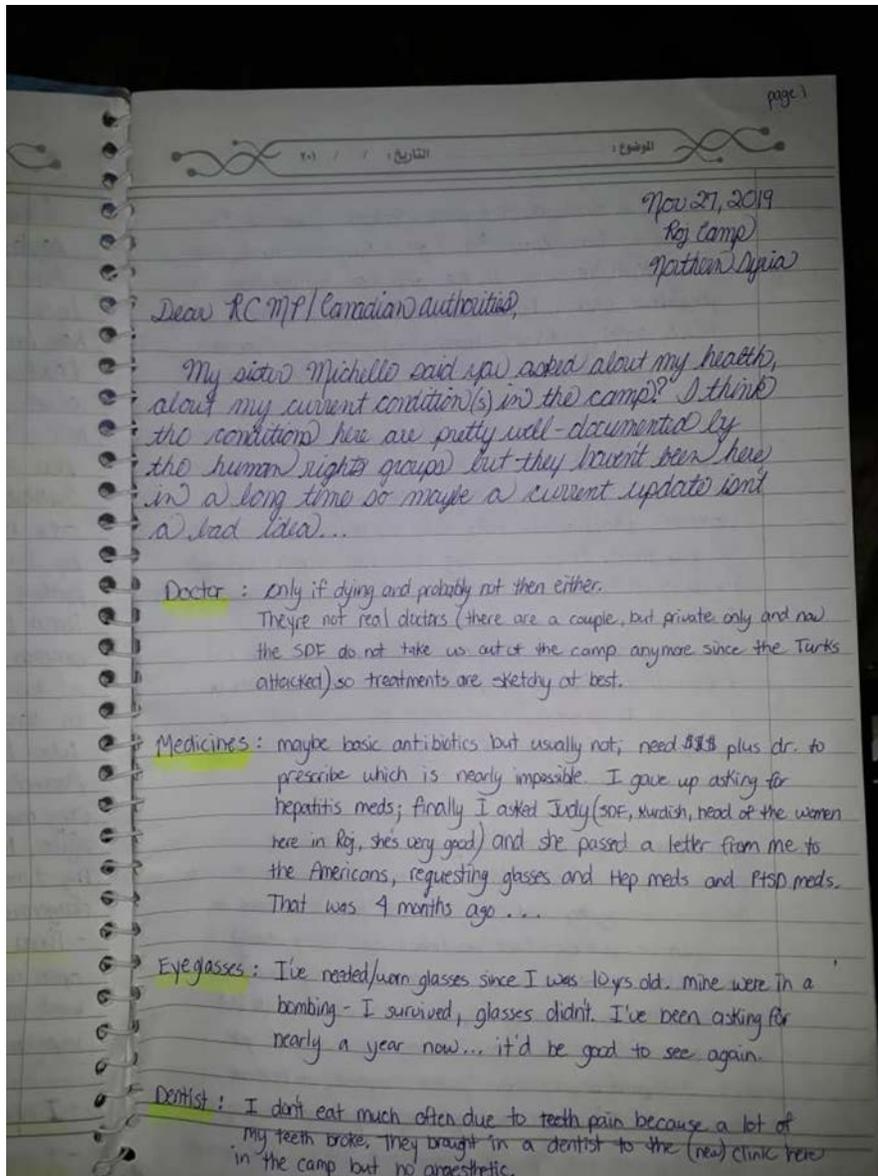
<sup>34</sup> Information based on Human Rights Watch visits to Roj and al-Hol camps in February 2019 and three visits to al-Hol camp in June 2019, each involving multiple interviews with detainees, camp authorities, and aid workers. See also “Syria: Dire Conditions for ISIS Suspects’ Families,” Human Rights Watch news release, July 23, 2019, <https://www.hrw.org/news/2019/07/23/syria-dire-conditions-isis-suspects-families>.

<sup>35</sup> Human Rights Watch communications via internet and telephone with members of humanitarian aid groups, speaking on condition of anonymity, May-June 2020.

<sup>36</sup> Human Rights Watch interview with Charlotte, April 30, 2020.

<sup>37</sup> Human Rights Watch interviews with detainees and family members, June 21-23, 2019, as well as aid workers, June 2019 and May-June 2020.

<sup>38</sup> “More than 500 people, mainly children, died in Syria’s al-Hol camp in 2019: Medics,” *Middle East Eye*, January 16, 2020, <https://www.middleeasteye.net/news/more-500-people-mainly-children-died-syrias-al-hol-camp-2019-medics> (accessed June 5, 2020).



Page of letter sent as text photos to Canadian relatives from Kimberly Polman. © 2019 Private

“Extreme weather, burning tents, threats ... little food/clothing, zero sanitation or health safety, disease,” Canadian detainee Kimberly Polman wrote in a letter signed by 10 detained Western women. “We survived ISIS, we were the lucky ones. ... But can we survive the camps?”<sup>39</sup>

<sup>39</sup> Letter from Kimberly Polman titled, “To the United Nations,” October 16, 2019. Copy on file with Human Rights Watch.

One Canadian woman shared text messages with Human Rights Watch from her sister-in-law that were increasingly filled with despair:

It's horrible here. When we have water, sometimes the water's clear. Sometimes it's green. Sometimes it's yellow. We're freezing. We're sleeping in tents... Our tents get flooded."<sup>40</sup>

“Kayla” described a phone message from her adult daughter in December in which she was “crying hysterically”:

She said the conditions are devastating. She was sick with diarrhea and a rash on her neck. She said a disease is affecting all the children—sores on their bodies, their hands and everything, it affects their liver.<sup>41</sup>

The camps also lack schools and playgrounds although two-thirds of detainees are children.

### *Violence and Threats*

Insecurity is rife, with violence periodically breaking out between detainees who still support ISIS and those who do not, as well as between detainees and guards from the SDF, which suffered massive casualties fighting ISIS.<sup>42</sup> Some female detainees have said they face threats of sexual violence. One woman said her adult daughter told her a guard was threatening detained women with the words, “We’re going to do to you what ISIS did to the Yezidis”—a reference to ISIS kidnapping, raping, and committing apparent genocide against members of the Yezidi religious minority.<sup>43</sup>

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<sup>40</sup> Human Rights Watch interview with “Basma” (pseudonym), Canada, December 21, 2019.

<sup>41</sup> Human Rights Watch telephone interview with “Kayla” (pseudonym), December 19, 2019.

<sup>42</sup> Human Rights Watch interviews with detainees, al-Hol camp, June 21-23, 2019; interviews with aid workers, June 2019, and interviews with aid workers and detainees’ family members, December 2019-June 2020. See also “Syria: Dire Conditions for ISIS Suspects’ Families,” Human Rights Watch news release, July 23, 2019, <https://www.hrw.org/news/2019/07/23/syria-dire-conditions-isis-suspects-families>. More than 10,000 SDF fighters died and another 20,000 injured in the fight against ISIS; see “SDF pressure has kept ISIS from resurging in Syria: coalition spokesperson,” *Rudaw*, March 6, 2020, <https://www.rudaw.net/english/middleeast/syria/06032020>.

<sup>43</sup> Human Rights Watch telephone interview with family member of detainee, New York to Canada, December 2019.

At al-Hol camp, some women in the foreigners’ annex reportedly remain ISIS loyalists and lead a local morality police force—al-Hisbeh—and have murdered at least two women for “immoral” behavior.<sup>44</sup> Human Rights Watch has previously documented how Hisbeh and other ISIS members policed women’s behavior including through physical abuse in ISIS-controlled territory.<sup>45</sup> Five women interviewed by Human Rights Watch at al-Hol camp, including one Canadian woman, said they feared being harmed by Hisbeh because they were considered moderates or had expressed remorse over joining ISIS.<sup>46</sup> A second Canadian woman expressed the same fears to her family in Canada.<sup>47</sup>

In June 2019, a 14-year-old girl was found murdered in her tent in al-Hol camp. Camp authorities said she was killed by camp hardliners for refusing to wear the hijab.<sup>48</sup> One Canadian woman wrote to the Canadian government through a family member that she and several other Western women were on the Hisbeh “kill list” because they had expressed remorse over joining ISIS.<sup>49</sup>

Detainees are terrified that the fighting in northeast Syria—involving the US-backed SDF, troops from the US, Turkey, Syria and its ally Russia, as well as various militia and remnants of ISIS—could spill into the camps or prisons. In October 2019, Turkish shelling hit a prison for ISIS suspects and the Ain Issa camp for family members of ISIS suspects.<sup>50</sup>

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<sup>44</sup> United Nations Security Council, Tenth 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/2020/95, February 4, 2020, [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2020\\_95.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2020_95.pdf) (accessed April 17, 2020), para. 9.

<sup>45</sup> “Iraq: Women Suffer Under ISIS,” Human Rights Watch, news release, April 5, 2016, <https://www.hrw.org/news/2016/04/05/iraq-women-suffer-under-isis>; “Syria: Extremists Restricting Women’s Rights,” Human Rights Watch news release, January 13, 2014, <https://www.hrw.org/news/2014/01/13/syria-extremists-restricting-womens-rights>.

<sup>46</sup> Human Rights Watch interviews with five Western women detained in al-Hol camp, June 21-23, 2019.

<sup>47</sup> Letter from Canadian detainee Kimberly Polman to family members, November 29, 2019. Copy on file with Human Rights Watch.

<sup>48</sup> Human Rights Watch interview with camp manager and camp security agent, Al-Hol, northeast Syria, June 23, 2020. Human Rights Watch viewed photos of the girl’s bruised and disfigured body that suggested she was beaten and tortured to death. See also Louisa Loveluck, “At a Sprawling Tent Camp in Syria, ISIS Women Impose a Brutal Rule,” *Washington Post*, September 3, 2019, [https://www.washingtonpost.com/world/at-a-sprawling-tent-camp-in-syria-isis-women-impose-a-brutal-rule/2019/09/03/3fcd14-c4ea-11e9-8bf7-cde2d9e09055\\_story.html](https://www.washingtonpost.com/world/at-a-sprawling-tent-camp-in-syria-isis-women-impose-a-brutal-rule/2019/09/03/3fcd14-c4ea-11e9-8bf7-cde2d9e09055_story.html) (accessed March 10, 2020).

<sup>49</sup> Kimberly Polman, letter to Canadian government, November 27, 2019, copy on file with Human Rights Watch.

<sup>50</sup> “Abandoned by U.S. in Syria, Kurds Find New Ally in American Foe,” *New York Times*, October 12, 2019, <https://www.nytimes.com/2019/10/13/world/middleeast/syria-turkey-invasion-isis.html> (accessed April 15, 2020).

They also fear capture by the forces of Syrian President Bashar al-Assad, whose prisons are notorious for torture, mass disappearances, and deaths.<sup>51</sup>

In June, the Autonomous Administration announced that in conjunction with Global Coalition Against ISIS, its security forces began collecting the biometric data of women in the camps in as an effort to officially register them, identify detainees who are security threats, improve living conditions, and “facilitate coordination with the countries whose nationals reside in the camp and urge them to assume their responsibilities towards their citizens.”<sup>52</sup>

### *Prisons: Inhuman Overcrowding and Deaths*

At least three prisons in northeast Syria holding the 2,000 foreign male ISIS suspects, including at least four Canadians, are severely overcrowded, with prisoners packed so tightly into cells that they cannot lie down without touching each other, according to Human Rights Watch interviews with eight people who had visited the prisons or had knowledge of the conditions.<sup>53</sup> Disease and malnutrition are widespread and medical care is grossly insufficient, they said.<sup>54</sup>

Between mid-2019 and early 2020, well over 100 and possibly several hundred prisoners died in the two largest prisons, Ghweran and al-Shaddadi many from lack of medical care according to two knowledgeable sources.<sup>55</sup> The death rate was highest in 2019, they said—a time when the prisons were flooded with detainees freshly wounded from the fall of

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<sup>51</sup> Letta Tayler, “Fear grips women and children trapped in Syria camps,” *Washington Post*, October 15, 2019, <https://www.washingtonpost.com/opinions/2019/10/15/fear-grips-women-children-trapped-syria-camps-their-countries-origin-must-bring-them-home/>. On Syrian detention, see Anne Barnard, “Inside Syria’s Secret Torture Prisons: How Bashar al-Assad Crushed Dissent,” *New York Times*, May 11, 2019, <https://www.nytimes.com/2019/05/11/world/middleeast/syria-torture-prisons.html?action=click&module=RelatedLinks&pgtype=Article>. See also Josie Ensor, “Assad raises prospect foreign Isis suspects could be tried in Syrian regime courts,” *The Telegraph*, November 27, 2019, <https://www.telegraph.co.uk/news/2019/11/27/assad-raises-prospect-foreign-isis-suspects-could-tried-syrian/>. (All articles accessed March 7, 2020).

<sup>52</sup> Autonomous Administration of Northeast Syria public statement, <https://www.facebook.com/smensyria/posts/1338333119689955>, June 10, 2020 (accessed June 22, 2020).

<sup>53</sup> Human Rights Watch telephone or in-person interviews with eight individuals who had visited or had direct knowledge of prison conditions, June 2019 to May 2020, including UK journalist Anthony Loyd by telephone on October 7, 2019, and a Western government official in September 2019. The interviewees spoke on condition that Human Rights Watch withhold all further details. Human Rights Watch also reviewed the transcript and audio clips of a phone call by Canadian prisoner Jack Letts to Global Affairs Canada on January 10, 2018.

<sup>54</sup> *Ibid.*

<sup>55</sup> Human Rights Watch, separate telephone interviews with two individuals, May 2020.

Baghouz. Together those two prisons, both in al-Hasakeh governorate, hold an estimated 7,500 Syrian and foreign ISIS suspects.

The prisoners include more than 100 children, all boys, two interviewees told Human Rights Watch.<sup>56</sup> Two journalists reported seeing child prisoners as young as 9.<sup>57</sup>

At Ghweran, a former school that holds about 5,000 detainees including at least two Canadians, four interviewees described seeing cell upon cell packed with bone-thin prisoners, many with amputated limbs.<sup>58</sup> Many of the men wore thin orange jumpsuits similar to those the US military made Al-Qaeda and Taliban suspects wear at the Guantánamo Bay prison in Cuba, or clothes that were in tatters, the interviewees said. Each cell had only one, partially walled-off latrine, producing a gag-inducing stench, they said.<sup>59</sup> One interviewee told Human Rights Watch:

The odor was horrible. It was everywhere. It was an awful mixture of everything—toilets, sewers, and human beings. There are around 100 men in each cell with no windows. They eat there, they do their business there, and they sleep there. ... It was shocking to see men of all ages together on the floor with no room to move. They were so close it was as if they were stuck together. ... I can't imagine what psychological state you would be in if you spent months in that cell.

They were wearing sandals. They had small, thin blankets and slept on thin mats on the floor. They were shivering in their cells. Some of the prisoners looked so weak, like they didn't have an ounce of energy.<sup>60</sup>

At least 100 prisoners at Ghweran are suspected of having tuberculosis and at least two detainees have died from the disease, but prison authorities lack sufficient medicine to

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<sup>56</sup> Human Rights Watch, separate telephone interviews with two individuals, February and May 2020.

<sup>57</sup> Ben Hubbard, "What Is Going to Happen to US? Inside ISIS Prison Children Ask their Fate," *New York Times*, October 23, 2019, <https://www.nytimes.com/2019/10/23/world/middleeast/what-is-going-to-happen-to-us-inside-isis-prison-children-ask-their-fate.html> (accessed March 7, 2020); Human Rights Watch interview with Loyd, October 7, 2019.

<sup>58</sup> Human Rights Watch, separate telephone interviews with four individuals, April and May, 2020.

<sup>59</sup> Ibid.

<sup>60</sup> Human Rights Watch telephone interview, May 2020, with individual who visited Ghweran prison in late 2019.

treat them, three interviewees told Human Rights Watch.<sup>61</sup> Other prisoners had infected limbs or urgently needed replacement colostomy bags to collect their body waste, two interviewees said.<sup>62</sup> Lice and scabies were widespread in the prisons, three interviewees said.<sup>63</sup>

Anthony Loyd, a journalist with the *Times of London*, said he saw similarly dire conditions when he visited a hospital ward in one of the prisons in October 2019, holding about 450 detainees seeking treatment. “Several prisoners had multiple amputations and I saw one with his intestines hanging out beneath a bloody dressing,” he said.<sup>64</sup>

For much of their incarceration, prisoners have had no access to outdoor areas and were unable to communicate with family members, five interviewees said.<sup>65</sup>

One interviewee told Human Rights Watch that in Chirkin prison in Qamishli, where at least two Canadians are held, a detainee alleged that the overcrowding forced detainees to remain in almost the same position from 8 a.m. to midnight, and that his cell had a single latrine for at least 80 prisoners. In warmer months, the prisoner said, detainees were allowed outside only exceptionally and were kept inside if they misbehaved, and in winter, they did not go out at all.<sup>66</sup>

Three of the interviewees saw or spoke with three different Canadian prisoners.<sup>67</sup> Human Rights Watch separately interviewed a fourth Canadian prisoner in northeast Syria in June 2019 and reviewed a transcript and audio clips of a phone call made in January 2018 by a

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<sup>61</sup> Human Rights Watch, separate telephone interviews with three individuals, May 2020.

<sup>62</sup> Human Rights Watch, separate telephone interviews with two individuals, May 2020.

<sup>63</sup> Human Rights Watch, separate telephone interviews with three individuals, May 2020.

<sup>64</sup> Human Rights Watch interview with Loyd. See also “Northeast Syria: Boys, Men Held in Inhumane Conditions,” Human Rights Watch news release, October 8, 2019, <https://www.hrw.org/news/2019/10/08/northeast-syria-boys-men-held-inhumane-conditions>.

<sup>65</sup> Ben Hubbard, “‘What is going to happen to us?’ Inside ISIS prison, children ask their fate,” *New York Times*, October 23, 2019, <https://www.nytimes.com/2019/10/23/world/middleeast/what-is-going-to-happen-to-us-inside-isis-prison-children-ask-their-fate.html> (accessed March 19, 2020); Louisa Loveluck, “Inside Syria’s teeming ISIS prisons: broken men, child inmates and orders to break free,” *Washington Post*, November 1, 2019, [https://www.washingtonpost.com/world/middle\\_east/inside-syrias-teeming-isis-prisons-broken-men-child-inmates-and-orders-to-break-free/2019/11/01/25219bda-fb39-11e9-9e02-1d45cb3dfa8f\\_story.html](https://www.washingtonpost.com/world/middle_east/inside-syrias-teeming-isis-prisons-broken-men-child-inmates-and-orders-to-break-free/2019/11/01/25219bda-fb39-11e9-9e02-1d45cb3dfa8f_story.html) (accessed March 19, 2020).

<sup>66</sup> Human Rights Watch interview, February 2020.

<sup>67</sup> Human Rights Watch telephone interviews, February and May, 2020.

fifth Canadian, Jack Letts, to Global Affairs Canada.<sup>68</sup> All of the prisoners spoke within earshot of guards or other prison officials and most did not want to describe their treatment in detention.

“Please get me out of this place,” Letts begged in his call from Chikrin prison to Global Affairs. “Are they going to send us to Guantanamo? Are they going to kill us?”<sup>69</sup>

In the call, Letts said he was held in solitary confinement soon after his detention in 2017:

I spent 35 days in a room that is slightly taller than I am, and about half that wide, with no toilet, no nothing. I started to go insane and talk to myself. I thought dying was better than my mother seeing me insane so I tried to hang myself.<sup>70</sup>

Under UN minimum standards for humane treatment of prisoners, solitary confinement for more than 15 days is strictly prohibited and may amount to torture or other inhuman treatment.<sup>71</sup>

In an interview with a UK journalist and texts to his parents shortly after his detention, Letts had said he was tortured after his capture.<sup>72</sup> Asked about the allegation by a Global Affairs Canada official during the phone call, Letts spoke haltingly and sounded scared:

To be honest, how can I say this? I can’t—in a situation like this I can’t explain to you everything that has happened, do you know what I am saying? But please understand me, without my having to say it, that any place other than here is where I want to go.<sup>73</sup>

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<sup>68</sup> Transcript of call from Jack Letts to Global Affairs Canada, January 10, 2018. Copy on file with Human Rights Watch.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), A/RES/70/175, adopted January 8, 2016, [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf) (accessed March 29, 2020), rules 43-45.

<sup>72</sup> David Rose, “‘I’ve been tortured’: Jihadi Jack’s anguished messages to his parents in Oxford,” *Mail on Sunday*, October 28, 2017, <https://www.dailymail.co.uk/news/article-5027643/Jihadi-Jack-s-anguished-messages-parents.html> (accessed April 30, 2020). See also section on Jack Letts, below.

<sup>73</sup> Ibid.

At the time of the call, Letts said, he was held in a room with 30 other prisoners that was only large enough for eight beds. He said he had not seen a doctor for seven months and had only received medication once despite health problems including acute, recurrent kidney pain.

One interviewee described the despair of two Canadian prisoners in Chirkin:

They are so isolated. No one comes to see them. This is what came out more than anything else. They want news from their family. [Name withheld] said, “I don’t even know if my mom knows if I’m still alive.”<sup>74</sup>

On March 29, 2020, a riot broke out in Ghweran prison.<sup>75</sup> Video from inside the prison showed detainees raising a blanket on which they wrote a message in Arabic calling on the Global Coalition Against ISIS and unnamed “international and human rights organizations” to inspect the prison conditions.<sup>76</sup> The prisoners were demanding improvements including addressing over crowdedness, effective medical care, communication with family members, and clarification of their legal status, two interviewees told Human Rights Watch.<sup>77</sup> Prisoners at Ghweran staged a second riot for several hours on May 3.<sup>78</sup>

In April, the Autonomous Administration announced it was forming a committee to review the cases of all detainees in northeast Syria to assess their conditions—including

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<sup>74</sup> Human Rights Watch telephone interview with one individual, May 2020.

<sup>75</sup> Liz Sly and Louisa Loveluck, “Kurdish-led forces put down revolt by ISIS detainees at prison in Syria,” *Washington Post*, March 30, 2020, [https://www.washingtonpost.com/world/middle\\_east/islamic-state-detainees-mutiny-at-prison-in-syria/2020/03/30/8fc4a0dc-7252-11ea-ad9b-254ec99993bc\\_story.html](https://www.washingtonpost.com/world/middle_east/islamic-state-detainees-mutiny-at-prison-in-syria/2020/03/30/8fc4a0dc-7252-11ea-ad9b-254ec99993bc_story.html); Charles Garland, “US-backed Syria forces say ISIS detainees caught at prison perimeter following uprising,” *Stars and Stripes*, March 30, 2020, <https://www.stripes.com/news/middle-east/us-backed-syria-forces-say-isis-detainees-caught-at-prison-perimeter-following-uprising-1.624158> (Both accessed April 8, 2020).

<sup>76</sup> Facebook page of journalist Ivan Hassib, <https://www.facebook.com/Ivan.Hassib/videos/203205947637231/> (accessed June 6, 2020). Prison authorities confirmed the message.

<sup>77</sup> Human Rights Watch telephone interviews with two individuals, April and May, 2020.

<sup>78</sup> Bassem Mroue, “Islamic State prisoners agree to end riot in Syria jail,” Associated Press, May 3, 2020, <https://apnews.com/729e249f1e441f2a97d9d27803875e94> (accessed May 10, 2020).

“whether the prisoner has died” and whether they need to remain in custody—as well as to share information about them with family members.<sup>79</sup>

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<sup>79</sup> “New Committee for Prisoners and Detainees Announced by AANES,” *Syrian Democratic Times*, April 15, 2020, <https://www.syriandemocratictimes.com/2020/04/15/new-committee-for-prisoners-and-detainees-announced-by-aanes/> (accessed May 6, 2020).

## II. Case Studies of Eight Canadians

One is a 5-year-old orphan who was found on a roadside. Two are men who claim they were imprisoned first by ISIS, then by anti-ISIS forces, and one says he was tortured in SDF custody. Two are toddlers whose fathers were killed in Syria. A sixth is a woman who was widowed twice. A seventh says she was raped in an ISIS prison. An eighth is a mother who needs medicine for her two sick children. Following are eight case studies of Canadians detained in northeast Syria.

### Amira: Stranded Orphan

Amira, who was 5 at time of writing, was found by a passerby in early 2019, wandering alone on a road leading from the rubble of Baghouz, her uncle “Karim” in Canada told Human Rights Watch. Amira told the passerby that her parents and all three of her siblings were killed in an airstrike. She ended up in the care of a stranger in one of the camps for women and children related to ISIS suspects in northeast Syria. A nongovernmental organization circulated a photo of Amira with her hair in braids and a fresh scar on her forehead that in mid-April found its way to Karim.<sup>80</sup>

Karim told Human Rights Watch that he immediately recognized Amira as his niece from photos that her parents had periodically emailed since her birth in Syria. Karim said he also made contact with other camp detainees who told him they recognized Amira and said she had named her dead parents and siblings, confirming her identity. Karim immediately contacted Global Affairs. He begged officials there to bring Amira home, offering to adopt her.

Three Canadian members of parliament, including Karim’s MP, have written to the ministers of foreign affairs and immigration to press the government to bring Amira to Canada.<sup>81</sup> Sixteen UN independent human rights experts have also called on Canada to

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<sup>80</sup> Human Rights Watch interview with “Karim” (pseudonym), Canada, December 17, 2019.

<sup>81</sup> See, e.g., Senator Leo Housakos, Wellington, Conservative Party of Canada, questions to Government Leader Senator Marc Gold on March 11, 2020; Senator Leo Housakos Twitter page, <https://twitter.com/SenatorHousakos/status/1237830199883988997> (accessed June 18, 2020). Member of Parliament Jenny Kwan, Vancouver East, New Democratic Party, correspondence to the Minister of Foreign Affairs and the Minister of Immigration, Refugees and Citizenship, March 2, 2020, copies on file with Human Rights Watch.

urgently repatriate Amira and said repatriation of child citizens trapped in northeast Syria was “a humanitarian and human rights imperative” for UN member states.<sup>82</sup> But at time of writing, Canadian authorities had yet to take the necessary steps to repatriate Amira or to help Karim do so himself, despite initial indications that they would help.

“Right now we've qualified it as too dangerous for Canadian officials to go into Syria and into those refugee camps,” Trudeau told CTV, Canada’s largest private television network, when asked in December 2019 why the government had not repatriated Amira.<sup>83</sup>

Global Affairs’ responses are “extremely frustrating,” Karim said. “I'm concerned for my niece's well-being physically, emotionally, mentally. I'm scared that I might lose her. She doesn't have anyone to watch [over] her.”<sup>84</sup>

Canadian officials said they could not help repatriate Amira until they knew where she was living inside the sprawling al-Hol camp but offered no assistance in finding her, Karim said, leaving it to him to persuade local authorities to track her down. “They said, ‘We need to know her exact location before we do anything. But they wouldn’t even help me find her,’” he said. Eight months passed before the Autonomous Administration informed Karim that it had found Amira living in a tent with a woman detainee who was acting as her informal caregiver.<sup>85</sup>

At first, Karim told Human Rights Watch, “They said, ‘Hey, just get her to a border. And once that’s done, we can work on it.’” But every time he contacted Global Affairs, they retreated further from their early offers to assist. When Karim told Global Affairs he was working on possible ways to get Amira to the border, for example, “They started saying, ‘Well, do we really know it’s her? We may need DNA testing.’” Because Global Affairs had already told Karim that it was too dangerous for Canadian officials to travel to northeast Syria, Karim offered to go conduct the tests himself.

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<sup>82</sup> “Canada urged to repatriate orphaned five-year-old girl held in Syrian camp,” OHCHR, news release, May 20, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25899&LangID=E> (accessed June 7, 2020).

<sup>83</sup> Paul Workman and Christy Somos, “‘Too dangerous’ to pull a 4-year-old Canadian orphan out of ISIS camp, Trudeau says,” *CTV News*, December 16, 2019, <https://www.ctvnews.ca/canada/too-dangerous-to-pull-4-year-old-canadian-orphan-out-of-isis-camp-trudeau-says-1.4732977> (accessed March 10, 2020).

<sup>84</sup> Human Rights Watch interview with Karim.

<sup>85</sup> *Ibid.*

However, Global Affairs would not tell Karim what kind of DNA test they would accept and said he needed to ask Immigration Services. When he asked his Global Affairs case worker if she could give him an Immigration Services contact, the response was, “No, just call the 1-800 number.” When Karim finally reached someone at Immigration Services, he said, “I was just ignored. They said, ‘This is a Global Affairs issue.’ ... It just goes back in circles.”

In December 2019, Karim, working through networks he developed without the assistance of Global Affairs, achieved a small victory when the Autonomous Administration agreed to move Amira to a center for unaccompanied children run by a humanitarian organization at the edge of one of the camps.<sup>86</sup> That month, an aid group arranged for him to have a video call with his niece for the first and only time. Karim told Human Rights Watch that Amira appeared to have an untreated tooth or gum infection that she developed before entering the center: her cheeks were so swollen that she couldn’t close her mouth.

In February, Karim traveled to northeast Syria in a failed quest to evacuate his niece. He was able to meet with Amira for a little over an hour inside a shipping container converted into an office:

I hugged her. She just sat there on my lap... I showed her pictures of her grandparents and other family members. I told her, “Everybody misses you, everybody loves you.” She knew who I was and that she’s from Canada.<sup>87</sup>

Amira’s health appeared to improve at the center, Karim said—her cheeks were no longer swollen and the center was treating her for asthma. But Karim was struck by how small and frail his niece looked: “If I didn’t know her, I would have thought she was two years old. Her hair is really thin. It didn’t look like she was getting proper food [before entering the center]. She looked like she weighed thirty-five pounds.”

When he arrived in northeast Syria, Karim again offered to conduct DNA testing to establish family ties and prove Amira’s right to Canadian citizenship. Global Affairs initially responded by telling Karim he could do so but did not provide any guidance. After his

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<sup>86</sup> Email update to Human Rights Watch among others from “Karim,” February 17, 2020. See also “Canadian orphan moved out of ISIS camp, into safer facility,” *CTV News*, January 22, 2020, <https://www.theloop.ca/ctvnews/canadian-orphan-moved-out-of-isis-camp-into-safer-facility/> (accessed June 5, 2020).

<sup>87</sup> Human Rights Watch telephone interview from Toronto to a location in Canada with Karim, March 16, 2020.

meeting with Amira in Syria, however, Global Affairs suddenly dropped the DNA requirement and said it would officially recognize Amira as a Canadian.

While in northeast Syria, Karim also requested permission from the Autonomous Administration to bring Amira back with him to Canada. But Dr. Abdulkarim Omar, co-chair of the administration's foreign relations commission, said Canada must first send an official delegate to northeast Syria to sign repatriation documents, following the same protocol that the Autonomous Administration required of other countries. Canada could designate a humanitarian aid worker or other representative in lieu of a government official to oversee Amira's transfer, the official said. Amira could then be escorted out of the camp to be met by Canadian officials in the neighboring Kurdistan Region of Iraq, where Canada has a consulate.

"It's very easy to get Amira out," Karim said the official told him. Karim relayed that information to Global Affairs officials, but at the time of writing, they had yet to name or send a delegate to bring her home.

## **Jack Letts: No Action on Alleged Torture**

When Jack Letts was captured and imprisoned by the Kurdish-led SDF in Syria in May 2017, he called home to the UK in relief. "The Kurds are being good to me," Letts, who was then 21 and a dual Canadian-UK national, said in an audio message to his parents. "... Mum, I think the whole process of handing me over [to come home] may be starting."<sup>88</sup>

Within weeks, however, Letts' audio messages had taken an ominous tone. "They threatened me with torture," Letts told his parents in a June message. "They say they'll put me in a box."<sup>89</sup> A week later, he left a message saying that: "Yesterday I had... a mental breakdown. ... I actually went insane."<sup>90</sup>

By July, Letts sounded desperate, saying he had been tortured and suggesting his captors may have used electric shocks:

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<sup>88</sup> Audio messages from Jack Letts to his parents John Letts and Sally Lane, May 3 and 7, 2017. Copies on file with Human Rights Watch.

<sup>89</sup> Audio message from Jack Letts to his parents, June 19, 2017. Copy on file with Human Rights Watch.

<sup>90</sup> Audio message from Jack Letts to his parents, June 25, 2017. Copy on file with Human Rights Watch.

My health situation has got much worse. Now they don't bring me food. There's no such thing as going out any more. And then they punish you. I've actually been tortured, intimidated. ... I'm scared of electricity. Mum, I've actually been tortured.<sup>91</sup>

After that, Letts' parents said, the messages stopped.

Letts has surfaced periodically in media reports since then and even made a call to Global Affairs Canada in January 2018 in which he repeatedly begged an official for help.<sup>92</sup> But Letts' parents, John Letts and Sally Lane, both dual Canadian-UK nationals, told Human Rights Watch that Global Affairs Canada appears to have taken no action on their pleas to investigate their son's allegations of torture and other ill-treatment or to get him out of a northeast Syria prison.

"Global Affairs Canada says the statement of torture is credible but not easily provable," John Letts said.<sup>93</sup> The UK reportedly chose to disregard the torture allegations.<sup>94</sup> The Autonomous Administration has denied any mistreatment.<sup>95</sup>

In his 20-minute call in January 2018 to Global Affairs Canada from Chirkin prison, Jack Letts called his conditions "terrible" and repeatedly begged Canada for help:

Please get me out of this place. ... Just get me out of here as soon as possible. I want to come to Canada. ... Can you help me? Do you have any idea how long I might stay in this place? ... I am going insane.<sup>96</sup>

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<sup>91</sup> Audio message from Jack Letts to his parents, July 8, 2017. Copy on file with Human Rights Watch.

<sup>92</sup> Telephone call from Jack Letts, Chirkin prison, Qamishli, to Global Affairs Canada, January 10, 2018. Transcript and audio clips on file with Human Rights Watch.

<sup>93</sup> Human Rights Watch telephone interview with John Letts from New York to Oxford, England, February 7, 2020.

<sup>94</sup> Simon Hooper, "Revealed: Boris Johnson ignored Jack Letts torture concerns because 'no public sympathy,'" *Middle East Eye*, December 18, 2019, <https://www.middleeasteye.net/news/revealed-boris-johnson-ignored-jack-letts-torture-concerns-because-no-public-sympathy-case> (accessed March 11, 2020).

<sup>95</sup> David Rose, "'I've been tortured': Jihadi Jack's anguished messages to his parents in Oxford," *Mail on Sunday*, October 28, 2017, <https://www.dailymail.co.uk/news/article-5027643/Jihadi-Jack-s-anguished-messages-parents.html> (accessed April 30, 2020).

<sup>96</sup> Human Rights Watch telephone interview with John Letts, February 7, 2020.



“We’ll try to help you,” the Global Affairs official tells Jack Letts, but adds that the government’s abilities are limited by its lack of consular presence in Syria.

John Letts told Human Rights Watch that he and his wife had first reached out to Global Affairs in 2017, after their son’s capture:

The first reaction was, “We’ll help you, this is a Canadian, this is outrageous.” But then they started to email back saying, “We can’t seem to find a telephone number for the Kurds [the Kurdish-led Autonomous Administration in Northeast Syria].” We said, “Here is the number for their ambassador in London, here is the number for their ambassador in Berlin.” They said, “Well, they’re not answering their phone but we’ll keep trying.” Then it was, “We are struggling because they [the Autonomous Administration] are non-state actors, we can’t figure out if they are holding him.” We said, “We know they are, here is the number of the prison governor [authority].”

Then it was, “Well, we’re talking to them but we can’t talk to you about it because we need your son’s permission to talk about him to you.” We said, “Well, we can’t get that permission to you because he is in solitary confinement.” I then said, “We are his parents and can act on his behalf.”<sup>97</sup> Then they said, “Oh, we can’t tell you about conversations with foreign governments.” We said, “But you yourself said these [Autonomous Administration] officials aren’t from a government, they are non-state actors.”<sup>98</sup>

In a meeting in Ottawa in April 2018, John Letts said, Global Affairs told him that it was too dangerous for Canadian officials to travel to northeast Syria to retrieve his son. The

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<sup>97</sup> Although Canada’s Privacy Act of 1985 strictly limits disclosure of personal information, Consular Services “may disclose personal information about a consular client without the client’s explicit consent if such disclosure is required... to contact, protect, rescue, repatriate, or evacuate Canadians citizens, to assist with arrangements for Canadians who become ill, are in need of medical assistance, or die abroad.” Government of Canada, Consular Policy Regarding the Use and Disclosure of Personal Information, <https://travel.gc.ca/assistance/emergency-info/consular/framework/consular-policy-personal-information> (accessed March 25, 2020) para. 3; Privacy Act, (R.S.C. 1985, c. P-21), <https://laws-lois.justice.gc.ca/eng/acts/P-21/page-2.html#h-397260> (accessed March 26, 2020), para. (8)(2)(a).

<sup>98</sup> Human Rights Watch interview with John Letts, February 7, 2020.

officials said they had arranged for Jack Letts to receive medical care, but John Letts said he had no confirmation that his son had received any.<sup>99</sup>

In March 2020, Jack Lett's mother emailed Global Affairs asking if the government could confirm that her son was still alive. A Canadian consular officer emailed back in March and again in April that Global Affairs had established a communication channel with authorities in northeast Syria but that those authorities "have not provided us with any specific information regarding your son's circumstances."<sup>100</sup>

"In other words, they can't guarantee whether Jack is alive or not," his mother told Human Rights Watch.<sup>101</sup>

As a child, Jack Letts was diagnosed as with an obsessive-compulsive condition, and in 2014, at age 18, he left the UK in 2014 for a holiday in Jordan, his father said. He went to Syria later that year. In 2016, a UK deradicalization counselor told *The Guardian*, Jack Letts repeatedly told him in Facebook exchanges that he wanted to come home, even if it meant serving prison time, and discussed escape routes. But, the counselor said, the UK Home Office took him off the case that year as part of a new approach of disengaging with citizens who had traveled to Syria.<sup>102</sup>

Jack Letts had told his parents for months before his capture that he had been trying to leave Syria, John Letts said. In prison interviews with British media, he admitted to living under ISIS but denied being a member and said the group had imprisoned him three times for opposing its practices.<sup>103</sup> In 2019, the UK government revoked his UK citizenship on suspicion of ISIS links. He has not been charged with any crime in the UK, northeast Syria, or Canada.

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<sup>99</sup> Human Rights Watch email from John Letts, April 29, 2020.

<sup>100</sup> Email exchange from Sally Lane to Canadian consular officer, March 27, 2020, and replies March 30 and April 8, 2020. Copies on file with Human Rights Watch.

<sup>101</sup> Email from Sally Lane to Human Rights Watch, May 6, 2020.

<sup>102</sup> Mark Townsend, "Home Office thwarted return home of Isis suspect Jack Letts," *Guardian*, June 23, 2019, <https://www.theguardian.com/uk-news/2019/jun/23/jihadi-jack-letts-isis-return-home-thwarted-home-office> (accessed March 28, 2020).

<sup>103</sup> Daniel Sanford and Steven Swann, "'Jihadi Jack in jail' after leaving IS-controlled territory," *BBC*, June 13, 2019, <https://www.bbc.com/news/uk-40119602> (accessed June 5, 2020).

John Letts, an organic farmer based in England, and Sally Lane, who lives in Canada, believe their son is innocent but accept that he may have to stand trial. “We just want him to have a fair trial. If he's done something wrong he should be punished,” John Letts said. He noted that his son has said publicly that he was willing to go to prison if he was found guilty.<sup>104</sup>

John Letts said the quest to get their son out of Syria has left him and Lane emotionally spent. In October 2017, the couple went on a weeklong hunger strike to press for their son’s return. In June 2019, a UK court convicted the pair of entering into a funding arrangement for the purposes of terrorism for sending £223 (US \$286) to a family member in Lebanon that prosecutors said was for their son. They received 15-month suspended sentences.<sup>105</sup>

### “Noor” and “Salma”: Failure to Recognize Citizenship

“Noor,” 3 years old, and “Salma,” 21 months old, were born in ISIS-held areas of Syria, each to a Canadian father and a foreign mother. In 2019, Noor’s father was shot dead by a sniper, and Salma’s father was killed in a coalition airstrike, according to the two girls’ Canadian aunts. For more than a year, the two aunts said, the toddlers have been detained in one of the northeast Syria camps with their mothers. The mothers’ home countries have made no moves to repatriate them or to recognize the children’s citizenship, and neither has Canada, they said.<sup>106</sup>

Since learning of the two girls’ detentions, “Basma” and “Lakia” have been asking Global Affairs to recognize their nieces as Canadian nationals, but they said they have gotten nowhere.

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<sup>104</sup> Human Rights Watch email from John Letts, February 7, 2020.

<sup>105</sup> “Sally Lane and John Letts sentenced for sending money to Daesh supporting son,” Crown Prosecution Service news release, June 21, 2019,

<https://www.cps.gov.uk/cps/news/sally-lane-and-john-letts-sentenced-sending-money-daesh-supporting-son> (accessed March 28, 2020). See also UK Terrorism Act 2000, 2000 c. 11, July 20, 2000,

<http://www.legislation.gov.uk/ukpga/2000/11/contents> (accessed June 7, 2020), sect. 17.

<sup>106</sup> Human Rights Watch interviews with “Basma” and “Lakia” (pseudonyms), Canada, December 21, 2019. The interviewees did not want the mothers’ nationalities published.

“She doesn't exist anywhere in the world right now,” said Basma, Noor’s Canadian aunt. “She's just a stateless child with no ID. We feel helpless because even if [Global Affairs] can't do anything, they're also not telling us what it is that we can do.”<sup>107</sup>

Basma and Lakia said they were not asking Global Affairs to bring their nieces to Canada at this time, and that they might never do so. They said they simply wanted to establish their nieces’ Canadian citizenship as a safety net should anything befall the girls’ mothers in the camps or should the girls be unable to obtain their mothers’ nationalities.

Lakia recalled her fears when Salma’s mother told her in September 2019 that Salma had Hepatitis A:

She was very, very sick. She was no longer getting out of bed. I imagined her, with Hepatitis A, lying down, no longer able to function with a one-year-old baby that needs to be taken care of. ... Without medicine, or health care. If something happens to the mother, what happens to my niece?<sup>108</sup>

Basma and Lakia said that when they asked Global Affairs to recognize their nieces as Canadian, they were told they could not do so because they had no consular presence in Syria. When the two aunts asked Global Affairs what DNA tests they would accept if they arranged them on their own, the response was, “Oh, we don't know,” Basma said. “It was just a whole mess.”

In November 2019, Basma and Lakia traveled to northeast Syria to see their nieces. On their very last day in the region, in early December, the Autonomous Administration let them visit the girls. The aunts had brought affidavits to northeast Syria drafted by a Canadian lawyer for their nieces’ mothers to sign that they could bring back to Global Affairs, attesting that the girls’ fathers were Canadian. But the morning of their visit with their nieces, their local guide told them that the Autonomous Administration would not let them obtain detainees’ signatures on documents absent permission from home countries—permission that they did not have and that Global Affairs had not told them they needed, they said.

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<sup>107</sup> Human Rights Watch interview with Basma, December 21, 2019.

<sup>108</sup> Human Rights Watch interview with Lakia, December 21, 2019.

Basma told Human Rights Watch she was shocked when she met Noor in the camp, finding her niece severely malnourished. Noor's mother said the girl had suffered from diarrhea for four months:

My [3-year-old] son is exactly a month older than my niece. Lifting my niece in my arms, there was a clear difference in weight from my son. My niece was significantly lighter. Her face, her skin was so dehydrated. Her clothes were so thin, and I was wearing thicker clothes than her and I was cold. She was happy when I gave her chocolate, but there were no words that came with it.<sup>109</sup>

The aunts brought their nieces gifts—shoes for Salma, who had none, and a coat for Noor. But they have not sent them anything from Canada, because Global Affairs would not advise them whether they might be charged with support for terrorism, Basma said:

I knew that she didn't have any [fresh] food to eat. I knew that they were malnourished, and I couldn't even send a hundred dollars for food. It's not like they have a P.O. box where I could send mail and send clothes or whatever. I couldn't do anything.<sup>110</sup>

Lakia said she felt like the Canadian government “doesn't really care”:

I'm having to fight the government for kids, for Canadian kids, for innocent Canadian kids. The children who didn't decide to go there, who didn't decide to be born there, they are victims. The Canadian government needs to realize that it should be a priority to stop creating victims and to create Canadian citizens.<sup>111</sup>

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<sup>109</sup> Human Rights Watch interview with Basma, December 21, 2019.

<sup>110</sup> Ibid.

<sup>111</sup> Human Rights Watch interview with Lakia, December 21, 2019.

## “Charlotte”: Automated Response from Global Affairs

“Charlotte” has been widowed twice since she and her husband, both Canadians, moved to Syria with their two young children in 2014. She was pregnant with her third child when she was detained by the SDF while fleeing Baghouz in February 2019 and gave birth in a hospital inside one of the camps later that year.<sup>112</sup>

In a telephone interview with Human Rights Watch in April, Charlotte expressed remorse over coming to Syria:

If I could turn back time, I wouldn't be here. I just want to come back home. I want to give my kids a life like I had when I was growing up. I had such a good childhood. I feel so bad for my parents. My children are the only grandchildren that they have. I make a mistake, but I didn't participate in anything that was done [by ISIS]. I was just at home with my children. Everybody makes mistakes, you know? It's what you learn from them.<sup>113</sup>

Human Rights Watch is not in a position to gauge the veracity of Charlotte's comments on her role in ISIS.

Dogs howled in the background during the interview. Charlotte said they were wild and ran through the camp in packs at night:

People dump their urine and feces and there is garbage all over the place. Dogs come and eat the Pampers [diapers]. There are probably hundreds of dogs in the camp. At night they go through the garbage and tear everything apart.<sup>114</sup>

Charlotte's father, “Michael,” and her mother, “Beverly,” told Human Rights Watch that they had repeatedly contacted Global Affairs since 2017 to ask how they could bring their daughter and grandchildren back. Each time, “We got no reply except an automated

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<sup>112</sup> Human Rights Watch telephone interviews with “Michael” and “Beverly” (pseudonyms) from New York to Canada, February 8 and April 29, 2020; and with “Charlotte” (pseudonym), New York to northeast Syria, April 30, 2020.

<sup>113</sup> Human Rights Watch interview with Charlotte, April 30, 2020.

<sup>114</sup> Ibid.

response” that their letter was received, Beverly said. Michael and Beverly have repeated their appeals during their frequent calls to a case worker in Global Affairs but “she just takes the messages,” Michael said. The couple has even asked Global Affairs to simply tell them if they have no hope of ever receiving assistance, but they have received no answer to that request either, leaving them in a state of indefinite limbo, he said.<sup>115</sup>

Like the other family members interviewed by Human Rights Watch, Michael and Beverly said they had no idea that their daughter and son-in-law were planning to live under ISIS in Syria. They said Charlotte’s first husband, an engineer, left in 2014, telling them he had taken a job in the oil industry in Qatar, and sent for Charlotte and the couple’s two children a few months later. Soon after, Beverly said, they received a call from Charlotte saying all was well:

We were thinking everything was fine. But then we lost contact with her for close to ten months. Nothing. When she finally called again, she said she was in Qatar, that they were happy and had found a good life. I was questioning her, question after question. We wanted to go see the grandchildren. She said, “There is not enough room.” We said, “We can go to a hotel.” She said, “No, Mom.” She said, “Mom, please don’t ask me these questions.” Then in 2015, CSIS [the Canadian Security and Intelligence Service] came knocking at our door. They said they suspected [Charlotte’s husband] was a terrorist. I was in shock.<sup>116</sup>

After Charlotte’s Canadian husband died in 2016, “She finally did break down and tell me, ‘Yes Mom, I am in Syria,’” Beverly said. But Charlotte said that ISIS would not let her leave. Like most widows, she was told by ISIS to remarry. Charlotte’s second husband, an ISIS member from a European country, was killed three months after their wedding.<sup>117</sup> By then, she was pregnant again.

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<sup>115</sup> Human Rights Watch telephone interviews with Michael and Beverly, April 29, 2020.

<sup>116</sup> Human Rights Watch telephone interview with Michael and Beverly, February 8, 2020.

<sup>117</sup> Ibid.

## Kimberly Polman: Canada Will Not Even Confirm Detention

Kimberly Polman, 47, has written to Canada-based family members and the Canadian government describing abuses she endured after leaving Canada for Syria five years ago to become an ISIS nurse and marry an ISIS fighter, her need for medical care in an SDF-run detention camp, and her longing to come home. But Global Affairs Canada will not even officially acknowledge that Polman is detained in one of the northeast Syrian camps, her sister “Maryanne” said:

She has been very ill. She needs medication and has no money. She told me, “You have to be pretty much dead before you get to see a doctor in the camp.” I sent [Global Affairs] a picture of her ID card. That was months ago. It’s a camp-issued card. All they say is, “We are trying to establish contact with the Kurds [the Kurdish-led Autonomous Administration] to see if she is there.”

Maryanne questioned how Global Affairs would have difficulty verifying her sister's identity or whereabouts. She noted that Polman told her she had been interviewed by intelligence agents from the US, UK and France—all allies of Canada—after she surrendered to the SDF in January 2019. Moreover, Maryanne added, it was CSIS that informed relatives in 2015 that Polman had gone that year to Syria, not Austria for a job as she had initially told them.

Maryanne described Polman as “totally traumatized” from nearly four years under ISIS and more than a year in a northeast Syria camp. A handwritten letter from Polman to “Canadian authorities,” sent to her family in October 2019 as text images, painted a grim picture of her condition:

Doctor [visit]: only if dying and probably not then either. ... Medicine: maybe basic antibiotics but usually not. ... Eyeglasses: I’ve been asking for more than a year now. ...I’m constantly sick with infections. Currently I’m recovering from Hepatitis #4; I get it every 3-4 months, most likely from the water. In the camp there are/have been: TB, pneumonia, cholera, Typhoid fever, Hepatitis, desert fevers, kidney stones, unknown pulmonary (lung)

infections, influenza, asthma, skin infections, snake/spider/scorpion bites.<sup>118</sup>

Polman also wrote that she was terrified of being threatened or killed by hardliners. “Please, bring me back to Canada,” she wrote. “Please, forgive me. Let me be who I am, a Canadian.”<sup>119</sup>

In subsequent communications, Polman has described the conditions as similar. In April, she said she had a kidney infection, a lung infection and hepatitis, Maryanne said.<sup>120</sup>

Polman is a dual US-Canadian citizen but spent nearly all of her life in Canada before moving to Syria. She grew up in a dysfunctional household with a father who struggled with addiction and was psychologically abusive, Maryanne said.



Canadian Kimberly Polman in Roj camp in northeast Syria. © 2019 Maya Alleruzzo/AP Photo

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<sup>118</sup> Kimberly Polman letter to Canadian government, November 27, 2019, shared by family members with Human Rights Watch. Copy on file with Human Rights Watch.

<sup>119</sup> Ibid.

<sup>120</sup> HRW telephone interview from Toronto to another location in Canada with Maryanne, April 18, 2020.

Just before Polman secretly left for Syria in 2015, she had lost her home. The Canadian government had placed her on permanent disability at the recommendation of a psychiatrist but the notification arrived just days after she left. An adult convert to Islam, Polman had met and married an ISIS member online who lured her to the so-called caliphate with promises of love and a nursing career, Maryanne said:

He told her all the good she could do. She always considered herself a self-fashioned nurse so she thought she could go over and help the women and children. She was looking for a sense of purpose no matter how misguided.

Soon after arrival, Polman contacted her family, confessed she was in Syria, and said she wanted out. “She was panicky,” Maryanne said. “She said it wasn’t what she was expecting and that her husband was very abusive and that he wouldn’t let her leave. Then we didn’t hear from her until June 2016. We thought that she was dead.”

When she finally resurfaced, Polman texted her family that her husband had put her in an ISIS prison in Raqqa for 10 months for being a “disobedient wife.” She said her captors raped her and gave her so little food that her body weight plummeted.<sup>121</sup>

Polman told family members that she still wanted out but that she was “watched all the time and you were killed if you tried to leave.” During the fall of Baghouz, she said, she had tried to continue caring for sick and wounded children but “these kids were dying. They had nothing to treat them with—no bandages or anesthetic or medication, no formula for the babies, nothing.”

In October, Polman wrote a letter addressed “To the United Nations” signed by 10 Western ISIS wives expressing remorse and offering to recount the horrors of their time in Syria as a way to deter others from joining extremist armed groups. Maryanne shared the letter with Global Affairs but did not hear back. “I guess they weren’t interested,” she said.<sup>122</sup>

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<sup>121</sup> Anne Speckhard, “Kimberly Pullman: A Canadian Woman Lured Over the Internet to the ISIS Caliphate,” *Homeland Security Today*, March 31, 2020, <https://www.hstoday.us/subject-matter-areas/counterterrorism/kimberly-pullman-a-canadian-woman-lured-over-the-internet-to-the-isis-caliphate/> (accessed June 17, 2020).

<sup>122</sup> Human Rights Watch telephone interview with “Maryanne” (pseudonym), December 23, 2019. Copy of letter on file with Human Rights Watch.

## “Asma”: Family Willing to Pay her Way Home

When “Asma” left Canada in 2014, the family had no idea she was leaving the country, much less headed for Syria to live under ISIS, her relative “Ghani” said. “The day she left, I even drove her to the subway station. She said she was just going to donate some clothes. I dropped her off and that was it.”<sup>123</sup>

Asma later told the family she went to Syria at the behest of her husband, a UK national who had secretly moved to live under ISIS while the family thought he was in his home country. The couple settled in Raqqa. But as Raqqa began to fall to anti-ISIS forces, Asma’s communication to Canada stopped. “For about three years, we thought she was dead,” Ghani said.

“Asma” next surfaced in February 2019 in a northeast Syria detention camp, divorced with two children both under age 5. She told her family she and her children had been picked up by the SDF during the fall of Baghouz. She has been trying to return to Canada with her sons ever since, even if the price of return is prison, according to “Ghani,” a family member. But Canada Global Affairs has done nothing, he said.

“She is homesick,” Ghani told Human Rights Watch. “She told me, ‘Come get me and bring me some Tim Hortons [a popular Canadian coffee chain].’” One child has rickets and both have a nutritional deficiency that makes them crave high salt and mineral content, prompting them to “eat sand and dirt,” Ghani said.<sup>124</sup>

Ghani said the failure of Global Affairs to help him repatriate Asma and her children had prompted him to question whether Canada had a “double standard” for Muslim citizens:

I said, “We will pay for the transportation out [of Syria]. She is willing to serve time. We are not advocating[to] let her go scot-free.” They say, “We have no consular services. Sorry about your plight.” That could be on replay. It’s robotic, robotic, robotic. Even rapists and killers get their day in

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<sup>123</sup> Human Rights Watch interview with “Ghani” (pseudonym), Canada, December 17, 2019.

<sup>124</sup> Ibid.

court. Is it an Islamic thing? They're failing to uphold their [own] standards. It's disheartening as a Canadian, as someone who embraces this culture.<sup>125</sup>

The family even considered hiring a smuggler to bring Asma and her sons to Turkey or Iraq, until they learned that the high-risk journey was fraught with risks and would cost \$30,000, Ghani said.

Ghani described his relative as a victim of ISIS propaganda: "She said it was a way of bonding with people from around the world in a state governed Islamically. They sold the dream and she bought it." But, he said, Canada's response should be to hold her to account, not to punish her and her children along with her by abandoning them to squalid, indefinite detention. "There are children involved," he said.

In May, Ghani told Human Rights Watch that he had not heard from Asma in over a month. He said one of Asma's acquaintances in the camp told him they heard that guards had placed her and her two young children in a jail for camp detainees after finding them in an area of the camp that foreigners were not allowed to access. He said one of the contacts told him that jailed detainees are often confined to their cells and sometimes are held there for several months.

Ghani told Human Rights Watch that he informed Global Affairs that Asma was apparently detained, but that he remained pessimistic that they would try to intervene on her behalf: "The onus is always on the families. You lose faith in your government's ability to advocate for you."<sup>126</sup>

### **"Hazem": Imprisoned by ISIS, then by SDF**

"Hazem," one of at least eight Canadian men detained in makeshift prisons in northeast Syria, had a history of "severe depression and anxiety" and had often disappeared for months or years at a time before he left for Syria in 2015, according to "Maya," a family member.<sup>127</sup> "He was not very stable psychologically."

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<sup>125</sup> Ibid.

<sup>126</sup> Human Rights Watch telephone interview with Ghani, May 6, 2020.

<sup>127</sup> Human Rights Watch telephone interview with "Maya" (pseudonym), February 27, 2020.

In December 2014, the RCMP alerted the family that border officials had stopped Hazem for making statements they considered delusional while he was trying to cross into the US, and that they thought he needed psychiatric help. Two months later, Hazem disappeared again. More than three years passed before relatives in Canada received a letter in 2018 from the ICRC notifying them that Hazem was imprisoned in northeast Syria. Hazem's family immediately contacted Global Affairs. But Maya said her repeated conversations with consular officials led nowhere.

"It's always the exact same sentence that comes out of their mouths: 'We don't have consular services [in Syria].'" Since his detention, Hazem has had no contact with Canadian authorities even by phone or video, she said.

Increasingly frustrated, Maya traveled to northeast Syria in January 2019 to try to help Hazem. When they met in a prison administration office, he was unable to walk unassisted, entering with a guard on each side to support him.

The family member showed Human Rights Watch a photo taken during the visit. Hazem is slumped over and gaunt, with a sunken face—a sharp contrast to his healthy appearance in his Canadian driver's license photo from five years earlier. Maya described her shock:

He's done. Psychologically. I feel it, he's done. He's like a battered animal. Something about him didn't seem right. I would have preferred that he died than to see him in these unimaginable conditions. He doesn't even understand why he's being detained. I didn't have it in me to tell him, "It's because the Canadian government doesn't want you."<sup>128</sup>

Maya said a local authority told her that Hazem had been an ISIS fighter, but at some point turned over his weapons and tried to escape. ISIS then held him in the Black Stadium, a notorious stadium-turned-prison in Raqqa, the authority said.<sup>129</sup> ISIS eventually freed Hazem but the SDF detained him in December 2017, two months after the fall of Raqqa. Hazem, in contrast, told Maya that he was never a fighter and that two months after joining

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<sup>128</sup> Ibid.

<sup>129</sup> Wladimir Van Wilgenburg, "Secrets of the Black Stadium: In Raqqa, Inside ISIS' House of Horror," *Daily Beast*, October 24, 2017, <https://www.thedailybeast.com/secrets-of-the-black-stadium-in-raqqa-inside-isis-house-of-horror> (accessed March 19, 2020).

ISIS, he defected. He said he become homeless in Raqqa and was imprisoned by ISIS three times.

Maya told Human Rights Watch that she was seeking Hazem's protection, not clemency:

We are dehumanizing these people over there. They made a mistake. A major mistake. But they are human beings. I'm not defending my [relative]. I'm defending a system that we have in place. If you put me on a jury and give me the evidence that he committed a crime, I assure you I'd be no less severe than a regular juror.<sup>130</sup>

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<sup>130</sup> Ibid.

### III. Inaction on Calls for Help

“A Canadian is a Canadian is a Canadian... As soon as you make citizenship for some Canadians conditional on good behavior, you devalue citizenship for everyone.”

—Prime Minister Justin Trudeau, then the Liberal Party leader, in a leaked 2015 audio recording, opposing revocation of citizenship for Canadians convicted of terrorism.<sup>131</sup>

Canada has not repatriated or facilitated the return of any of its citizens detained in northeast Syria including the 26 children, most or all of whom never chose to live under ISIS. Nor has Canada provided effective consular assistance to the detainees, despite multiple pleas for them to do so from Canadian family members in Canada and abroad.

Canada’s inaction on repatriations and consular assistance flout its international legal obligation to take necessary and reasonable steps to intervene in favor of nationals abroad facing serious abuses including risks to life, torture, and inhuman and degrading treatment. Canada’s breaches are particularly egregious in the case of its obligations toward child citizens, including the obligation to ensure a child’s right to acquire a nationality (see Legal Standards chapter, below).

The inaction stands in stark contrast to Global Affairs’ rapid and robust evacuations of thousands of Canadians stranded abroad because of the Covid-19 pandemic. As of May 2020, Global Affairs had coordinated the repatriation of more than 40,000 Canadian citizens and permanent residents on over 350 flights from 100 countries—more than 850 times the number of Canadians detained unlawfully in northeast Syria.<sup>132</sup> repatriated included 29 Canadians from Syria—but not even one of the northeast Syrian detainees.<sup>133</sup>

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<sup>131</sup> “In audio recording, Trudeau says Bill C-24 makes citizenship conditional upon ‘good behavior,’” *CTV News*, September 17, 2015, <https://www.ctvnews.ca/mobile/politics/in-audio-recording-trudeau-says-bill-c-24-makes-citizenship-conditional-upon-good-behaviour-1.2583849> (accessed April 15, 2020).

<sup>132</sup> Kathleen Harris, “Government operation to bring home pandemic-stranded Canadians almost complete, says MP,” *CBC*, May 22, 2020, <https://www.cbc.ca/news/politics/pandemic-covid-coronavirus-repatriation-flights-foreign-affairs-1.5579425> (accessed April 15, 2020).

<sup>133</sup> Mark Mackinnon, “Canadians land in Montreal after pandemic had stranded them in Syria,” *Globe and Mail*, June 5, 2020, <https://www.theglobeandmail.com/world/article-canadians-stranded-in-syria-en-route-to-montreal-after-lebanon-aids/> (accessed June 8, 2020).

Global Affairs negotiated the evacuations with an array of governments and airlines, often using messaging applications such as WhatsApp to rapidly secure landing rights and lower flight fares, as well as passage for cruise ships with Canadians aboard.<sup>134</sup>

The government initially paid for air tickets with taxpayer money. It also approved more than 1,300 emergency travel loans and was processing thousands more to help bring Canadians home.<sup>135</sup>

Canada's inaction on repatriating child citizens also contrasts starkly with its efforts as the founder and longtime chair of the Group of Friends on Children and Armed Conflict at UN headquarters in New York.<sup>136</sup>

Based on Global Affairs' uniformly inadequate assistance to all its 47 citizens in northeast Syria, Canada appears to be limiting consular assistance to those detainees because of their suspected links to ISIS. International law forbids withholding consular services in a discriminatory or arbitrary manner because of factors such as a person's religion or their political or other views.<sup>137</sup>

Both UN Secretary-General António Guterres and Bachelet, the UN human rights commissioner, have called on all countries to assume responsibility for their nationals arbitrarily detained in northeast Syria. "It is perfectly legitimate for States to factor in national security considerations, however these cannot not be made at the expense of human rights protections," Bachelet told the UN Human Rights Council in June.<sup>138</sup>

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<sup>134</sup> Michelle Carbert, "Minister takes unconventional diplomatic steps to repatriate stranded Canadians amid Covid19," *Globe and Mail*, April 14, 2020, <https://www.theglobeandmail.com/politics/article-minister-takes-unconventional-diplomatic-steps-to-repatriate-stranded/> (Accessed April 15, 2020).

<sup>135</sup> Ibid.

<sup>136</sup> Global Affairs Canada webpage, "Children and armed conflict," [https://www.international.gc.ca/world-monde/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/armed\\_conflict-conflits\\_arnes.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/armed_conflict-conflits_arnes.aspx?lang=eng) (accessed June 6, 2020).

<sup>137</sup> "Set universal standards for effective consular assistance, UN expert urges States," OHCHR news release, October 25, 2019, <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25213&LangID=E> (accessed June 18, 2020).

<sup>138</sup> "Bachelet urges States to help their nationals stranded in Syrian camps," OHCHR news release, June 22, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25986&LangID=E> (accessed June 23, 2020).

## No Repatriations

Canada has not repatriated any of the Canadians detained in northeast Syria even though the Autonomous Administration has repeatedly called on all countries to repatriate their citizens—an appeal echoed by the Canada’s neighbor and ally the US, which has created a military task force to help international and multinational partners repatriate foreign ISIS suspects.<sup>139</sup> Canadian authorities will not even bring home Amira, a 5-year-old orphan, despite calls to do so by 16 UN independent human rights experts.<sup>140</sup>

Several Canadians held in northeast Syria have begged to be repatriated even if they may face investigation and prosecution once home.

“I made a mistake,” Mohammed Ali Saeed, a Canadian imprisoned as an ISIS suspect in northeast Syria, told Human Rights Watch in 2019. “If I could go back in time I would not have come here to Syria. Or I would have come here purely to give humanitarian aid. But obviously, I have to face the consequences.”<sup>141</sup>

Family members interviewed by Human Rights Watch also said they accepted that their relatives may be investigated or prosecuted if repatriated. “If she has to spend time in jail and face the consequences, just get me the neighboring cell,” said “Kayla” of a daughter who left Canada with her husband to live under ISIS in 2015.<sup>142</sup>

### *Canada’s Rationale for Not Repatriating*

The Canadian government says it does not comment on specific cases because of privacy considerations. However, Canadian officials have cited a number of legal, diplomatic and practical reasons for its inaction on bringing home its citizens. Human Rights Watch finds none of them persuasive.

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<sup>139</sup> Lead Inspector General Report for Operation Inherent Resolve, Quarterly Report to the US Congress, January 1-March 31, 2020 (“Inspector General Report”), May 13, 2020, <https://www.dodig.mil/Reports/Lead-Inspector-General-Reports/Article/2185122/lead-inspector-general-for-operation-inherent-resolve-i-quarterly-report-to-the/> (accessed May 20, 2020), p. 58. See also Dan E. Stigall, “Repatriating Foreign Fighters from Syria: International Law and Political Will (Part 1),” *Just Security*, March 18, 2020, <https://www.justsecurity.org/69244/repatriating-foreign-fighters-from-syria-international-law-and-political-will-part-1/> (accessed June 18, 2020).

<sup>140</sup> “Canada urged to repatriate orphaned five-year-old girl held in Syrian camp,” OHCHR news release, May 20, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25899&LangID=E> (accessed June 7, 2020).

<sup>141</sup> Human Rights Watch interview with Mohammed Ali Saeed, northeast Syria, June 26, 2019.

<sup>142</sup> HRW telephone interview with “Kayla” (pseudonym), Canada, December 19, 2019.

Under the Canadian Charter of Rights and Freedoms, every citizen has the right to “enter” Canada.<sup>143</sup> The government appears to interpret this right to apply only to citizens who present themselves at a Canadian port of entry, or who request a passport or travel document at one of its foreign consulates. According to Public Safety Canada, the right “does not obligate the government to intervene to assist Canadians abroad in their efforts to leave a foreign country and return to Canada, except where a citizen needs an emergency passport or other travel document to allow them to return.”<sup>144</sup>

However, under international human rights law, no one should be arbitrarily deprived of the right to enter their own country. Canada should not, whether through action or inaction, create direct or indirect obstacles to citizens’ efforts to exercise their right to return to Canada. Canada also has an obligation to help protect citizens abroad facing risks to life, torture and other ill-treatment, and arbitrary detention. Canada’s obligations are even stronger in the case of its detained child citizens, whom they are to treat first and foremost as victims and help obtain their right to a nationality.

At time of writing, the Canadian government had also refused to provide any emergency passports or other travel documents to its citizens detained in northeast Syria. Any identification documents these detainees had were confiscated by ISIS or by the SDF upon their capture or surrender.

Short of escaping locked camps and prisons, traversing a war zone, and crossing borders without identification papers or funds, in many cases with small children, the Canadians in northeast Syria have no way to reach the closest Canadian consulates—which are hundreds of kilometers away in Turkey or the Kurdistan Region of Iraq—unless Canada acts.

The government has also repeatedly claimed that it cannot do more for the Canadians held in northeast Syria because the region is an active conflict area and Canada has had no consular presence in Syria since 2012.

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<sup>143</sup> Canadian Charter of Rights and Freedoms, <https://laws-lois.justice.gc.ca/eng/const/page-15.html> (accessed March 10, 2020), art. 6.

<sup>144</sup> Public Safety Canada, “Mitigating the Threat Posed By Canadian Extremist Travellers,” online advisory, last updated December 20, 2019 (accessed March 10, 2020).

“Given the security situation and the lack of a physical presence on the ground, the Government of Canada’s ability to provide consular assistance in any part of Syria is extremely limited,” Foreign Affairs Minister Champagne wrote in his June 2020 letter to Human Rights Watch.<sup>145</sup>

Yet at least 20 countries have repatriated or allowed the returns of some or many citizens detained as ISIS suspects and family members from northeast Syria. While most countries have accepted only token numbers, generally orphans or young children and their mothers and at times under court order, several others have brought home citizens by the hundreds, including Kazakhstan, Russia, and Kosovo.<sup>146</sup>

Significantly, seven countries—Denmark, Finland, France, Germany, Norway, the UK, and the US—have brought home child nationals, and in some cases their mothers, since October 2019, when security in northeast Syria worsened as a result of the Turkish incursion, showing that repatriations have remained possible.<sup>147</sup> Most recently, France brought home 10 orphans and children it called “humanitarian cases” in June and a 7-year-old girl requiring emergency heart surgery in April.<sup>148</sup>

Although Canadian authorities do not cite potential political fallout as a reason, in 2017 Trudeau faced a backlash simply for supporting rehabilitation programs for Canadian ISIS suspects who return home.<sup>149</sup> To be sure, the repatriations are not always popular—in

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<sup>145</sup> Letter to Human Rights Watch from Foreign Affairs Minister Champagne, June 9, 2020.

<sup>146</sup> Countries which have repatriated or allowed the return of citizens detained as ISIS suspects and family members from northeast Syria include Australia, Austria, Denmark, Finland, France, Germany, Ireland, Italy, Kazakhstan, Kosovo, Malaysia, Morocco, Norway, Russia, Sudan, Sweden, Trinidad, UK, US, and Uzbekistan. Ireland has accepted the return of only one citizen while Kazakhstan has flown home 524.

<sup>147</sup> See, e.g., “11-month old ISIS orphan handed over to the Danish delegation,” *ANF News*, November 21, 2019, <https://anfenglish.com/rojava-syria/11-month-old-isis-orphan-handed-over-to-danish-delegation-39520> (accessed June 9, 2020); “Police: Two Finnish children have been repatriated from al-Hol Syria,” *Helsinki Times*, December 23, 2019, <https://www.helsinkitimes.fi/finland/finland-news/domestic/17129-police-two-finnish-children-have-been-repatriated-from-al-hol-syria.html?fbclid=IwAR1sTmO8al22w2b6-nW3iiPp8Ncc6axEMxTIOyCVFGm6R5RHZYuGZGxY6Hs> (accessed June 18, 2020); Mohammed Rwanduzy, “UK repatriates three British orphans from Syria,” *Rudaw*, <https://www.rudaw.net/english/world/22112019> (accessed June 18, 2020).

<sup>148</sup> “France repatriates 10 children from Syria, foreign ministry says,” *France 24*, June 22, 2020, <https://www.france24.com/en/20200622-france-repatriates-10-children-from-syria-foreign-ministry-says> (accessed June 23, 2020).

<sup>149</sup> See, e.g., Graham Slaughter, “Plan to deal with returning ISIS fighters sparks fiery exchange between Scheer, PM,” *CTV News*, <https://www.ctvnews.ca/politics/plan-to-deal-with-returning-isis-fighters-sparks-fiery-exchange-between-scheer-pm-1.3698183> (accessed June 7, 2020).

January, for example, a populist party walked out of Norway's coalition government, causing its collapse, in part over the repatriation of a woman and her child from a northeast Syria camp.<sup>150</sup> But the vast majority of repatriations have taken place with little or no controversy.

During meetings with Human Rights Watch in December, Canadian government officials said that returns were complicated by the fact that the detainees are held by the Autonomous Administration, a non-state actor whose sovereignty over northeast Syria is not officially recognized by many countries including Canada.<sup>151</sup>

Human Rights Watch acknowledges that the government of Canada may face additional challenges in assisting citizens detained in a theater of armed conflict by a non-state actor with which it lacks consular relations. However, in his June 2020 letter to Human Rights Watch, Foreign Affairs Minister Champagne acknowledged that Canada has established a "channel" to communicate with Autonomous Administration authorities about Canadian detainees.<sup>152</sup>

Moreover, the Canadian government has contacted and even met with representatives of the Autonomous Administration in the past, Dr. Abdulkarim Omar, co-chair of the administration's foreign relations commission, told Human Rights Watch.<sup>153</sup> Canada was the first country to communicate with the Autonomous Administration about repatriating its citizens, in 2018, Omar said. Canadian and Autonomous Administration officials even agreed to a number of returns during a meeting that year in Suleimaniyah, a district in the neighboring Kurdistan Region of Iraq, he added:

They sent us application forms and travel document papers. Canadians [detained in northeast Syria] filled out all of it and we sent back scanned versions. We got to the point of them coming to pick up their citizens, then

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<sup>150</sup> Jack Guy, James Frater, and Sarah Dean, "Norway's governing coalition collapse over ISIS repatriation," *CNN*, January 20, 2020, <https://www.cnn.com/2020/01/20/europe/norway-government-collapse-isis-intl/index.html> (accessed June 5, 2020).

<sup>151</sup> Human Rights Watch meetings with officials from Global Affairs, Public Safety and the Prime Minister's office, Ottawa, December 19, 2019.

<sup>152</sup> Letter to Human Rights Watch from Foreign Affairs Minister Champagne, June 9 2020.

<sup>153</sup> Human Rights Watch telephone interview with Abdulkarim Omar, co-chair of the Foreign Relations Commission for the Autonomous Administration of Northeast Syria, January 26, 2020.

everything stopped. We don't know why. This was two years ago. ... We would love a meeting with Canada on this issue.<sup>154</sup>

The Autonomous Administration has required countries to send representatives to meet with them in northeast Syria during handovers of citizens.<sup>155</sup> Alternatively, however, it has accepted meetings inside northeast Syria with non-governmental delegates—provided that foreign countries have designated them as their emissaries—and in such cases has transferred the foreigners to officials from their respective governments at the border with the Kurdistan Region of Iraq. From there, the foreigners have been driven three hours to the Iraqi Kurdistan capital of Erbil, where Canada and many of its allies have consulates, and flown home.<sup>156</sup>

Canada could also communicate with the Autonomous Administration through the Global Coalition Against ISIS or the US military, which has a team to assist the SDF on issues involving the detainees in camps and prisons as well as to help countries repatriate their detained nationals,<sup>157</sup> or through allied countries that have already repatriated some or many citizens. Humanitarian organizations also have assisted countries in repatriating nationals detained in northeast Syria.

While Canada's lack of a consular presence in Syria may be a hindrance, it did not prevent the Trudeau government from allowing Lebanon—a country where it has staged troops to counter ISIS in the region<sup>158</sup>—to mediate the release of a Canadian citizen, Kristian Lee Baxter, from a prison controlled by the Assad government in Syria.<sup>159</sup> Nor did it prevent Canada from coordinating the evacuations from Syria of the 29 Canadians in response to Covid-19.

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<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid., as well as Human Rights Watch telephone and internet communications with two individuals with firsthand knowledge of Western European repatriations who spoke on condition of anonymity, February 21, 2020 and May 15, 2020.

<sup>157</sup> Inspector General Report, May 13, 2020, p. 58.

<sup>158</sup> Charlie Pinkerton, "Canada's military training mission was ready to resume in Iraq until COVID-19 outbreak," *iPolitics*, March 9, 2020, <https://ipolitics.ca/2020/03/09/canadas-military-training-mission-was-ready-to-resume-in-iraq-until-covid-19-outbreak/> (accessed June 5, 2020).

<sup>159</sup> Lebanon's general security chief and Canada's ambassador to Lebanon announced Baxter's release in August 2019 in a news conference in Beirut. See Sarah El Deeb, "Canadian citizen freed from Syria after Lebanese mediation," AP, August 9, 2019, <https://abcnews.go.com/International/wireStory/canadian-citizen-freed-syria-lebanese-mediation-64877304> (accessed June 5, 2020).

Global Affairs and Public Safety did not respond to questions from Human Rights Watch regarding what requests, if any, the government of Canada has made to the Autonomous Administration regarding repatriations of its citizens.<sup>160</sup> Champagne's letter to Human Rights Watch said only that Canadian officials have used their communication channel with Autonomous Administration authorities "to verify the whereabouts of the Canadian citizens who have sought consular assistance from the Government of Canada, and to advocate for their well-being to the extent possible."<sup>161</sup>

In a joint legal opinion issued in February on the detainees in northeast Syria, two UN human rights experts, the Special Rapporteur on countering terrorism and the Special Rapporteur on extrajudicial executions, questioned the excuses used by countries such as Canada to stall repatriations, finding that countries have a duty to take "necessary and reasonable steps to intervene in favor of their nationals abroad" when they face the risk of egregious human rights violations including risk to life, torture and inhuman treatment, arbitrary detention and flagrant denial of justice:<sup>162</sup>

In light of the inhumane, degrading and increasingly dangerous situations of detention, the Special Rapporteurs cannot accept that stated practical challenges faced by States in the return process, including the lack of consular representation in areas where nationals are present and the shortage of information on the whereabouts of and conditions faced by nationals in conflict zones who frequently find themselves in the power of armed groups operating as de facto authorities, be used as excuses to obstruct return.<sup>163</sup>

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<sup>160</sup> Letter to Foreign Affairs Minister François-Philippe Champagne and Minister of Public Safety Bill Blair from Human Rights Watch, January 13, 2020. Copy on file with Human Rights Watch.

<sup>161</sup> Letter to Human Rights Watch from Foreign Affairs Minister Champagne, June 9, 2020.

<sup>162</sup> Agnes Callamard and Fionnuala Ni Aolain, Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic, February 20, 2020, <https://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf>, paras 3, 14-16.

<sup>163</sup> *Ibid.*, para 4.

## Inadequate Consular Assistance

In June 2020, Foreign Affairs Minister Champagne wrote to Human Rights Watch that “Canadian consular officials are engaged directly with the Canadians in the custody of the [Autonomous Administration] ... or their family members in Canada, to monitor their location and well-being.”<sup>164</sup>

But all 11 Canadian family members interviewed by Human Rights Watch said assistance from officials at Global Affairs Canada or its consular services section was inadequate or non-existent despite their repeated pleas to the government to repatriate relatives held in northeast Syria or to help them do so, or even to improve their relatives’ conditions of detention.

None of the 11 family members said they had information that a Canadian consular official had contacted their detained relatives in northeast Syria. They also said they had no information on what steps, if any, their government has taken to monitor the health, wellbeing, and treatment of their loved ones, including the 26 children.

“The help from Canada has been next to nothing,” said “Michael,” who has been beseeching Global Affairs to help him bring home his widowed daughter and her three young children from northeast Syria. “Canada is taking refugees from Syria but it is ignoring its own citizens.”<sup>165</sup>

Canada’s Consular Services Charter promises that the government is “committed to providing effective and efficient consular service to Canadians around the world” and “emergency assistance to Canadians 24/7.”<sup>166</sup> In cases of Canadians detained abroad, consular officials will attempt to make contact with the detainee within one business day and at regular intervals thereafter to ensure that they are not being mistreated.<sup>167</sup> Consular

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<sup>164</sup> Letter from Foreign Affairs Minister Champagne to Human Rights Watch, June 9, 2020.

<sup>165</sup> Human Rights Watch telephone interview with Michael from New York to Canada, February 8, 2020. Canada has granted asylum to 40,000 Syrian refugees since 2015, according to <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/welcome-syrian-refugees/key-figures.html> (accessed April 2, 2020).

<sup>166</sup> Government of Canada, Canadian Consular Services Charter, “Assisting Canadians Abroad,” April 27, 2016, <https://travel.gc.ca/assistance/emergency-info/consular/canadian-consular-services-charter#assisting> (accessed April 2, 2020).

<sup>167</sup> Government of Canada, Global Affairs, *Guide for Canadians Detained Abroad*, <https://travel.gc.ca/travelling/publications/guide-for-canadians-detained-abroad> (accessed April 2, 2020).

officials can “advocate to ensure that your basic needs are met; raise medical or dental issues with local authorities...; transmit concerns through official channels to local officials and prison representatives about any treatment that could affect your health and well-being.”<sup>168</sup>

Human Rights Watch learned of one case in which a Canadian detainee managed to call Global Affairs. Autonomous Administration authorities in January 2018 allowed the prisoner, Jack Letts, to make the call from a northeast Syrian prison after international media published his allegations from prison that he had been tortured, held incommunicado for more than one month, and needed medical care.<sup>169</sup> Letts’ father, John Letts, said that Global Affairs officials told him that they had requested medical care but, despite his requests for updates, provided no evidence that it was provided, much less any evidence that they had investigated his son’s allegations of abuse.<sup>170</sup>

Consular officials are “committed to ... ensuring more frequent contact when a detained Canadian is *deemed to be particularly vulnerable* [emphasis added],” the Global Affairs website advises. Such cases may include “the potential violation of an individual’s human rights; where a Canadian suspects or has made allegations of mistreatment or torture, or where these are suspected; [or] a Canadian is held ‘incommunicado’...”<sup>171</sup>

Canada’s apparent lack of outreach to Letts contrasts with the findings of a 2018 report to parliament on consular services to Canadians abroad, submitted by the Auditor General of Canada, which said that in “cases involving allegations of mistreatment or torture of Canadians detained abroad . . . consular officers took immediate action to contact detainees and make in-person visits when possible.”<sup>172</sup> The report faulted consular officials for taking one to six months to formally assess the allegations. That is far less time than the three years since Letts first alleged he was tortured.

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<sup>168</sup> Ibid.

<sup>169</sup> Transcript of call from Jack Letts to Global Affairs Canada, January 10, 2018. Copy on file with Human Rights Watch. See also See Letts section in Case Studies of the Canadians chapter, above.

<sup>170</sup> Human Rights interview with John Letts, Human Rights Watch telephone interview with John Letts from New York to Oxford, England, February 7, 2020.

<sup>171</sup> Government of Canada, Consular Services: Service Standards, last modified September 4, 2019, <https://travel.gc.ca/assistance/emergency-info/consular/standards> (accessed April 2, 2020).

<sup>172</sup> Auditor General of Canada, 2018 Spring Reports to the Parliament of Canada, Report 7—Consular Services to Canadians Abroad—Global Affairs Canada, [https://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201805\\_07\\_e\\_43039.html#p52](https://www.oag-bvg.gc.ca/internet/English/parl_oag_201805_07_e_43039.html#p52) (accessed May 3, 2020).

Four family members said Global Affairs would not confirm whether they could legally send cash to family members who were pleading for emergency supplies of food, medicine, and clothing.<sup>173</sup> “Kiran” burst into tears as she described her efforts to obtain help from a Global Affairs case worker for her six Canadian family members detained in northeast Syria, three of them young children:

I begged her. I said, “Please, send them food or can you please check, is there is a way to send money?” She said, “We can’t.” Do they just want them to die? That’s what it seems like. It’s miserable there. I have a text from my daughter: the tent collapsed on them, it was muddy, it was cold, they were in wet clothes all night. These children, where are they going to get food, medicine, vitamins? You’re [Global Affairs] not helping them survive, and you’re not letting me help them.<sup>174</sup>

The Global Affairs website advises that consular officials can “arrange for the purchase (at your expense and if permitted) of food supplements, essential clothing and other basic items not available through the prison system.”<sup>175</sup> The Consular Services Charter says that consular officials will contact relatives or friends to request assistance in sending a citizen money or airline tickets, and “transfer funds if urgent financial assistance is required and all other options have been exhausted.”<sup>176</sup>

In his letter to Human Rights Watch, Foreign Affairs Minister Champagne said that the government has no way to facilitate money transfers “since it does not have a presence on the ground,” and advised Canadians seeking to transfer funds to their loved ones to consult a lawyer. The letter did not say whether Canada had explored alternative methods for the family members to send cash or essential supplies to their loved ones.<sup>177</sup>

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<sup>173</sup> Human Rights Watch telephone interviews with and Kayla, December 19, 2019 and “Kiran” (pseudonym), December 23, 2019; and in-person interviews in Canada with “Basma” (pseudonym) and “Lakia” (pseudonym), December 21, 2019;

<sup>174</sup> Human Rights Watch telephone interview with Kiran, December 23, 2019.

<sup>175</sup> Global Affairs, *Guide for Canadians Detained Abroad*, <https://travel.gc.ca/travelling/publications/guide-for-canadians-detained-abroad> (accessed April 2, 2020).

<sup>176</sup> Government of Canada, Canadian Consular Services Charter, “Assisting Canadians Abroad,” April 27, 2016, <https://travel.gc.ca/assistance/emergency-info/consular/canadian-consular-services-charter#assisting> (accessed April 2, 2020).

<sup>177</sup> Letter from Foreign Affairs Minister Champagne to Human Rights Watch, June 9, 2020.

Most of the family members said that Global Affairs only assigned them a junior case worker, with no decision-making authority, despite the complexities of their loved ones' cases: detentions of citizens with alleged ties to a transnational extremist armed group by a non-state authority in a zone of armed conflict, many of them young children lacking recognized birth certificates. All family members said they received evasive and at times contradictory answers when they asked about options for repatriation or even confirmation of the citizenship of their detained relatives, including in four cases in which family members traveled all the way from Canada to northeast Syria in failed quests to help their relatives or get them out.

Each time a family member takes a step that Global Affairs says is necessary for obtaining the government's assistance, "They just keep moving the goal posts further and further back," said "Karim," the uncle of orphan Amira.<sup>178</sup>

Karim was one of three family members who said Global Affairs would not tell them what kind of DNA testing they would accept to help confirm citizenship through blood relatives. Instead, they said, Global Affairs told them they needed to contact Immigration, Refugees and Citizenship Canada (IRCC) for all details on DNA tests and other means of citizenship verification—but did nothing to help them reach the right office or person, giving them only the email address or telephone number for general information.<sup>179</sup> IRCC, in turn, did not provide any relevant information and referred the family members back to Global Affairs, they said.

Consular services notes that contacts with the detainee may be impeded by factors "beyond [its] control" including "violent conflict."<sup>180</sup> Notwithstanding the armed conflict in northeast Syria, Human Rights Watch can find no logical excuse for delays of months or even, in some cases, years, in contacting citizens there. The argument that the conflict has impeded Canada's ability to provide consular services is particularly questionable in light of Canada's past and current communication with the Autonomous Administration, the contacts between Autonomous Administration representatives and other Western

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<sup>178</sup> Human Rights Watch interview with "Karim" (pseudonym), Canada, December 17, 2019.

<sup>179</sup> Human Rights Watch interviews with Karim, December 17, 2019, and Basma and Lakiya, December 21, 2019.

<sup>180</sup> Government of Canada, Consular Services: Service Standards, last modified September 4, 2019, <https://travel.gc.ca/assistance/emergency-info/consular/standards> (accessed May 21, 2020).

governments including allies of Canada, and the close military alliance between the SDF and the Global Coalition Against ISIS, of which Canada is a member.

Global Affairs could also arrange to interview Canadian detainees individually confidentially via video conference in SDF or other Autonomous Administration administrative buildings. Such conferencing could be used not only to assess detainees' needs, but to help verify citizenship and issue identity documents, in line with the Canadian Citizenship Act.<sup>181</sup> Aid groups have expressed willingness to facilitate communications.

All family members interviewed by Human Rights Watch said they had cooperated with the Royal Canadian Mounted Police (RCMP) and Canadian Security Intelligence Service (CSIS, Canada's lead intelligence agency) and contrasted their responsiveness to that of Global Affairs. "One branch of government is getting information and intelligence from you, while others are claiming not to know where she is," said "Maryanne," whose sister is detained in northeast Syria.

Several family members anguished over whether their appeals to Global Affairs would have been more effective had they publicly campaigned in news conferences or media interviews. But they said they were too scared, fearing repercussions against them and their family members in Canada, as well as retaliation against their loved ones detained in northeast Syria, to go public.

One Canadian woman, "Basma," told Human Rights Watch that she was stigmatized as word leaked out in her community that one of her relatives had died in Syria:

There's a lot of stigma. People think, " Their son became like that for a reason." ... Everything is blamed on the family. ...I had to change my email, I had to close social media accounts. All of a sudden, I had to become this person who had to try and advocate and defend all of the Muslims around the world and try to convince everyone that we're not bad people and we're

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<sup>181</sup> Under sections 12(1) (a)-(b) of the Canadian Citizenship Act, the Minister of Immigration, Refugees, and Citizenship shall provide citizenship applicants with a "means to establish their citizenship," verify it "*including by way of an electronic system*" (emphasis added) and, if verified, issue them a certificate of citizenship. Citizenship Act, R.S.C., 1985, c. C-29, <https://laws-lois.justice.gc.ca/eng/acts/c-29/page-1.html#h-81636>.

not terrorists. We were harassed on so many levels, whether it was [by] individuals or the media. It was unbelievable.<sup>182</sup>

Citing security considerations, Foreign Affairs Minister Champagne's letter to Human Rights Watch did not respond to our written request, first sent in January, for details on what consular assistance it has provided to Canadians detained in northeast Syria or what assistance it has given these detainees' family members in Canada apart from connecting detainees with the ICRC.<sup>183</sup> The letter also did not respond to Human Rights Watch questions about whether the government has asked authorities in northeast Syria to facilitate efforts by Canadian family members to officially establish the identities of their detained relatives, including by obtaining signatures on affidavits attesting to their identities or those of detained children.

### *Past Accusations of Discrimination*

Consular Services has been repeatedly criticized in recent years for inadequate and discriminatory responses to requests from Canadian citizens for assistance.

In December 2019, a yearlong investigation by the *Globe and Mail*, Canada's highest-circulation newspaper, found "fundamental problems, including unclear standards, failures to meet what few measurable standards there are and unequal treatment of consular cases."<sup>184</sup>

The investigation found that consular cases that attract the attention of the minister of foreign affairs through public campaigns and calls to members of parliament may receive the minister's preferential treatment and direct engagement. It also quoted a former assistant deputy minister for consular affairs who stressed the geo-political issues at play, asking: "How far are you going to press to solve a particular consular case in the context of your overall relationship with another country, bearing in mind the potential impacts on other Canadians in that country?"

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<sup>182</sup> Human Rights Watch interview with "Basma" (pseudonym), Canada, December 21, 2020.

<sup>183</sup> Letter from Foreign Affairs Minister Champagne to Human Rights Watch, June 9, 2020.

<sup>184</sup> Annie Burns-Pieper, "How Canada's patchwork of consular services leaves some citizens fighting for life and justice abroad," *Globe and Mail*, December 25, 2019, <https://www.theglobeandmail.com/canada/article-canadian-consular-services-investigation/> (accessed May 3, 2020).

Global Affairs Canada has faced billions of dollars worth of legal claims since 2011 over its consular assistance to Canadians abroad, the *Globe and Mail* investigation revealed. Many of the lawsuits stemmed from citizens who faced allegations of terrorism or allege they were wrongfully imprisoned and, in some cases, tortured in foreign countries.”<sup>185</sup>

In 2019, Amnesty Canada and the Vancouver-based Fahmy Foundation developed a proposed Consular Services “protection charter” intended to address “a growing perception that some Canadians who face human rights violations abroad receive less political support than others might, because of their personal, family, political or religious background.”<sup>186</sup>

The protection charter recommends 12 measures to address gaps and inconsistencies in Canada’s provision of consular assistance to Canadians. They include enshrining the right to consular assistance in Canadian law, developing transparent criteria to guide consular assistance, and establishing an independent office for review of consular assistance.<sup>187</sup> At time of writing, the government had discussed several of the recommendations but only adopted one, to provide consistent support for death penalty clemency.

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<sup>185</sup> Annie Burns-Pieper, “Global Affairs Canada has faced billions in legal claims since 2011 over consular aid for Canadians abroad,” *Globe and Mail*, January 10, 2020, <https://www.theglobeandmail.com/canada/article-global-affairs-canada-has-faced-billions-in-legal-claims-since-2011/#c-image-o> (accessed May 3, 2020).

<sup>186</sup> Amnesty International and Fahmy Foundation, Canada Protection Charter, January 26, 2016, <https://www.amnesty.ca/sites/default/files/CanadaProtectionCharter26January16.pdf> (accessed March 11, 2020). The Fahmy Foundation was started by Mohamed Fahmy, an award-winning journalist who has said that Canada could have done more to effectively raise his case when Egypt imprisoned him for 438 days in 2013-14 on bogus terrorism charges. <https://www.ourcommons.ca/Content/Committee/421/FAAE/Reports/RP10186936/faaerp21/faaerp21-e.pdf> (accessed March 30, 2020); Mohamad Fahmy says Canadian government could have done more to secure his release,” CBC, October 7, 2015, <https://www.cbc.ca/news/canada/mohamed-fahmy-canadian-government-release-1.3261362> (accessed June 19, 2020), p. 10-11.

<sup>187</sup> Amnesty International, Canada Protection Charter, January 26, 2016, <https://www.amnesty.ca/sites/default/files/CanadaProtectionCharter26January16.pdf> (accessed March 11, 2020).

## IV. Closing Accountability Gap

As a practical matter, Canada is the only country currently equipped to investigate and, if appropriate, prosecute Canadians detained in northeast Syria for potential involvement in serious ISIS crimes. Options floated by the Autonomous Administration, Western countries, and others to pursue justice in the region for ISIS war crimes, crimes against humanity, and apparent genocide for those held in northeast Syria appear to have been put on hold, possibly indefinitely. The longer Canadian authorities allow citizens suspected of ISIS association to remain in northeast Syrian camps and prisons without credible investigation, the greater the chance of evidence being lost amid the fog of war and of victims losing their right to accountability.

### Rights of Victims, Risks of Escape

The indefinite detention without charge of the Canadians in northeast Syria not only violates their rights to be promptly brought before a judge, it also denies victims redress for any crimes these detainees may have committed. ISIS members suspected of serious crimes may also flee amid the instability created by the ongoing armed conflict in northeast Syria, allowing them to evade justice—and also, as the US-led Global Coalition Against ISIS has repeatedly warned, to regroup.<sup>188</sup>

The detainees in camps and prisons in northeast Syria pose a “significant risk” to the Global Coalition operations to defeat ISIS, warned a US government agency report in May 2020 that calls on countries to repatriate their detained nationals. Riots and ongoing escape attempts underscore “the high-impact risk of a mass breakout,” it said.<sup>189</sup> In addition, “ISIS retains a smuggling network in the camps, bringing in supplies and moving family members in and out.”<sup>190</sup>

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<sup>188</sup> See., e.g., Statement of General Kenneth F. McKenzie, Jr., Commander, United States Central Command Before The House Appropriations Subcommittee on Defense, March 11, 2020, <https://docs.house.gov/meetings/AP/APo2/20200311/110703/HHRG-116-APo2-Wstate-McKenzieJrK-20200311.pdf> (accessed May 20, 2020).

<sup>189</sup> Inspector General Report, May 13, 2020, <https://www.dodig.mil/Reports/Lead-Inspector-General-Reports/Article/2185122/lead-inspector-general-for-operation-inherent-resolve-i-quarterly-report-to-the/> (accessed May 20, 2020), p. 57-58.

<sup>190</sup> *Ibid.*, p. 53.

ISIS leaders have called for the detainees to break out of the prisons and for supporters to help them do so.<sup>191</sup>

Immediately following Turkey's invasion of northeast Syria in October, at least 100 ISIS suspects escaped SDF-controlled prisons and some 850 foreign women and children held as ISIS family members fled the now-closed Ain Issa camp when it was hit by a Turkish air strike.<sup>192</sup> On March 29, during their riot at Ghweran prison some of the 5,000 imprisoned ISIS suspects temporarily broke through cell doors and seized the ground floor.<sup>193</sup> Four prisoners reportedly managed to reach the perimeter before being captured.<sup>194</sup> Prisoners again seized Ghweran for several hours on May 3.<sup>195</sup>

Continued unlawful detention of the Canadian detainees in deeply degrading, and at times inhuman and life-threatening conditions also risks exacerbating grievances among detainees that could generate additional recruits and further violence by extremist armed groups, creating yet more victims. As the UN Security Council, the UN Secretary-General and Global Counter-Terrorism Strategy warn, violations of human rights are not only unlawful, they are also drivers of terrorism.<sup>196</sup>

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<sup>191</sup> Louisa Loveluck, "Inside Syria's teeming ISIS prisons: broken men, child inmates and orders to break free," *Washington Post*, November 1, 2019, [https://www.washingtonpost.com/world/middle\\_east/inside-syrias-teeming-isis-prisons-broken-men-child-inmates-and-orders-to-break-free/2019/11/01/25219bda-fb39-11e9-9e02-1d45cb3dfa8f\\_story.html](https://www.washingtonpost.com/world/middle_east/inside-syrias-teeming-isis-prisons-broken-men-child-inmates-and-orders-to-break-free/2019/11/01/25219bda-fb39-11e9-9e02-1d45cb3dfa8f_story.html) (accessed March 19, 2020).

<sup>192</sup> Joe Gould, "US does not know where ISIS escapees are, says Syria envoy," *Defense News*, October 23, 2019, <https://www.defensenews.com/congress/2019/10/23/us-does-not-know-where-isis-escapees-are-says-syria-envoy/> (accessed June 5, 2020); "Hundreds of ISIL prisoners escape Syrian camp, Kurds say," *Al Jazeera*, October 13, 2019, <https://www.aljazeera.com/news/2019/10/hundreds-isil-prisoners-escape-syrian-camp-kurds-191013141044768.html> (accessed March 19, 2020). See also General Report, May 13, 2020.

A US troop withdrawal from northeast Syria in October—later partially reversed—allowed Turkey to capture areas of the region along its southern border and also allowed Syrian and allied Russian forces supporting Syrian President Bashar al-Assad to push further north into areas controlled by the Autonomous Administration.

<sup>193</sup> Liz Sly and Louisa Loveluck, "Kurdish-led forces put down revolt by ISIS detainees at prison in Syria," *Washington Post*, March 30, 2020, [https://www.washingtonpost.com/world/middle\\_east/islamic-state-detainees-mutiny-at-prison-in-syria/2020/03/30/8fc4a0dc-7252-11ea-ad9b-254ec99993bc\\_story.html](https://www.washingtonpost.com/world/middle_east/islamic-state-detainees-mutiny-at-prison-in-syria/2020/03/30/8fc4a0dc-7252-11ea-ad9b-254ec99993bc_story.html) (accessed April 8, 2020).

<sup>194</sup> Garland, "US-backed Syria forces say ISIS detainees caught at prison perimeter following uprising," *Stars and Stripes*, March 30, 2020, <https://www.stripes.com/news/middle-east/us-backed-syria-forces-say-isis-detainees-caught-at-prison-perimeter-following-uprising-1.624158> (accessed June 18, 2020).

<sup>195</sup> Bassam Mroue, "Islamic State prisoners agree to end riot in Syria jail," Associated Press, May 3, 2020, <https://apnews.com/729e249f1e441f2a97d9d27803875e94> (accessed June 5, 2020).

<sup>196</sup> UN General Assembly, The United Nations Global Counter-Terrorism Strategy, A/RES/60/288, September 8, 2006, <https://www.un.org/sc/ctc/news/document/ares60288-adopting-the-global-counter-terrorism-strategy/> (accessed June 22, 2020). See also UN Security Council, Tenth 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/2020/95, February 4, 2020, <https://www.un.org/sc/ctc/news/document/title-s-2020-95-tenth-report-secretary-general-threat-posed-isil-daesh-international-peace-security-range-united-nations-efforts-support/> (accessed April 17,

## Potential to Monitor or Prosecute in Canada

In meetings with Human Rights Watch, Canadian government officials expressed concern that once home, the returnees could pose a security risk to Canada. They said they feared they might not be able to prosecute suspects whom they suspected of wrongdoing. Part of the challenge they outlined was the difficulty of converting intelligence on alleged crimes that occurred thousands of miles away into evidence admissible in Canadian courts.<sup>197</sup>

Human Rights Watch upholds the international legal obligation of all countries to keep individuals on their territory safe and recognizes that returning ISIS suspects may pose security challenges. But states have a parallel international legal obligation to prosecute egregious human rights crimes.<sup>198</sup> Moreover, legally binding resolutions enacted by the UN Security Council require all member states to prosecute crimes of so-called “foreign terrorist fighters.”<sup>199</sup> Canada, a mature democracy with a robust criminal justice system, possesses an array of legal tools to fulfill these obligations by investigating and, if appropriate, prosecuting citizens it repatriates from northeast Syria.

While the cases against Canadians who may be implicated in ISIS crimes abroad could be complex, the number of potential suspects is small and Canada’s criminal justice system is equipped to absorb them. Only 24 of the 47 Canadian detainees in northeast Syria were above the age of criminal responsibility at the time of their capture by the SDF: 8 men, 13 women, and a 17-year-old boy. Prosecutions for association with an armed group should be an exceptional measure of last resort, particularly for those under age 14. (See Legal Standards chapter of this report.)

Any repatriated Canadians suspected of the international crimes of genocide, crimes against humanity, or war crimes could and should be investigated for potential prosecution under Canada’s Crimes Against Humanity and War Crimes Act, which imposes

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2020), para. 11. See also UN Security Council, Resolution 2396 (2017), S/RES/2396, [https://undocs.org/S/RES/2396\(2017\)](https://undocs.org/S/RES/2396(2017)) (accessed June 19, 2020), para. 33.

<sup>197</sup> Human Rights Watch background briefings with officials from Global Affairs, Public Safety and the Office of the Prime Minister, December 19, 2020.

<sup>198</sup> Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 19, 1998, entered into force July 1, 2002, preamble. See also UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), December 10, 1984, UNTS, vol. 1465, p. 85, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (accessed May 1, 2020), art. 7.

<sup>199</sup> UN Security Council, resolution 2178 (2014), S/RES/2178 (2014), [https://www.undocs.org/S/RES/2178%20\(2014\)](https://www.undocs.org/S/RES/2178%20(2014)) (accessed June 19, 2020) See also UN Security Council, Resolution 2396 (2017), S/RES/2396 (2017).

a maximum sentence of life imprisonment for those offenses.<sup>200</sup> Canada's Crimes Against Humanity and War Crimes Program is mandated to examine all claims that suspected perpetrators of war crimes and crimes against humanity are living in Canada and, where appropriate, investigate and prosecute these individuals.<sup>201</sup>

The program has not been amply funded but with additional resources could investigate repatriated Canadians suspected of committing grave crimes while abroad, as provided under the Crimes against Humanity and War Crimes Act, two Canadian legal experts said.<sup>202</sup>

Canadian judicial authorities may also seek cooperation from UN-mandated teams investigating serious crimes related to the ISIS conflict in Syria and Iraq to obtain relevant information to facilitate proceedings where possible. In particular, the UN investigative mechanism on Syria has noted its improved capacity to respond to requests for judicial cooperation.<sup>203</sup>

Interpol and Canada's partners in the Global Coalition Against ISIS may also share relevant information and materials. Indeed, in a binding resolution in 2017, the United Nations Security Council called on all UN member states to share law enforcement information to ensure appropriate prosecutions of foreign fighter suspects.<sup>204</sup>

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<sup>200</sup> Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, <https://www.canlii.org/en/ca/laws/stat/sc-2000-c-24/latest/sc-2000-c-24.html> (accessed March 3, 2020).

<sup>201</sup> Canada Department of Justice website, Crimes Against Humanity and War Crimes Program Evaluation, <https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2016/cahwc-cchcg/p3.html> (accessed June 16, 2020).

<sup>202</sup> Human Rights Watch telephone interview in Canada with two Canadian lawyers, one specializing in national security law and one in international criminal law, who spoke on background, February 5, 2020. On funding, see also Department of Justice, Evaluation Division Corporate Services Branch, Crimes Against Humanity and War Crimes Program Evaluation, Final Report, August 2016, <https://www.justice.gc.ca/eng/cj-jp/wc-cdg/prog.html> (accessed March 12, 2020), pp. 11, 72. Section 8(a)(1) of the Crimes against Humanity and War Crimes Act allows prosecutions of Canadian citizens implicated in serious international crimes abroad. Section 8(b) allows prosecutions of anyone present in Canada after the time the offence is alleged to have been committed.

<sup>203</sup> UN General Assembly, Fifth Report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, A/74/699, February 13, 2020, <https://undocs.org/en/A/74/699> (accessed June 3, 2020).

<sup>204</sup> UN Security Council, Resolution 2396 (2017), S/RES/2396 (2017).

Canada's rules of evidence may create challenges in building a case, but if information from foreign sources is not sufficiently credible to be used in its own courts, questions arise over its value to inform any possible criminal proceedings in northeast Syria or elsewhere.

Should Canada suspect returnees of involvement in ISIS crimes that are grave yet fall short of war crimes, crimes against humanity, or genocide, it can also consider prosecuting or monitoring them under domestic terrorism laws applicable to crimes committed at home or abroad. Indeed, if anything, the risk is that Canada could overstep its application of these laws as notwithstanding significant reforms in 2017, some of their provisions remain overly broad.<sup>205</sup>

Under the Criminal Code, leaving or attempting to leave Canada to knowingly participate in a terrorist group or contribute, directly or indirectly, to the group's ability to facilitate or carry out a terrorist activity is a crime punishable by up to 10 years in prison.<sup>206</sup> There is no requirement that the accused enhanced the terrorist group's abilities or knew the specific nature of the activity that he or she might have facilitated.<sup>207</sup> Commission of, or intent to commit, a specific terrorist act abroad carries sentences ranging from 14 years to life in prison.<sup>208</sup>

If the Canadian authorities lack sufficient evidence for a criminal charge, they may ask courts to impose terrorism peace bonds—restraining orders on individuals whom they have “reasonable grounds” to fear may commit a terrorism offense.<sup>209</sup> Among other restrictions, the courts may order suspects to participate in a treatment program; wear an electronic monitoring device; limit the times they may leave the home, the places they may travel and their access to the Internet; and confiscate their passports or other travel documents.<sup>210</sup>

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<sup>205</sup> See, for example, Craig Forcese and Kent Roach, “The roses and the thorns of Canada's new national security bill,” *Maclean's*, June 20, 2017, <https://www.macleans.ca/politics/ottawa/the-roses-and-thorns-of-canadas-new-national-security-bill/>; Andrew Seal, “A New National Security Act for Canada,” *OpenCanada*, April 11, 2018, <https://www.opencanada.org/features/new-national-security-act-canada/> (both accessed February 5, 2020).

<sup>206</sup> Criminal Code, section 83.181 in conjunction with section 83.18(1), <https://laws-lois.justice.gc.ca/eng/acts/c-46/FullText.html> (accessed February 5, 2020).

<sup>207</sup> *Ibid.*, as well as Criminal Code sections 83.18(2) and 83.18(3)(d).

<sup>208</sup> Criminal Code, sections 83.19 to 83.27.

<sup>209</sup> *Ibid.*, section 810.011.

<sup>210</sup> *Ibid.*, subsections (6)-(10).

The Criminal Code also permits preventive detention of terrorism suspects upon court order if a peace officer suspects on reasonable grounds that a terrorist activity may be carried out, and suspects on reasonable grounds that the restraining orders or arrest is necessary to prevent the terrorist act.<sup>211</sup> In addition, CSIS has controversial powers to not only investigate but also to disrupt suspected terrorist activity.<sup>212</sup>

Canada has experience prosecuting terrorism. From 2001 through 2018, it charged 55 suspects with terrorism-related offenses, 12 of them for leaving or attempting to leave Canada for the purposes of committing terrorism crimes.<sup>213</sup> Of those 12, four were convicted and two were awaiting trial at time of writing. The authorities withdrew charges against one suspect and imposed terrorism peace bonds on two. Warrants were outstanding against four others.<sup>214</sup>

## Lack of Fair Trial Options Abroad

In February, the Autonomous Administration announced that it would begin prosecuting foreign men and women for ISIS-related crimes.<sup>215</sup> In April, however, the Autonomous Administration indefinitely suspended the plan, citing concerns about Covid-19.<sup>216</sup> Even before then, it was unclear how the embattled, cash-strapped authority could finance the proceedings, and whether it would be able to provide lawyers, right to appeal, foreign-language interpreters and other fair-trial guarantees.

It was also unclear whether the Autonomous Administration would be enacting laws to criminalize the international crimes of war crimes, crimes against humanity, and genocide for ISIS atrocities against the Yezidi religious minority. Nor did the Autonomous Administration explain what would become of foreigners who were not charged or were acquitted, including the 8,000 children, or where those convicted would serve their sentences.

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<sup>211</sup> Criminal Code, section 83.3(2).

<sup>212</sup> Canadian Security Intelligence Service Act, RSC 1985, c C-23, section 21.1.

<sup>213</sup> Canada Public Safety, 2018 Public Report on the Terrorism Threat to Canada (most recent available), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/pblc-rprt-trrrsm-thrt-cnd-2018/index-en.aspx#s32> (accessed March 20, 2020).

<sup>214</sup> Ibid.

<sup>215</sup> Human Rights Watch telephone interviews with Omar, January 26, 2020.

<sup>216</sup> Heather Murdock, "Trials of IS Fighters in Syria Suspended Indefinitely," *Voice of America*, April 2, 2020, <https://www.voanews.com/middle-east/trials-fighters-syria-suspended-indefinitely> (accessed June 5, 2020).

Even if these obstacles were surmounted at a future date, uncertainty persists over the long-term viability of the Autonomous Administration as a functioning regional authority capable of ensuring detained ISIS suspects do not escape or fall into the hands of the Assad government.

At present, other options for criminal proceedings outside home countries where the rule of law is respected are equally elusive. Canada is a member of the International Criminal Court (ICC), the world's only permanent international court, but Syria and Iraq, where the majority of ISIS-related crimes have taken place, are not. Although the ICC has jurisdiction over serious crimes allegedly committed by the nationals of its member countries—in this case, citizens of Canada—as a matter of policy it focuses on those individuals most responsible for serious crimes. In April 2015, the ICC prosecutor said the prospects of her office investigating and prosecuting those most responsible for crimes committed by ISIS were limited.<sup>217</sup>

An ad-hoc tribunal would most likely take years to establish, cost hundreds of millions of dollars, and prosecute only a small fraction of accused, based on previous experiments with such courts. Iraq, which some Western countries considered in 2019 as a site for an international or hybrid international-Iraqi court to prosecute ISIS suspects, has a documented record of convicting terrorism suspects in flawed trials, based on evidence apparently obtained through torture, and sentencing them to death.<sup>218</sup> Canada, like many Western countries, bans capital punishment.

Absent alternatives, the only way to hold Canadian ISIS suspects accountable under international law and Security Council mandates for any crimes they may have committed, and ensure their right to fair trials and humane treatment, is to pursue proceedings at home.

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<sup>217</sup> International Criminal Court, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS, April 8, 2015, <https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-08-04-2015-1> (accessed June 4, 2020).

<sup>218</sup> See, e.g., United Nations Assistance Mission for Iraq and Office of the United Nations High Commissioner for Human Rights, Human Rights in the Administration of Justice in Iraq, January 2020, [https://www.uniraq.org/index.php?option=com\\_k2&view=itemlist&layout=category&task=category&id=164&Itemid=650&lang=en](https://www.uniraq.org/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=164&Itemid=650&lang=en) (accessed June 20, 2020).

As the UN Special Rapporteurs on countering terrorism and on extrajudicial executions wrote:

An effective return process includes holding individuals accountable for serious violations of national and international law for serious and systematic crimes committed in Syria and Iraq. It is, in fact, the only way to close the gaping impunity gap for which the inadequate and dysfunctional judicial system in both Iraq and Syria is not an answer.<sup>219</sup>

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<sup>219</sup> Agnes Callamard and Fionnuala Ni Aolain, Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic, February 20, 2020, <https://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf> (accessed June 19, 2020).

## V. Legal Standards

### International Human Rights Law

The International Covenant on Civil and Political Rights (ICCPR) sets forth universal civil and political rights and freedoms including the right to enter one's country; to life; to be free from torture and other ill-treatment, including in detention; to freedom of religion; to fair trials and freedom from arbitrary deprivation of liberty; and the right to a nationality.<sup>220</sup> The ICCPR requires all governments, including Canada, to ensure and respect the fundamental rights of all persons not only within their territory but also those abroad who are subject to their jurisdiction.<sup>221</sup>

According to the UN Human Rights Committee, which interprets the ICCPR, this means that a state party, in this case Canada, must extend and ensure the rights set forth in the Covenant to “anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”<sup>222</sup> Consequently, Canada should not, whether through action or inaction, create direct or indirect obstacles to citizens' efforts to exercise their fundamental rights and freedoms, including when they are abroad.

#### *Right to Enter Canada*

The International Covenant on Civil and Political Liberties (ICCPR) holds that “No one shall be arbitrarily deprived of the right to enter his own country.”<sup>223</sup> Canada's failure to provide travel documents and other citizenship verification to its nationals arbitrarily detained in northeast Syria effectively bars them from exercising that right.

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<sup>220</sup> UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), December 16, 1966, UNTS, vol. 999, p. 171, entered into force March 23, 1976; <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed June 18, 2020).

<sup>221</sup> ICCPR, art. 9, para. 2.

<sup>222</sup> UN Human Rights Committee (HRC), General Comment No. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, May 26, 2004, CCPR/C/21/Rev.1/Add.13, <https://www.refworld.org/docid/478b26ae2.html> (accessed 10 April 2020).

<sup>223</sup> ICCPR, art. 12.

## *Right to Life*

The right to life is a fundamental right under the ICCPR.<sup>224</sup> The indefinite, arbitrary detention of Canadians by an embattled non-state actor in camps and prisons in the volatile northeast Syrian theater of armed conflict, where detainees are unable to exercise their rights to adequate food; health, including through protective measures against infection by Covid-19; housing;<sup>225</sup> clean drinking water;<sup>226</sup> and sanitation;<sup>227</sup> all essential rights under international law, compromise the detainees' right to life.

The Human Rights Committee has affirmed that a state may exercise control over a person's rights by carrying out activities which affect them in a direct and reasonably foreseeable manner.<sup>228</sup> In relation to the right to life, the Committee considers that:

In light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner.<sup>229</sup>

## *Torture and Other Ill-Treatment*

The international prohibition on torture and other inhuman or degrading treatment is

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<sup>224</sup> ICCPR, art.6.

<sup>225</sup> Un General Assembly, International Covenant on Economic, Social and Cultural Rights (ICESCR), December 16, 1966, UNTS, vol. 993, p. 3, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed March 29, 2020), arts. 11, 12.

<sup>226</sup> UN General Assembly, Resolution 64/292(2010), A/RES/64/292 (2010), [https://www.un.org/ga/search/viewm\\_doc.asp?symbol=A/Res/64/292](https://www.un.org/ga/search/viewm_doc.asp?symbol=A/Res/64/292) (accessed March 29, 2020).

<sup>227</sup> UN General Assembly, Resolution 70/169 (2015), A/RES/70/169 (2015), [https://www.un.org/ga/search/viewm\\_doc.asp?symbol=A/RES/70/169](https://www.un.org/ga/search/viewm_doc.asp?symbol=A/RES/70/169) (accessed March 29, 2020).

<sup>228</sup> HRC, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf) (accessed June 22, 2020).

<sup>229</sup> *Ibid.*, para. 63.

absolute.<sup>230</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obligates Canada, as a state party, to seek extra-territorial jurisdiction over acts of torture when the alleged offender is a Canadian national or if, if it considers it appropriate, when the victim is a Canadian national.<sup>231</sup>

The UN Special Rapporteur on torture has applied the positive international legal obligation of states to prevent torture of their nationals to extra-territorial areas not under their legally recognized control.<sup>232</sup>

The Human Rights Committee has repeatedly found that arbitrary as well as indefinite or protracted detention, combined with dire conditions and a failure to provide procedural rights to detainees, constitutes torture or other cruel, inhuman or degrading treatment or punishment, by “cumulatively inflicting serious psychological harm.”<sup>233</sup> Under this finding, the detentions of Canadians in camps and prisons in northeast Syria may constitute torture or other inhuman or degrading treatment.

### *Freedom from Discrimination*

The ICCPR grants every individual equal protection of the law without discrimination including on the basis of race, color, and religion, social origin, and political or other opinion.<sup>234</sup> Canada’s failure to bring home or help repatriate any of its citizens arbitrarily detained in northeast Syria, while actively repatriating nearly 40,000 other nationals from 100 countries around the world to in response to the Covid-19 pandemic, is apparent discrimination based on the detainees’ suspected links to ISIS.

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<sup>230</sup> ICCPR, art. 7. Convention against Torture, art. 2(2).

<sup>231</sup> Convention against Torture, art. 5. Canada has been a party to the Convention against Torture since 1987.

<sup>232</sup> Interim Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, A/70/303, August 7, 2015, <https://www.refworld.org/docid/55f292224.html> (accessed February 20, 2020), para. 33.

<sup>233</sup> HRC, *F.J. et al. v. Australia*, CCPR/C/116/D/2233/2013, May 2, 2016, para. 10.6; *F.K.A.G. et al. v. Australia*, CCPR/C/108/D/2094/2011, August 20, 2013, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/108/D/2094/2011&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/108/D/2094/2011&Lang=en), para. 9.8; *M.M.M. et al. v. Australia*, CCPR/C/108/D/2136/2012, August 20, 2013, [http://ccprcentre.org/doc/2013/08/2136\\_2012-MMM-et-al-v-Australia\\_en.pdf](http://ccprcentre.org/doc/2013/08/2136_2012-MMM-et-al-v-Australia_en.pdf), para. 10.7. (All accessed March 31, 2020).

<sup>234</sup> ICCPR, art. 26.

## *Arbitrary Detention*

The ICCPR protects every person’s liberty and security and prohibits arbitrary detention.<sup>235</sup> The ICCPR guarantees the right of the accused to promptly appear before a judge or to otherwise challenge their detention,<sup>236</sup> as well as the rights of the accused to a fair trial, including the right to be presumed innocent until found guilty in fair and impartial proceedings.<sup>237</sup>

Anyone detained, including civilians initially held in wartime as security threats, should be detained on a clear legal basis, and have the right to challenge the necessity and legality of their captivity before a court. The Human Rights Committee has said that the right to a judicial review of detention continues at all times, including in situations of emergency or armed conflict.<sup>238</sup>

Movement restrictions on camps for displaced people are only permissible if they are provided by law as necessary to protect national security, public order, public health or morals, or the rights and freedoms of others.<sup>239</sup> Any restrictions must be nondiscriminatory, proportionate, and necessary to achieve legitimate aims.

The detention of men, women, and children in the camps and prisons in northeast Syria solely on the basis of their suspected ISIS affiliation or their family ties to ISIS, with no judicial review or criminal charge, amounts to guilt by association and collective punishment, which are prohibited under international human rights law as well as the laws of war.<sup>240</sup> Detaining individuals solely because they are family members of alleged criminals is an “egregious” form of arbitrary detention, according to the Human Rights Committee.<sup>241</sup>

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<sup>235</sup> *Ibid.*, art. 9.

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*, art. 14.

<sup>238</sup> HRC, General Comment No. 35, Article 9 (Liberty and security of person), December 16, 2014, CCPR/C/GC/35, <https://www.refworld.org/docid/553e0f984.html> (accessed 10 April 10, 2020), art. 64-67.

<sup>239</sup> ICCPR, art. 12.

<sup>240</sup> The requirement of individual criminal responsibility is included in the American Convention on Human Rights, the African Charter on Human and Peoples’ Rights and the Cairo Declaration on Human Rights in Islam. The European Convention on Human Rights does not spell out this rule, but the European Court of Human Rights has stated that “it is a fundamental rule of criminal law that criminal liability does not survive the person who has committed the criminal act”. See International Committee of the Red Cross, Customary Humanitarian Law Database, rules 102 and 103, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1> (accessed March 31, 2020).

<sup>241</sup> *Ibid.*, para. 16.

### *Conditions of Detention*

The UN Standard Minimum Rules for the Treatment of Prisoners, known as the “Nelson Mandela Rules,” set forth universal requirements for humane detention practices.<sup>242</sup> The Mandela Rules state that “[a]ll accommodation provided for the use of prisoners ... shall meet all requirements of health” including climatic conditions, minimum floor space, lighting, heating and ventilation.<sup>243</sup> They require “sanitary installations ...adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.”<sup>244</sup> They also require provision of nutritious food,<sup>245</sup> at least one hour per day of outdoor exercise,<sup>246</sup> and contact with the outside world.<sup>247</sup>

Under the Mandela Rules, detaining authorities should ensure medical care for those in their custody at least equivalent to that available to the general population.<sup>248</sup> The rules also state that “All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.”<sup>249</sup> They call for detainees with severe mental health conditions that would be exacerbated in prisons to be transferred to mental health facilities or other appropriate locations as soon as possible.<sup>250</sup> They also provide that young children should be detained separately from adults.<sup>251</sup>

The dire conditions of detention for Canadians in northeast Syria prisons, such as severe overcrowding and filth; acute shortages of mental health and medical care, including measures to protect against infection from Covid-19; inadequate food; and near-lack of any outdoor time, exercise, or contact with family, contradict the standards set forth in the Mandela Rules.

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<sup>242</sup> UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), A/RES/70/175, adopted January 8, 2016, [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf) (accessed March 29, 2020), (accessed March 29, 2020).

<sup>243</sup> *Ibid.*, rule 13.

<sup>244</sup> *Ibid.*, rules 15-16.

<sup>245</sup> *Ibid.*, rule 22.

<sup>246</sup> *Ibid.*, rule 23.

<sup>247</sup> *Ibid.*, rules 58-63.

<sup>248</sup> *Ibid.*, rule 24.

<sup>249</sup> *Ibid.*, rule 27.

<sup>250</sup> *Ibid.*, rule 109.

<sup>251</sup> *Ibid.*, rule 11.

The Mandela Rules also state that solitary confinement, defined as confinement of more than 22 hours of per day without meaningful human contact, shall be imposed only in exceptional cases as a last resort, for as short a time as possible and subject to independent review. Solitary confinement of more than 15 days, such as that alleged by Canadian detainee Jack Letts, is prohibited and may amount to torture or other cruel, inhuman or degrading treatment. The imposition of solitary confinement should be prohibited in the case of prisoners with mental health conditions or physical disabilities when their conditions would be exacerbated by such measures.<sup>252</sup>

Supplementing these standards, the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules, provide that women prisoners “shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.”<sup>253</sup>

### *States’ Duties Toward their Nationals*

In a joint legal opinion on foreign ISIS suspects and family members arbitrarily detained in northeast Syria, the UN Special Rapporteur on countering terrorism and the UN Special Rapporteur on extra-judicial executions in February 2020 found that: “States have a positive obligation to take necessary and reasonable steps to intervene in favor of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of international human rights law.” The violations they listed include denial of justice; imposition of the death penalty or other immediate or foreseeable threats to the right to life; torture or cruel, inhuman or degrading treatment; sexual violence; and deprivation of liberty in grave violation of human rights standards.<sup>254</sup>

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<sup>252</sup> Ibid., rules 43-45.

<sup>253</sup> UN General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“Bangkok Rules”), A/C.3/65/L.5, adopted December 21, 2020, <https://undocs.org/A/RES/65/229> (accessed June 5, 2020), rule 5.

<sup>254</sup> UN Human Rights Special Procedures, Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic, Legal Analysis of the Special Rapporteur on the promotion and protection of human rights while countering terrorism and the Special Rapporteur on extrajudicial, summary or arbitrary executions, February 2020, <https://www.ohchr.org/Documents/Issues/Executions/UNSRsPublicJurisdictionAnalysis2020.pdf> (accessed March 20, 2020), paras. 3, 14-16.

### *Justice for Egregious ISIS crimes*

Canada is a signatory to numerous international treaties that obligate it to ensure justice for victims of egregious international human rights crimes such as those committed by ISIS, which has carried out war crimes, crimes against humanity and apparent genocide. The ICCPR grants the right to effective remedy to all individuals for violations of their rights and freedoms under the Covenant.<sup>255</sup> The Convention against Torture sets forth that each state party ensure in its legal system that the victim of an act of torture obtains redress.<sup>256</sup> Among additional international instruments to which Canada is a party, the Convention on the Rights of the Child,<sup>257</sup> the Genocide Convention,<sup>258</sup> and the Rome Statute of the International Criminal Court<sup>259</sup> also provide the right to a remedy.

UN Security Council resolutions 2178 (2014) and 2396 (2017) on so-called “foreign terrorist fighters,” which are legally binding under Chapter VII of the UN Charter, require that all UN member states implement strategies for returning foreign fighters and family members including prosecutions as appropriate, in line with international human rights standards.<sup>260</sup>

In Resolution 2396, for example, the Security Council emphasizes that member states “are obliged ... in accordance with resolution 1373, to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice.”<sup>261</sup>

Resolutions 2396 and 2178 further require all UN member states to criminalize, as serious offenses, travel or attempted travel abroad “for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist

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<sup>255</sup> ICCPR, art. 2.

<sup>256</sup> Convention against Torture, art. 14. Canada became a state party to the convention in 1987.

<sup>257</sup> Convention on the Rights of the Child, art. 39. Canada became a state party to the convention in 1991.

<sup>258</sup> UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, UNTS, vol. 78, p. 277, <https://www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx> (accessed May 20, 2020), art. 5. Canada ratified the Genocide Convention in 1952.

<sup>259</sup> UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July 17, 1998, ISBN No. 92-9227-227-6, <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> (accessed May 10, 2020), arts. 68 and 75.

<sup>260</sup> UN Security Council, resolution 2178 (2014), S/RES/2178 (2014); UN Security Council, resolution 2396 (2017), S/RES.2396 (2017). For human rights obligations, see preamble paragraph 7 in both resolutions.

<sup>261</sup> UN Security Council, Resolution 2396 (2016), S/RES/2396 (2017), paras. 6 and 30.

training,” as well any nationals who fund or otherwise facilitate that travel or attempted travel.<sup>262</sup>

## UN Guidance and Binding Resolutions on Repatriations, Rehabilitation and Reintegration

Repatriations, rehabilitation, and reintegration of ISIS suspects and their family members, in addition to prosecutions, would be a positive implementation by Canada of UN guidance and mandates.

In his February 2020 report to the Security Council on the threat posed by ISIS, UN Secretary-General António Guterres called on home countries to repatriate their citizens from northeast Syria, stating that:

Member states have primary responsibility for the repatriation of their nationals and therefore for taking appropriate measures to develop comprehensive repatriation strategies, for providing consular services, for issuing birth certificates and other identification documents for children born to their nationals, for taking all measures necessary to prevent arbitrary denial of citizenship rights and for protecting their nationals, especially children, from becoming stateless in accordance with international law.<sup>263</sup>

The Secretary-General’s report warns that leaving ISIS suspects and family members in the northeast Syrian camps and prisons threatens international peace and security: “Unsuitable and overcrowded facilities can be breeding grounds for despair and radicalization to violence, especially in the case of young people, endangering rehabilitation attempts and leading to the possibility that many may become hardened violent extremists.”<sup>264</sup>

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<sup>262</sup> UN Security Council, Resolution 2178 (2014), S/RES/2178 (2014), para. 6. See also UN Security Council, Resolution 2396 (2017), S/RES.2396 (2017), para. 17.

<sup>263</sup> UN Security Council, Tenth 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/2020/95, February 4, 2020, <https://www.un.org/sc/ctc/news/document/title-s-2020-95-tenth-report-secretary-general-threat-posed-isil-daesh-international-peace-security-range-united-nations-efforts-support/> (accessed April 17, 2020), para. 49.

<sup>264</sup> *Ibid.*, para. 11. See also UN Security Council, Resolution 2396 (2017) and Resolution S/RES.2396 (2017), pmb para. 33.

UN High Commissioner for Human Rights Michelle Bachelet in September called for the repatriation of all foreign family members of ISIS suspects and the release of the suspects themselves unless they are to be prosecuted in accordance with international standards. “The continuing detention of individuals *not* suspected of crimes, in the absence of lawful basis and regular independent judicial review, is not acceptable,” Bachelet said.<sup>265</sup>

The UN Special Rapporteur on countering terrorism and the UN Special Rapporteur on extra-judicial executions describe urgent repatriations as “the only international law-compliant response to the increasingly complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in inhumane conditions in overcrowded camps, prisons, or elsewhere” in northeast Syria.<sup>266</sup>

Given the absence of local rehabilitation, reintegration and prosecution options for the foreign detainees in northeast Syria, repatriations also would “amount to a positive implementation” of UN Security Council binding resolutions 2178 of 2014 and 2396 of 2017, the two Special Rapporteurs said.<sup>267</sup>

### *Women and Children as Potential Victims*

A number of UN resolutions and protocols call on member states to consider women and children as potential victims of armed conflict or of human trafficking, an international crime committed by ISIS against many women and children.

For example, UN Security Resolution 2396 requires member states including Canada to “develop and implement comprehensive and tailored” strategies and protocols not only for the prosecution of suspects who join groups such as ISIS but also for the rehabilitation and reintegration of such suspects as well as their spouses and children.<sup>268</sup>

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<sup>265</sup> “41<sup>st</sup> session of the Human Rights Council: Opening statement by UN High Commissioner for Human Rights Michelle Bachelet,” OHCHR news release, June 24, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24724&LangID=E> (accessed June 19, 2020).

<sup>266</sup> Agnes Callamard and Fionnuala Ni Aolain, Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic, February 20, 2020, <https://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf>, para 2.

<sup>267</sup> *Ibid.*

<sup>268</sup> UN Security Council, Resolution 2396 (2016), S/RES/2396 (2016), para. 30. See also UN Security Council, Resolution 2178 (2014), S/RES/2178 (2014), para. 6.

In addition, Resolution 2396 “stresses the importance of assisting women and children associated with foreign terrorist fighters who may be victims of terrorism, and to do so taking into account gender and age sensitivities”:

[W]omen and children associated with foreign terrorist fighters returning or relocating to and from conflict may have served in many different roles, including as supporters, facilitators, or perpetrators of terrorist acts, and require special focus when developing tailored prosecution, rehabilitation and reintegration strategies.<sup>269</sup>

Where women have been victims of trafficking for the purpose of exploitation, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, known as the Palermo Protocol, provides that a state party whose citizen is a victim of human trafficking “shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.” This includes agreeing to issue, at the request of the receiving state party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.<sup>270</sup>

The Palermo Protocol encourages states to provide for the physical, psychological and social recovery of victims.<sup>271</sup> It defines trafficking in persons as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution

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<sup>269</sup> UN Security Council, Resolution 2396 (2016), S/RES/2396 (2016), para 31. The 2018 Addendum to the 2015 Madrid Guiding Principles on foreign fighters and family members also emphasizes that women and children may themselves be victims of terrorism. It says countries should pay particular attention to ensuring that counterterrorism measures respect international law regarding women and children.

<sup>270</sup> UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, November 15, 2000, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> (accessed June 7, 2020), arts. 8(1) and 8(4).

<sup>271</sup> *Ibid.*, art 6(3).

of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>272</sup>

The UN Security Council has underscored the need for member states to ensure that trafficking victims are treated as victims and “not penalized or stigmatized for their involvement in any unlawful activities in which they have been compelled to engage.”<sup>273</sup>

## *Rights of the Child*

### **Right to a Nationality**

International human rights law provides that everyone has the right to a nationality and that no one shall be arbitrarily deprived of their nationality.<sup>274</sup> Countries have a responsibility to ensure that children are not deprived of this right under the UN Convention on the Rights of the Child (CRC).<sup>275</sup> This obligation extends to providing access to nationality for all children born abroad to one of their nationals who would otherwise be stateless, according to the Human Rights Committee.<sup>276</sup> Countries must ensure acquisition of nationality by an otherwise stateless child “as soon as possible.”<sup>277</sup>

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<sup>272</sup> Ibid., art. 3(a).

<sup>273</sup> UN Security Council Presidential Statement S/PRST/2015/25, December 16, 2015, <https://undocs.org/S/PRST/2015/25>. For more on ISIS and trafficking see Jane Huckerby “When Human Trafficking and Terrorism Connect: Dangers and Dilemmas,” *JustSecurity.org*, February 22, 2019, <https://www.justsecurity.org/62658/human-trafficking-terrorism-connect-dangers-dilemmas/>; and Caroline Fish, “ISIS Brides” and State Failure to Screen for Human Trafficking in Violation of International Law and Transnational Anti-Trafficking Regimes, *Opiniojuris.org*, January 3, 2019, <http://opiniojuris.org/2019/03/01/isis-brides-and-state-failure-to-screen-for-human-trafficking-in-violation-of-international-law-and-transnational-anti-trafficking-regimes/>. (All links accessed June 7, 2020.)

<sup>274</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), UN Doc. A/810 at 71 (1948), art. 15. ICCPR, art. 24(3).

<sup>275</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990, arts. 7(1) and 7(2). Canada ratified the CRC in 1991.

<sup>276</sup> UN General Assembly, Human rights and arbitrary deprivation of nationality, A/HRC/25/28, <https://undocs.org/en/A/HRC/25/28> (accessed June 19, 2020), para. 43.

<sup>277</sup> Ibid.

The CRC requires state parties to take all feasible steps to protect the survival and development of children including protection from all forms of physical or mental violence, injury or abuse, or neglect. <sup>278</sup>

### **Preserving Family Unity**

The right of the child to remain with their family is contained in the CRC.<sup>279</sup> The CRC requires states parties to ensure that a child shall not be separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation “is necessary for the best interests of the child.”<sup>280</sup> Absent this best-interest determination, repatriations of children detained in northeast Syria without their parents would run counter to this obligation.

### **Children in Armed Conflict**

International standards recognize that children who have been involved in armed conflict are entitled to special treatment, placing a priority on their rehabilitation and reintegration into their communities. These standards—including both hard and soft law—recognize these children primarily as victims of violations of international law, not perpetrators, and reject the use of detention, except in exceptional cases where children may have committed grave offenses or pose a serious threat to a state’s security. Even in such exceptional cases, international law still requires the application of due process and international juvenile justice standards and does not allow deviations based on national emergency or the seriousness of the offense.

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<sup>278</sup> CRC, art. 2. See also, UN Human Rights Special Procedures, Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic, Legal Analysis of the Special Rapporteur on the promotion and protection of human rights while countering terrorism and the Special Rapporteur on extrajudicial, summary or arbitrary executions, February 2020, <https://www.ohchr.org/Documents/Issues/Executions/UNSRsPublicJurisdictionAnalysis2020.pdf> (accessed March 20, 2020) including paras. 3, 6, 14-16, and 35.

<sup>279</sup> Article 24 of the ICCPR also addresses the right of all children, without any discrimination, to receive protection not only from society and the state but also from their families.

<sup>280</sup> CRC, art. 9.

The CRC defines a child as any person under the age of 18 and requires states to “take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”<sup>281</sup>

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (the “Optional Protocol”), to which Canada is also a party, prohibits any forced recruitment or conscription of children under 18 by government forces, and the participation of children under 18 in active hostilities by any party, including non-state forces.<sup>282</sup> The recruitment or use of children under the age of 15 in armed conflict is considered a war crime.<sup>283</sup> Under these standards, any members of ISIS who recruited or used Canadian children in an armed conflict should be held to account.

The Optional Protocol calls on states to provide appropriate assistance for the physical and psychological recovery and social reintegration for children who have been recruited or used in armed conflict contrary to the protocol.<sup>284</sup> The CRC states that any prosecution of children for criminal acts should prioritize the best interest of the child and be conducted with the objective of rehabilitating the child and promoting the child’s reintegration and assumption of a constructive role in society.<sup>285</sup>

In addition to reiterating the rights of the accused of all ages in covenants such as the ICCPR, the CRC stipulates a number of important rights for child suspects. For example, it provides that children generally should be allowed to maintain contact with their family through correspondence and visits, and to have their parents or other legal guardians present in any hearings on their cases.<sup>286</sup>

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<sup>281</sup> CRC, art. 38.

<sup>282</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted May 25, 2000, G.A. Resolution 54/263, Annex I, 54 UN GAOR Supp. (no.49) at 7, UN Doc. A/54/49, vol. III (2000), entered into force February 12, 2002, art. 4.

<sup>283</sup> See ICRC, Customary International Humanitarian Law, Rule 136, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter39\\_rule136#Fn\\_64781199\\_00003](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule136#Fn_64781199_00003). The Rome Statute of the International Criminal Court lists “conscripting or enlisting children under the age of 15 years” into “armed forces or groups” or “using them to participate actively in hostilities” as war crimes (arts. 8(2)(b)(xxvi) and 8(2) (e)(vii).

<sup>284</sup> CRC Optional Protocol, art. 6(3).

<sup>285</sup> CRC, arts. 3(1) and 40(1).

<sup>286</sup> CRC, arts. 37(c) and 40(2)(b)(iii).

## Age of Criminal Responsibility

In the exceptional cases in which prosecution may be appropriate, the UN Committee on the Rights of the Child recommends that states set the age of criminal responsibility no lower than 14 to 16 years, calling 12 years of age the “absolute minimum.”<sup>287</sup> The age of criminal responsibility in Canada is 12.<sup>288</sup>

Since 1999, the UN Security Council has adopted a series of resolutions on children and armed conflict that call on member states to ensure the rehabilitation and reintegration of children recruited in violation of international law. These include resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011), 2225 (2015), and 2427 (2018). Resolution 2225, adopted in 2015, addresses detention specifically, urging UN member states:

To consider non-judicial measures as alternatives to prosecution and detention that focus on the rehabilitation and reintegration for children formerly associated with armed forces and armed groups taking into account that deprivation of liberty of children should be used only as a last resort and for the shortest appropriate period of time, as well as to avoid wherever possible the use of pretrial detention for children.<sup>289</sup>

Canada played an important role in forming the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (the “Paris Principles”), which call for children who are associated with armed groups to not be arbitrarily deprived of their liberty and to be provided with reintegration support.<sup>290</sup> As a signatory to the Paris Principles, Canada has committed to considering all children associated with or recruited into armed groups “primarily as victims of offenses against international law; not only as perpetrators,”<sup>291</sup> including those accused of crimes against international law.

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<sup>287</sup> UN Committee on the Rights of the Child (CRC), General comment No. 10: Children's Rights in Juvenile Justice (CRC/C/GC/10), April 25, 2007, <https://www.refworld.org/docid/467ofca12.html> (accessed March 7, 2020), paras. 32-33.

<sup>288</sup> Youth Criminal Justice Act, S.C. 2002, c. 1, as amended December 18, 2019, <https://laws-lois.justice.gc.ca/eng/acts/y-1.5/page-1.html> (accessed April 13, 2020), sect. 2(1).

<sup>289</sup> UN Security Council Resolution 2225 (2015), S/RES/2225 (2015), para 6.

<sup>290</sup> UN Children's Fund, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007, [https://childrenandarmedconflict.un.org/publications/ParisPrinciples\\_EN.pdf](https://childrenandarmedconflict.un.org/publications/ParisPrinciples_EN.pdf).

<sup>291</sup> Paris Principles, para. 3.6.

The Paris Principles call on states to seek alternatives to judicial proceedings for children wherever possible, and note that the purpose of any sanction imposed on a child should be to promote rehabilitation and reintegration into the community and not to punish.”<sup>292</sup> Children should not be prosecuted or punished solely for their membership in armed groups.<sup>293</sup> Any criminal prosecution should comport with international juvenile justice standards.<sup>294</sup>

### **Standards for Children Accused of Terrorism-Related Crimes**

In its 2018 renewal of the UN Global Counter-Terrorism Strategy of 2006, the UN General Assembly acknowledged that children accused of committing terrorist acts may themselves be victims of terrorism and stressed that they should be treated accordance with applicable international law including the Convention on the Rights of the Child.<sup>295</sup>

The 2018 Addendum to the 2015 Madrid Guiding Principles on so-called “foreign terrorist fighters” (FTFs) and family members also reminds UN member states to “take into consideration the age of the child and the many roles that children associated with FTFs may have served, while recognizing that such children may be victims of terrorism,” and reiterates that for children, “detention should be used as a measure of last resort.”<sup>296</sup>

The 2016 Neuchatel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context stresses that the primary jurisdiction for children charged with terrorism-related crimes should be specialized juvenile justice systems, that the best interests of the child should be a primary consideration, that particular attention should be paid to alternatives to prosecution, and that any justice action should aim at the child’s reintegration into society.<sup>297</sup>

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<sup>292</sup> Ibid., paras. 3.7 and 3.6.

<sup>293</sup> Ibid., para. 8.7.

<sup>294</sup> Ibid., para 8.8.

<sup>295</sup> UN General Assembly, Resolution 291 (2016), A/RES/70/291 (2016), <https://undocs.org/en/A/RES/70/291> (accessed June 19, 2020), para 18.

<sup>296</sup> Addendum to the guiding principles on foreign terrorist fighters (2018), S/2018/1177 (2018), para. 24 and Guiding Principle 7.

<sup>297</sup> Neuchatel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, August 25, 2016, <https://toolkit.thegctf.org/document-sets/neuchatel-memorandum-juvenile-justice/document> (accessed February 14, 2019).

## Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms grants every Canadian citizen the right to enter Canada.<sup>298</sup> This includes the right of every Canadian to obtain a passport or emergency travel document for return travel to Canada from any Canadian embassy or consulate abroad.<sup>299</sup>

The Canadian Charter provides that “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”<sup>300</sup> Canadian citizens can invoke this constitutional right abroad where the Canadian government has some measure of responsibility or control over their detention.<sup>301</sup>

The Canadian Charter grants every individual equal protection of the law without discrimination including on the basis of race, color, religion, and ethnic origin.<sup>302</sup>

The Canadian Charter holds that “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”<sup>303</sup>

The Canadian Charter prohibits arbitrary detention.<sup>304</sup> The charter guarantees the right of the accused to be promptly informed of the reason for their detention, to retain counsel, and to challenge the legality of their detention before a court.<sup>305</sup> It also guarantees the right to a fair trial, including the right to be presumed innocent until found guilty in fair and impartial proceedings.<sup>306</sup>

Under the Canadian Citizenship Act, children born abroad are Canadian citizens provided that at least one of their parents was a Canadian citizen at the time of their birth.<sup>307</sup>

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<sup>298</sup> Canadian Charter, section 6.

<sup>299</sup> *Abdelrazik v. Canada (Minister of Foreign Affairs)*, 2009 FC 580; and *Kamel v. Canada (Attorney General)*, 2009 FCA 21.

<sup>300</sup> Canadian Charter, section 7.

<sup>301</sup> *Canada (Prime Minister) v. Khadr*, 2010 SCC 3.

<sup>302</sup> Canadian Charter, section 15.

<sup>303</sup> *Ibid.*, section 12.

<sup>304</sup> *Ibid.*, section 9. See also ICCPR, art. 9.

<sup>305</sup> Canadian Charter, section 10.

<sup>306</sup> *Ibid.*, section 11.

<sup>307</sup> Citizenship Act, R.S.C., 1985, c. C-29, <https://laws-lois.justice.gc.ca/eng/acts/c-29/page-1.html#h-81636>, section 3(1)(b).

## Consular Assistance

The power of a state to intervene in matters concerning the protection of its nationals abroad is codified in the 1963 Vienna Convention on Consular Relations (the Vienna Convention), to which Canada is a party.<sup>308</sup> The Vienna Convention sets forth the powers of consuls to communicate with, access and assist detained foreign nationals, as well as the rights of detained or imprisoned nationals to communicate with their consular representatives.<sup>309</sup>

The government of Canada interprets the Vienna Convention as discretionary authority to provide consular services rather than as a legal obligation, but says its policy is to provide consular assistance whenever possible.<sup>310</sup> Even if Canada considers its authority discretionary, its provision of consular services must comport with the Canadian Charter of Rights and Freedoms as well as international human rights law. The UN General Assembly has repeatedly recognized the significance of consular assistance to foreign nationals detained abroad.<sup>311</sup> The General Assembly has also endorsed the Mandela Rules, which affirm that: “Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.”<sup>312</sup>

At least 45 countries have enacted laws imposing a mandatory consular duty to protect all citizens extra-territorially.<sup>313</sup> Jurisprudence has interpreted the Vienna Convention provision on the rights of detained nationals to communicate with their consular representatives to mean that consular assistance is a part of the right to a fair trial.<sup>314</sup>

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<sup>308</sup> Vienna Convention on Consular Relations, March 13, 1967, 596 UNTS 261, 292, <https://treaties.un.org/doc/Publication/UNTS/Volume%20596/v596.pdf> (accessed March 20, 2020).

Canada acceded to the Vienna Convention in 1974.

<sup>309</sup> Vienna Convention, art. 36 (1).

<sup>310</sup> Canada House of Commons, “Strengthening the Canadian Consular Service Today and for the Future,” Report of the Standing Committee on Foreign Affairs and International Development, November 2018, <https://www.ourcommons.ca/Content/Committee/421/FAAE/Reports/RP10186936/faaerp21/faaerp21-e.pdf> (accessed March 20, 2020), pp. 9, 13.

<sup>311</sup> UN General Assembly, Resolution 69/186 (2015), A/69/186 (2015), <https://undocs.org/A/RES/69/186> (accessed June 19, 2020), para. 5 (b). See also UN General Assembly, Resolution 70/304, August 7, 2015, A/70/304, February 14, 2015, <https://undocs.org/A/70/304> (accessed June 19, 2020).

<sup>312</sup> Mandela Rules, rule 38(1).

<sup>313</sup> Canada House of Commons, “Strengthening the Canadian Consular Service Today and for the Future,” November 2018, p. 11.

<sup>314</sup> UN General Assembly, Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, Agnes Callamard, A/74/318, <https://undocs.org/A/74/318> (accessed March 20, 2020), paras. 24-31.

The UN Special Rapporteur on extra-judicial executions has called for the adoption of a universal set of standards on consular support for imprisoned foreign nationals.<sup>315</sup>

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The Inter-American Court of Human Rights recognized the right to consular information as a human right in 1999. See *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, Advisory Opinion OC-16/99 Series A no 16 (IACHR), Requested by the United States of Mexico.

See also *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466, para. 89; and *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, para. 40; and International Court of Justice, *Jadhav (India v. Pakistan)*, Judgment of 17 July 2019, I.C.J. Reports 2017, para. 145.

<sup>315</sup> “Set universal standards for the effective consular assistance, UN expert urges States,” OHCHR news release, October 25, 2019, <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25213&LangID=E> (accessed June 19, 2020).

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## “Bring Me Back to Canada”

### Plight of Canadians Held in Northeast Syria for Alleged ISIS Links

For more than a year, at least 47 Canadians—8 men, 13 women, and 26 children, most under age 6—have been arbitrarily detained in degrading, inhuman, and often life-threatening conditions in desert camps and prisons in northeast Syria as Islamic State (ISIS) suspects and family members. At least 20 other countries have repatriated some or many of their nationals from these same camps and prisons, but Canada has failed to bring home even one—not even a 5-year-old orphan.

With plans stalled for trials in northeast Syria, the innocent among these detainees, including the children, face indefinite detention without charge. And any detainees potentially linked to serious ISIS crimes may never be prosecuted, denying victims their right to redress.

“*Bring Me Back to Canada*” is based on research in Canada and northeast Syria with detainees and their family members, as well as human rights defenders, humanitarian workers, and government officials. It documents the detainees’ horrific living conditions and the Canadian government’s failure to provide them with effective consular assistance or to support family members’ efforts to bring them home. The report calls on Canada to repatriate, with utmost urgency, all its detained citizens for rehabilitation, reintegration, and, as appropriate, prosecution.

The Canadians are among nearly 14,000 non-Iraqi foreigners from more than 60 countries held for suspected ISIS links by a Kurdish-led authority in northeast Syria—8,000 children and 4,000 women in camps and 2,000 men and boys in prisons. Countries will not make the world safer by abandoning their citizens to indefinite, unlawful detention. Rather, they risk fueling despair and violent radicalization while punishing innocent children.

*(above) Children in al-Hol, a camp detaining thousands of foreign family members of ISIS suspects in northeast Syria.*

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*(front cover) A girl stands in al-Hol camp.*

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