Introduction

Tens of thousands of individuals from over 80 countries travelled to join Islamic State (IS) in Iraq and Syria. While foreign fighters espousing jihadist ideology have participated in military conflicts in recent decades, such as in Afghanistan, Bosnia, or Chechnya, the scale of travel to IS-held territory as well as the substantial percentage of women and children who undertook the journey was unprecedented.

With IS’s loss of its self-proclaimed “caliphate,” international attention has mostly focused on the risk posed by the potential return of these foreigners to their home countries. But the flood of “returnees” that was feared did not materialise and returnees so far represent a relatively small percentage of those who travelled to live under IS. Cook and Vale (2018) noted that out of the 41,490 foreigners who became affiliated with IS only 7,366 (i.e. 17%) are known to have actually returned to their home countries.

What happened to those who did not “return”? While many died in anti-IS military operations, those who are still alive fall into three broad categories: (1) those detained by authorities and local groups in Iraq and Syria, (2) those still living in small pockets that remain under the control of IS in eastern Syria, and (3) those who are hiding in local communities in Syria, Iraq or neighbouring countries, notably Turkey, after paying smugglers to cross battle lines or borders.
This chapter focuses on those who are in detention in Iraq and Syria. These IS-affiliated foreigners are very diverse in profile, with a significant percentage of women and children. The chapter begins with a quick overview of those who constitute these “unreturned” foreigners before delving into the challenges and difficulties they currently face. The main issue in northern Syria is the legal void they are in as the US-backed Syria Democratic Forces (SDF) which are holding them have stated that they do not intend to prosecute them and would like to transfer them to their home countries. However, with very few exceptions, most home countries have refused to take them back. For those held in Iraq, the issue is not a lack of trials but rather the absence of fair trials with Iraqi courts sentencing most of them to death or life in prison following rushed proceedings that fail to take into account a suspect’s individual actions or role in IS. Not only does this situation affect the rights of the accused, it also denies justice to victims of IS who are not included in any proceedings. The current approach has also left IS-affiliated foreign children, who ended up in Syria and Iraq through no fault of their own, stranded in extremely vulnerable situations.

The “Un-returned:” A Quick Mapping

Most estimates put the number of foreigners who travelled to join IS or lived in its self-proclaimed “caliphate” at around 40,000 (RAN, 2017; Barrett, 2017). Cook and Vale (2018) review all publicly available information on those who travelled and counted 41,490 IS affiliates in Iraq and Syria whom they broke down as follows: 75% men, 13% women, 12% children. Of those, their study counted 7,366 IS returnees. These numbers should be taken as best estimates because many countries did not properly track their nationals and no one really knows how many children were born to foreigners in Syria and Iraq.

The estimates of returnees are lower than initially expected or feared in security circles. Studies suggest that there is a difference in the “rate of returns” depending on nationalities. As of July 2017, the Radicalization Awareness Network (RAN) estimated that about 30% of the approximately 5,000 residents of the European Union thought to have gone to Syria and Iraq had returned home (RAN 2017). Percentages were lower for nationals from Russia and the former Soviet Republics with the Soufan Group, a security consultancy, estimating that just over 10% of these foreigners had returned (Barrett, 2017). The lower number of returnees may be related to the fact that a large proportion of foreign fighters and their families
were killed in the fighting or in airstrikes on IS-held territory. General Raymond Thomas, head of US Special Operations, stated that the US and its allies “have killed in conservative estimates 60,000 to 70,000” IS followers (Aspen Institute, 2017). This number does not distinguish between foreigners and locals and does not specify whether these IS followers were all combatants. Lt. Gen. Kenneth F. McKenzie Jr., the director of the Pentagon’s Joint Staff, was quoted as saying, “We’re not seeing a lot of flow out of the core caliphate because most of those people are dead now. Some of them are going to go to ground” (cited in Schmitt, 2017). Local authorities in Raqqa and Mosul continue to find bodies and mass graves in the rubble of their cities (HRW, 2018c; al-Jumma, 2018). In addition to those killed in the fighting, IS has also executed many within its own ranks, especially as it became increasingly worried about spies (Abdul-Zahra and Mroue, 2016).

But the lower numbers of returnees are also due to the fact that starting in 2015, it became harder for foreigners to leave Syria and Iraq. Many of their countries by then had issued arrest warrants for them or revoked their citizenship to deter or prevent them from returning. Turkey, which was the only international gateway to access IS-controlled territories, also tightened its border control in late 2015, making it much harder for people who had joined IS to cross back and try to make it to their home countries (Soguel and Batrawy, 2016). By September 2016, Turkish forces and their local Syrian allies finally expelled IS from the last strip of territory it controlled along the Syrian-Turkish border effectively sealing it from the outside world (Mroue and Bilginsoy, 2016). For the foreigners who remained in Syria and Iraq, the options for leaving narrowed drastically.

The IS-affiliated foreigners who remain in Syria and Iraq are very diverse in profile with more than 80 nationalities represented. Based on available information about those detained in these countries, the group includes a significant percentage of women and children, many of them very young or born locally. Most of their home countries have indicated that they do not want them back and have left it to Iraqi and US-backed local authorities in northern Syria to deal with them despite the immense challenges already facing these authorities.

Legal Void in Syria

As SDF forces took areas from IS, they rounded up thousands of suspected IS members and their families, including many foreign men, women and children.
While the SDF has not released statistics about the number of foreigners it is holding, US officials told CNN in April 2019 that after the fall of the last IS enclave in Baghouz, the SDF is holding more than 2,000 men from over 50 countries (Browne & Hansler, 2019). The US is helping the SDF to run and secure its detention facilities.6

The Kurdish-led authorities in northern Syria have adopted distinct strategies for dealing with nationals and foreigners who are accused of joining IS. Syrian nationals are eventually transferred by the SDF to local ad hoc counter-terrorism courts, known as the People’s Protection Courts, and some have their situations regularised as part of locally negotiated amnesties. However, with the exception of a few Iraqi nationals, the Kurdish-led authorities have not prosecuted any foreigner accused of IS affiliation. The official position of the local authorities in northern Syria is that the foreigners are a burden and their preference is that their countries take them back. A spokesperson for the SDF told the author that the foreigners were a “legal and logistical challenge. As much as possible, we try to contact their countries usually through the civilian administration. We are ready to hand them over. But many countries do not want to take them back” (Omar, 2018).

The overwhelming majority of countries have been reluctant to take their nationals back, citing fears that they represent a security threat. Some have also indicated concern about evidentiary and legal challenges that would prevent them from prosecuting these IS suspects (Savage 2018). Some countries, such as France, have explicitly said that they would prefer their nationals to be tried locally (BFM TV, 2018). However, the court system set up in northern Syria suffers from serious shortcomings and is not recognised internationally. Key issues include the absence of any role for a defence lawyer and the lack of any formal appeals process. Local critics also noted that the courts are not fully independent of the local authorities and lack adequately trained prosecutors and judges.7

Even if there was a local and international will to build up the local judicial system to ensure fair trials, the SDF is an unlikely long-term jailor. Its future control over northern Syria is uncertain and it has recently entered into negotiations with the Syrian government which may eventually lead to a return of government forces to the area (Francis, 2018). Given the record of Syrian government forces in abusing detainees and the abysmal record of Syria’s counter-terrorism courts, an eventual transfer of SDF-held detainees to Syrian government custody would violate international norms and so far has not been discussed by international policy-makers as a desirable or viable option.8
The future of foreign IS members held in northern Syria was discussed at a meeting of key defence ministers of the “International Coalition to Defeat ISIS” in Rome in February 2018 but no agreement was reached (Castelfranco, 2018). Shortly thereafter, a number of local and international news outlets reported that the SDF exchanged some IS detainees for SDF fighters held by IS in secret exchange deals (Alani, 2018; Ensor and Boscolo, 2018). The SDF denied such exchanges and details of how many detainees, if any, may have been exchanged remain unknown.

In the absence of a collective agreement for transferring detainees to their home countries, the US began transferring some of the detained men to their country of origin through bilateral arrangements. A senior US Defense Department official was quoted in July 2018 as saying that about two dozen men had been returned while “another 100 or so are in the process of being sent back to their countries” (Lubold, 2018). The official did not provide specifics about the countries involved, but media outlets later reported that Lebanon and Macedonia had taken back some of their nationals (al-Amin and Murtada, 2018; Munoz, 2018). The US also repatriated two American citizens held by the SDF in northern Syria (Jarrett and Browne, 2018).

The current US-led approach to transferring detainees to their countries of origin may reduce the numbers of foreign detainees but it does not address the issue of what will happen to those – currently a majority – whose countries continue to refuse to allow them to return. France, for instance, has repeated its refusal to take them, and this position was emphasised again in July 2018 by Frederic Parisot, the French director of civil-military operations for the anti-IS coalition. Britain’s defence secretary also reiterated that the two British men accused of being members of an IS group implicated in the torture and beheading of a number of foreigners “should never be allowed to return to the UK,” and media reports indicated that the UK may have already stripped them of their citizenship (Kirka, 2018).

In addition, the US would be in breach of its international obligations if it transferred these detainees to countries of origin or other third countries where they might be tortured. The United Nations Convention against Torture, to which the US is a party, as well as international humanitarian law prohibits the transfer of detainees to a country where “there are substantial grounds for believing” they would be in danger of being tortured or would otherwise face mistreatment. The concern is amplified by the fact that these transfers are being done through military channels and in secrecy, and therefore it is unclear
whether detainees are being provided with the opportunity to contest their transfer.

If progress is not made with respect to the situation of the foreign men detained in northern Syria, hundreds of them are likely to remain there in a legal vacuum for the foreseeable future. What is needed is increased international cooperation to ensure accountability for IS’s horrific crimes in trials where victims can participate if they wish to. In the absence of local trials, a clear framework is needed to arrange for transfers to other destinations where trials could take place. For those who cannot be sent back to their countries of origin because of fear of torture, there needs to be a serious effort to relocate them to a third country.

Detained in Camps: Foreign Women and Children

In addition to the almost 2,000 foreign men in its custody, the SDF is also holding IS-affiliated foreign women and children. Unlike the men, the SDF is not holding them in prisons but in three camps for the displaced in northern Syria, namely in Roj, ‘Ayn ‘Issa and al-Hawl. While the SDF have not released any statistics, visits to the camps by the author in January 2018, September 2018 and February 2019 as well as discussions with local camp administrators indicate that there were about 1,200 women and children from over 50 countries.

Like the men, the women and children are in legal limbo. The SDF says it is holding them temporarily until their countries take them back (Omar, 2018; Khalil, 2018); but in the absence of a return programme, their situation is beginning to resemble indefinite detention without legal basis. While the SDF has conducted investigations with the women, it has not prosecuted or referred any of them to trial. Some women complained that their SDF interrogators, usually women, beat them during interrogation, including some who reported beatings that would amount to torture (Ahmad, 2018). Many of the foreign children in the camps are under the age of six, including a significant number of those who were born while their mothers lived in areas under IS. Health conditions are poor. While there are doctors who visit the camps, specialised care is not readily available and diseases spread easily, especially among the children. During a visit by the author to the camps in January 2018, there was a Hepatitis A outbreak, and two months later cases of Tuberculosis were reported in Roj camp and led to the death of a Russian-speaking woman (whose nationality was not communicated to the author). There are no rehabilitation programmes or
counselling for the women and children in the camps to treat the trauma they were exposed to. Many women expressed worries about their future, especially after reports that some women were part of the detainee exchanges with IS.

By May 2019, only Russia, Indonesia, Kazakhstan, Kosovo and the US were publicly known to have taken some of their nationals back from these camps. France and Sweden have taken back a handful of children who were orphans. Russia initially made the most active effort to return women and children from Iraq and Syria. In August 2017, Ramzan Kadyrov, the head of Chechnya, organised efforts, with the support of the Kremlin, to repatriate women and children. Between August 2017 and February 2018, over 90 children and women arrived in Russia on special flights to Grozny, Chechnya’s capital (Lokshina, 2018; Arutunyan, 2018). According to a Kurdish local official, an estimated 35 of those came from the camps in Syria (Hubbard, 2018). But these returns appear to have stopped in February 2018 without any explanation.

Other countries take the view that while they would not stop women and children from returning if they manage to reach a consulate or embassy, they will not exert any particular effort to return them from northern Syria. Given that these women and children are not free to leave the camps, let alone cross a border, these policies amount to perpetuating the indefinite detention currently in place in northern Syria.

Many officials justify their lack of initiative by arguing that their countries no longer have consular representation in Syria. But the real reason appears to be a political reluctance rooted in concern that the women and even the children could present a threat which governments feel ill-prepared to deal with because they may not have grounds to prosecute them.

The governments’ attitudes started to harden towards women who travelled to join IS in 2016. Before then, policy towards women was more lenient as it was based on a generally accepted assumption that the women who left were victims of male relatives or recruiters. But since the participation of women in IS-inspired attacks in Europe, many security officials have reversed their assessment and a number of experts have noted that women’s roles in IS’s “caliphate” were not limited to care giving, with some participating in recruitment. Attitudes hardened not only in Western countries but also in countries like Morocco and Tunisia (Tafnout, 2018).

Official hostility has also recently extended to the return of children who lived under IS as security officials began warning of the danger they could represent without necessarily substantiating these claims. Germany’s head of domestic
intelligence, for instance, warned of the “massive danger” posed by children returning to Europe, saying, “We have to consider that these children could be living time bombs. There is a danger that these children come back brainwashed with a mission to carry out attacks” (cited in Shalal and Siebold, 2018). Similar views – often sensationalised by media outlets – were expressed by British and French officials.13

But a potential threat cannot be the basis for condemning these women and children to indefinite detention without trial in camps in northern Syria. Women should either be referred to a judicial process if there is any evidence that they committed a crime or be released. If the local authorities in northern Syria cannot or do not wish to conduct such trials, then they need to transfer them to their countries of origin or release them. The current situation is particularly troubling for the children who remain in the camps. Most are very young, under the age of six, and their exposure to recruitment attempts by IS is probably minimal and in any case not subject to criminal responsibility. Even if the children attended IS’s schools or fought for IS, international law is clear: anyone under the age of 18 who has been recruited into armed or terrorist groups is, without exception, the victim of crimes committed by adults. In the event that these children committed crimes, international juvenile justice standards call on relevant authorities to make efforts to seek alternatives to prosecution, and to prioritise rehabilitative measures with the aim of reintegrating children into society. By leaving them in the camps in northern Syria, their countries of origin deny them the support they need to reintegrate into society and, ironically, could be laying the ground for these children to end up as “time bombs.”

Unfair Trials and Harsh Sentences in Iraq

Iraqi authorities have also detained large numbers of foreigners affiliated with IS as they have regained control of their territory (HRW, 2017). Iraq has not provided details of the number of foreign IS-affiliated nationals in detention, but media outlets managed to report on some information relating to foreign women and children. A security source (cited in AFP, 2017) stated that most of the foreign women and children held in Iraq belonged to a group of more than 1,300 foreigners detained by Iraqi forces in August 2017 during the battle for Tal Afar in Iraq’s north-west. The group was composed of 509 women and 813 children. A large proportion of these women and children are Turkish nationals.
according to Iraqi Prime Minister al-Abadi (cited in AP, 2017b). The overall number of foreign women and children in detention is believed to be slightly higher based on information from sources close to the penitentiary system in Baghdad (HRW, 2018b).

Unlike the local authorities in northern Syria, Iraq has proceeded with trials against foreigners on charges of membership of or assistance to IS as well as illegal entry into the territory. Such prosecutions of foreign nationals have encompassed men, women and children over the age of nine. The Iraqi authorities have not published any information about the number of foreigners tried in Iraq on IS-related charges. Abdul Zahra and George (2018) reported in March 2018 that the Iraqi government has detained more than 19,000 people, most of them Iraqis, on terrorism-related charges and convicted at least 8,861 since 2013. Of these, at least 3,130 were sentenced to death on terrorism-related charges, with at least 250 having been executed. However, these statistics do not mention how many are foreigners.

There are serious shortcomings in Iraq’s current legal proceedings against individuals accused of IS affiliation. Trials are rushed and end in harsh sentences without taking into account the individual actions of suspects. Human Rights Watch (HRW, 2017) reported one judge stating that he had recommended the death penalty for an IS cook because “how could an ISIS fighter have executed someone if he had not been fed a good meal the night before?”

Opportunities for a meaningful and substantive defence are lacking in the cases reviewed by human rights groups and foreign journalists. Trials often last around ten minutes and sentences are often issued on the same day as the trial (Coker and Hassan, 2018). The overwhelming majority of cases that have been reported publicly ended with a life sentence, which in Iraq amounts to 20 years in jail, or the death penalty. Victims play no part in the proceedings and the current approach, with its lack of emphasis on individual actions, is unlikely to provide victims with closure or establish an essential record of the terrible crimes committed by IS.

A particular worry is that Iraq is carrying out its death sentences, which the UN has warned risks “resulting in gross, irreversible miscarriages of justice” (UN OHCHR, 2016). Two mass hangings of 42 and 38 convicted IS members took place in September and December 2017 (The New Arab, 2017; BBC, 2017). The true number of executions may be even higher but remains unknown due to lack of transparency by the government. Not only combatants but also civilian employees of IS are being sentenced to death.
Iraq applies the same strict approach to foreign women even though it initially seemed that it might adopt a different approach. In September 2017, shortly after the detention of a large group of foreign women and children near Tal Afar, Prime Minister Haider al-Abadi stated in an interview that many of the women and children were not guilty of any crime, and that his government was “in full communication” with their home countries to “find a way to hand them over” (cited in AP, 2017b). He noted that “it is not in our interest to keep families and children inside our country when their countries are prepared to take them.” But Iraq appears to have changed its approach and began referring these foreign women for prosecution in large numbers starting in January 2018.

In trials of foreign women monitored by human rights groups, Iraqi authorities did not sufficiently examine the actual role and participation – if any – of these women in IS activities. Judges often asked the women the same set of questions about when and how they entered Iraq, where their husbands were, if they believed in IS ideology, and if they received any money from the extremist group. Many women ended up with sentences of 20 years in prison or the death penalty merely because they married an IS fighter or received a monthly stipend from IS after the deaths of their husbands.

There has been little discussion about what will happen to foreign men and women after they finish serving their sentences in Iraq. Will their countries of origin accept their “return” and, if not, where will they be deported to? In addition, what measures will the Iraqi authorities take to ensure that the time spent in prison helps in the future reintegration of IS-affiliated inmates. The current situation raises some concerns. The largest concentration of those with IS-related convictions is in Nasiriyah Central Prison, a maximum-security complex holding most of those sentenced for terrorism-related offences. According to a prison official, cells originally designed to hold two prisoners were in fact holding six (cited in Abdul Zahra and George, 2018). The official said that overcrowding made it difficult to segregate prisoners charged with terrorism from others and that an inadequate number of guards meant IS members are openly promoting their ideology inside the prison.

Countries with nationals facing trials in Iraq should work with Iraqi authorities to ensure fair trials, provide their nationals with access to consular services, and seek ways to improve detention conditions. They should also consider initiating discussions with Iraqi authorities about the possibility of having their nationals serve their sentences in their home countries to relieve Iraq’s overcrowded prisons.
Trials of Foreign Children

Iraqi judicial authorities also prosecute foreign children over the age of nine on terrorism-related charges and sentence them in some cases to up to five years in prison for IS membership and up to 15 years for participating in violent acts (HRW, 2018b). Iraq’s approach to these children seems to follow an age breakdown. A lawyer who has represented many foreign children accused of terrorism summarised the situation:

For children between the ages of nine and thirteen, the courts are more lenient, though you can still be prosecuted for illegal entry and in some cases, for membership in IS. If you are just prosecuted for illegal entry, your sentence is usually between six months and one year. For membership, you get three to five years. If you are accused of participating in a violent act, like planting a bomb, then you can get between five and fifteen years (Qader, 2018).

He said that Iraq has conducted about 400-500 trials of children accused of affiliation with IS, including dozens of cases of foreign children, who are also charged with illegal entry into the country. Children as young as ten are sentenced for entering the country illegally even though their parents brought them there and they probably had no choice in the matter (HRW 2018b). Older children are subject to harsher sentences. An Iraqi court sentenced a 16-year-old German national whose case garnered much media attention to six years in jail – five years for IS membership and one year for entering Iraq illegally (Charter, 2018).

Iraq’s current approach emphasises punishment in opposition to international juvenile justice standards which call on national authorities to make efforts to seek alternatives to prosecution, and to prioritise rehabilitative measures with the aim of reintegrating children into society. Even those children who may have been responsible for terrible acts of violence are often also victims of forced recruitment by IS. Therefore, international norms emphasise that authorities should incarcerate children only as a measure of last resort and for the shortest appropriate period. In 2007, the UN Committee on the Rights of the Child found holding children below the age of twelve criminally responsible “not to be internationally acceptable” (UN CRC, 2007). A report of the United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict (UN SGCAC, 2011) similarly suggested that when dealing with
children who took part in armed groups “more effective and appropriate methods, other than detention and prosecution are encouraged, enabling children to come to terms with their past and the acts they committed.” Iraq’s approach to children who are only accused of membership of a group like IS and not of any specific violent act is particularly troubling. In 2016, the UN Secretary-General (2016) criticised countries that respond to violent extremism by administratively detaining and prosecuting children for their alleged association with such groups.

Little information is available about the services available to children detained in Iraq. Foreign children under the age of three are usually kept in jail with their mothers in often overcrowded cells. Those between three and nine are usually separated from their detained mothers and put in foster institutions run by the Iraqi state. Those between nine and eighteen are held in juvenile detention facilities. Foreign orphans are kept in local orphanages.

While some foreign children have been transferred to their home countries, many others are still waiting to be transferred. Iraqi NGOs complain that many countries seem to delay or procrastinate in seeking the return of children who are their nationals.

Stateless Children

One particularly vulnerable group of children still in Iraq and Syria are those born to foreign parents living under IS and who do not have recognised birth certificates, which puts them at risk of statelessness. At least 730 infants from 19 countries were born under IS, including 566 recorded to have been born to a Western European parent (Cook and Vale, 2018: 30). However, due to considerable data gaps, particularly for the Middle East and North African region, the number of children born to at least one foreign IS parent is expected to be significantly higher. Some unverified estimates have suggested that up to 5,000 children were born to foreign parents (Chulov, 2017).14

The documentation problem for these children lies at two levels. First, if there are records, such as marriage or birth certificates, these tend to be issued by IS and such unofficial documentation is not recognised by the Iraqi or international authorities. Secondly, in many cases, most of these documents are no longer available as they were destroyed during the fighting.

In northern Syria, the SDF and the local administration started to issue birth certificates to children born to foreign mothers while living in SDF-run camps,
but no measure has yet been taken for children previously born under IS. The situation is complicated by the fact that no country has diplomatic representation in northern Syria, which makes the process of proving lineage and issuing identity documents challenging.

The Iraqi government is working with some countries of origin to grant identity papers to children born to foreign parents. It conducts some DNA tests on foreign children as well as on their parents (Mostafa, 2018; Arraf, 2017). But many children are separated from their parents and there is no clear mechanism in place to compare DNA test results with those of extended families in home countries. The current system largely depends on the level of engagement with the countries of origin, which differs greatly. This creates a situation where many children are likely to fall through the cracks.

The current approach in Iraq and Syria for identifying children born to foreign parents is not adequate to handle the scale of the challenge. Some sources estimate that as many as 1,000 Russian minors have been orphaned or abandoned inside the conflict zones of Syria and Iraq (Ayres, 2017). ICSR estimates that 70% of children with a Belgian parent and currently present in Syria or Iraq were born under IS (Cook and Vale, 2018). Similarly, ICSR estimates that half of the children in Syria and Iraq with a Dutch or French parent are believed to be under four and five years old respectively, suggesting that many were born under IS.

There is an urgent need for states to take active steps to ensure that no child remains stateless. The home countries of foreign fighters should prepare to take back greater numbers of minors. Without clear political will and better coordination there is a risk that many of these children will fall through the cracks and end up living a life of stigma on the margins of Syrian and Iraqi society. Those bearing the “IS” label may find such societal stigma to be the fuel for future radicalisation.

Conclusion

The “un-returned,” or those who travelled to join IS and remain today in Syria and Iraq, are unwanted. Their countries of origin overwhelmingly hope they can just remain there, and to this end have turned a blind eye to the legal and rights issues that affect their nationals, including very young children. But this approach – while it may be politically convenient for home countries – is short-sighted and fails to address pressing needs around providing fair trials for IS suspects, ensuring
accountability for their crimes, guaranteeing safe and decent detention conditions, and promoting the safety and well-being of foreign children who ended up in IS territories through no fault of their own. After all, the failure to push for fair trials does not just affect the rights of suspects; it also denies victims their day in court. The absence of serious attempts to distinguish between those IS members who committed very grave crimes and those who simply married members of the group is not just unfair to some individuals but ultimately dilutes responsibility for the group’s actions and leads to overcrowded prisons in Iraq and Syria.

Those born in IS-controlled territories face the additional risk of remaining stateless as they usually lack recognised identification documents. Yet, instead of taking back foreign children – most of whom have extended families in their home countries who are waiting for their return – officials in many home countries have painted them as “time bombs” to be kept as far away as possible and have transferred the responsibility of handling them to the under-resourced authorities in Syria and Iraq.

The current situation not only raises major human rights concerns but also carries serious security risks. The US has voiced concerns that foreign detainees in northern Syria could escape from local prisons or help radicalise other inmates setting the stage for a renewed IS-inspired insurgency (Manson et al. 2018). This appears to be the main reason why it has tried to convince its allies to take their nationals back – with limited success so far. The handful of US-orchestrated transfers of foreign men that have recently taken place from northern Syria are shrouded in secrecy, raising concerns about possible transfers to torture or other ill-treatment.

A new approach is needed with the clear goal of ensuring fair trials that determine the individual culpability of those foreigners who travelled to join IS. The international community should work with Iraq to promote fair trials and ensure victim participation. If fair trials cannot be held locally in northern Syria, then they should be held in countries with a nexus to the perpetrators or the victims if conditions in those countries allow for such trials. There should be discussions about the possibility for foreigners convicted in trials in Iraq – or possible future trials held in northern Syria – to serve their sentences in their home countries to reduce overcrowding or deal with the uncertain future of northern Syria. The wellbeing of children should be a priority for all parties involved and accelerated measures should be adopted to issue them with identification documents, reunite them with their extended families, and provide them with psychological and educational support to reintegrate them.
Finally, there needs to be a discussion about the future of those in detention who have a legitimate fear of torture if sent back to their home countries and accordingly cannot be transferred back there. In interviews with the author, many women held in northern Syria expressed concern about their treatment if they were transferred to their countries of origin. Alternatives should be discussed for those who cannot return to their countries, including possible relocation to a third country. These discussions will not be easy. But waiting for the situation of foreigners who joined IS to somehow resolve itself will only make it more complicated.

Notes

1 For example, Thomas Hegghammer (2010: 60) found that of almost 20 conflicts that attracted foreign fighters with jihadist ideology, 13 involved fewer than 300 foreigners, while only 6 involved more than 1,000. For a broader discussion of the participation of foreign fighters in conflicts see Malet, 2017.

2 In the case of Syria, the focus is on those held by Syrian Democratic Forces (SDF) in northern Syria. No information is publicly available about those held by the Syrian government.

3 Other studies suggest similar ranges. For example, Barrett (2017) estimates that “there are now at least 5,600 citizens or residents from 33 countries who have returned home.” The European Parliamentary Research Service (EPRS, 2018) provides a good breakdown of returnees to European countries.

4 See for example comments by N.J. Rasmussen, Director of the United States National Counter Terrorism Centre, at the Aspen Forum in July 2017, saying that “fewer had returned than anticipated and assessing that most would likely stay to defend the caliphate” (cited in Barrett, 2017). See also comments by Peter Neumann from ICSR who notes that “I’ve been saying for a long time that there will not be a ‘flood’ of returnees, rather a steady trickle, and that’s what we are seeing” (cited in Schmitt, 2017).

5 For a good discussion of deprivation of citizenship by European countries in the context of foreign fighters see EPRS 2018. Australia has also stripped citizenship from five IS supporters captured in Syria (McGuirk, 2018).

6 The New York Times reported that US Special Operations forces visit the prisons multiple times in a week to offer expertise in running them, train guards, and help process new detainees using biometrics and interrogation. On a visit to one detention facility a US military official was reportedly denied his request to speak with a detainee (Savage, 2018).

7 The author visited these local counter-terrorism courts in July 2017 and January 2018. Some of the findings from these visits can be found in HRW, 2018a.
8 Human rights groups and the UN Commission of Inquiry set up to investigate abuses in Syria have documented systemic human rights abuses of detainees by Syrian government forces including torture and large-scale deaths in detention. See for example HRW (Human Rights Watch), 2012. For an assessment of Syria’s counterterrorism courts see Violations Documentation Centre, 2015 and Ekman, 2017.

9 When asked if France was working on repatriating its nationals, his answer was, “Well, on this question, it’s quite clear. First of all, the government of France said that they do not want these people back. So I mean, that’s a policy statement” (cited in US Department of Defense, 2018).

10 The US has only repatriated one female national with her four US children. For more details see Childress & Baker, 2018. Indonesia took back an extended family with at least 15 members in summer 2017 (Associated Press, 2017a). While some Western countries have repatriated children from Iraq, none have been repatriated from northern Syria so far, at least not publicly.

11 The study of Renard & Cooolsaet (2018) from the Belgian Egmont Institute found that in Belgium, Germany, and the Netherlands “[u]ntil recently, women were treated with more clemency, but this has now come to an end.” See also Mekhennet & Warrick, 2017 for the news reporting about the potential threat of women.

12 See, for example, the statements by Commander Dean Haydon, the head of Counter-Terrorism Command of London’s Metropolitan Police Service (cited in Davenport and Hall, 2018) and comments by French Public Prosecutor François Molins (cited in RTL, 2018).

13 Since Iraq is a federal country, there are two judicial systems in charge of prosecuting IS affiliates: federal courts and courts operating in the Kurdistan Region of Iraq. Each has its own counter-terrorism laws. This chapter focuses on prosecutions before the federal courts where most foreigners have been tried. For more on Iraq’s judicial prosecution of IS see HRW, 2017.

14 Iraq’s Ministry of Interior surveyed the areas of Salaheddin, Kirkuk, Diyala and Anbar, and suggested that up to a third of marriageable-age women in these cities married members of IS, including foreigners, highlighting the potential number of foreign children. See reporting in al-Jibouri, 2016.

References


