

YOUNG “TERRORISTS” OR YOUNG INNOCENTS? EXAMINING CANADIAN
PUBLIC POLICIES AND PRAXIS IN ABANDONING, REPATRIATING, AND
INTEGRATING CHILDREN BORN OF ISIS’s MEMBERS

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ABSTRACT

This research examines the 25 Canadian children detained in Al-Hol detention camp whose mother in the camp or their family in Canada wishes they would be repatriated to their country of origin, in this case, Canada. This research analyzes the position of the Canadian government with regards to repatriation, and reviews existing policies concerning returning children with the goal of providing a safe life to the children born of ISIS parents by repatriating them to Canada from Al-Hol detention camp. The Canadian government has not taken a proactive stance with regard to these children, which has created moral, legal, political, diplomatic and security dilemmas. This thesis had found that there are no direct laws and policies in Canada that address repatriation or integration of the children of foreign fighters, which delimited the possibility of reviewing previous Canadian public policies. As a result, this research examines United States, France and United Kingdom's laws and policies to repatriation versus Canada's approaches to repatriation. The research aims to answer two central questions: What are the practices, policies, and law provisions that Canada needs to implement to ensure the children's repatriation and integration is in line with the “best interest” of the child and long-term strategic security interests of Canada? *Should* and *can* Canada adopt similar repatriation and integration policies as the United States, United Kingdom, and France? This research is organized around three complementary objectives:

1. Reviewing Canada's position on the repatriation of the children born of ISIS parents.
2. Surveying the policies put in place in the United States, United Kingdom, and France on the repatriation of the children born of ISIS parents.
3. Providing policy recommendations for Canada in order to help these children in accessing basic justice care and be repatriated to Canada.

Keywords: Children Born of ISIS Parents, Al-Hol Detention Camp, Repatriation, International and Domestic Human Rights, Canadian Extremist Travellers (CETs), Public Policy

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“I can do all things through Jesus Christ who strengthens me.”

~Philippians 4:13

I would love to thank God for His endless and plenty blessings that are always giving me a powerful support and helping me stay determined to reach my goal; and whenever I doubt myself and feel that I could be giving up, He would be telling me “...it was then that I carried you”.

I would love to thank my parents, siblings, and friends for their countless prayers, help, motivation, and support.

I would love to thank the participants of this research who continue to raise awareness on the Canadian children detained in Al-Hol detention camp in Northeast Syria. I would love to dedicate this thesis to the Coptic martyrs who were either bombed or beheaded by the hands of ISIS.

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Now that I have finally completed this thesis, amidst COVID-19, I say with full tranquility that:

“She believed she could, so she did.”

~ R.S. Grey, Scoring Wilder

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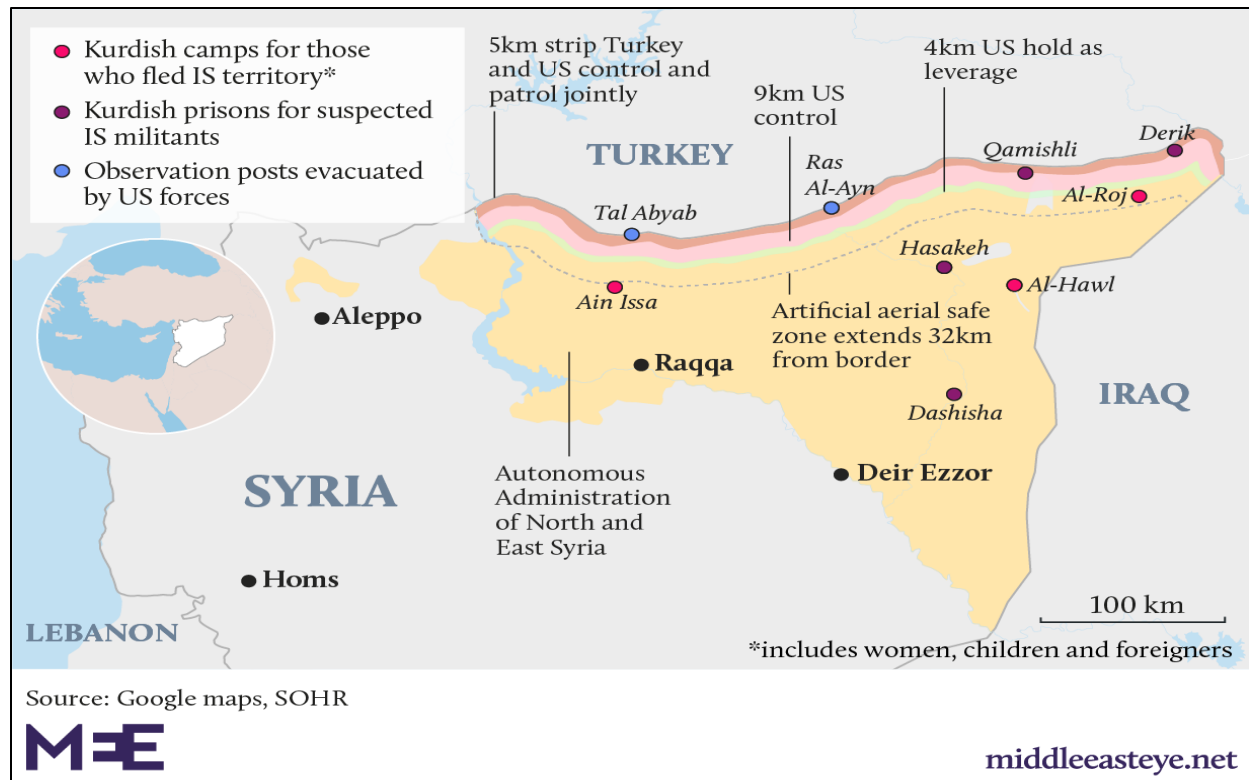
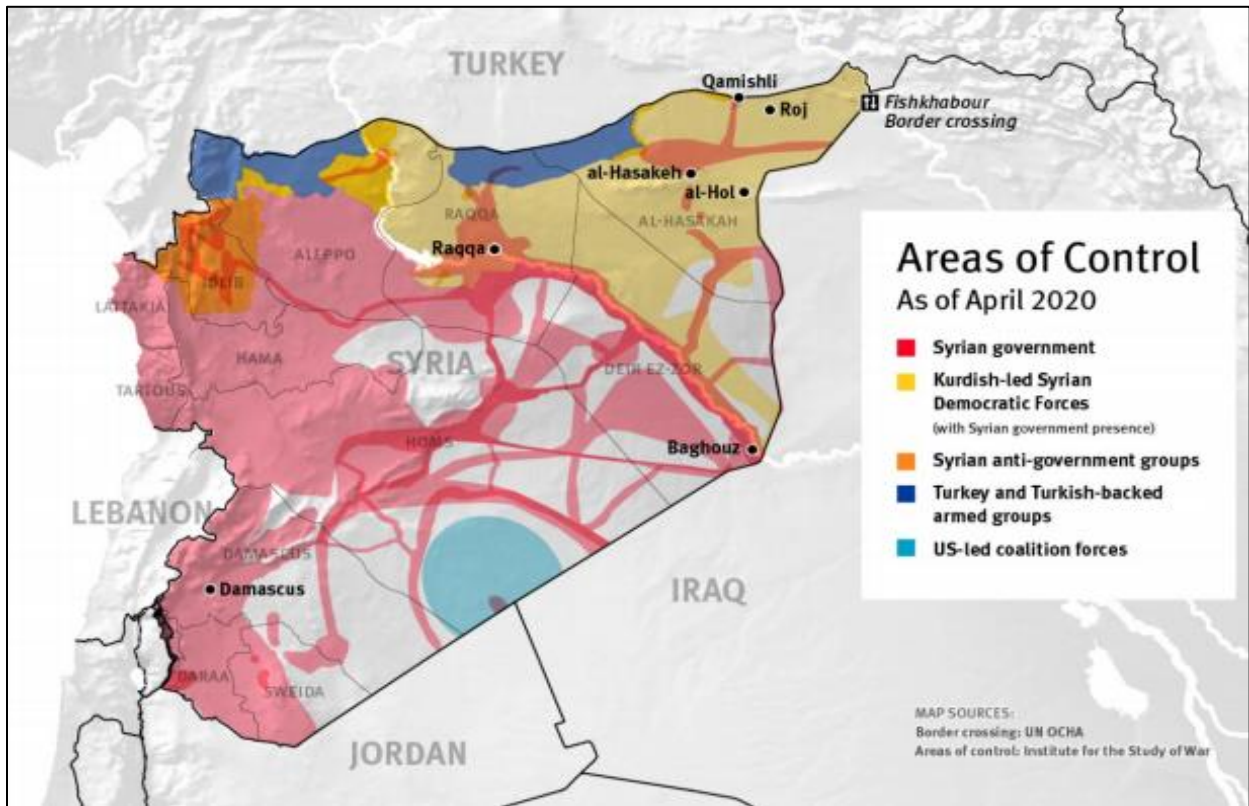
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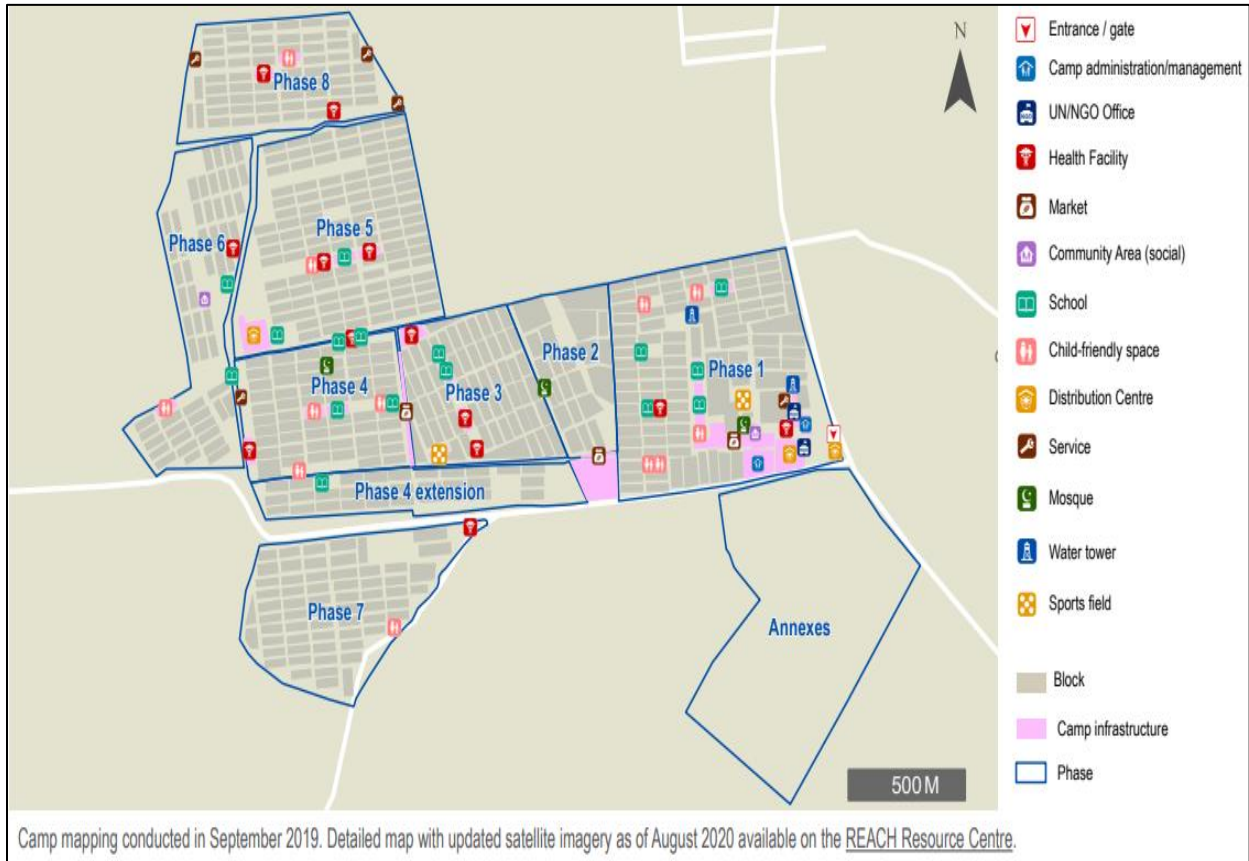
LIST OF ACRONYMS

ISIS	Islamic State of Iraq and Syria
SDF	Syrian Democratic Forces
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UDHR	Universal Declaration of Human Rights
ICSR	International Centre for the Study of Radicalization
IRCC	Immigration, Refugees and Citizenship Canada
COVID-19	Coronavirus Disease 2019
CTF	COVID-19 Treatment Facility
SVPRS	Syrian Vulnerable Persons Refugee Scheme
ICCPR	International Covenant on Civil and Political Rights
CETs	Canadian Extremist Travellers
AQI	Al Qaeda in Iraq

THE DEMARCATIONS OF NORTHEAST SYRIA



MAP OF AL-HOL DETENTION CAMP



CHAPTER 1: FRAMING CANADIAN CHILDREN DETAINED IN AL-HOL DETENTION CAMP IN SYRIA

1.1 Introduction

ISIS stands for the Islamic State of Iraq and Syria, also called the Islamic State of Iraq and the Levant or ISIL, or just IS or Islamic State (Anjarini, 2013). In Arabic, the group is popularly known as *Da'ish*. Former Al-Qaeda member in Iraq Abu Musab Al-Zarqawi, is credited with laying out ISIS' original ideology (Anjarini, 2013). Despite being killed by a U.S. airstrike in 2006, Zarqawi was the first to shift the Iraqi insurgency from a battle against U.S. forces to a Shia-Sunni war. ISIS was commanded by Abu Ayyub Al-Masri, a former Al-Qaeda member, and Omar Al-Baghdadi, a former followers of Saddam Hussein's Baathist regime. In an U.S.-Iraqi air strike in 2010, both of these leaders were killed, and Abu Bakr-Al-Baghdadi assumed control of a weakened Al Qaeda in Iraq (AQI). In June 2014, Abu Bakr Al-Baghdadi proclaimed himself Caliph (Anjarini, 2013). In February 2014, al-Qaeda cut all ties with the group, reportedly because of its brutality. On October 27, 2019, in Syria's northwestern Idlib Province, Baghdadi killed himself by detonating a suicide vest during the Barisha raid, conducted by the U.S. with the approval from President Donald Trump (Sly, 2014). ISIL confirmed his death and named Abu Ibrahim al-Hashimi al-Qurashi as his replacement (Nance, 2015). Today, ISIS has occupied large areas in Iraq and Syria, murdering and terrorizing thousands of people. An area that ISIS used to occupy prior to the defeat of ISIS is Baghuz Fawqani.

ISIS lost its last territorial stronghold at the Battle of Baghuz Fawqani on March 23, 2019, prompting the Syrian Democratic Forces (SDF) to declare final victory over the "terrorist" organization (Callimachi, 2019). Even though there is no official ISIS territory left, it is estimated that tens of thousands of ISIS supporters remain in Syria and Iraq (Callimachi, 2019). Over 11,000

male fighters have been imprisoned as a result of ISIS's “defeat” (Hubbard et al., 2019). Furthermore, former refugee camps in Syria, Iraq, and Libya have been converted into detention camps for thousands of women and children who were previously affiliated with ISIS (Hubbard, 2019). The fall of ISIS has raised legal, political, and ethical concerns about “what to do with the tens of thousands of people from around the world who had flocked to join the jihadists and now have nowhere else to go” (Hubbard, 2019). The fall of the caliphate only brought new challenges to women and children no state wanted to reclaim, as stated by Azadeh Moaveni in her book, *Guest House for Young Widows: Among the Women of ISIS* (Moaveni, 2019).

The territorial triumph over ISIS has resulted in a humanitarian crisis in the detention camps that house thousands of women and children who were formerly affiliated with ISIS. The largest of three detention camps in northern Syria, Al-Hol is administered by the autonomous Kurdish administration (Hubbard, 2019). While determining the precise number of detainees in the camp is difficult, as of January 2021, Al-Hol is hosting nearly 64,619 detainees, 80% of whom are women and children (Rosand et al., 2020). 41,000 of the camp's inhabitants are children under the age of eighteen, with 7,000 of them being foreigners (Rosand et al., 2019). Ninety-five percent of the children in the camp are under the age of twelve (Sly, 2019). Foreigners in the camp include people from about fifty countries, including, among others, Australia, Belgium, Canada, France, the United Kingdom, the United States, and Russia (Human Rights Watch, 2019). The Kurdish administration has indicated that it has no plans to prosecute the detainees and has consistently stated that home countries should repatriate their citizens (BBC News, 2019). The lack of humanitarian assistance available to the detainees at Al-Hol detention camp has made international headlines. In the camp, women and children are extremely malnourished and lack access to basic services (Human Rights Watch, 2019). Some detainees at Al-Hol detention camp have

participated in ISIS-related operations. While there is not any publicly available data with exact numbers, many of the women in the camp are ardent ISIS followers, and some of the children were taught by jihadists (Hubbard, 2019). However, not all of the women and children had direct ties to ISIS. Some women were coerced, held hostage, and brainwashed to marry ISIS fighters against their wishes, and many children had no choice but to obey and follow their parents who chose to join the group (Loveluck & Mekhennet, 2019). Nevertheless, the radicalization of some women and the stigmatization of the children as “terrorists” is a reason behind making repatriation and the delivery of humanitarian aid difficult (Darden, 2019).

Syrian refugees were and still are being categorized as a 'problem', which is stated in *National Geographic: The Rooting of Peoples and the Territorialisation of National Identity among Scholars and Refugees* by Liisa H. Malkki (Malkki, 1997, p.63). Malkki states that “rootless refugees” are no longer trustworthy as “honest citizens and are necessarily a problem” (Malkki, 1997, p. 63). For example, Indonesia is not repatriating any ISIS fighters' children because it views them as a problem and thus wants to protect its nation from them (Gorbiano, 2020). ‘Rootless refugees’ relates to the concept of “ontological security”, coined by Anthony Giddens in 1991, which illustrates that the absence of a legal status, belonging, livelihoods and perspectives for the future characterizing extended exile produce “an acute sense of not knowing what comes next”, that shapes people's lives and behaviors. Giddens (1991) conceptualizes ‘ontological security’ in the social sciences as the experience of having a sense of order and continuity in one’s life which is “...predicated on people’s ability to give meaning to their lives and avoid chaos or anxiety” (Hyndman & Giles, 2017, p.16). Following scholars such as Botterill et al. (2015), Conlon (2015), and Narotsky (2010), Hyndman and Giles draw on distinctions between Giddens’s conception of ‘ontological security’ and ‘insecurity’ in conditions of long-term

displacement. They contend that refugees living in protracted situations experience ‘ontological insecurity’ instead.

...We characterize ontological security as a lived sense of safety with a degree of certainty underwriting it. It is demarcated as much by its absence as its presence among people caught in conditions of extended exile. The ongoing search for belonging, livelihoods and a place to call home in conditions of protracted displacement produces conditions of insecurity (p.17).

Thus, the detainees at Al-Hol detention camp experience conditions of insecurity as a result of their ongoing search for belonging. Hyndman and Giles add that this conceptualization entails contesting the prevailing conception of security indisplacement, which is normally scaled down to settlement and safe households. As a result, they contend that protracted displacement is a state of ongoing anxiety despite long-term settlement and livelihood in exile.

To address the humanitarian crisis at Al-Hol detention camp, various solutions have been proposed. This includes local prosecution where the government of Syria or Iraq would be prosecuting the women and children who are currently detained at Al-Hol detention camp and who are allegedly affiliated with ISIS; citizenship stripping; and repatriation (Human Rights Watch 2019). Repatriation will assist in ending this humanitarian crisis for foreigners at Al-Hol detention camp because countries would take their citizens back to their respective home countries instead of leaving them in the camp (Hubbard, 2019). However, the number of people who have been repatriated have been low (Hubbard, 2019). Due to the refusal to repatriate citizens, foreigners in these detention camps are effectively “stateless”. This is explicitly stated in Article 1(1) of the 1954 Convention to the Status of Stateless Persons, which defines a stateless person as “a person who is not considered as a national by any State under the operation of its law” (Bhabha, 2011). People may be born stateless, but people may also become stateless due to various causes including the deprivation of nationality (Bhabha, 2011; Specia, 2019). Consequently, while the Kurdish

administration detains them indefinitely, thousands of foreign women and children have nowhere to go. Countries' refusals to take back their citizens make it an obstacle to see an end to a detention camp like Al-Hol detention camp.

As the situation in northeast Syria becomes ever more precarious, this thesis offers recommendations for how a Western country, like Canada, which has been slow to claim responsibility for its nationals can alleviate the detention crisis, starting with a push to repatriate children. This thesis reviews Canada's position on the repatriation of the children born of ISIS parents. It surveys the policies put in place in the United States, United Kingdom, and France on the repatriation of the children born of ISIS parents. These countries were selected in this research both because these countries have an unprecedented number of young Muslim women who travelled to Syria and Iraq to join the "terrorist" group, and because their international support put them in a relatively strong position to face and manage to overcome most if not all their challenges that are identical to the challenges that Canada is currently facing. As such, the mutuality of political and legal contexts between these countries and Canada would make Canada amenable to common recommendations resulting in effective outcomes. The thesis then concludes with providing policy recommendations for Canada in order to help these children in accessing basic justice care and be repatriated to Canada.

In seeking to argue both the humanitarian imperative for and political feasibility of a repatriation strategy that starts with women and children, the thesis draws on 6 interviews with two Canadian politicians, a human rights activist, a public servant, a researcher and professor, and a human rights lawyer conducted between June 2020 and February 2021, as well as on Crisis Group's prior reporting on Syria, surrounding countries, and ISIS activities in the region. This thesis focuses on the foreign children in Al-Hol detention camp, meaning children who are not

Syrian or Iraqi and proposes an alternate solution to their detention. Unlike the Iraqi and Syrian children in these detention camps, foreign children are of special significance because they have the option to be repatriated to their home country. Since Al-Hol detention camp has received the most international coverage of the camps, this thesis discusses the conditions there. Specifically, this thesis aims to answer two main questions: What are the practices, policies, and law provisions that Canada needs to implement to ensure the children's repatriation and integration is in line with the “best interest” of the child and long-term strategic security interests of Canada? *Should* and *can* Canada adopt similar repatriation and integration policies as the United States, United Kingdom, and France?

1.2 Outline of Thesis

There is a long-standing international norm of commitment to protecting children’s rights. The United Nations (U.N.) has granted children a special status and protection framework, recognizing them as a particularly vulnerable group treated with special concern (International Justice Resource Center, 2019). The Convention on the Rights of the Child (CRC), which has 196 parties to it, is the most inclusive treaty addressing heightened duties toward children (CRC, 1990). Not only is the CRC the most widely ratified human rights treaty, but there are over twenty additional treaties that specifically address special protection for children (CRC, 1990). Overall, these treaties reflect states’ uniform agreement that children are a distinct and vulnerable population deserving special protection.

Children’s rights are distinct from other areas covered by international law. In fact, the rights of children are “among the most elaborated within contemporary international law,” making violations against children by state and non-state actors “particularly grave” (Bhabha, 2011;

International Justice Response Center, 2019). This thesis focuses on repatriating children under the age of 18, as children older than 18 may have been involved in combat or have executed killings or torture and are old enough to have received the training on how to perform such acts (Houry, 2016). Also, 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” (CRC, 1990). If children continue to be detained at Al-Hol detention camp, and without a means to return to their home countries, the international community will be standing idly by as international law—specifically the CRC—is openly violated. These violations would demonstrate a significant deficiency in the international community’s capacity to exercise its power.

This thesis is structured as follows: in Chapter 2, I engage with my epistemological approaches and discuss the research methodology. This thesis then examines *why* should Canada repatriate these children detained in Al-Hol detention camp in Chapters 3 and 4. In Chapter 3 it describes Al-Hol detention camp, its detainees, and the conditions at the camp. In Chapter 4 it discusses relevant international law addressing children, detention, family separation, and the right to return. Subsequently, the thesis explores *how* should Canada repatriate these children in Chapters 5 and 6. Chapter 5 examines statelessness; prosecution at home vs. prosecution in Syria or Iraq; deprivation of nationality where stripping of citizenship violates the “best interests” of a child; and home countries like the United States’, United Kingdom’s, and France’s policies responding to returning children versus Canada’s approaches to repatriation. This thesis distinguishes itself from the existing literature on displaced children and refugee law because it focuses on the children born of ISIS parents, who may or may not have been involved in radicalization and who have very little chance to return to their countries. Chapter 6 concludes by providing policy recommendations for Canada to effectively repatriate the children born of ISIS

parents detained in the camp.

CHAPTER 2: METHODOLOGY, METHODS AND LIMITATIONS

2.1 The Research Scope and Epistemological Considerations in the Research

The responsible use of data leads to knowledge, creates empowerment and builds accountability; the research methods chosen for this project are structured to produce data that will straightforwardly relate to my research objectives. Given that this research focuses on analyzing the position of the Canadian government with regards to repatriating the children born of ISIS parents, conducting qualitative interviews with my research participants, conducting literature reviews, analysis of data and reviewing documents by the U.N. Convention on the Rights of the Child and public policies published by the United States, United Kingdom, and France, are pivotal to the project success. They are crucial tools in providing a more intricate exploration of the areas that government officials should focus on. As such, my research proposes that repatriation is the best option from a (long-term) security perspective and that Canada needs to adopt similar repatriation and integration policies, practices and law provisions as the United States, United Kingdom, and France.

The research question, aims and design are informed by my own ontological and epistemological approaches as a researcher (Bryman, 2004; Epstein, 2012; Silverman, 2012). My research question is shaped by qualitative social research which is concerned with questions on “...how (process of constructing reality) and what (reality as a substantive truth)” (Epstein, 2012, p. 34). The multidimensional nature of the issues that I examine shows how my research is fundamentally interdisciplinary and contributes to multiple scholarly fields. As I adopt an interdisciplinary lens, I have been able to integrate different methodological and epistemological

approaches used by different disciplines (Repko, 2012). In particular, for my research on integration and repatriation of the children born of ISIS parents in Al-Hol detention camp, I have been able to integrate approaches and perspectives from Human Security Studies, Child Rights Studies, Gender Studies, Refugee studies, Socio-legal Studies, and Social Science to contribute to my own unique approach in this research. There is little to no research on this issue in the Canadian context, which sets this thesis as being significant and as such appealing to anyone with relevant interests in law, international relations, anthropology, and criminology. Crucially, this thesis offers useful implications for practitioners, particularly in light of increasing interest in the rule of law and justice mechanisms in refugee contexts. Finally, the thesis will expand policy-makers' knowledge on the role played by international agencies in the crafting of international human rights law, and in informing work practices around human rights protection to the children born of ISIS parents in Al-Hol detention camp in Syria.

The research for this project was conducted from September 2019 till April 2021. I reviewed literature in socio-economic and legal fields to obtain an understanding of the complexities and challenges linked to the repatriation of ISIS fighters' children. In addition to a review of this literature, I examined United States, France and United Kingdom's laws and policies regarding repatriation versus Canada's approaches to repatriation. As I mentioned earlier, I specifically chose these countries because they have an unprecedented number of young Muslim women who travelled to Syria and Iraq to join the “terrorist” group. This was evident in the report from the International Centre for the Study of Radicalization (ICSR) that showed that in the United States there were 272 American citizens affiliated to ISIS, including 38 women and 12 minors (Cook & Vale, 2018). Out of the 38 women, 3 women were returnees to the United States and out of the 12 minors, 9 were returnees to the United States (Cook & Vale, 2018). The report showed

that in France there were 1,910 French citizens affiliated to ISIS, including 382 women and 460 minors (Cook & Vale, 2018). Out of the 382 women, 43 women were returnees to France and out of the 460 minors, 68 were returnees to France (Cook & Vale, 2018). The ICSR researchers Joana Cook and Gina Vale stated that 850 British citizens became affiliated with ISIS in Iraq and Syria, including 145 women and 50 minors (Cook & Vale, 2018). Out of the 145 women, 2 women were returnees to the UK and out of the 50 minors, 4 were returnees to the UK (Cook & Vale, 2018).

In addition, between June 2020 and February 2021, I interviewed two Canadian politicians, a human rights activist, a public servant, a researcher and professor, and a human rights lawyer. The participants were selected based on their active involvement on the issue of Canadian children detained in Northern Syria. Their active work and involvement on this issue was seen through their public statements, political debates, or publications. The in-depth interviews were conducted via Zoom and lasted between 30 minutes to 1 hour. No compensation was given to participants. Prior to the Zoom meeting or phone call, for ethical considerations, the participants received and sent back to the researcher (myself) the Informed Consent Form through email, where written consent was obtained from the interviewees for conducting the interviews and for voice recording. I also asserted that personal data and information are completely confidential. To protect their identity, all participants who wished to not waive their anonymity were given a pseudonym and only the researcher has the participants' name (see Table 1). During the interview, I explained the research topic, its objectives, and any potential risks. I stressed their right to end the interview anytime they request. They were then asked about their experiences, knowledge, and thoughts on repatriating and integrating the children born of ISIS parents. Lastly, interviews were translated and transcribed. The interviews helped me achieve my objectives, as they contributed to a better comprehension of the repatriation and integration of the children born of ISIS parents to Canada.

Table 1. List of Participants (Pseudonyms have been used for participants' names)

Code	Pseudonym	Gender	Occupation	Date conducted
P1	Kerollos	Man	Member of Provincial Parliament (MPP)	June 21, 2020
P2	Demyana	Woman	Human Rights Activist	August 29, 2020
P3	Shenouda	Man	Canadian Public Servant	October 3, 2020
P4	Moussa	Man	Researcher and Professor	October 14, 2020
P5	Faltous	Man	Member of Parliament (MP)	January 12, 2021
P6	Filomena	Woman	Human Rights Lawyer	February 18, 2021

2.2 Positionality and Reflexivity

As a researcher, I acknowledge my own positionality that influences the research produced through the biases and presumptions brought into it (Merriam et al., 2001; Momsen, 2006; Stanley & Slattery, 2003). Hence, it is significant to delineate those issues in relation to my research question and context through engaging with reflexivity processes. As an Afro-Indigenous Coptic minority woman, the Coptic community in Egypt represents about 10 percent of the population in Egypt. Coptics (Copts) are the ethnoreligious group indigenous to Northeast Africa who primarily inhabit the area of modern Egypt, where they are the largest Christian denomination in the country. ISIS targets Christians, calling Copts “*infidels*” and their “*favorite prey*” (Fox News, 2017). Thus, repatriating these children is essential, in my opinion, to help ensure their humanitarian needs and safety, reduce the number of ISIS supporters and put an end to the reign of ISIS. This was also emphasized during my interview with Moussa, a researcher and professor who specializes in terrorism, radicalization, diaspora politics, and who conducted numerous in-person interviews with current and former foreign fighters in Syria and Iraq. He noted that,

[the] camp in northeastern Syria, where thousands of captured Islamic State foreign

fighters' families are living under Kurdish control, are fertile ground for the research needed to understand the rise and fall of the caliphate and the urgent need of repatriation.

Moussa, Researcher and Professor

Interview-based research also has its limits in this thesis as Canada had made only one repatriation from Al-Hol detention camp. Canada is not active on this issue and has little to no political will, which is delimiting the possibility of reviewing previous public policies in facilitating the return and integration of these children. Thus, interviewing Canadian politicians was a partial, yet challenging, solution because addressing issues associated with repatriation and integration of the children born of ISIS parents has become extremely sensitive due to the controversy and stigma associated with them. In light of this limitation on Canadian public policies, this thesis adopts a comparative approach through examining United States, France, and United Kingdom's laws and policies to repatriation versus Canada's approaches to repatriation. Importantly, a comparative approach was utilized to reveal what *should* and what *could* Canada adopt and implement to reach repatriation and integration policies as the United States, United Kingdom, and France.

CHAPTER 3: AL-HOL DETENTION CAMP IN NORTHEAST SYRIA, A HUMANITARIAN CRISIS

This chapter describes the detainees at Al-Hol camp, which include thousands of women and children who were previously living under the ISIS regime. It continues by discussing the camp's appalling conditions, including the lack of international aid and organizational presence. This chapter demonstrates that the situation in Al-Hol detention camp represents a great humanitarian crisis, where detainees are being overlooked by the international community due to their association with ISIS.

3.1 The Women and Children of Al-Hol detention camp

After ISIS was defeated in March 2019, Al-Hol detention camp became a detention center for women and children affiliated with ISIS. In December 2018, the population at Al-Hol detention camp was approximately 9,000 people but by March 2019, it rose to over 70,000 people (Hubbard, 2019). This had overwhelmed the local camp administration officials and created an urgent need of humanitarian supplies and assistance (Hubbard, 2019). As of January 2021, there are around 9,000 non-Iraqi and non-Syrian women and children housed in the camp's foreigners' annex (Syrian Arab Republic, 2020). Detainees in the foreigners' annex are from about fifty different countries and currently have no legal immigration status (Hubbard, 2019). There are about 46 Canadians in Al-Hol camp, including at least 25 Canadian children.

During my interview with MPP Kerollos, the MPP stated that,

the detainees are not allowed to leave the Al-Hol detention camp freely because of their perceived threat and dangerousness.

Kerollos, Member of Provincial Parliament (MPP).

Many of the women are considered national security threats because “some women were . . . combatants . . . and still endorse the extremists’ ideology, making local officials reluctant to let them leave” (Hubbard, 2019; The Soufan Center, 2017). Not only this, but in some cases their families might add to the government officials’ justified reasons of continuing their encampment, of revoking their citizenship, or adding on to their “security threat” labelling. An example of this is Hoda Muthana, an ISIS bride in the camp whose U.S. citizenship was revoked when Hoda’s sister was arrested in April 2021, while she was attempting to join ISIS (Chulov & Mckernan, 2019; Curi, 2021). This demonstrated to the United States’ federal government that revoking the citizenship of Hoda was fair and on point due to the fact that the ISIS ideology is still supported

among her family members and Hoda is considered a national security threat as a result of this (Stanley-Becker, 2019).

The women in Al-Hol detention camp joined or became members of ISIS for a variety of reasons. Some were coerced into joining ISIS, while others joined voluntarily (Yee, 2019). Experts state that “some women are both victims and perpetrators” (Yee, 2019). A number of United Nations resolutions and protocols call on member states to consider women and children as potential victims of armed conflict or of human trafficking, which is one of the many international crimes committed by ISIS against many women and children. For example, U.N. 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 (U.N. Security Council, Resolution 2396, 2016).

In the case 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” (U.N. General Assembly, 1966, 1989, 2000). 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 (U.N. General Assembly, 2000). The Palermo Protocol helps states to help victims with their physical, psychological, and social recovery (U.N. General Assembly, 2000). It defines trafficking of persons as,

“... the recruitment, transportation, transfer, harboring 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 of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (U.N. General Assembly, 2000).

The U.N. Security Council has emphasized the importance of 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” (U.N. Security Council Presidential Statement, 2015).

While many of the women in the camp may suffer as much as the children, this thesis specifically focuses on the children born of ISIS parents at Al-Hol camp. In Al-Hol detention camp the “children make up about two-thirds of Al-Hol’s residents. Some are orphans . . . All have witnessed violence, and some have been taught to practice it” (Hubbard, 2019). Furthermore, researchers say that the Islamic State “employed children as scouts, spies, cooks and bomb-planters, and sometimes as fighters and suicide bombers” (Yee, 2019). Some of the children “have had years of ISIS indoctrination and, in the case of older boys, military training” (Yee, 2019). However, not every child was involved in “terrorist-related” activities. The majority of the children had no choice but to live under ISIS, and many of them were even born into the regime. In total “20,000 residents are under the age of 5,” and “11,000 of the kids aged 6 to 18 have not been exposed to learning for at least five years” (Wright, 2019). Several hundred of the children are orphans as well (Sly, 2019). The specific number of children at the camp who are suspected of being involved in “terrorist-related” crimes is not publicly available, nor is there evidence that this information has been recorded. The U.N., on the other hand, suggests that the limitation of the children’s knowledge, options, and cognitive development support makes them victims of armed conflict and in need of special attention (UNODC, 2018).

Despite a lack of specific data concerning children detained at Al-Hol camp, the report by Cook and Vale had helped decipher the one of four categories that foreign children fall into: 1) children who were born abroad but were brought by their parents into the ISIS regime; 2) children who were born into the ISIS regime and who have foreign born parents; 3) children who were involuntarily trafficked or forced to be part of ISIS; and 4) children above 18 years old who travelled voluntarily (without parents) to the ISIS regime (Cook & Vale, 2018). The first three groups describe children who lack agency when becoming part of ISIS, which this thesis focuses on. The fourth group, on the other hand, portrays children who were, presumably, not forced or coerced into joining ISIS. This thesis solely focuses on the child detainees in the foreigners' annex since foreigners are technically entitled to citizenship and residence in countries other than Syria and Iraq. The local Kurdish administration is demanding that Western states repatriate their citizens, claiming that each foreign detainee is the responsibility of his or her own country (Hubbard, 2019). Apart from each country's aversion to repatriating its citizens, identifying the nationality of the women and children can be challenging due to many of the detainees' lack of identification and the use of fake identities (Hubbard, 2019).

Based on records and intelligence, some countries have sent delegations who have failed to find children who should be in the camps but do not appear on SDF camp rosters (Sly, 2019). There are reports that some women may be hiding orphans or passing them off as their own children, either in order to preserve the next generation of militants or – assuming that their attachment to a child will make it more difficult for national governments to abandon them – to maximize their own chances of repatriation (Human Rights Watch, 2019). Against this backdrop, governments will certainly wish to conduct genetic testing to establish descent ahead of repatriation, along with other methods of family tracing (Sly, 2019).

ISIS has set up a system to register marriages and births, but no other authority recognizes these documents (Houry, 2016). Also, the fact that ISIS has cut off meaningful contact between territories under its control and the rest of the world has made it almost impossible for anyone still living under ISIS to register their newborn child with government officials in Iraq or Syria (Houry, 2016). The absence of any U.N. or international relief organization operating in ISIS areas also means that there will be no U.N. issued documents — such as U.N. High Commissioner for Refugees (UNHCR) certificates or vaccine booklets— that could help establish a child's identity (Houry, 2016). In determining whether to recognize ISIS-issued documents, priority should be given to ensuring the “best interests” of the child. For cases involving one or two foreign parents, countries will need to work together to facilitate the determination of parentage, grant citizenship, and possibly repatriate these children to their parents' countries (Houry, 2016). These coordination mechanisms will need to establish how to handle temporary travel documents, as well as DNA testing in certain cases (Houry, 2016). For example, Amira, the first Canadian repatriation case of a five-year-old Canadian orphan, was without any family in the camp after her parents and three siblings travelled from Canada to Syria to become ISIS fighters and were killed in an airstrike on Baghouz, Syria (Bell & Stephenson, 2020). She was born in Syria, meaning her family in Canada needed a DNA test to prove her parents are Canadian and Amira would also need temporary documentation to travel (Houry, 2016). Amira’s uncle and grandparents in Canada had been calling on the Canadian government to rescue the child for months —using other countries like Sweden, Australia, and France as examples of governments who have sent in personnel to extract women and children left behind after the years of war with the caliphate (Somos, 2019). The Canadian government had adopted UK’s method in addressing complicated questions about the identity of undocumented children or orphans reunifying with their extended families in their

country (Davenport, 2018). Like the London Metro Police’s method of conducting DNA testing on orphans under the age of 18 to confirm their citizenship and relationship with their extended families, the Canadian government had previously told Amira’s family that she must undergo a DNA test to prove that she is related to them and is a Canadian citizen before she can be issued travel papers — which would take months (Davenport, 2018; Somos, 2019). In 2019, Defense Minister Harjit Sajjan said that Canada did not have the “necessary support” in Syria to bring Amira home to live with her uncle in Toronto (Somos, 2019). Also, Defense Minister Harjit Sajjan emphasized that the Liberal government had previously refused to repatriate any Canadian citizens from detention facilities for ISIS captives and their families (Somos, 2019). However, in October 2020, after Global Affairs Canada’s learning about Amira’s “exceptional circumstances”, the Canadian Armed Forces provided support to a Global Affairs Canada consular delegation in what was described as “a well-planned initiative” that took custody of the girl from authorities in northeast Syria (Somos, 2019). What specifically changed that policy is unclear, but Amira’s uncle had filed a case in the Federal Court alleging the government had violated the five-year-old’s rights by not bringing her home. Finally, on October 5th, 2020, Amira was Canada’s first repatriation case. Other than Amira, no such cases has been reported in Canada yet, and there is no clear sign of a Canadian strategy for determining the identity of children born under ISIS to Canadian men or women (Shepard, 2018). Given these reasons and following U.N. Secretary General Antonio Guterres, it is “absolutely essential” that countries like Canada repatriate Canadian women and children currently being held in prison camps in Syria (Zimonjic et al., 2021).

There are two key reasons behind the Canadian government’s hesitation and their primary concern with regards to returnee children. The first being proving the identity of the child as the

offspring of a Canadian foreign fighter. The second is the difficulty in addressing the experiences and trauma experienced by the child (Bloom, 2015). Not all children will have been born in Syria or Iraq, as some women are known to have travelled with older Canadian born children; however, many women will likely return with young children up to 5 years old, as most Western girls and women travelled to ISIS-controlled territories starting in 2014 (Bloom, 2015). Mia Bloom emphasizes that if and when any of these children return to Canada, interventions must be carried out in order to address the psychological trauma inflicted upon these children (Bloom, 2015). Reintegration for children will need to include their Islamic re-education to unlearn the interpretation of Islam taught to them, one-on-one counseling and therapy programs informed by similar programs created for children returning from conflict zones as well as programs for child soldiers and for children exposed to gang violence (Bloom, 2015). These children will likely have problems with socialization, “as they may lack empathy and suffer from attachment problems” among other issues (Bloom, 2015). Front-line practitioners will need to be properly trained and well informed on the types of trauma they will deal with (Peresin & Cervone, 2015, p. 498).

As pre-existing and new actors fight for control of the region, and the void left by ISIS's defeat in Syria and Iraq, stateless children could become prime targets or new recruiting ground for other “terrorist” groups (Houry, 2016). In order to stop the cycle of radicalization and mitigate the ability of new extremist organizations to recruit young fighters, these children will need to be rescued and receive emotional and psychological support as well as a proper education to enable them to eventually lead “normal” and productive lives (Bloom, 2015). Furthermore, most children — unlike their parents— did not volunteer to travel to join or support and participate in ISIS. Men and women foreign fighters from the West that traveled with young children are the ones responsible for exposing their child or children to extremist ideology, illegal activities, and a

dangerous environment (Bell, 2018). Governments will need to establish a process to determine whether children are better off living with their parent(s), other close relatives such as grandparents or other immediate family members or should be removed from the family and placed into care with children's services (Bell, 2018). In Canada, child protection services are provincially administered (Shephard, 2018). This indicates that while the majority of deradicalization and reintegration initiatives should be managed at the provincial and federal level, streamlined communication and partnership between local centers and the relevant provincial and federal departments will be imperative (Shephard, 2018). Discussions should also be held at the federal level to determine the culpability of any minor that accompanied their parent(s) but continued to participate with ISIS after reaching the age of majority, if any such examples exist (Bell, 2018).

Given these reasons, repatriation is the best option from a (long-term) security perspective (Houry, 2016). However, according to Save the Children Canada, Canada is refusing to take any further steps toward the repatriation of the 25 Canadian children where, according to my interview with Moussa, “the oldest child in the camp is 13, with the majority are under the age of 5” (Moussa, Researcher and Professor) (Cardwell, 2020; West & Amarasingam, 2019). Canada's refusal is a breach of its basic obligations under the UNCRC (Canada ratified the treaty in 1991). This convention requires states parties to ensure the survival and development of children and to take all appropriate measures to protect them from all forms of physical or mental violence, injury or abuse, neglect, or negligent treatment (Blanchfield, 2018). In 2018, Public Safety Minister Ralph Goodale, stated that “the children are in a very vulnerable position, but they are in a war zone half a world away where Canada does not have diplomatic relations” (Blanchfield, 2018).

As noted above, the vast majority of these children are under the age of five, and some were even born in the Kurdish camps. The Honourable Prime Minister Justin Trudeau in 2017 in

the House of Commons had said that many of the Canadian mothers and children in Kurdish custody could be candidates for integration or reintegration (42nd Parliament, 1st session, number 240, November 28, 2017). The captured ISIS members who wish that their children be repatriated and integrated should have a constitutional right to enter/re-enter the country, but as of today, the government of Canada does not have active policies nor legal obligations to facilitate their return and integration. Canadian laws only deal with citizens leaving Canada to join “terrorist” groups, such as Leaving Canada to participate in activity of “terrorist” group or Leaving Canada to facilitate “terrorist” activity (2013, c. 9, s. 6 and s. 7; Criminal Code of Canada, RSC 1985, c.46, s.83.18(1); Criminal Code of Canada, RSC 1985, c.46, s.83.19(1); Criminal Code of Canada, RSC 1985, c.46, s.83.22(1)). As there are no direct laws and policies that address repatriation or integration of the children born of ISIS parents, this research examines the laws and policies on that issue put in place in the United States, France, and United Kingdom. This research provides policy recommendations to the Canadian government in order to prevent the continuation of ISIS through helping these children, provide a safe life to them, and help end their sufferings in this camp.

3.2 Conditions in the Camp

As of now, there is a shortage of medicine, food, clean water, and sanitary conditions in the camp (Yee, 2019; Casey, 2019). The camp is overcrowded because of the population surge in 2019. The foreigners’ annex is especially crowded, and the conditions are worse than the camp’s main area that is housing Syrians and Iraqis (Yee, 2019). The detainees in the foreigner’s annex experience worse treatment than other detainees in the camp (Human Rights Watch, 2019). Foreign women and children, unlike the Syrian and Iraqi detainees, have more limited mobility, a

lack of access to direct medical services, and a lack of sustenance (Human Rights Watch, 2019). Foreigners are not permitted to have cell phones, and they are not allowed to make purchases with the camp's internal currency (Human Rights Watch, 2019). There have also been reports that women have had to give births in their tents, demonstrating the lack of care given to detainees (Arraf, 2019).

Sickness and malnutrition have claimed the lives of many children. So far, it has been reported that over 390 children died due to preventable diseases and lack of food (Cumming-Bruce, 2019). Outside the camp, there is currently a cemetery with bricks and little mud mounds marking the graves for the children who have lost their lives (Sly, 2019). In addition, camp departures have recommenced as Coronavirus Disease 2019 (COVID-19) preventive measures have eased (OHCHR, 2020). More than 1,000 people are reported to have left the camp in the past two months (OHCHR, 2020). One British national child and one Canadian national child were among those who left Al-Hol on 15 September and 5 October respectively (OCHA, 2021). To date, four cases of COVID-19 have been confirmed among Al-Hol's resident population (OCHA, 2021). Efforts are still being made to enhance the camp's contact tracing capacity, which remains limited to one medical team consisting of three health care workers and 11 community volunteers. Partners are working to reduce gaps after a capacity assessment of the COVID-19 Treatment Facility (CTF - formerly known as the isolation center) in August revealed that it was fully operational but only appropriate for treatment of mild-to-moderate cases (OHCHR, 2020). The establishment of a laundry area, adjustments to on-site medical waste incineration, and the procurement of additional oxygen cylinders are among the most pressing issues (OCHA, 2021).

Aside from the camp's sanitary condition, radicalization experts are concerned that the camp will become breeding grounds for terrorism, and they warn of the danger of leaving

vulnerable children in conditions where they may be exposed to extremist ideologies (Gardener, 2019). There is evidence that Al-Hol detention camp does house ISIS followers, implying that radical ideology is something to which children may be exposed, especially given that there are no schools in the camp and children are not getting the appropriate education (Human Rights Watch, 2019). Thus, this leaves children vulnerable to the teachings of those adults in the camp that support ISIS, “ as such the camps are counterproductive to combating ISIS indoctrination” (Sly, 2019).

Furthermore, in the past, unjust punishment has been a common rallying cry for extremist organizations, and consequently, this camp could spark another insurgency movement (Gardner, 2019). Many academics and radicalization experts point to the lessons learned from Camp Bucca, in Umm Qasr, Iraq, the detention center where ISIS’s leader Abu Bakr Al-Baghdadi was schooled (Gilmour, 2019). They are of the opinion that unless a “secure and humane resolution to the issue of those thousands displaced by the collapse of the IS caliphate” is found, then the detention camps are “ticking time bombs that Europe and other parts of the world will live to regret” (Gardner, 2019). There is concern that if detainees are not repatriated, the women may become even more radicalized or even absorbed into the remnants of ISIS, taking their children along with them.

CHAPTER 4: RELEVANT LAW AND POLICIES RESPONDING TO CHILDREN DETAINEES AND RETURNEES

This chapter will discuss the international legal frameworks that address children’s rights, detention, stateless people’s rights, and the right to be repatriated. This chapter will also address family separation and the “best interest” of the child. The discussion of the relevant laws and human rights conventions will show how the detention of the children born of ISIS parents in Al-Hol detention camp is in violation of international law, including major international human rights

treaties.

4.1 Children under International Law

The CRC is the most comprehensive treaty providing protection for children worldwide, with 196 states party to it. Under the treaty, a child is defined as any person who is under the age of 18 (CRC, 1990). The Convention is organized around four principles: (1) the principle of non-discrimination, (2) the principle of the best interest of the child, (3) the right to life, survival, and development, and (4) the right to be heard (UNICEF, 2019; Fore, 2019). Additionally, the Convention guarantees various fundamental rights including but not limited to the right to protection from abuse, exploitation, and neglect, the right to education, and the right to adequate food and health (Nicholason & Kumin, 2017).

The principle of the “best interest” of the child is the cornerstone of children’s rights in international law (McAdam, 2017). According to Article 3, “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interest of the child shall be a primary consideration” (CRC, 1990). This is applicable to all children no matter whether they live in their country of origin or not (McAdam, 2017). The Committee on the Rights of the Child has explained that this principle is a substantive right, a legal principle, and a rule of procedure (McAdam, 2017).

Children in armed conflict, particularly those in combat zones, are also addressed by the CRC. Articles 39 and 40 describe states’ commitment to promote the recovery and social reintegration of child victims in armed conflict (CRC, 1990). Recovery and reintegration “shall take place in an environment which fosters the health, self-respect, and dignity of the child” (CRC, 1990). Additionally, regarding the prosecution of children involved in armed conflict, every child is entitled to a presumption of innocence until being proven guilty, to have “the matter determined

without delay by a competent, independent,” and impartial authority in a fair manner, to have his or her privacy respected, and more (CRC, 1990).

The foreign children at Al-Hol detention camp are a particular vulnerable population, not only because they are children, but also because they are perceived as being affiliated with ISIS. Some children were born into ISIS, while others joined on their own or were introduced to ISIS by their parents. No matter the reason, due to their age, the U.N. has emphasized that “the recruitment and exploitation of children by ‘terrorist’ and violent extremist groups is to be considered a serious form of violence against children” (UNODC, 2018). Consequently, children recruited by extremists or those born into the group should be treated as victims under international law (CRC, 1990). The CRC, along with U.N. guidelines, emphasizes that at least up until some age (most often eighteen years old under the CRC), children are often understood not to be able to exercise meaningful choice, even if they claim to act on their own (CRC, 1990). Overall, the labeling of the children born of ISIS parents as “terrorists” puts them at a high risk of being stigmatized and ostracized by their communities (UNODC, 2018). Not only that but as Alice Martini (2018) notes that, “the process of labelling may be considered an act of epistemic violence because it ascribes specific subject positions to the ones that are categorized and thus silences their voices” (Martini, 2018). In fact, the children have already suffered due to the international community’s refusal to remove them from the appalling detention camps.

The U.N. takes the position that recognizing children who have been involved in armed conflict as victims rather than combatants is justified. Doing so provides children with critical access to the rights of victims of crime (UNODC, 2018). Thus, the legal status of victim grants them access to specific rights, like the right to reparations and rehabilitation (UNODC, 2018). Additionally, this recognition aids the process of reintegration (UNODC, 2018). Being considered

a victim rather than a “terrorist” would fundamentally change how the world views these children, and hopefully, how the world responds to their current plight. Additionally, the U.N. has emphasized that “there should be a presumption against the prosecution of children, and they should be treated primarily as victims” (U.N. Secretary-General, 2019). Even for children accused of crimes related to “terrorist” organizations, the prioritization of non-judicial measures, rehabilitation, and reintegration is necessary in order to prioritize children’s best interest (U.N. Secretary-General, 2019).

As of 2021, the CRC’s four main rights that are guaranteed to children worldwide are being denied to the children born of ISIS parents. Regarding non-discrimination, the foreign children born of ISIS parents are being discriminated against when compared to the Iraqi and Syrian children in the camp, who have access to basic services providing them with food, water, and medical treatment (Yee, 2019). The right to survival and development is being disregarded with over 390 child deaths due to preventable causes and COVID-19 (Cumming-Bruce, 2019). The right to be heard is also ignored because, so far, these children have had minimal success in appealing their detentions (Save the Children, 2019). Lastly, detention in a squalid camp without education and an increased chance of radicalization cannot be regarded as in the “best interest” of any child (Ferguson, 2019). Even going beyond the CRC’s four main rights, camps like Al-Hol violate and infringes on a child’s rights to protection from abuse, exploitation, and neglect, the right to education, and the right to adequate food and health.

Two other specific issues regarding the children in Al-Hol detention camp merit discussion: child-sensitive age assessment and cross-border cases. Because of the Syrian civil war, birth certificates and other forms of identification for children are scarce (U.N. News, 2019). Thus, determining whether a teenager is under the age of eighteen is difficult. The presence of armed

conflict and lack of documentation may lead more states to try children as adults rather than presuming they are under eighteen and trying them as minors (UNODC, 2018). However, the U.N. recommends that serious effort should be taken to determine the age of children, while respecting the dignity of those children (UNODC, 2018). Additionally, in cases where there is no conclusive determination by a judge, public officials “must treat the young person as a child if he or she claims to or appears to be younger than eighteen” (UNODC, 2018).

As for cross-border cases, U.N. discussions focus on the possible extradition of children to their home countries, as long as the principle of non-refoulement is respected (UNODC, 2018). For the children in Al-Hol detention camp, this is not a possibility because their home countries refuse to repatriate them. Overall, however, under the CRC, States have the responsibility to protect the rights of children within their territory without discrimination, no matter whether children are their own citizens or not (CRC, 1990). Furthermore, the rehabilitation and the reintegration of children who have been exploited should be the overall goal of administrative detention, rather than punitive reasons of prosecution (U.N. Secretary-General, 2019).

Even when children have been involved in “terrorist-related” activities, because of their age, lack of agency, and vulnerability as a group, the international community has uniformly agreed by signing the CRC that treating children as victims of exploitation by “terrorist” organizations is in the “best interest” of children (U.N. Secretary-General, 2019). Additionally, the Immigration and Refugee Protection Act states that “it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child” (Government of Canada, 2013). That means children are not detained unless there are serious safety or security concerns that is not in the best interest of the child. Based on this discussion on the international protection for children’s rights,

the detention of the children born of ISIS parents, the current detention conditions, and the lack of return possibilities all violate the CRC.

4.2 Family Separation

Not only is detaining a child a last resort but separating the child from their parents is also considered a last resort in Canada, according to the Immigration and Refugee Protection Act. In Article 9, the UNCRC specifically addresses a “child’s right not to be separated from his or her parents against their will” (CRC, 1990). However, if it is in the best interest of the child to be separated from his or her parents then this separation would not violate Article 9. One may argue that family separation is in the best interest of the child because the dire conditions at the camp are putting the child’s life at risk even if the mother is not an ISIS follower. This argument might be considered as weak because it implies that any time a child and a mother are detained for an indeterminate period of time, family separation would be a lawful option for the child’s protection.

A stronger and more nuanced response to this critique finds its legal basis in Articles 20 and 22 of the CRC. These articles address the right to “special protection and assistance” by the State in the case if “a child is temporarily or permanently deprived of his or her family environment, or whose own best interests cannot allow him or her to remain in that environment” (CRC, 1990). This thesis has established that the conditions at Al-Hol detention camp are detrimental to the “best interest” of the child, particularly due to the terrible health risks, lack of education, and persistent exposure to ardent ISIS followers, even if this does not include their mother. Article 20 of the CRC allows alternative care for children including “foster placement, adoption, or if necessary, placement in suitable institutions for the care of children” (CRC, 1990). This means that when a child’s present environment is not conducive to a child’s best interest,

States are allowed to find alternate solutions of care. Furthermore, Article 22 mandates States with refugee children to trace the child's parents or any family members that may be found (CRC, 1990). Every state in the world is bound under the CRC to attempt family reunification for refugee children (covered under Article 10). This is with exception to the United States, as the United States has not ratified the CRC as it considers that doing so "limits the US sovereignty or would cause unlimited interference in family life" (CRC, 1990). Therefore, as the conditions in the camp are detrimental to the best interest of the child, it would be a way for children to leave Al-Hol camp and have States reunify the child with other family members if possible.

4.3 The Legal Basis of Detention

The international legal basis for detention falls under international human rights law during peacetime and the law of armed conflict (international humanitarian law) under wartime. During peacetime, international human rights law allows detention when it is "necessary to protect national security, public order, public health or morals, or the rights and freedoms of others" (Human Rights Watch, 2019). According to the U.N. Human Rights Committee, "the right to liberty of person is not absolute" and deprivation of liberty is sometimes justified as long as it is not arbitrary and is carried out "with respect for the rule of law" (U.N. Human Rights Committee 2014). Thus, detention should only be imposed "according to law, on an individual basis, and with all basic rights of the detained under international law including judicial review of detention." (Human Rights Watch, 2019). Since the detainees are a national security threat, the Kurdish administration can claim that the detention of women and children is a lawful preventive detention. However, according to the U.N. Human Rights Committee, "egregious examples of arbitrary detention which is forbidden under the ICCPR include detaining family members of an alleged

criminal who are not themselves accused of any wrongdoing” (ICCPR, 1966; U.N. Human Rights Committee, 2014). Thus, the detention of children at Al-Hol detention camp violates international law under international human rights law, specifically the ICCPR.

During wartime, the law of armed conflict—which allows states to detain those “reasonably suspected of threatening state security, without affording them judicial guarantees”—applies (Hakimi, 2008). Even though the War on Terror is technically not an international armed conflict under the definition of the 1949 Geneva Convention, it can and has been used as a basis for creating detention centers where the international law of armed conflict applies (Hakimi, 2008, Geneva: WHO, 2000). The law of armed conflict “permits states to detain anyone reasonably suspected of posing a security threat until the circumstance justifying detention ceases to exist, or until the end of hostilities” (Hakimi, 2008). Due to the foreign women and children’s perceived affiliation with ISIS, the Kurdish administration can claim that, under the international law of armed conflict, the detention is lawful until hostilities with ISIS fully come to an end. However, the U.N. Human Rights Committee has explained that in situations where the law of armed conflict applies, international human rights law acts as a complement to it (Hakimi, 2008). While no case has clearly delineated the relationship between the two bodies of law, it is clear that international armed conflict law cannot openly disregard the requirements found under major international human rights treaties, which includes the ICCPR (Hakimi, 2008). Therefore, national security concerns do not invalidate ICCPR guarantees, even if international armed conflict law is used to rationalize Al-Hol camp.

Regarding the children specifically, their detention due to security concerns has unfortunately become the “norm rather than the exception” (UNODC, 2018). At various times in history, the presumption that some children are a risk for society has led to child detention all over

the world, including Thailand, Iraq, Nepal, Sri Lanka, and the U.S (Hamilton et al., 2011). However, Article 37 of the CRC states that detention of children should be a measure of last resort and for the shortest period possible (CRC, 1990). Additionally, children should have access to facilities that provide health and human dignity (UNODC, 2018). The detrimental impact of detention is emphasized due to the negative effects that it has on children and their development. Detention of children leads to an increased chance of exposure to violence, stigmatization, and an overall negative effect on wellbeing (UNODC, 2018).

If and when child detention must occur, “the conditions of detention and the treatment of the child must be respectful of the dignity and special needs of the child . . .” (UNODC, 2018). The squalid conditions of Al-Hol camp, combined with the international outcry regarding the humanitarian crisis these children face, demonstrate that the children are not being treated with dignity and respect at the camp (Hubbard, 2019). Additionally, “not all children *de jure* can be considered to have the capacity to commit crimes” (UNODC, 2018). As a group, these children do not face a presumption of guilt. There is also “no requirement under the universal counter-terrorism instruments to criminalize association with or membership in a terrorist group” (UNODC, 2018). The detention of children at Al-Hol detention camp for years now has been in violation of international norms delineating the proper way to detain them, and this is an issue that must be resolved urgently.

Although international law allows punishment only after an individual is deemed guilty at trial, according to Syria, its detention camps do not serve as punishment (ICCPR, 1966). Instead, the camps are used as a way to incapacitate a person who is a threat to national security (Hakimi, 2008). However, under international law, “preventing families from leaving the camps” qualifies as “collective punishment,” which “violates the laws of war” (Human Rights Watch, 2019).

Additionally, international law violations are occurring because restriction must be “non-discriminatory, proportionate, and necessary to achieve legitimate aims” (Human Rights Watch, 2019). Restrictions have been discriminatory given that foreign detainees experience worse conditions than Iraqi and Syrian detainees (Yee, 2019). Restrictions have also not been proportionate because this detention is indefinite and has continued for more than a year (Human Rights Watch, 2019; Yee, 2019). Lastly, restrictions do not achieve legitimate aims because there are no pending trials against the detainees at the moment. The Kurdish administration has already stated they will not prosecute detainees, and there are currently no criminal charges being brought against the detainees by their own nations (BBC News, 2019). Detainees are being held simply because Syria cannot release them nor return them to their home countries, and this violates international law. The U.N. Human Rights Committee has clearly stated that detention “not in contemplation of prosecution on a criminal charge . . . presents severe risks of arbitrary deprivation of liberty,” especially if there are alternative measures to detention (U.N. Human Rights Committee, 2014).

A recent report also demonstrates that the Iraqi and the Kurdish administrations have prosecuted over 180 children linked to ISIS, with the possibility of torture being used to force confessions (Human Rights Watch, 2019). However, at least at Al-Hol detention camp, the Kurdish administration has stated that it does not intend to prosecute foreign children (BBC News, 2019). Thus, children are being held indeterminately without a possibility for future trials. The actuality is that, regardless of whether the law of armed conflict or international human rights covers this specific instance of detention, at least some of the children born of ISIS parents, who are according to the U.N. considered to be victims, are being held without causing threats to national security. Moreover, orphans under the age of 18 do not pose a threat to national security

since they have not been indoctrinated (Sly, 2019). Children who were born into the regime are not classified as ISIS fighters automatically. As such the detention of children is a violation of both the law of armed conflict and international human rights law.

4.4 Right to Nationality/ Stateless Persons Law

The international community views stateless persons as “some of the most vulnerable and oppressed people in the world” (Opeskin et al., 2012). The right to a nationality is a basic human right guaranteed to all under the Universal Declaration of Human Rights (UDHR), the ICCPR, and the CRC (CRC, 1990; ICCPR, 1960; UDHR, 1948). Furthermore, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness expounds rights for stateless people and seeks to limit state practices that leave someone stateless (for example, stripping citizenship from someone who is not a dual citizen) (Opeskin et al., 2012; UNHCR, 2014).

A person is *de jure* stateless “if he or she is not considered to be a national by any State” (Opeskin et al., 2012). If a country legally strips citizenship from the detainees at the camp, and they do not have citizenship elsewhere, they would be *de jure* stateless. On the other hand, detainees can as well be *de facto* stateless. This designation covers “individuals who technically possess a nationality but are unable to enjoy its benefits because . . . the State of their nationality is not able or willing to offer them protection” (Opeskin et al., 2012). Even if their citizenship has not been stripped by their home country, the majority of the foreign children at the camp are *de facto* stateless because most home countries are actively preventing their return or turning a blind eye towards them. The 1961 Statelessness Convention—which has seventy-four parties including the U.K.—recommends that “persons who are stateless *de facto* should as far as possible be treated

as stateless *de jure* to enable them to acquire an effective nationality” (Akram & Rempel, 2004).

While authority to make decisions about a person’s nationality primarily rest with domestic governments, according to the U.N. Office of the High Commissioner, “the right of States to decide who their nationals are is not absolute . . . and must comply with their human rights obligations” (Akram & Rempel, 2002). Specifically, Article 15 of the UDHR prohibits the arbitrary deprivation of nationality (UDHR, 1948). Additionally, the “prohibition of arbitrary deprivation of nationality has been widely recognized as a norm of customary international law” (U.N. Counter-Terrorism Implementation Task Force, 2018). Arbitrary deprivations can take many different forms, including when states deprive citizenship and by doing so “do not serve a legitimate state purpose or are procedurally unfair” (Opeskin et al., 2012). Currently, many states contend that national security supersedes the children born of ISIS parents’ right to nationality, and thus the *de facto* statelessness of their children serves a legitimate state purpose. However, this justification cannot be squared with international human rights law, which treats the children born of ISIS parents as victims rather than “terrorists” (Opeskin et al., 2012). This shows that States are violating international law by leaving their children in camps because there is no legitimate purpose for Western governments to prevent victimized children from exercising their right to nationality. Certain behaviors of adults or children might justify revoking repatriation and depriving someone of nationality. However, there is no similar exemption for the foreign children at the camp because they are treated as victims under international law. Because the international community has emphasized that States should do all they can to prevent statelessness or to refrain from depriving their citizens of a nationality, the *de facto* statelessness of the children of Al-Hol detention camp violates the CRC, the ICCPR, and the 1961 Statelessness Convention.

4.4.1 Ensuring the Right to Nationality

A fundamental right provided for in a number of international human rights instruments is the right to nationality. Protecting children's rights necessitates ensuring nationality. When it comes to the jurisdiction and responsibility of a State beyond its territory, nationality could particularly be determinative for children affected by the foreign fighter phenomenon. Nationality is also linked to a State's duty to admit a child and its responsibility for repatriation, reintegration and rehabilitation. A nationality of a child has a strong influence on his or her social identity and thus his or her development. This might also have security implications in the long run, since children without nationality risk being marginalized and exploited by designated "terrorist" groups.

Children of foreign fighters are at a great risk of becoming stateless, despite the right to nationality being provided for under international law, including in the CRC. First, a child might be denied national recognition because the situation would link him or her to the foreign fighter phenomenon. As such, lack of documentations, such as passports or birth certificates, might act as an obstacle to establish nationality through his or her parents. Some children only have birth certificates issued by non-State actors, in some cases it would be by "terrorist" groups which are not recognized by all Member States. Denial of the rights of women and girls to confer their nationality upon their children or nationality laws that are discriminatory on other grounds may present additional hurdles (Human Rights Watch, 2018). Currently, most governments do not offer repatriation assistance to citizens in the conflict zones of Iraq and the Syrian Arab Republic, including men and women who are suspected of being "foreign terrorist fighters" and their children (U.N. Secretary-General, 2019). Some States lack representation in such areas making it difficult to provide effective consular services. For legal, practical, and political reasons, several States only provide such assistance when their nationals manage to be present at their embassies or consulates

and their nationalities are established, including through DNA testing. This situation raises questions as to how these States are fulfilling their obligations to children who are entitled to nationality by decent, under the law.

Second, as a counter-terrorism measure, a child may be impacted by the deprivation of nationality. Some States have adopted legislation that allows authorities to revoke citizenship under specific circumstances. These circumstances are in cases where a citizen's return is deemed to be a threat to national security or the vital interests of the State. In many States, this measure may only be applicable to those individuals possessing dual or multiple nationalities. However, some domestic legislations do not provide protection against statelessness. Any measures affecting a parents' nationality may impact a child's citizenship directly, her or his ability to repatriate and capacity to freely enjoy his or her rights. As summarized below, international law prohibits arbitrary deprivation of nationality regardless of whether it leaves the concerned person stateless or not. In addition, States parties to the 1961 Convention on the Reduction of Statelessness may generally not deprive persons of citizenship when it would leave them stateless, except under certain narrow exceptions (U.N. Secretary-General, 2019). Moreover, it has not been shown that the denial or deprivation of nationality is an effective counter-terrorism measure. Rather, it is increasingly understood to be potentially counterproductive to security aims for a number of reasons (Yee, 2019). Such measures can prevent return, rehabilitation and reintegration of individuals who may want to leave a "terrorist" organization and who do not, or no longer, constitute a threat, while conferring the risk of threat to host countries and local populations (Cumming-Bruce, 2019).

4.4.2 International Law and Standards

The Right to Nationality

The right to a nationality is a fundamental human right. A number of international conventions and the Universal Declaration of Human Rights provide for this right (Save the Children, 2019). Under the Convention on the Rights of the Child, all children should be registered immediately after birth and are entitled to a name and a nationality (Ferguson, 2019). In addition, States that are party to the 1961 Convention on the Reduction of Statelessness must provide nationality to children born on their territory who would otherwise be stateless.

It is vital to establish, register and document the nationality of a child and birth since it provides the child the grounds to secure other rights, such as health care, freedom of movement, education, and labour market protection. A lack of documented nationality could also result in prolonged detention in immigration facilities, among others, which should be avoided, as it is never in the “best interests” of the child (U.N. News, 2019). Documented and registered age also determines treatment by the justice system by establishing that a child is below the minimum age of criminal responsibility or under 18 and therefore subject to lower penalties and treatment according to juvenile justice standards (UNODC, 2018). The denial of a child’s right to birth registration or nationality thereby renders him or her subject to a multiplicity of human rights violations. Indeed, the Committee on the Rights of the Child has found that the failure to provide a child with birth registration or other identification documents constitutes neglect of the child, exposing them to potentially vulnerable situations (UNODC, 2018).

In respect of recognition of the children’s nationality impacted by the foreign-fighter phenomenon, States should refrain from arbitrarily or discriminatorily applying their own nationality. Denying a child nationality because of the association with a parent who is deemed to be a foreign fighter would be contrary to the non-discrimination principle under the CRC (Article

2) and the “best interests” of the child (Article 3) a child is denied nationality because the link to the parent who is a national is not recognized, States should adopt a flexible approach to the acceptance of evidence of that link, taking into account the specific context by facilitating the provision of documents and consular services to assist nationals with the registration of their child born abroad and with recognition of their nationality. The fact that birth registration, which confirms a child’s place of birth and parentage, was conducted by a legitimately unrecognized non-State actor should not prevent the recognition of the parent–child relationship for which the registration is evidence. States should take actions to speedily establish or not unduly delay the recognition of nationality, because of the impact that such a delay can have on the child’s enjoyment of other rights and on their sense of identity (UNODC, 2018).

4.4.3 The Prohibition of Arbitrary Deprivation and Denial of Nationality

A child’s nationality should never be deprived from her or him by a State. This remains the same for children affected by the foreign fighter phenomenon who are often victims of violations of international law by multiple groups. In the case of parents’ being deprived of their nationality, the children’s nationality status should not be influenced by their parents’ status or any apparent affiliation or association deriving from manipulation or coercion. Deprivation or denial of nationality is never in the “best interests” of the child, as this is likely to result in economic, emotional, social and immigration consequences (UNODC, 2018). Deprivation of a child’s nationality, from a security perspective, contributes to creating greater insecurity by leaving children without support to recover or reintegrate, which increases marginalization, and this may lead to future violent extremism.

Under international law, arbitrary deprivation of nationality is prohibited. While the

deprivation of nationality is permissible under international law in certain situations, it must not be arbitrary or unreasonable under the particular circumstance (CRC, 1990). It thus must be carried out in accordance with due process protections and other procedural safeguards to ensure that it serves a legitimate purpose and that it is the least intrusive instrument to achieve the desired result, as well as be proportional to the aim it is seeking to accomplish (UNODC, 2018). Circumstances that authorize the deprivation of nationality have been noted to include situations in which an individual has acted in a way that is seriously prejudicial to the vital interests of the State. Decisions relating to nationality should be issued in writing and open to effective administrative or judicial review, including on substantive issues (U.N. Secretary-General, 2019).

Deprivation of nationality poses significant risks for human rights violations not only for the individuals stripped of nationality, but also for any children associated with them, especially when their nationality or immigration status is dependent on that of their parents' (Human Rights Watch, 2019). Again, such a negative impact on a child's status is likely to be contrary to the non-discrimination principle in penalizing the child based on the status, activities, expressed opinions, or beliefs of the child's parents and is likely to impact the enjoyment of other rights, including the right to family life (U.N. Human Rights Committee, 2014).

Another approach to how deprivation of nationality may impact a child affected by the foreign fighter phenomenon is when the person targeted for deprivation of nationality is still a child. As recruitment and use of children by armed groups is a violation of their rights and other provisions of international law, children who have been recruited or used should be considered primarily as victims. Thus, just serving in an armed group should not result in deprivation of nationality. Additionally, principles of juvenile justice must be applied when determining whether a child has committed crimes that are seriously prejudicial to the States' vital interests. The

principles of juvenile justice would include a careful assessment of children’s mental capacity to commit the crime, maturity, and capacity to understand the nature and the consequences of his or her acts. In short, stripping of a child of nationality goes against the “best interests” of the child and is most likely to contrary to any proportionality requirement (Human Rights Watch, 2019).

CHAPTER 5: BRIDGING RESCUES AND AGENCY IN THE CONTEXT OF CANADIAN CHILDREN DETAINED IN AL-HOL DETENTION CAMP IN NORTHEAST SYRIA

5.1 International Aid and International Organizations

The stigma attached to the detainees prevents countries and individuals from adequately supporting the humanitarian efforts in the camp, which causes the international aid and organizations to step in. Many international donors have been hesitant to help the detainees for fear of being perceived as helping “terrorist” organizations. Often, “their excuse is that these are ‘terrorist families’ and they say, as humanitarian NGOs, they don’t support terrorists” (Gardner, 2019). Numerous countries also have laws that criminalize financial support to individuals linked with “terrorist” organizations (Darden, 2019). Additionally, there are fears that the Assad government will weaponize humanitarian assistance, as it has done so in the past (Human Rights Watch, 2019). The Assad regime has a history of deliberately obstructing the delivery of aid to territories held by his opposition. In early 2019, the UNHCR was allegedly temporarily blocked from delivering aid to Al-Hol detention camp due to a dispute with the Assad regime (Human Rights Watch, 2019). Many residents lacked shelter for various weeks because of the aid hold-up. The regime “may exploit the increasingly dire conditions in Al-Hol detention camp to pressure the Kurdish forces ...to hand over control” (Darden, 2019). Thus, the suffering of the Al-Hol detention camp children is exacerbated by the lack of humanitarian assistance.

These social challenges faced by detainees can be looked at in the light of Ervin Goffman’s

stigma theory. Goffman defines stigma as being different in a social construct, so this can be a race, class, or gender difference (Davis, 2016). Goffman explains that stigma makes an individual discredited, leads to an uncomfortable social interaction, as well as discrimination and a reduction of an individual's life chances (Davis, 2016). The stigma in this case originates from the fear of these individuals being "terrorists" (Drolet & Moorthi, 2018). This stigma makes their integration harder. Stigma works by putting labels on individuals. This not only changes the way people perceive the stigmatized group, but it also changes the way the stigmatized groups see themselves, i.e., as a threat (Slattery, 2003). This change in the view of oneself leads to a new self-image and a new behavior (Slattery, 2003). They now see themselves in the eyes of their home country as foreign and different and therefore their behavior becomes that. This pushes stigmatized people further away from mainstream society and keeps them locked in their circle of cultural friends. All in all, this reduces the likelihood of them being repatriated.

5.2 Labelling Refugees and the 'Othering' Discourse

A number of scholars (for example, Bradley, 2014; Bradley, Milner, and Peruniak, 2019; Chatty, 2007, 2010; Hyndman & Giles, 2017; Goffman, 1963; Kyriakides et al., 2018a, 2018b; Malkki, 1992, 1995, 1996; Turton, 2003; Zetter, 2007) have challenged the international refugee regime's discursive representation of refugees as a homogenous group of objects who have been forcibly displaced and thus are stigmatized, labelled, helpless, passive, unprotected and stuck in the present unable to build lives into the future (Brun, 2015; Brun and Fábos, 2015; Hyndman & Giles, 2011).

The refugee label and its characterizations are codified in the 1951 Refugee Convention's widely used legal definition (Kyriakides et al., 2018b, Malkki, 1995; Zetter, 2007) that states

...owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Article A(2)).

This definition implicitly incites preconditions to refugee status eligibility (Zetter, 2007). The second precondition illustrates that refugees are assumed to be unprotected and rightless (Blitz, 2009; Massey, 2010). This is because by the time people left their home country, they are either *de facto* stateless since they "...are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country" or *de jure* stateless and do not hold nationality from any state under its law (Blitz, 2009; Massey, 2010, p. 61). Thus, while not all refugees are *de jure* stateless, UNHCR considers all refugees to be at least *de facto* stateless (unprotected persons) (Massey, 2010). The third precondition is that they are portrayed as people who have lost their ability and freedom to act because their "...judgment and reason had been compromised by their experiences" (Malkki, 1996, p. 384) and thus unable to claim "...normative authority of citizens" (Kyriakides et al., 2018b, p. 3).

In light of these depictions, Edward Said's *Orientalism* (Said, 1979) provides one way to comprehend how the refugee label leads to the discourse of 'otherness' (Hyndman & Giles, 2017; Kyriakides et al., 2018a, 2018b; Sajjad, 2018). This is evident in the global North's attributions to 'unfamiliar' refugees, which exemplifies them as passive, silent and in need for help and as threats to security (Hyndman, 2000; Hyndman & Giles, 2017; Sajjad, 2018; Zetter, 2007). Additionally, Western knowledge about the East is not generated from facts or reality, but from preconceived archetypes that envision all "Eastern societies as fundamentally similar to one another, and fundamentally dissimilar to Western societies" (Said, 1979). Said noted that,

“orientalism can be discussed and analyzed as the corporate institution for dealing with the Orient—dealing with it by making statements about it, authorizing views of it, describing it, by teaching it, settling it, ruling over it: in short, Orientalism as a Western style for dominating, restructuring, and having authority over the Orient” (Said, 1979). In other words, *Orientalism* is the process of Western countries, such as Canada, Britain, France, and the United States, constructing and representing the Orient’s identity as how the West perceives it.

Stuart Hall is another author that has also made significant contributions to the study of representation and how certain representations have had impacts on the children detained in Al-Hol detention camp. Hall contends in *Representation: Cultural Representations and Signifying Practices* that a “regime of representation” is a way of creating meaning through difference (Hall, 1997). So, through representing what is the Orient, Said is also representing what is not the Orient, or it’s opposite: the Occident. By using the “us vs them” dichotomy, Hall reaffirms the importance of creating difference by stating, “We need ‘difference’ because we can only construct meaning through a dialogue with the ‘Other’. It is obvious in Western culture that Orientalism has greatly contributed to the way that people of the Middle East, or part of the Orient, are represented. We can see here that by creating a difference between “us” and “them” we are able to create a representation of each, respectively. This is evident through the generalization that all the detainees in the Al-Hol detention camp pose a threat to our national security because they are connected to ISIS and that none of them should be let into our country because they all are a homogenous group. Furthermore, connecting Hall and Said together shows that, “stereotypes get hold of the few ‘simple, vivid, memorable, easily grasped and widely recognized’ characteristics about a person, reduce everything about the person to those traits, exaggerate and simplify them, and fix them without change or development to eternity”

(Hall, 1997). These stereotypes, in turn, create and enforce hierarchical systems of power, which is evident through the “Orient”. The exploration of theory provided by both Hall and Said greatly contribute to the ways in which refugees are represented to the public in the West, which through this process stigma and labelling is created and in turn, influences policies, opinions, and perspectives on whether or not repatriation should be granted.

I do believe that there is hope because countries like, France, the United Kingdom, and the United States had resisted at least partially ‘othering’ them through their humanitarian aid in repatriating children. Also, organizations such as the UNHCR had added to lifting this ‘othering’ through encouraging the repatriation, acceptance, and support of these detainees, “while the international community struggles to effectively address multiple crises, and their implications beyond the Middle East, UNHCR’s immediate priority will be to maintain the most favourable protected environment for these children” (UNHCR).

5.3 Public Policies Around Repatriation and Repatriation Efforts

The right to return, also known as repatriation, is expressed in several major international declarations, treaties, and conventions, such as in Article 13 of the UDHR, Article 12 of the ICCPR, and the 1951 Refugee Convention. The right to return is both embodied in the preceding hard law (for example, binding treaties) but also “soft law,” such as U.N. Resolutions (G.A., 1979). The U.N. Human Rights Committee has also stated that governments “must not, by stripping a person of nationality . . . arbitrarily prevent this person from returning to his or her own country” (Dearden, 2019; Wayne et al., 2019). The U.N. Human Rights Committee adds that “there are few, if any, circumstances in which deprivation of the right to enter one’s own country could be reasonable” (U.N. Human Rights Council, 2019). Repatriation is also recognized under

international customary law: “many commentators conclude that aside from being required by specific provisions in international treaties, the right to return is obligatory under customary international law in the human rights context” (Akram & Rempel, 2004; Rosand, 1998). The right to return is a principle that ensures refugees and exiles a right of return to their home countries. The right to return is a legally binding obligation on governments. Applying this principle to the situation of the foreigners at the camp, all countries are legally obliged to enable their citizens to return home if they wish so. Even though some citizens may, in fact, be linked to ISIS, there are binding U.N. Security Council Resolutions that require states to bring ‘terrorists’ to justice in their home country and to “develop and implement appropriate prosecution, rehabilitation, and reintegration strategies for returning foreign ‘terrorist’ fighters” (Mehra & Paulussen, 2019). If detainees are found to be guilty of a crime, rather than leaving them in camps, actions should be taken towards bringing them to their home for prosecution. Repatriation does not imply that one’s crimes should be forgiven, nor does it provide a possibility towards impunity. Repatriation simply opens the way for detainees to return to their home country and face the outcomes of their actions abroad in their own country’s judicial system (Akram & Rempel, 2004; Rosand, 1998).

Regarding children, Articles 7 and 8 of the CRC address their right to return. Article 7 states that every child has a right to nationality and that “State Parties shall ensure the implementation of this right . . . in particular where the child would otherwise be stateless” (CRC, 1990). Article 8 emphasizes that when a child is illegally deprived of his identity, States “shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity” (CRC, 1990). Children at Al-Hol detention camp have the same right to return to their home countries as any adult under international law, and the international framework’s heightened duties towards children protect this specific right. States having their citizens at Al-Hol detention

camp are failing to fulfill their obligation to preserve their citizen's right to nationality, particularly with respect to speediness, because many children have been detained for more than one year.

Overall, international law grants every person the right to return to their country and specifically requires countries to fulfill a child's right to acquire a nationality (CRC, 1990). This duty extends to children born abroad so they do not become stateless (International Justice Resource Center, 2019). Children and women are experiencing no effective returns as the right of return does not exist if there is no practical way to return. Theoretically, the end to the humanitarian crisis of the detained foreign children at the camp would be their repatriation because they would be taken out of detention and returned to their countries of nationality.

The children and women at the camp are unable to leave the camp since the majority of countries where they come from have refused to repatriate them. The refusal to repatriate is motivated by several factors, i.e., the lack of political will, minimal public interest, and the fear that the detainees might be importing extremism into their home countries. With the situation in Al-Hol becoming increasingly untenable, some governments are reconsidering their policy towards repatriation and have been willing to repatriate citizens. For example, the United States took the lead among Western countries when it repatriated sixteen Americans, both adults and children, as State Department officials had stated that, "the safety and security of U.S. citizens is their highest priority" (United States Institute of Peace, 2017; Shapiro, 2019). As the U.S. is one of the countries with the smallest number of citizens who joined ISIS, few if any of the children at Al-Hol camp appear to be U.S. citizens because only around 300 Americans joined ISIS abroad (Sky 2019; Editorial Board, 2020). The Department of Justice's Office of Public Affairs on October 1st, 2020 had released that with the recent transfer of custody of four defendants, the United States has successfully repatriated all Americans held by the SDF against whom criminal

charges have been lodged for offenses relating to their support for ISIS. The Department of Justice will review the facts and circumstances relating to any future detainees and, where warranted, bring additional charges against others. The Biden administration recently argued that “beyond being the best option from a security standpoint, repatriation is also simply the right thing to do” (Sly, 2019).

However, following the withdrawal of U.S. forces from the Kurdish region in Syria in 2019, Turkey’s subsequent encroachment into Syrian territory has created an additional barrier to home governments’ involvement in repatriating their citizens (Margolin et al., 2019). For example, the Canadian government explained that it is too dangerous for their officials to enter Syria to take children back now that Turkey was increasing its presence in the area (Albeck-Ripka, 2019). Despite the fact that Al-Hol detention camp is not located in a combat area, Turkey’s actions have negatively affected the camp since the invasion in October 2019, the Kurdish forces have prioritized fending off the invasion rather than monitoring their detention camps (Coles, 2019). In addition, most international groups have halted their operations in the camp, making the humanitarian situation more dire than before (Coles, 2019). Lastly, it has been confirmed at a detention center near Al-Hol that detainees are escaping from Al-Hol detention camp, which is problematic because these detainees might be dangerous ISIS supporters (Coles, 2019). Overall, the fighting at the border has increased danger to children in the camp, emphasizing the need for repatriation or other action by the international community.

However, the total number of children repatriated from the Al-Hol detention camp holding ISIS women and children remains low (Save the Children, 2019). Due to logistical difficulties such as security threats and the complications of nationality certifications, most other countries refuse to repatriate the children. Some children, for example, were born to parents of different

nationalities, making it difficult to determine which nationality the child should claim, especially if one parent has died in battle (Tayler, 2019). Overall, “few countries seem ready to send people to Syria and Iraq to collect them. Several countries require children born in the ISIS regime to undergo DNA testing to prove their parentage, and therefore their citizenship, before repatriation” (Yee, 2019). Due to the lack of resources in the camp, DNA testing for citizenship determination makes it extremely difficult and challenging for children to be able to return to their country of citizenship.

Various governments’ decisions to not repatriate their citizens have recently raised legal arguments against their decision. The families of the detainees and the detainees themselves from the United States, France, the United Kingdom, and Canada have challenged their detention through voicing it to their respective courts (Pop & Coles, 2019). As noted above, the Canadian government recently announced the repatriation of Amira. This “exfiltration” came after a bitter fight led by her Toronto family, which filed a lawsuit against the Canadian government to obtain Amira’s repatriation (Senator Leo Housakos, 2020). The federal government has been reluctant to welcome these nationals, as they are considered to be Canadian Extremist Travellers (CETs), i.e., an individual with a Canadian nexus who is found abroad or has travelled to participate in extremist activity (Government of Canada, 2019). However, the question remains of *why* should Canada repatriate these children and how *should* Canada deal with these children returning from areas considered to be hotbeds and training grounds for terrorism? Unlike France or the United States, Canada has very few CETs in the Syrian-Iraqi zone: 8 men, 13 women and 25 Canadian children (Department of Justice Canada, 2013; Public Safety Canada, 2019). Public opinion, on the other hand, is partitioned between international obligations concerning children’s rights on the one hand and security imperatives on the other (Pop & Coles, 2019).

Moreover, the security imperatives arose due to the stigma associated with the children born of ISIS parents detained in the Al-Hol detention camp. This relates to Goffman's theory on stigma, where even before repatriating Amira, there was already a stigma towards the children in the camp (Elliot, 2010). The stigma originated from the fear that these children and their mothers will pose a security threat since they are tied with ISIS (Elliot, 2010). This stigma makes the repatriation process harder, as it functions by putting labels on individuals. Thus, this stigma results in these children being locked in the realm of the misery of the camp with little to no hope of being repatriated. This was evident through my interview with MP Faltous who is working on the issue of Canadian children detained in Northern Syria. The MP had stated that,

there is little to no political will in repatriating or facilitating the return of the Canadian children detained ... a Canadian policy around repatriation is based on "exceptional cases", such as in Amira's case.

Faltous, Member of Parliament (MP).

Prime Minister Justin Trudeau had said that since Amira was an orphan and had family in Canada then her repatriation is "exceptional" (Somos, 2019). As discussed earlier, this then leads to a sense of "ontological insecurity" that Giles and Hyndman examine in their book, *Refugees in Extended Exile: Living on the Edge* (Hyndman & Giles, 2016). They observe that ontological insecurity is closely related to the depiction of refugees as vectors of insecurity, which is the consequence to those in these circumstances. They are vectors of insecurity because the 'global North perceives them as an existential threat'; they are trapped in a permanent temporariness through which ISIS ideology and indoctrination is being enforced on them, thus this produces ontological insecurity (Hyndman & Giles, 2016).

During my interview with MPP Kerollos, the MPP stated that,

the lack of diplomatic representation in these sensitive areas, as well as the complexity of rescue operations, which necessitates extensive logistical planning, have added to the reasons for the Canadian government's reservations about repatriation.

Kerollos, Member of Provincial Parliament (MPP).

Furthermore, this was echoed by MP Faltous that emphasized that there is a lack of international agreement on the approach that States should take in dealing with these returns. MP Faltous highlighted that,

there is no concrete policy in Canada that specifically addresses the repatriation of children from Al-Hol detention camp in Syria and that the problem is not logistics, it is fundamentally one of political will.

Faltous, Member of Parliament (MP).

This demonstrates that our government lacks political will to write a policy that protects and includes these children in the realm of human rights and public policy. The repatriation of these children is rendered intentionally invisible by powerful institutions or states since they view these children as a threat and deserving of life imprisonment in the camp (Somos, 2019).

However, a similar and yet different case where Canada was for the second time active on a case of repatriation and was successful is in Omar Khadr's case. Omar Khadr is a Canadian, captured by American soldiers after a firefight in Afghanistan in 2002, when he was 15 years old (Shephard, 2008). Khadr was imprisoned in Guantanamo Bay and Canada for almost 13 years in total. In 2010, the Supreme Court of Canada ruled that Khadr's detainment violated international law and the Canadian Charter of Rights and Freedom, "the principles of fundamental justice" and "the most basic Canadian standards about the treatment of youth suspects" (Shephard, 2008). The

Supreme Court of Canada ruling shows how the CRC was ignored in Khadr's case. As I agree that while children should be held accountable for their crimes, but not to the same level as adults, international law also requires that they be treated in a manner that takes into account their particular vulnerability and relative culpability as children and focuses primarily on rehabilitation and reintegration. As mentioned in the Optional Protocol to the C.R.C., adopted in 2000 and ratified by the United States in 2002, that requires states to "take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities are demobilized or otherwise released from service," and are given "all appropriate assistance for their physical and psychological recovery and their social re-integration" (Ryan, 2010). The Optional Protocol to the CRC further obligates states to prevent "any activity contrary to . . . the rehabilitation and social reintegration of [child soldiers]" (Ryan, 2010). The Convention on the Rights of the Child, adopted in 1989 but not ratified by the United States, binds states to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... armed conflicts," including child soldiers (Ryan, 2010). During my interview with Demyana, a Human Rights Activist, she emphasized that

the fact that the Convention on the Rights of the Child can be so easily ignored in Khadr's case and so in the case of the 25 Canadian children in the Al-Hol camp, especially in circumstances that demonstrate violation of the prohibition against torture, is a matter of serious concern for all members of the international community.

Demyana, Human Rights Activist.

Thus, in both cases, Canada's complicity is troubling because Canada has ratified the conventions that its Prime Minister now chooses to ignore.

In addition, the 25 Canadian children detained in Al-Hol detention camp are affected by

the Omar Khadr case. This is because the story of Omar Khadr had raised alarming changes in Canadian society that were reflected by the Omar Khadr case, including changes in political attitudes towards Canadians detained abroad (Williamson, 2012). Since Omar was a Canadian child soldier and a minor at the time he allegedly committed the acts that form the basis of the charges that were against him, the children in the Al-Hol camp are rendered as an intentional threat (Williamson, 2012). This was because some children in the camp are indoctrinated into ISIS ideology which was evident through the media's representation of these children. An example of the indoctrinated children in the Al-Hol detention camp is covered in The Sun newspaper in a news article titled, *'WOMB OF ISIS' Kids in Shamima Begum's former camp vow to join ISIS and 'kill non-believers' as terror group launches bloody comeback*. The news article has footage showing children under the age of 18 raising "one finger in the air – a gesture which is synonymous with jihadis" and when asked what they want to be, "they said fighters" (Hodge, 2021). As these children are immersed in such a dangerous environment along adults who support ISIS, the media represents the camp as "a time bomb" that is imposing a greater risk on these children as they are susceptible to following similar paths of these adults (Hodge, 2021; Peltier & Méheut, 2021). Thus, under the CRC, these children are a vulnerable population that merit special protection; however, them being detained in the camp violates the rights of protection to these children. Also, the fact that they are living in these camps participates to their 'othering' process in the media, where the media impacts their experiences of belonging to their home country and builds assumptions that if this certain identified group leaves the camp, they will pose a threat to the favored group. i.e., the West (Said, 1979; Hall, 1997). In addition, what is publicly known yet not put into practice in this case is Canada's Consular Services Charter, that 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” (Government of Canada, Consular Policy, 2020). Thus, Canada has the promises to help these children, yet their promises are inactive.

Canada’s neighboring country, the U.S., on the other hand, is active on repatriating it’s citizens that are detained in Al-Hol detention camp (Shapiro, 2019). The U.S. is in favor of the systematic repatriation of all nationals who have joined the Islamic State (Shapiro, 2019). In addition, European countries like France are campaigning for the prosecution of adult CETs to occur “as close as possible” to the place where their crimes were committed, and for repatriation to be considered on a case-by-case basis (France24, 2017, 2019). Several men have already been tried and sentenced in Iraqi courts (France24, 2020). This position is also shared by the Canadian government, which so far only repatriates “exceptional cases” (Save the Children, 2019) This reluctance is due in part to the several obstacles that the judiciary faces in trying CETs in Canada for crimes committed in Iraq or Syria (Department of Justice Canada, 2013; Public Safety Canada, 2019). Indeed, it should be recalled that those who join ISIS are presumed to have committed serious human rights violations and, as a result, may pose a serious threat upon their return. However, when it comes to the children of CETs, the security issue deserves to be deeply examined.

In addition to the United States, Canada should learn from a country like France, which implemented a case-by-case policy to repatriate its detained citizens in Al-Hol detention camp. France has repatriated seventeen children, yet there are an estimated 200 French children in the detention camps (France24, 2019). For security reasons, France has rejected the appeals of children with their mothers’ cases that claimed a right to repatriation (RFI, 2019). The French Council of State denied communal/joint repatriation of children with their mother and stated that decisions

would have to be made on a case-by-case basis, giving priority to orphans and fragile children whose mothers agree to let them go (France24, 2020; RFI, 2019). France brought home 10 orphans and children it called “humanitarian cases” in June 2020 and repatriated Taymia, a 7-year-old girl requiring emergency heart surgery in April 2020 (France24, 2020; Hubbard & Méheut, 2020).

Additionally, Save the Children reported on October 20, 2019, that thirty unaccompanied British children remained in the camps (Townsend, 2019). In late November 2019, United Kingdom's Prime Minister Boris Johnson said that they had successfully repatriated three orphaned children of British ISIS members from Syria (Peltier, 2019). Only those who are aged 16 and under will be allowed to return to Britain (Wayne et al., 2019). The Home Office had stated and warned that these returns are exceptional and do not constitute a reversal of the British government's position on this issue. This was evident in the U.K.'s position on Shamima Begum's case, where the U.K. had stripped Begum's citizenship. Begum who was born to Bangladeshi parents, left London in 2015 when she was 15 years old and traveled to Syria to join the jihadists. In Syria, she married an Islamic State fighter, Dutch-born Yago Riedijk, and lived in Raqqa, the capital of the self-declared caliphate, where she remained there with her children for four years until she was discovered in the detention camp (Dearden, 2019). During my interview with a Canadian Public Servant, Shenouda, he stated that

States, including the U.S., France, Canada, and the U.K. are leaning towards repatriating children under the age of 18 because older child returnees are old enough to have received training in how to use guns and wear suicide vests and may have been involved in combat, torture, or killings, which was evident in the case of the U.K. revoking Shamima Begum's citizenship and refusing her repatriation and this is because of the reasons I just mentioned.

Shenouda, Canadian Public Servant

Goffman's theory of interaction order is evident through the repatriation efforts that countries like the United States, United Kingdom, and France are moving towards and achieving. The general idea of the symbolic interactionism theory is that humans give meaning to things based on how they interact with them and that every person can have a different perspective of the same thing, and this perspective is subject to change at every new interaction (Elliot, 2010). In line with George Herbert Mead's theory of symbolic interactionism, Elliot explains that refugees want to view themselves positively as everyone does. However, this becomes difficult with all the hindering aspects of the refugee's home country's citizens viewing them as a security threat, which usually produces low self-confidence in them (Valenta, 2008). There were several terrorist attacks in the West from supposedly Muslim groups, an example is the Paris attack in France in 2015. As a result of these attacks, there was an increase of the depiction of Muslims as "terrorists" in the media, and this is making the repatriation and integration of the detainees much harder. If the detainees' home countries see them as "terrorists" then this can change the identity of the detainees. It carries the potential of first reducing their self-esteem and confidence, and it also makes them feel as if they must prove that they are not "terrorists", such as in Khadr's and Begum's case.

In addition, Goffman adds to symbolic interactionism and takes it in a new direction in his theory called interaction order. Goffman's theory of interaction order is a code of the way unfamiliar people socially interact with one another in social situations so as to achieve certain goals such as producing an absence of threat, marking territories, and managing their physical appearance (Elliot, 2010). This theory can be used to explain the integration of the detainees into the society of their home country. As detainees are being repatriated to their countries, they are faced with unfamiliarity everywhere they go and are in need to a long-term integration and meaningful social inclusion. To integrate with the new environment and people, they must create

an “absence of threat” in their body language and behavior, as to appear more friendly and be able to blend in the new culture (Elliot, 2010). This change of behavior makes them strangers to themselves as this is not their normal way to interact in social situations (Elliot, 2010). However, it is the necessary way in their current situation because it allows them to integrate and settle in this new culture and surrounding. This is evident through Figure 1 which shows The New York Post’s news article showing a photo of Begum wearing western attire in the camp, in northeastern Syria, on March 14, 2021, versus Begum’s picture in 2019 in her Islamic clothing. This demonstrates that what Begum is conveying to the British government is that her children alongside her are no longer a threat and that she is liberating herself from wearing the *niqab* (non-western attire) to showing her hair and wearing a shirt (western attire). In other words, she is telling them that she is taking off or removing the ISIS ideology from within her.



Figure 1: Shamima Begum photographed wearing western attire in the camp, in northeastern Syria, on March 14, 2021, versus Shamima Begum pictured in 2019 in her Islamic clothing. Retrieved from [ISIS bride Shamima Begum drops Islamic garb for Western duds \(nypost.com\)](https://www.nypost.com/2021/03/14/isis-bride-shamima-begum-drops-islamic-garb-for-western-duds/)

In addition to the portrayal of Begum with and without the *niqab*, Amira, the Canadian child repatriated on October 5th, 2020, was also portrayed with and without the *hijab* (see Figure 3). As such, the media representation and the stigma surrounding Muslim women and their autonomy to wear the *hijab* shapes the policies around repatriation in making the repatriation

process harder, since stigma functions by putting labels on individuals (Martini, 2018). As Sherene Razack argued that “Muslims are stigmatized, put under surveillance and denied full rights”, thus evicting the ‘Muslim’ person out of the Western policies and laws to the extent of marginalizing them (Razack, 2008). For example, there is a Netflix Swedish series released in 2020 called, Caliphate, that talks about how ISIS radicalizes and then recruits women in Western countries, in this case Sweden. The poster in Figure 2 shows the stigma and fear around women with the *hijab* or *niqab*, where we could also see a liberated woman and an unliberated woman obeying ISIS who wants to be free from ISIS. This is similar to Amira’s case because when CTV news showed Amira’s image prior to repatriation they had her without the *hijab* but in the process of her repatriation they have portrayed her with a *hijab* (see Figure 3). It all goes back to the form of representation, which here we could see the media’s representation of the issue and its role in evicting these detainees out of the Western policies and laws surrounding repatriation through its way of increasing islamophobia and negatively stimulating the public’s interest around this issue. The media’s representation had made the *hijab* by itself a symbol associated with fear and as a result of this fear it ‘othered’ these children by positioning them in the ‘stigmatized’ group.



Figure 2: *Caliphate*, on Netflix, is a harrowing Swedish series about how ISIS radicalizes and then recruits women in Western countries, in this case Sweden, to run away to Syria and marry their fighters.

Retrieved from [Caliphate / Netflix Official Site](https://www.netflix.com/title/80114601)



Figure 3: Shows Amira's image in the camp, i.e., the two pictures on the left, and the image on the right is Amira on her way to Canada.

Retrieved from [Orphaned Canadian girl held in Syrian camp is on her way home: family lawyer / CTV News](https://www.ctvnews.ca/orphaned-canadian-girl-held-in-syrian-camp-is-on-her-way-home-family-lawyer/1.5211111)

5.4 Prosecution in Syria or Iraq

States may choose to leave their citizens in Al-Hol detention camp as an alternative to repatriation in the hopes of facing local prosecution, i.e., prosecution in Syria or Iraq. If detainees at Al-Hol detention camp were successfully and fairly prosecuted, they would most likely be imprisoned or released, and the camps would be obsolete. Local prosecution, in the eyes of some

countries, is a better option than prosecution in the detainee's country of citizenship (“prosecution at home”) because local authorities have more access to evidence and witnesses, and local prosecutions allow the country to avoid the costs associated with those prosecutions. France has taken this route with respect to eleven adult male citizens, who were all sentenced to death for their involvement with ISIS after a hasty trial in Iraq (Rubin, 2019). Stark criticism of the decision to pursue local prosecution followed because for terrorism cases, Iraqi law does not convict based on a defendant’s actions (“the underlying crime”) (Rubin, 2019). Rather, Iraqi law convicts people simply because they joined ISIS (Rubin, 2019). According to critics of Iraqi prosecution, Iraqi law contemplates terms of punishment too broadly. Forty-five French defense lawyers criticized the French government’s decision to support local trials because “it violated the French constitution by risking the execution of its citizens and . . . by using the threat of terrorism to justify an overall erosion of protections for suspects and detainees” (Rubin, 2019).

Iraqi trials have attracted criticism because they also violate Iraqi law (Desiderio, 2020). Iraqi trials have been found to be rushed, based on coerced confessions, and without victim participation (Human Rights Watch, 2018). No significant efforts have been undertaken to gather evidence for prosecution (Human Rights Watch, 2018). Additionally, authorities have violated the due process rights of ISIS suspects under Iraqi law, which provides the ability to see a judge within twenty-four hours of detention, to have access to lawyers during interrogations, and to notify their families that they are being detained (Human Rights Watch, 2018). Regarding the prosecution of allegedly ISIS-affiliated women, judges have rejected claims of foreign women who have testified that their husbands forced them to come to Syria without giving them any choice (Human Rights Watch, 2018). While discussing local prosecution in my interview with Filomena, a Human Rights Lawyer, Filomena stated that,

these observations show that Iraq has failed to uphold its own judicial protections for terrorist-related suspects, making it unlikely that it will uphold any international standards that protects detainees in Al-Hol.

Filomena, Human Rights Lawyer

The flaws of the Iraqi trials also raise concerns about the general idea of, and international right to, a fair trial. For example, prior to the children’s arrival to Al-Hol detention camp, they have been subjected to arbitrary arrests and prosecutions with torture being utilized as a way to coerce confessions (Human Rights Watch, 2019). Apart from utilizing torture, “the lack of transparency . . . , the use of the death penalty, limited to no access to defense counsel, . . . and the collapse of a functioning judiciary . . . in Syria and Iraq all indicate that foreign fighters and their families do not receive a fair trial, if they receive a trial at all” (Mehra & Paulussen, 2019). The U.N. Human Rights Committee has stated that the right to a fair trial “may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights” (U.N. Human Rights Committee, 2007). It further states that “deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times” (U.N. Human Rights Committee, 2007). So far, Iraq, a signatory to the International Covenant on Civil and Political Rights (ICCPR), is violating this treaty by hastily conducting local trials that do not ensure fair trials for detainees (ICCPR, 1966). Furthermore, even if local prosecutions offered foreign detainees the opportunity to clear their names, this opportunity may not be available to the women and children detained in Al-Hol camp. First, there is a lack of probative evidence indicating that many of the women and children were not involved with ISIS, and this evidence would require significant resources, time, and effort to find. Second, Syria’s prisons are already overwhelmed with male militants who may face trial. The prosecution of women and children in camps is

unlikely to take priority over the imprisoned population (Bhabha, 2011). Lastly, the Kurdish administration has stated that they are not going to prosecute the women and children in the detention camps (BBC News, 2019). The focus of prosecution is placed on the men who are being held in actual prisons. The women and children at Al-Hol detention camp are being held indefinitely without access to court proceedings that determine guilt or innocence, in violation of international law (Bhabha, 2011). Thus, for the children at Al-Hol camp, local prosecution is unlikely to be an adequate solution.

5.5 Prosecution at Home

Prosecution at home is a proposed solution to detention camps because, presumably, detention camps would be unnecessary if each country repatriated their citizens and prosecuted them in their own country (Amman, 2014). Prosecution at home, on the other hand, poses significant logistical challenges. First, prosecution at home has been deeply criticized because in most countries in Europe, sentences for those convicted of being part of “terrorist” organizations only consist of a few years in jail (Dworkin, 2019). In the U.K., the average sentence is seven years (Dworkin, 2019). France stands out for having longer sentences, around fourteen to twenty years of imprisonment (Dworkin, 2019). In Canada, the Combating Terrorism Act creates four new offences of leaving or attempting to leave Canada for the purpose of committing certain terrorism offences. For example, “leaving or attempting to leave Canada to participate in any activity of a terrorist group for the purpose of enhancing the ability of any “terrorist” group to commit a “terrorist” activity, such as receiving training at a “terrorist” training camp, will become a specific criminal offence” (2013, c. 9, s. 6). The maximum penalty for this offence, or an attempt to commit this offence, is ten years imprisonment (2013, c. 9, s. 6). The other new offences of leaving or

attempting to leave Canada to facilitate a “terrorist” activity, leaving or attempting to leave Canada to commit an offence for the benefit of a “terrorist” group and leaving or attempting to leave Canada to commit an offence that also constitutes a “terrorist” activity impose a maximum penalty of fourteen years imprisonment (2013, c. 9, s. 6). The short sentences cause fear amongst people at home that regard this prosecution as a quick way for “terrorists” to be free from real punishment, making it an unpopular solution. Additionally, there is fear that evidence would be hard to find in battlefields, thus making prosecution, in Iraq or in the home country, even more challenging (Gardner, 2019). States may also have evidence admissibility rules that prevents it from being used in court. For example, the U.K. does not allow intercepted evidence in court (Dworkin, 2019). If people are taken back to home countries without enough evidence for prosecution, there will likely be political backlash against the home government, which would be seen as bringing in national security risks (Mechra & Paulussen, 2019). Also, even if convicted, imprisonment may pose a “potential difficulty” because “prisons are often an incubator of radicalization” (Dworkin, 2019). Countries seem unwilling to trust that home prosecution will provide meaningful redress when women and children are brought home because home prosecutions will be difficult and may be distrusted. Thus, this process is also not an adequate solution to children’s needs at Al-Hol camp.

5.6 Stripping/ Revoking of Citizenship

Some countries have encouraged stripping citizenship from the detainees at Al-Hol camp. The U.K. has stripped the citizenship of various nationals, like Begum (Dearden, 2019). Her British citizenship was revoked on national security grounds on February 19th, 2019 (see Figure 4) shortly after this in March 2019 she was found nine months’ pregnant. She has had three children,

but all her infants have died of malnutrition and disease (Sabbagh, 2020). So, instead of Britain taking responsibility and prosecuting Begum and other members of ISIS for “terrorist” activity that they may have facilitated or perpetrated against the people of Syria, the UK government is leaving them stateless in the misery of the camp. Under the 1981 British Nationality Act, a person can be deprived of their citizenship if the home secretary believes it would be “conducive to the public good” (Wayne et al., 2019). There is no requirement that a citizen be found guilty of a “terrorist” offence; in fact, when introducing the legislation, the government argued that in some instances deprivation of citizenship is preferable to prosecution. The only limit on this extreme use of executive power is that under the 1981 British Nationality Act, the government cannot revoke a person’s citizenship if it would render them stateless (Wayne et al., 2019). However, in certain cases, the law allows the government to render naturalized citizens stateless if they have acted in a manner “seriously prejudicial to the vital interests of the UK” and this is what had happened in Begum’s case (Wayne et al., 2019). Begum had made multiple pleas to return but all of them were rejected by the British Supreme court and since she was born in the UK, and does not consider herself a dual national, it is not clear how the government plans to make its case. In February 2021, the British Supreme court again rejected her pleas to return, thus she remains stateless in the detention camp. Begum is now appealing the Supreme Court’s ruling and it appears that Begum’s lawyer, Tasnime Akunjee, is preparing to argue that since her mother is from Bangladesh, a country that conveys citizenship by blood, Begum can apply to retain that state’s citizenship until she is 21 (Rajina, 2021). She, therefore, has the potential to not be rendered stateless. However, it is unknown if Bangladesh will recognize her citizenship and the privileges that go along with it, namely a passport and consular services. If Bangladesh fails to provide assistance to Begum, the UK’s decision will effectively render her *de facto* stateless (Rajina, 2021).

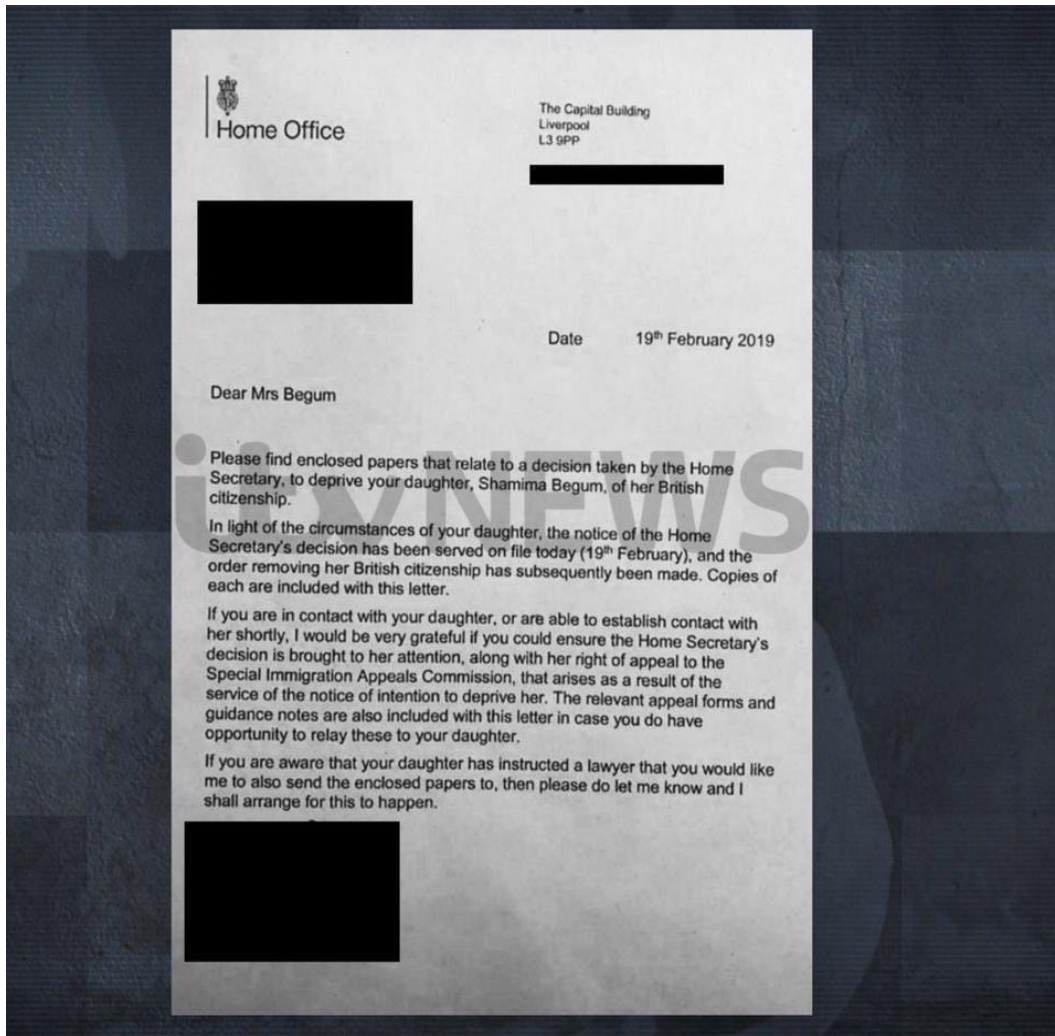


Figure 4: A copy of the Home Office letter received by Begum's family in regard to the Home Secretary's decision on removing Shamima Begum's British citizenship. Retrieved from <http://perma.cc/B569-RCKT>.

Between 2018 and 2019, those stripped of citizenship by the U.K. increased by 600 percent, but the U.K.'s Home Office refused to identify how many of these people were related to ISIS (Dearden, 2019). In a similar stripping of citizenship case to Begum, Hoda Muthana's U.S. citizenship was revoked after she expressed her regret in words through *The Return: Life After ISIS*, a film directed by Alba Sotorra Clue, saying, "when you are brainwashed, you don't realize it until you snap out of it. I took everything too fast, and too deep" ("The Return: Life After

ISIS': Human Rights Watch Film Festival, New York Digital Edition, 2021; Brown, 2021). What happened in Hoda's case is that in January 2016, the Obama Administration revoked her passport stating that she was not a citizen by birthright because her father's termination of diplomatic status had not been officially documented until February 1995 (Stanley-Becker, 2019). Afterward, President Trump instructed Secretary of State Mike Pompeo not to allow her back into the United States. Pompeo released a press statement that reads, "Ms. Hoda Muthana is not a U.S. citizen and will not be admitted into the United States. She does not have any legal basis, no valid U.S. passport, no right to a passport, nor any visa to travel to the United States. We continue to strongly advise all U.S. citizens not to travel to Syria" (U.S. Department of State, 2019; Hjelmgard & Collins, 2019). On February 21, 2019, her father, Ahmed Ali Muthana, filed an emergency lawsuit, asking the federal government to affirm his daughter's citizenship and allow her to return to the United States (Holpuch, 2019). However, in November 2019, a federal judge ruled that she did not have American citizenship (France-Presse, 2019). Two years after on January 19, 2021, The United States Court of Appeals for the District of Columbia Circuit upheld the decision of the District Court, ruling that Hoda is not a U.S. citizen (U.S. Court of Appeals for the District of Columbia, decision No. 19-5362, 2021). As a result of this, both Shamima's and Hoda's children are facing governments who have left them *de facto* stateless. The women are confronting their situations and trying to heal from their traumas in the dire conditions of a locked camp in northeast Syria.

Critics of the practice of stripping citizenship state that this practice leaves people "homeless without protection," making international cooperation challenging because other countries must take on the costs of detaining, housing, or prosecuting the stateless (Speccia, 2019). Overall, stripping of citizenship is often criticized as an inefficient, counterproductive, and even

dangerous way to fight terrorism because it eliminates the possibility of rehabilitation, reintegration, and prosecution in the country of citizenship (Dearden, 2019). The case of Begum and her children demonstrate that governments might take this action against children and their mothers in the future, which would elevate the danger of leaving children without a nationality.

Additionally, in Canada the government of Trudeau's Conservative predecessor, Stephen Harper, approved legislation that allowed Canada to strip the citizenship of dual nationals who were convicted of terrorism-related offenses in Canadian courts (Coletta, 2020) Trudeau's government repealed the law soon after he was elected in 2015 stating during his campaign that, "A Canadian is a Canadian is a Canadian ... And you devalue the citizenship of every Canadian in this place and in this country when you break down and make it conditional for everyone" (Coletta, 2020). But since then, Canada, like other countries, has balked at taking its citizens back from Syria, citing dangerous conditions and the lack of a diplomatic presence. Leaders in some countries have fretted about a backlash among their citizens if they brought suspected Islamic State fighters' home and the possibility that evidence, they might use to prosecute them might not stand up in their courts.

Taylor, a senior researcher at Human Rights Watch, noted that "Canada is a member of the Global Coalition Against ISIS and is partnered with many countries who have had intelligence agents on the ground in northeast Syria to assess the innocence or guilt of some of these detainees" (Coletta, 2020). However, critics, including the United Nations and Human Rights Watch, have accused Canada of shirking its international obligations, pointing out that Canadian allies such as the United States and France have surmounted similar obstacles to repatriate some of their nationals (Coletta, 2020). Since Canada has been so slow at repatriating their children, the following chapter will propose policy recommendations to Canada as a solution to help end the

humanitarian crisis at Al-Hol detention camp by repatriating the detained foreign children.

CHAPTER 6: CONCLUSION AND POLICY RECOMMENDATIONS

Based on the findings in this thesis, Chapter 6 will highlight how countries, like Canada, *should* consider the following recommendations to effectively repatriate the children born of ISIS parents detained in the camp, to better protect them in emergencies, protect their rights to social protection, nationality and strengthen social protection systems, and reduce their physical and emotional risks. These recommendations are based on my review of relevant international laws and the policies put in place by the United States, United Kingdom, and France. This chapter sets a reminder that Canada has an obligation under international law to develop a policy to protect the rights of the children detained in Al-Hol detention camp. In Chapter 6 there are different sets of recommendations targeting the humanitarian conditions in the camp, the right to repatriation, and strategies of reintegration that are addressed to different audiences. As the government of Canada plays a role in passing laws and making decisions, the recommendations of Chapter 6.1 are addressed to the government of Canada including Prime Minister's Office, Global Affairs Canada, Public Safety Canada, and Parliament. Also, it is addressed to the Department of Justice, Public Prosecution Service of Canada, including the Royal Canadian Mounted Police. In Chapter 6.2 the recommendations are addressed to Donors and Members of the Global Coalition Against ISIS, including Canada, because they are committed to the goals of eliminating the threat posed by ISIS and have already contributed in various capacities to the effort to combat ISIS in Iraq, the region and beyond. The breadth and diversity of partners supporting the coalition demonstrate the global and unified nature of this endeavor.

6.1 Implications and Policy Recommendations to the Government of Canada Including Prime Minister's Office, Global Affairs Canada, Public Safety Canada, and Parliament. To the Department of Justice, Public Prosecution Service of Canada, including the Royal

Canadian Mounted Police.

1. First off, children should not pay for their parents' wrong doings. As such, repatriation should be an urgent priority given to all children. So, bringing home children with their mothers, only if, there is absent compelling evidence that separation is in the best interest of the child, in line with international legal obligations with respect to family unity. By this I mean, that there should be a deep investigation of the children's mother's activities and see if their mothers were involved with ISIS. If for that reason there was evidence to show that involvement, then they should be allowed repatriation with their children, but they should go through the legal process in Canada and if appropriate and proven guilty, be prosecuted in Canada for potential involvement in serious ISIS crimes.
2. All people under the age of 18 should be treated as "children" who are entitled to special protections. Children should not be blamed for their parents' involvement with ISIS and as such children should be provided with the protection afforded to them under international human rights, humanitarian and refugee law including the Convention on the Rights of the Child and relevant national child rights law and standards, with the support of the United Nations.
3. Treat all persons under the age of 18 that are affected by the foreign fighter phenomenon first and foremost as victims of abuses and whose human rights are violated. This includes children who were recruited by ISIS. However, this does not prohibit investigation and prosecution of these children as long as they are above the age of criminal responsibility, abiding with international juvenile justice and fair trial standards. This should apply in situations where there is credible evidence of crimes committed by the child.
4. Stigmatization and discrimination have to be acknowledged and addressed when dealing with children affected by the foreign fighter phenomenon and instead, they should be provided with all necessary care and support.
5. Canada should have an obligation to repatriate and readmit these children to its territory.
6. A primary consideration in all actions or measures concerning children must be the best interests of the child in legislative, judicial, and administrative decisions. The assessments of the "best interests" of the child should be conducted with procedural protections in place and on an individual basis. The assessments should be multidisciplinary, i.e., including various experts, such as child psychologists, social workers, and counterterrorism experts.
7. Under the UNCRC, which Canada signed the Convention on May 28th, 1990, and ratified the Convention on December 13th, 1991. The right of a child is to remain with their family to preserve the family unity. The UNCRC requires states parties to ensure that a child shall not be separated from their parents against their will, except when 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. However, if mothers are not repatriated with their children and it is not based on the "best interest" of the child then that would run counter to the obligation contained in the UNCRC, which again Canada is a

signatory.

8. Repatriating the Canadian citizens, i.e., the children, detained in northeast Syria should be treated as a matter of urgent priority.
9. Canada should prioritize repatriation based on giving priority to children, persons requiring urgent medical assistance, and other particularly vulnerable detainees.
10. Canada's repatriation measures should include promptly authenticating citizenship, issuing citizens travel documents, and providing or coordinating safe passage to Canadian consulates or territory from Al-Hol detention camp.
11. Canada should effectively work with humanitarian agencies and local authorities to help expediate the process of repatriating pending repatriations.
12. Canada must work with humanitarian agencies and local authorities to help improve the dire conditions in Al-Hol detention camp, including overcrowding and lack of hygiene and medical care.
13. Canada must work with humanitarian agencies and local authorities to create a system whereby families can send funds to detained relatives in the Al-Hol detention camp, so that they could use these funds exclusively for essential provisions such as food, medicine, and clothing. Also, Canada must regularly provide Canadian families with timely information about their detained relatives.
14. Canada should provide and offer the detainees who are successfully repatriated with the proper rehabilitation and reintegration services.
15. Canada must prioritize investigations and prosecutions of returned detainees suspected of involvement in serious international crimes—namely, war crimes, crimes against humanity, and potential acts of genocide, in line with international fair trial and juvenile justice standards.
16. In case of convictions being secured, Canada must consider alternatives to incarceration for women caring for young children. Women should be in facilities where their children can regularly visit them.
17. Different roles of the suspected returned detainees that may have served in ISIS should be considered in determining the criminal justice responses for them, including women and children. As well as their potential roles as victims should be taken into consideration, including as women and children who were trafficked or otherwise lured, groomed, or pressured by ISIS to join the group.
18. Canada should prosecute and detain suspected children only as an exceptional measure of last resort, in line with the CRC. Before doing this, Canada should consider that any child below the age of 18 who was recruited or used by non-state armed groups is a victim and

is a violation of international law.

19. Canada must ensure that programs like the Crimes Against Humanity and War Crimes Program are adequately staffed and resourced, including the Sensitive and International Investigations Section of the Royal Canadian Mounted Police.
20. Canada must take action on investigating allegations of torture and inhuman treatment of Canadians detained in Al-Hol detention camp by pressing for accountability for detaining authorities responsible for any confirmed ill-treatment
21. Canada must enact into Canadian law a right to effective and adequate consular assistance and a zero-tolerance policy must be enforced toward discriminatory provision of consular services.
22. Canada should never consider depriving a child of his or her nationality.
23. Canada must not strip of the nationality of a child and the child should not have their nationality status affected by the status of their parents. Also, the child's nationality status should not be affected by any alleged affiliation or association resulting from coercion or manipulation, since stripping the nationality of a child would go against the "best interests" of the child.

6.2 Implications and Policy Recommendations to Donors and Members of the Global Coalition Against ISIS, including Canada:

1. Press for and provide support to home countries, like Canada, to give urgent priority for repatriation to children, persons requiring urgent medical assistance (like how France repatriated Taymia, the 7-year-old girl requiring emergency heart surgery) and other particularly vulnerable individuals.
2. In cases where the returnees are not at risk of torture, ill-treatment or unfair trial upon their repatriation, support must be provided to Canada to therefore bring home foreigners detained in Al-Hol detention camp.
3. As the United States and United Kingdom, Canada should repatriate, reintegrate, rehabilitate, and, as appropriate, investigate and prosecute suspected returnees from Al-Hol detention camp, in line with international fair trial and juvenile justice standards.
4. A target should be set to end the dire and often life-threatening conditions in the Al-Hol detention camp by immediately increasing humanitarian aid to the camps. Must ensure adequate shelter, clean water, sanitation, and for children, education. Must also ensure adequate health care, which includes prevention, testing, and treatment for COVID-19, tuberculosis, scabies, and other diseases.
5. Regular and effective communication between detainees and their family members should occur. As such, demand the Autonomous Administration of northeast Syria and the SDF

to facilitate that and provide technical and financial assistance for such communication.

6.3 Conclusion

Following ISIS’s territorial defeat on March 23, 2019, thousands of women and children who were affiliated with ISIS were detained at various camps—including Al-Hol detention camp that this thesis examined—in Syria because of their perceived link to the “terrorist” organization. The conditions at Al-Hol camp, the largest of the detention camps, have led to international outcry due to the humanitarian crisis experienced by the detainees (Hubbard, 2019). Overall, there is a lack of basic resources, such as food, water, and medicine.

The Kurdish administration has stated that it has no intention to prosecute the detainees, and it has repeatedly asked detainees’ home countries to repatriate their citizens (BBC News, 2019). However, most western countries have either repatriated only a few of the detainees or, due to national security concerns, flatly refused repatriating. Thousands of children have nowhere to go and are detained indefinitely because repatriation numbers have been low, and because prosecution in Iraq or in the detainees’ home countries is unlikely to meet the children born of ISIS parents’ needs under international standards.

This thesis focused on the foreign children at Al-Hol detention camp and surveyed the policies put in place in the United States, United Kingdom, and France and the international human rights norms on the repatriation of the children born of ISIS parents. Based on the reviews of national and international norms, this thesis proposed policy recommendations to Canada as a solution to end the children’s detention. Specifically, this thesis argued that the Canadian detained children at Al-Hol detention camp must be repatriated to Canada. This thesis found, after analyzing relevant international law, that indeterminately detaining children just because of a perceived

affiliation to ISIS violates both the law of armed conflict and international human rights law. The detention of children illustrates a state overreach and the sacrifice of children's rights for the sake of unlawful national security goals. Furthermore, because countries are purposefully preventing their detained citizens from returning to their country of origin, the children born of ISIS parents are being prevented from exercising their right to nationality and their right to return (CRC, 1990). Thus, the foreign children at Al-Hol detention camp are left *de facto* stateless due to the lack of repatriation. As such, repatriating these children will eventually end the illegal collective punishment for children who are linked to ISIS and be the way to set them free from the indefinite detention in the camp's dire conditions.

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