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& ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

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Form 59
Rule 29.02(1)

Affidavit

No. of 20

Federal Court of Australia
District Registry: VIC
Division: General

Save the Children Australia

Applicant

Minister for Home Affairs and another

Respondents

Affidavit of: **Mathew Tinkler**
Address: 33 Lincoln Square South, Carlton, Victoria
Occupation: Chief Executive Officer
Date: 5 June 2023

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| 5 | Annexure "MT-4": letter from the Applicant's solicitors to the Respondents, with attachments, dated 1 June 2023. | 6 | 405-414 |
| 6 | Annexure "MT-5": email from an officer of the Second Respondent to the Applicant's solicitors, dated 4 June 2023. | 7 | 415-416 |

Filed on behalf of (name & role of party) Save the Children Australia, the Applicant
Prepared by (name of person/lawyer) Moustafa Kheir
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[Version 3 form approved 02/05/2019]

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| 7 | Annexure "MT-6": letters from the Applicant's solicitors to an officer of the Second Respondent, dated 4 June 2023. | 8 | 417-419 |

I, Mathew Tinkler, Chief Executive Officer, of 33 Lincoln Square South, Carlton, Victoria affirm:

1. I am the Chief Executive Officer of the Applicant in this proceeding, and I am authorised to make this affidavit on the Applicant's behalf.
2. On 19 May 2023, the Applicant's solicitors, Birchgrove Legal, sent a letter to the Respondents, on behalf of the Applicant, seeking that a decision be made about the repatriation of Australian women and children who are currently detained by the Autonomous Administration of North East Syria at Al-Roj camp. The letter attached:
 - (a) a statement prepared and signed by me on 18 May 2023 (**my statement**);
 - (b) an expert report prepared by Professor Michael A Newton;
 - (c) an expert report and supplementary expert report prepared by Dr Anan Alsheikh Haidar; and
 - (d) an expert report prepared by former Ambassador Peter Woodward Galbraith.
 Annexed and marked **MT-1** is a copy of the letter and the attachments to it.
3. I affirm that each fact stated in my statement is true and correct, to the best of my knowledge and belief. Where a fact is stated on the basis of information from another person or document, I have stated its source, and I believe the fact to be true.
4. On 23 May 2023, Birchgrove Legal sent a further letter to the Respondents. Annexed and marked **MT-2** is a copy of that letter.
5. On 26 May 2023, an officer of the Second Respondent sent a letter to Birchgrove Legal. Annexed and marked **MT-3** is a copy of the letter.
6. On 1 June 2023, Birchgrove Legal sent a letter to the Respondents stating that the Applicant inferred from the 26 May letter that the Respondents had decided not to make a further repatriation decision, and attaching a draft Concise Statement and confidential annexure, which the Applicant intended to file with the Court on 5 June 2023. Annexed and marked **MT-4** is a copy of the letter and the attachments to it.
7. On 4 June 2023, a lawyer in the office of the Australian Government Solicitor sent an email to Birchgrove Legal. The email requested that the Applicant delay filing the proceeding, but did not provide any commitment by the Respondents towards effecting

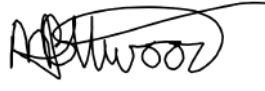
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repatriation of the remaining Australian women and children. Annexed and marked **MT-5** is a copy of the email.

- 8. On 4 June 2023, Birchgrove Legal responded to that email. Annexed and marked **MT-6** is a copy of two letters from the Applicant’s solicitors to the Australian Government Solicitor, the second making a correction to the first.
- 9. At the time of affirming this affidavit, shortly after 3:00 PM on 5 June 2023, I have not received any further relevant communication from the Respondents.

Affirmed by the deponent
 at Melbourne
 in Victoria
 on 5 June 2023
 Before me:

) 
)
)
) Signature of deponent
)



Signature of witness

Madelyn Beth Attwood
 Corrs Chambers Westgarth
 Level 22, 567 Collins Street, Melbourne VIC 3000
 An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria)
 A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018* to take an affidavit.

This affidavit was signed and witnessed over audio visual link in accordance with the *Oaths and Affirmations Act 2018* (Vic).

Rule 29.02(8)

Annexure certificate

No. of 20

Federal Court of Australia

District Registry: VIC

Division: General

Save the Children Australia

Applicants

Minister for Home Affairs and another

Respondents

MT-1

This is the annexure marked **MT-1** referred to in the affidavit of Mathew Tinkler affirmed on 5 June 2023.

Filed on behalf of (name & role of party) Save the Children Australia, the Applicant
Prepared by (name of person/lawyer) Moustafa Kheir
Law firm (if applicable) Birchgrove Legal
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19 May 2023

Our Ref: MK:19-1841
Your Ref:

Hon Clare O'Neil MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

Request for decision whether or not to repatriate the remaining Australian children and women detained in North East Syria

We act for Save the Children Australia (**STCA**) and write this letter on its behalf.

STCA refers to its previous communications with the Australian Government about Australian women and children detained by the Autonomous Administration of North East Syria (**AANES**) in Al-Roj camp in North East Syria (the **Australian women and children**).

As you know, in October 2022, the Australian Government decided: (a) to request AANES to release, and (b) to facilitate the repatriation of, some Australian women and children (the **first repatriation decision**).

That decision did not extend to the other Australian women and children (the **remaining Australian women and children**), who are still detained in Al-Roj camp to this day.

STCA writes to you, both in your capacity as Minister of State for the Commonwealth, and as representative of the Commonwealth Executive, to ask that the Executive make an equivalent decision about the remaining Australian women and children (a **further repatriation decision**).

In support of this request, STCA provides the following materials:

1. A statement by STCA's CEO Mat Tinkler, with Annexure.
2. An expert report prepared by Professor Michael A Newton.
3. An expert report, and supplementary expert report, prepared by Dr. Anan Alsheikh Haidar.
4. An expert report prepared by former Ambassador Peter Woodward Galbraith.

STCA asks that a decision be made on the basis of these materials, having regard to applicable rules of domestic and international law. If the decision is to not make a further repatriation decision, please provide written reasons for that decision (which may be short).

You and the Executive have had a long time to consider a further repatriation decision. You must have been considering the repatriation of the remaining Australian women and children before, and

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up to the time of, making the first repatriation decision which could have extended to them but did not. Since that decision, STCA and others have consistently requested a further repatriation decision. In that context, STCA requests that a decision be made, either to make a further repatriation decision or not, **by 26 May 2023**. STCA asks that the decision, and reasons if the decision is adverse, be communicated to STCA and Birchgrove Legal by the close of business that day.

If you do not communicate a decision either to make a further repatriation decision, or to not make a further repatriation decision, by that day, STCA will infer, having regard to the time you have had to make such a decision, that you have decided to not make a further repatriation decision.

STCA has previously advised on numerous occasions of its intention to commence a proceeding for habeas corpus on behalf of the remaining Australian women and children, should no further repatriation decision be made. Unless the Executive makes a further repatriation decision extending to all of the remaining Australian women and children, STCA intends to institute a proceeding seeking habeas corpus for any remaining Australian women and children not the subject of a further repatriation decision. In that proceeding, STCA may also seek judicial review of any adverse decision, express or inferred, to not make a further repatriation decision in respect of all of the remaining Australian women and children.

STCA wishes to reiterate that commencing litigation is a measure of last resort to achieve the repatriation of the remaining Australian children and women and to protect them from further harm.

STCA asks that you treat this letter and the attachments in strict confidence. Should you propose disclosing this letter and the attachments to anyone other than appropriate Commonwealth Officers or lawyers, STCA requests that you provide STCA and Birchgrove Legal five business days' notice prior to any disclosure occurring. Without being exhaustive as to the reasons for confidentiality, STCA instructs that the following risks may arise if there is any disclosure:

- ISIS promotes that women in the camps who want to return to a non-Muslim country and who recognise the authority of the law enforcement and government of that country must be killed. Women and children publicly named and connected to this correspondence or any future legal proceedings may therefore be (a) subjected to threats and acts of violence by radicalised women in Al-Roj camp; or (b) killed should they be captured and brought into the hands of ISIS.
- The remaining Australian women and children face increased risks simply by drawing attention to this danger.

These remaining Australian women and children are your citizens; you are their government. Their liberty is taken without authority, and in their detention, they are at risk of daily harm; you hold the key to their release.

STCA remains available to discuss this matter with you or senior officers of your Department.

Yours faithfully



Moustafa Kheir
Principal Solicitor
Birchgrove Legal
mkheir@birchgrovelegal.com.au

STATEMENT OF MATHEW TINKLER

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I, **MATHEW TINKLER**, of Save the Children Australia, 33 Lincoln Square South, Carlton, Victoria, Chief Executive Officer, make the following statement.

I. Introduction and summary

- 1 I am the Chief Executive Officer of Save the Children Australia (**STCA**), of 33 Lincoln Square South, Carlton, Victoria.
- 2 For several years, certain Australian-citizen women and their children (who are also citizens, or are eligible to become citizens) have been detained in camps in North East Syria, including by the Autonomous Administration of North East Syria (**AANES**) at Al-Roj camp (the **Australian women and children**).
- 3 At no time has the detention of Australian women and children in Al-Roj camp been:
 - (1) authorised under the law of Syria, being the sovereign of the territory on which Al-Roj is situated, or otherwise authorised by foreign domestic law;
 - (2) consistent with applicable international law.

- 4 On 28 October 2022, the Australian Government successfully repatriated some Australian women and children: Mariam Raad, Mariam Dabboussy, Bassem Assaad, Shayma Assaad and their thirteen children (the **repatriated Australian women and children**).
- 5 I infer that this was achieved by:
- (1) the Australian Government deciding to:
 - (a) request that the AANES: (i) release the repatriated Australian women and children from Al-Roj camp; and (ii) take any steps necessary to assist the Australian Government to facilitate their repatriation; and
 - (b) facilitate the repatriation of the repatriated Australian women and children;(the **first repatriation decision**);
 - (2) accordingly, the Australian Government requesting that the AANES release the repatriated Australian women and children from Al-Roj camp and take any steps necessary to assist the Australian Government to facilitate their repatriation;
 - (3) the AANES agreeing to that request;
 - (4) the AANES releasing the repatriated Australian women and children from the Al-Roj camp, and taking steps necessary to assist the Australian Government to facilitate their repatriation;
 - (5) the Australian Government facilitating the repatriation of the repatriated Australian women and children.
- 6 However, Australian women and children remain detained by the AANES in Al-Roj camp (the **remaining Australian women and children**).
- 7 The detention of the remaining Australian women and children remains unauthorised by foreign domestic law and inconsistent with applicable international law.

8 I infer from [4]–[6] above that, at the time of making the first repatriation decision, the Australian Government decided:

- (1) not to request that the AANES: (a) release the remaining Australian women and children from Al-Roj camp; (b) take any steps necessary to assist the Australian Government to facilitate their repatriation;
- (2) not to facilitate the repatriation of the remaining Australian women and children.

9 I have prepared this statement in support of a request to the Commonwealth Executive now to make a decision:

- (1) to request that the AANES: (a) release the remaining Australian women and children from Al-Roj camp; (b) take any steps necessary to assist the Australian Government to facilitate their repatriation;
- (2) to facilitate the repatriation of the remaining Australian women and children; (a **further repatriation decision**).

10 To be clear, STCA has been authorised by some, but not all, of the remaining Australian women and children to issue such legal proceedings and take such other steps as may be necessary or appropriate to bring about their repatriation, including, where necessary or appropriate, as their litigation guardian. Those remaining Australian women and children (the **STCA-authorising remaining Australian women and children**) are as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 To accompany this statement, I have prepared an Annexure, comprising a bundle containing copies of the documents to which I refer in this statement, with sequential page numbering, and an index at the front giving the name and starting

page number for each document. A document referred to in this statement can be found in the Annexure by reference to that index.

12 This statement deals with the following matters:

- (1) this introduction and summary section (section I below);
- (2) STCA, and my role and relevant experience with STCA (section II below);
- (3) the detention of Australian women and children by the AANES in Al-Roj camp (section III below);
- (4) the STCA-authorising remaining Australian women and children (section IV below);
- (5) the citizenship status of the STCA-authorising remaining Australian women are Australian citizens (section V below);
- (6) detention of Australian women and children by the AANES in Al-Roj camp is not authorised under foreign domestic law and is inconsistent with international law (see section VI below);
- (7) a further repatriation decision for the remaining Australian women and children would result in their repatriation to Australia (see section VII below);
- (8) there is no basis for distinguishing between the reasons supporting the first repatriation decision and the reasons supporting a further repatriation decision (see section VIII below);
- (9) the risk of harm to the remaining Australian women and children if they are not repatriated (see section IX below);
- (10) STCA's recent advocacy for repatriation of the remaining Australian women and children (section X below); and
- (11) a conclusion (section XI below).

13 I make this statement based on matters within my own knowledge and experience, except where I have stated otherwise. Where my knowledge is based on information given to me, I have identified the source, except where information was received in confidence.

14 This statement contains names and identifying details of Australian women and children, publication or other disclosure of which might be highly prejudicial to them. I request that this statement be treated as confidential, and that I be given seven clear days' notice of any proposal to file it in Court or disclose it to any person outside of the Australian Government.

II. **STCA and my role and relevant experience**

15 The Save the Children Association (**Save the Children**), which is registered in Geneva, is the world's leading independent organisation for children. Save the Children operates in Australia, the Pacific, and around the world, to protect children from abuse and neglect, to provide access to healthcare and education, and to assist children in times of emergency.

16 Save the Children manages and implements programs that support children in 21 countries around the world. Save the Children also directly delivers programs in the Pacific region and supports children and families in Australia, running programs in more than 197 communities and locations across the country.

17 Save the Children, of which STCA is a member, works through a single structure, Save the Children International (**STCI**), when implementing projects internationally. This means that STCA implements Save the Children's projects in Australia and the Pacific, whereas international projects are implemented through STCI and other local Save the Children partners. A true copy of STCA's Constitution is in the Annexure.

18 STCI has been active in Syria since 2012. STCI has an in-country office in Syria (known as the Syria Response Office) with hundreds of staff and volunteers who deliver emergency and lifesaving support, and early recovery activities that help restore basic services for children and their families. As part of STCI's work in Syria, STCI continues to be active in Al-Roj camp and delivers humanitarian relief to the camps in North East Syria.

19 In addition to the presence of STCI in Syria and contacts within the Syria Response Office, STCA has an extensive network of local, regional and international contacts, including organisations such as Human Rights Watch, Amnesty International, Australian National Imam Council, Australian Red Cross, Reprieve and others, which provide up-to-date information concerning the issues addressed in this statement. The field staff and local offices of other non-

governmental organisations have accessed Al-Roj camp, alongside the service-delivery activities of STCI's local staff. This network provides STCA with credible and current information about the matters addressed in this statement.

20 In 2014, I commenced my employment with STCA, as Director of Policy and Public Affairs. In 2017, I was appointed Managing Director of Policy & International Programs. In 2022, I was appointed to my current position as Chief Executive Officer.

21 Since 2019, my work has included:

- (1) regular communications with STCI's Syria Response Office about the conditions facing the Australian women and children and about calls for repatriation of foreign nationals, set in their geopolitical context;
- (2) regular engagement with the Australian Government including with relevant Ministers, Ministerial offices, and relevant officers of relevant departments, including the Ambassador for Counterterrorism in the Department of Foreign Affairs and Trade (**DFAT**) and the Counterterrorism Coordinator in the Department of Home Affairs (**DHA**);
- (3) regular meetings with Members of Parliament and their advisers, about the repatriation of Australian women and children, including about questions to be asked during Senate Estimates processes;
- (4) engagement with foreign domestic governments to understand their repatriation efforts, ascertain their support for repatriation and encourage them to make representations to the Australian government about repatriation of Australian women and children;
- (5) engagement with UN bodies and experts including Fionnuala D. Ní Aoláin, the UN Special Rapporteur on counter-terrorism and human rights, and experts in deradicalisation;
- (6) coordination with other civil society organisations in Australia and internationally to support collaborative efforts on repatriation;
- (7) FOI requests by STCA directed (among other things) to understanding the Australian government's ability to: (i) communicate with Australian women and children detained at Al-Roj camp; (ii) access and provide humanitarian assistance to Australian women and children in Al-Roj camp; and

- (iii) repatriate Australian women and children from camps in North East Syria;
- (8) maintaining familiarity with current and reputable reporting of relevant events, including through my own role as a spokesperson for STCA, in which role I have appeared in a wide range of Australian and international media outlets as an expert on the topic of repatriation of Australian children from Syria, and have worked with a range of Australian media outlets such as The Guardian, SBS, ABC, Herald Sun and The Australian to publish and prioritise the stories of Australian children held in Syria;
- (9) engagement with the Australian women and children, including the repatriated and the remaining Australian women and children, as well as their families and supporters; and
- (10) engagement with others involved in the repatriation process, including representatives of the AANES.

22 I have also obtained experience and expertise relevant to the issues discussed in this statement through:

- (1) my education, including a Bachelor of Science (Honours) (Biochemistry & Molecularly Biology) (1997-2000) and a Bachelor of Laws (1997-2003) from Monash University;
- (2) my admission to practise as a Solicitor in the Supreme Court of Victoria in 2004 and my work as a lawyer with national law firm Minter Ellison between 2004 and 2007 in the Commercial Disputes and Litigation, Intellectual Property and Insurance & Risk practice groups;
- (3) my work in the Australian Parliament as Attorney-General's Adviser to (then) Senator Natasha Stott Despoja between 2007 and 2008; and
- (4) my work in the Australian Government between 2009 and 2013 as an adviser and Chief of Staff to the Hon Bill Shorten MP in portfolios including disability and children's services; assistant treasurer; financial services and superannuation; employment and workplace relations; and education.

III. Detention of Australian women and children in Al-Roj camp

- 23 The AANES was established in 2012. The AANES is used to refer both to a de facto autonomous region in North East Syria, which is home to numerous ethnic groups, and to the governing powers of that region.
- 24 The military force of the AANES is the Syrian Democratic Forces (**SDF**), a Kurdish paramilitary organisation backed by the United States of America. Al-Roj camp is administered by the SDF.
- 25 The Australian women and children are currently detained by the AANES in Al-Roj camp because of their associations (voluntary or involuntary) with Islamic State (**IS**, also known as Islamic State in Iraq and Syria (ISIS) and Islamic State in Iraq and the Levant (ISIL)).
- 26 The history of Al-Roj camp is outlined in an article by Ellen Whinnett, published in The Weekend Australian on 16 July 2022, titled “No exit and no hope in this living hell”, a copy of which is contained in the Annexure. To my knowledge, the facts stated in Ms Whinnett’s article are correct.
- 27 On 17 June 2022, in my capacity as CEO of STCA, I travelled alone to Erbil, Iraq via a commercial flight from Istanbul. On 18 June 2022, I travelled by car with STCI staff from Erbil to the Syrian border for three hours. I crossed the border from Iraq to Syria at Faysh Khabour, having obtained approval in writing from the AANES. After staying overnight in Derek, Syria, I travelled by car from Derek to Al-Roj camp on 18 June 2022. I was accompanied by [REDACTED] [REDACTED] of STCI, and two local staff.
- 28 My initial impression of Al-Roj camp was that it is a fortified and secure camp. A solid fence topped with barbed wire bounded the perimeter. Around the perimeter there were command posts, manned by armed guards.
- 29 The process of entry to Al-Roj camp involved proceeding through a military checkpoint at the gates of the camp, where I was searched. I was also asked to leave there personal items such as my laptop.
- 30 I entered Al-Roj camp at approximately 10:00 am on 18 June 2022. The temperature during my visit was between 42 and 44 degrees Celsius.
- 31 After a brief initial meeting with camp administration, I inspected education and community engagement facilities delivered by STCI to detainees.

32 Upon entering Al-Roj camp, I met with a group of 12 Australian women, some of whom were accompanied by their children. The women included some repatriated Australian women [REDACTED], [REDACTED], [REDACTED] and [REDACTED]). They also included the STCA-authorising remaining Australian women, and other remaining Australian women.

33 I spent about 40 minutes with the group. Most of the women had thick Australian accents. During that meeting, I explained that STCA was proposing to bring litigation to effect their repatriation and asked each of the women in turn the following questions.

- (1) Are you and your children being detained against your will?
- (2) Do you want to come home to Australia?
- (3) Do you authorise Save the Children Australia to bring litigation on your behalf and on behalf of your children?

34 Each woman answered in the affirmative to these three questions, both in words and by nodding.

IV. The STCA-authorising remaining Australian women and children

35 By the answers given to me by the STCA-authorising remaining Australian women to whom I spoke on 18 June 2022, to the second and third questions in [33] above, and by subsequent communications with them, and their family and supporters, I understand that they wish STCA to take whatever steps might be necessary or appropriate to bring about the repatriation of them and their children, including by litigation and, where necessary or appropriate, as their litigation guardian.

36 Although not present at the meeting I had with the Australian women on 18 June 2022, STCA has also received authority from [REDACTED] via her family to take any necessary steps to bring about the repatriation of her and her son.

V. Citizenship status of STCA-authorising remaining Australian women and children

37 [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

38 I believe that the children of the STCA-authorising remaining women are either Australian citizens or are eligible for Australian citizenship, and would become Australian citizens upon repatriation.

39 A table containing details of each of the STCA-authorising remaining Australian women and children, including their name, date and place of birth, relationship (e.g. mother/child), citizenship status, medical conditions, and instructions to bring this application on their behalf is included in the Annexure. I am informed that this table was prepared on the basis of instructions from the STCA-authorising remaining Australian women and children (including through their families and supporters where direct instructions were not possible to be provided from Al-Roj camp).

40 At the time of visiting, I did not ascertain whether any of the STCA-authorising Australian women or children have been purportedly deprived or stripped of citizenship.

VI. Their detention is unlawful and inconsistent with international law

41 By their affirmative answer to the first question in [33] above, I understood the STCA-remaining Australian women with whom I spoke indicated that they were being detained against their will.

42 I also asked each of the STCA-remaining Australian women to whom I spoke whether they had been charged with an offence under Syrian or Iraqi law. Each woman indicated that she had not.

43 I have read expert reports prepared by:

- (1) Dr Anan Alsheikh Haidar;
 - (2) Peter Galbraith; and
 - (3) Professor Michael Newton
- (the **Expert Reports**).

44 Based on the Expert Reports, my understanding is that:

- (1) the detention of the remaining Australian women and children in Al-Roj camp is not; and
- (2) the detention of the repatriated Australian women and children in Al-Roj camp immediately before their detention, was not—

authorised under foreign domestic law, either that of Syria or the rules applied by the AANES within the area it controls, or consistent with international law.

45 Further, that their detention is inconsistent with international law is supported by statements by United Nations human rights experts concerning the Australian women and children and other persons detained in North East Syria, which are included in the Annexure, and summarised below.

VII. A further repatriation decision would be effective

46 The Australian Government effected the repatriation of the repatriated Australian women and children, following the first repatriation decision.

47 Each of the Australian women with whom I met on 18 June 2022 (see [32] above) — including both repatriated Australian women and remaining Australian women — wanted to come home to Australia (see [33(2)] and [34] above). The remaining Australian women still do.

48 I believe that were the Australian Government to:

- (1) make a further repatriation decision; and
- (2) implement it by following the process that I infer was followed to effect repatriation of the repatriated Australian women and children,

the remaining Australian women and children would likewise be repatriated.

49 I am not aware of any reason why there would be any different process or outcome for the remaining Australian women and children, as compared to the repatriated Australian women and children.

50 The probable efficacy of a further repatriation decision is further established by the matters discussed in the following section VIII.

VIII. There is no distinction between the basis for the first repatriation decision and the basis for a further repatriation decision

51 For the following reasons, I do not believe there is any rational basis for distinguishing between the reasons why the first repatriation decision was made for the repatriated Australian women and children, and the reasons why a further repatriation decision should be made for the remaining Australian women and children.

52 **First**, a range of reasons floated by the Australian Government before the first repatriation decision turned out, in the event, not to be reasons for refusing to make the first repatriation decision in respect of the repatriated Australian women and children.

53 From 2019 until October 2022, STCA had written and oral communications with representatives of the Australian Government, in which a range of reasons were given, or hinted at, for not making a decision to repatriate the Australian women and children (copies of the written communications are in the Annexure).

- (1) By letter dated 17 April 2019, on behalf of STCA, I informed the then Prime Minister, the Hon Scott Morrison MP (**Mr Morrison**), of the dire humanitarian situation in the Al Hol camp (where some of the Australian women and children were being detained at the time), asking for repatriation of detained Australian children and explaining that some states, such as Sudan, Kazakhstan, France and Belgium had taken responsibility for their citizens, engaged with the AANES and were able to bring some children home.
- (2) By letter dated 28 April 2019, Mr Morrison informed me that public commentary on the repatriation of Australian children “may hinder our partners’ ability on the ground to provide assistance we have requested”, that it “increases the risks to humanitarian staff in a dangerous and complex location” and that “the Australian Government is working closely with humanitarian partners who have the mandate and expertise in restoring family links in conflict zones ... with the view to ensuring that these children can be transferred to a location where they can be safely accessed by Australian Government officials”.

- (3) By letter dated 6 May 2019, the Australian families of Australian women and children then detained in Al Hol camp informed Mr Morrison of the conditions faced by the women and children in Al Hol camp and that those women and children had not received any support despite the Australian Government acknowledging the pleas for assistance on their behalf.
- (4) By letter dated 10 May 2019, Mr Morrison informed me that the Australian Government:
 - (a) was working closely with international agencies that had the mandate and expertise to identify Australians and transfer them to a place where they could safely be accessed by Australian Government officials;
 - (b) was funding various humanitarian organisations providing assistance in the camps across Syria; and
 - (c) had limited ability to provide assistance to the women and children in Syria.
- (5) By letter dated 7 June 2019, Paul Ronalds, then CEO of STCA (**Mr Ronalds**), on behalf of STCA requested from the Foreign Minister, the Hon Marise Payne (**Ms Payne**), a meeting between the Australian Government and STCA about the need to repatriate the Australian women and children in Syria and the efforts the governments of Indonesia, Sweden, Kosovo, France and Belgium were making to repatriate their citizens or move them to safer locations. The letter also described the story of Mariam Dabboussy, the coercion she experienced to enter Syria, her experiences in Syria, and the effects of this on her and her children. The letter was co-signed by Mr Kamalle Dabboussy, the father of Mariam Dabboussy.
- (6) By letter dated 26 June 2019, Mr Ronalds on behalf of STCA sent a letter to Mr Morrison commending him on the “positive steps taken by the Australian Government to move eight Australian children from Syrian refugee camps to safety” and reminding Mr Morrison it had previously written on behalf of the other Australian women and children detained in the camps, and was hopeful that attention could now shift to them and the urgent need for their repatriation.

- (7) By letter to Mr Dabboussy dated 3 September 2019, Mr Morrison stated that Mr Dabboussy's daughter and grandchildren were in an extremely volatile and dangerous conflict zone, which significantly limited the government's ability to provide consular and passport assistance.
- (8) On 17 October 2019, Mr Dabboussy and I sent an email to the Hon. Peter Dutton, the then Minister for Home Affairs (**Mr Dutton**) on behalf of STCA and the "over 60 Australian children and women [who] are currently being held in camps in North East Syria". In that email we addressed the concern expressed by the Mr Morrison that it was too dangerous to send Australian officials to Al-Roj camp to extract the detained women and children, informing Mr Dutton that the repatriation could occur without sending anyone to Syria. We informed Mr Dutton that the Kurdish authorities had recently advised us "over the last few days that, if they receive a request from the Australian Government, they remain willing to transfer foreign nationals from the camps to border towns such as Qamishli and Dêrik". By the reference to the camps, I intended to include Al-Roj camp. In that email, we also addressed the concern that some of the women may be a security risk and we repeated our request for the detained Australian women and children to be brought home.
- (9) By letter to STCA dated 12 December 2019, Linda Geddes (Commonwealth Counter-Terrorism Coordinator) stated that "conditions in the camps are extremely challenging" and that the Government was working with international humanitarian organisations but was not prepared to expose officials to the risk of harm in order to extract people. The letter stated that any Australian who "seeks to leave conflict zones in Syria or Iraq is encouraged to contact ... relevant authorities, including the Department of Foreign Affairs and Trade's Consular Emergency Centre".
- (10) On 23 February 2021, I sent a letter on behalf of STCA to Michelle Lowe (Acting Counter-Terrorism Ambassador) reiterating the vulnerability of the Australian women and children in Al-Roj camp and outlining important developments that had implications for the Australian Government's position on repatriation. This included the growing number of governments moving to repatriate their citizens (including France, Germany, Uzbekistan, Finland and Albania), and the decisions and reports of the United Nations

Committee on the Rights of the Child, which found that foreign governments have an obligation to protect the rights of children and citizens detained in foreign countries, including in Al-Roj camp.

- (11) On 30 March 2021, Richard Feakes (Deputy Counter-Terrorism Coordinator) sent a letter to STCA referring to a recent fire in Al Hol camp and the Australian Government's monitoring of the welfare of Australians, but stating that the Government's position on the repatriation of Australians from Al-Roj camp remained unchanged, and that while the Government took "a case-by-case approach" to repatriation, the ability of the Government to provide consular assistance to Australians in Syria was limited.
- (12) By letter dated 26 May 2021, on behalf of STCA, I provided Ms Payne and the Hon. Karen Andrews (then Home Affairs Minister) (**Ms Andrews**) with a comprehensive update on conditions in Al-Roj camp, raising specific health concerns for families in Al-Roj camp, seeking their repatriation, and detailing the specific cases of [REDACTED]. Those two girls were expressly identified in the letter because of STCA's concern for their survival without access to medical attention, and due to the availability of family support in Australia if they were repatriated.
- (13) By letter dated 25 June 2021, on behalf of STCA, I reiterated to Ms Payne and Ms Andrews the request for repatriation, outlining the limited medical facilities available to the detained women and children and the impacts on their health, as well as my belief that Australians held in Al-Roj camp could be transported to the Syrian border where Australian officials could meet them in relative safety. I formed this belief having regard to information Mr Dabboussy shared with me, my correspondence and conversations with Peter Galbraith (US diplomat and former Ambassador) and STCA's regional contacts.
- (14) On 12 July 2021, Ms Andrews sent a letter to STCA acknowledging the "challenging conditions in the camp", and stating that the Australian Government continued to monitor the situation closely and was working with international humanitarian organisations. The letter also confirmed that the Australian Government had provided \$4 million in 2020-2021 to support essential health services in North East Syria, including to organisations with access to displaced persons camps.

- (15) On 4 July 2022, on behalf of STCA, I sent a letter to Senator Penny Wong, Minister for Foreign Affairs (**Ms Wong**), and the Hon Clare O’Neil, the Minister for Home Affairs and Minister for Cyber Security (**Ms O’Neil**), providing notice of proposed legal action against the Government with STCA as litigation guardian. The letter also referred to my visit to Al-Roj camp in June 2022, and stated that STCA had received instructions to commence litigation. The letter attached two documents: the first was an outline of the claims to be made in such litigation; and the second was a families list documenting the known medical conditions and injuries suffered by the Australian women and children (as understood at the time of writing the letter). The letter also referred to “credible reports that the [AANES] entertains plans to move some boys reaching the age of 11 and 12 to camps for adult men”, and stated that the forcible separation of the boys from their mothers appeared imminent.
- (16) On 18 July 2022, Andrew Kefford (Deputy Secretary) (**Mr Kefford**) and Roger Noble (Ambassador for Counter-Terrorism) (**Mr Noble**) sent a letter to STCA acknowledging STCA’s letter dated 4 July 2022 and the accompanying outline of claims. The letter stated that “there are many security, diplomatic, community and welfare considerations” to be addressed by the Government, and that the Government required time to implement effective long-term solutions in the best interest of the Australian women and children.
- (17) On 25 July 2022, on behalf of STCA, I sent an email to Mr Kefford and Mr Noble acknowledging the gravity of planning and logistics involved in this matter, and reiterating the families’ strong desire to proceed with litigation. The correspondence stated that the families had agreed to refrain from filing a court proceeding so as to provide further time for the Government to settle its position, and sought an undertaking by 12 August 2022 that repatriations would commence within a reasonable timeframe. The correspondence also warned the Government of the possibility that “one or more of the families may lose patience entirely and break from the broader group, seeking instead to proceed with a case using alternative legal representation”.
- (18) On 12 August 2022, Mr Kefford and Mr Noble sent a letter to STCA in response to my email. The letter again stressed that time was required to

undertake the work necessary to implement effective and long-term solutions in the best interests of the Australian women and children. The letter also stated that the Government appreciated the concerns expressed by the families, and was not able to provide further details of the work being undertaken.

- (19) On 22 August 2022, on behalf of STCA, I sent an email to Mr Kefford and Mr Noble stating that STCA was due to meet the Australian-based families of the Australian women and children later in that week, and requesting any further updates from the Government to share with the families at those meetings.
- (20) In addition to the correspondence outlined above, STCA continued to engage in private negotiations with the Australian Government from April 2021 to October 2022. The negotiations included meetings held on:
 - (a) 23 April 2021 (between myself and Mr Noble);
 - (b) 26 May 2021 (between myself, Mr Dabboussy and Mr Noble);
 - (c) 5 August 2021 (between Marion Stanton, an employee of STCA acting on my behalf, and Mr Noble);
 - (d) 15 October 2021 (between myself, Mr Feakes and Mr Noble);
 - (e) 9 December 2021 (between myself and Mr Feakes);
 - (f) 3 May 2022 (between myself and Mr Feakes);
 - (g) 15 August 2022 (between myself, Mr Kefford and Mr Noble); and
 - (h) 20 October 2022 (between myself and Mr Feakes).
- (21) With the exception of the meeting that took place on 15 August 2022 (which was conducted by Microsoft Teams), all of the meetings took place in person in Canberra. Throughout the course of those negotiations, I continued to advocate as a representative of STCA for the urgent repatriation of the Australian women and children.

- 54 Notwithstanding the range of reasons, expressed or implied, the Australian Government then made the first repatriation decision and, on 28 October 2022, effected repatriation of the repatriated Australian women and children.
- 55 The Australian Government made various statements before and after the successful repatriations, extracts of which are reproduced below.
- (1) On 3 October 2022, the Hon Tanya Plibersek (Minister for the Environment and Water) was reported by the ABC as stating, “We’ve got about 40 Australian kids living in one of the most dangerous places on Earth, in a refugee camp...Some of the women, some of the mothers were taken there as little more than children themselves and married off to IS fighters, some of them tricked, some of them forced to go there”.
 - (2) On 29 October 2022, Ms O’Neil (Minister for Home Affairs) issued a statement which noted that, “[t]he Government’s decision follows similar repatriations carried out by the previous Morrison Government in 2019, as well as the United States, Italy, Germany, France, the Netherlands, Belgium, the United Kingdom and, most recently, Canada”.
 - (3) In an SBS News article published on 30 October 2022, the Hon Tony Burke (Minister for Employment and Workplace Relations, Minister for the Arts, and Leader of the House) stated that, “We need to remember a lot of the people we’re talking about here are children...Some of the women that we’re talking about were tricked in terms of their own personal circumstances.”
 - (4) On 13 November 2022, Ms O’Neil stated in an interview with journalist David Speers: “If I can just explain what the Australian government has done has brought back four women and 13 children, the oldest of which is a 13 year old girl, to resettle back in Australia. What I really want people to understand about this is that the people at the heart of this issue here are Australian citizens. And the reason I make that clear is because these people will be able to come back to Australia. They can demand, as of right, an Australian passport at any time. The national security question for us is, do we want these children growing up in a squalid refugee camp where they have no access to health and education, where they are subjected every day to radical, violent ideology that tells them to hate their own country? Or

do we want them to grow up here with Australian values? So that's the choice for us". A full transcript of that interview is in the Annexure.

- (5) On 24 November 2022, Ms O'Neil stated in an interview with journalist Greg Jennett: "...let me just quickly explain the context here. So all of the people who the Australian government has decided to repatriate recently are women and children – four women and 13 children, the oldest of whom is a 13-year-old girl. The reason that we are doing this is because there are a number of Australian women and children who are in Syria at the moment who are Australian citizens. They are at some stage in the future going to be able to make their way back to Australia, and so the question for us as Australians is what is the safest path forward here..." A full transcript of that interview is in the Annexure.

56 Whatever the reasons for the first repatriation decision, I am not aware of any rational basis for that decision to apply only to the repatriated women and children, and not to the remaining Australian women and children. Although, from time to time, I have heard comments about domestic security risk if Australian women and children are repatriated, my understanding is that this is not a barrier to repatriation.

57 Similarly, I am not aware of any reason why the Australian Government would not now make a further repatriation decision for the remaining Australian women and children, which would distinguish its reasons for making the first repatriation decision for the repatriated Australian women and children.

58 **Second**, although some of the expressed or implied reasons in the communications from the Australian Government before October 2022 referred to concerns for the safety of officers of the Commonwealth, that does not appear to be a viable reason for confining the first repatriation decision to only the repatriated women and children, and would not justify refusal to make a further repatriation decision for the remaining Australian women and children.

59 Such concerns did not prevent repatriation of the repatriated Australian women and children, and I am not aware of any possible basis for distinguishing between them and the remaining Australian women and children by reference to such concerns.

Third, my own experience of visiting Al-Roj camp is inconsistent with the existence of any such impediments.

- (1) When, on 18 June 2022, I travelled by car with STCI staff from Erbil to the Syrian border for three hours, the roads were well-maintained, had low levels of traffic and were safe and reliable. I crossed the border from Iraq to Syria at Faysh Khabour. This crossing is controlled by the AANES and approval was obtained in writing from the AANES Department of Public Relations (copy in Annexure). I found it straightforward to gain approval from the AANES.
- (2) The border crossing involves boarding a minibus and traveling across a pontoon bridge over the Tigris River, before passing immigration controls on the Syrian side of the Tigris River. I experienced minor delays when crossing the border, because the officials who were monitoring the border did not have the approval email which authorised me to access territory controlled by the AANES. However, I was able to access the email on my mobile phone, which I then presented to officials. Following this, the crossing was facilitated quickly. Once I crossed the border, I was met by members of STCI's local staff from the Syria Response Office. At all times during the border crossing, I felt safe and well-supported by officials.
- (3) After staying overnight in Derek, Syria, I travelled by car from Derek to Al-Roj camp on 18 June 2022. The trip took about 20 minutes, and the roads were well-maintained. I was accompanied by [REDACTED] [REDACTED] of STCI, and two local staff. A link to a video taken during my journey is included in the Annexure.
- (4) I departed Al-Roj camp at approximately midday on 18 June 2022. I was able to safely enter and exit Al-Roj camp during my visit, assisted at all times by the Al-Roj camp administrators. I was accompanied by the camp administrators when walking around the tents and facilities but not when I spoke with the interviewed women and their children. I did not experience any security concerns during my visit.
- (5) I reported on my experience visiting the camp in several media articles upon my return to Australia (copies in Annexure).

- 61 I do not believe that the security environment in the camp posed any obstacle to the Australian Government repatriating the repatriated Australian women and children.
- 62 **Fourth**, as referred to in various parts of this statement, and documents in the Annexure, numerous foreign states have repatriated their citizens from camps in North East Syria, including Al-Roj, without apparent impediment by reason of practical constraints or security issues.
- 63 **Fifth**, the Expert Reports support the proposition that the Australian Government can effect repatriation without substantial risks of this kind.
- 64 **Sixth**, I am not aware of any relevant changes to the security environment that might prevent repatriation of the remaining Australian women and children.
- (1) Numerous other foreign governments have repatriated citizens held in Al-Roj camp since October 2022, including:
- (a) on 1 November 2022, the Netherlands repatriated 40 people (12 women and their children) from Al-Roj camp (document in Annexure).
 - (b) on 10 January 2023, Spain repatriated two women and 13 children from Al-Roj camp (document in Annexure);
 - (c) on 24 February 2023, France repatriated 15 women and 32 children from Al-Roj camp (document in Annexure); and
 - (d) on 20 February 2023, Kyrgyzstan repatriated 18 women and 41 children from the Al-Roj and Al Hol camps in North East Syria. Following the repatriations, the United States Department of State issued a press statement (in Annexure), stating:

Last week, the Government of Kyrgyzstan repatriated 18 women and 41 children from displaced persons camps in northeast Syria. We are grateful to Kyrgyzstan and to our local partners, the Syrian Democratic Forces, for working with us to help resolve the ongoing humanitarian and security challenges presented by al-Hol and Roj camps. ISIS remains a persistent threat to the region, including to the thousands of vulnerable

residents in these displaced persons camps, more than half of whom are under the age of 12.

Repatriation is the only durable solution to this urgent humanitarian and security situation. Approximately 10,000 residents of al-Hol and Roj displaced persons camps are from more than 60 countries outside Syria and Iraq. We urge all governments to follow Kyrgyzstan's example and repatriate their nationals, especially women and children.

- (2) Since my visit to Al-Roj camp, Ellen Whinnett, a journalist from The Australian, accessed Al-Roj camp to interview women in the camp and document the camp's conditions. Articles authored by Ms Whinnett are referred to throughout this statement, and copies are in the Annexure.
- (3) I am informed by STCA's regional contacts, as recently as 12 May 2023 that the security measures imposed by the Al-Roj camp administrators remain largely unchanged since my visit.

65 **Seventh**, there are compelling reasons at international law why Australia should repatriate the Australian women and children, and I am not aware of any basis for a distinction in that respect as between the repatriated and the remaining Australian women and children.

- (1) United Nations' Special Rapporteurs are responsible for holding inquiries into human rights violations and investigating urgent humanitarian situations, and that their independent functions include responding to individual complaints, conducting studies and undertaking country visits. Upon assessing a particular human rights situation, Special Rapporteurs may issue a report to the Human Rights Council or the United Nations General Assembly, release public statements to the media or issue correspondence to governments.
- (2) In 2020, the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (together, the **Special Rapporteurs**) expressed the following opinion about children and their guardians in camps, prisons or elsewhere in the northern Syrian Arab Republic (North East Syria):

4. In light of the inhumane, degrading and increasingly dangerous situations of detention, the Special Rapporteurs cannot accept that stated practical challenges faced by States in the return process, including the lack of consular representation in areas where nationals are present and the shortage of information on the whereabouts of and conditions faced by nationals in conflict zones who frequently find themselves in the power of armed groups operating as de facto authorities, be used as excuses to obstruct returns. The Special Rapporteur on the promotion and protection of human rights while countering terrorism has seen first-hand that partnerships can be optimized in tracing, identifying and delivering the practical means to extract individuals from territories under the control of non-state actors and ensure their safe return to home countries. She has also seen that a number of steps can be taken to ascertain nationality, to obtain assistance from state and non-state actors to move individuals from camps and assist in air transport, as well as in the provision of humanitarian assistance and medical care before, during and after transit. While both diplomatic protection and effective consular assistance can play a preventive role when facing a risk of flagrant violations or abuses of human rights, the remedial nature of consular assistance frequently means that it cannot effectively prevent an irreparable harm from being committed

...

35. The Special Rapporteurs point out that States are in the best position to ensure the protection of human rights for children and their guardians in camps in the northern Syrian Arab Republic. In the absence of their engagement and acceptance of legal responsibility, children face death, starvation, and extreme physical and emotional harm, as do their mothers. In this context, they note that in the very specific circumstances of these camps in the northern Syrian Arab Republic it is undeniable that the State of nationality for citizens have the only tenable legal claim to protect their citizens, and the capacity to make such claims materialize. The Special Rapporteurs also underscore that the relevant Kurdish authorities have made consistently clear their willingness and capacity to

support returns to States and their inability to manage the humanitarian catastrophe they face, a fact that is demonstrated by multiple successful return processes.

The Annexure contains a true copy of the paper of the Special Rapporteurs.

- (3) On 26 January 2021, the Special Rapporteurs, additional Mandates and Working Groups sent a joint letter to the Australian Government (copy in Annexure):
- (a) reiterating concern over the dire, and sometimes fatal, conditions children were facing in the camps, and the impact the deprivation of liberty was having on women in Al-Roj camp (as well as Al Hol camp);
 - (b) explaining that there had already been repatriations from the camps;
 - (c) stating that the UN considered that the ability to repatriate nationals to their country of origin, or to impact on camp authorities sufficiently to allow or deny family members access to individuals in the camps, revealed the exercise of de facto, or constructive jurisdiction over the conditions of nationals held in the camps, specifically because States have the practical ability to bring the detention and violations to an end;
 - (d) confirming that the Special Rapporteurs had received information indicating that the SDF had expressed willingness to assist governments in repatriating their citizens from the camps and outlining a number of actions and measures that could be taken by States to protect the rights of the individuals held in the camps; and
 - (e) expressing concern about the purpose of a 'registration and verification process' involving the collection of biometric data that they understood had taken place in the camps without any oversight from humanitarian actors.
- (4) On 23 August 2021, Sally Mansfield (Ambassador and Permanent Representative of the Australian Permanent Mission to the Office of the United Nations and Conference on Disarmament) wrote a letter to Beatriz Balbin (Chief, Special Procedures Branch of the Office of the High

Commissioner for Human Rights) in response to the letter of 26 January 2021 from the Special Rapporteurs (copy in Annexure). In that letter Ms Mansfield:

- (a) stated that the Australian Government was aware that Australian citizens, including children, were present in the camps, and in June 2019 had taken steps to remove all unaccompanied minors known at that time from the camps;
 - (b) observed that Australian officials monitor conditions in the camp through regular engagement with Kurdish officials and humanitarian partners and communicate with the family members of individuals in the camps;
 - (c) stated that the Australian Government accepts there may be exceptional circumstances in which its human rights obligations extend outside Australian territory where it exercises effective control, but rejected the proposition that the Australian Government exercises control of the Al Hol and Al-Roj camps, such that its international human rights obligations are not engaged; and
 - (d) confirmed the Australian Government funds humanitarian partners in the area.
- (5) On 1 February 2022, the Special Rapporteurs, additional Mandates and Working Groups sent a joint letter to the Australian Government regarding the detention of boys and men in North East Syria, including Australian boys and men (copy in Annexure). The letter:
- (a) stated that the Special Rapporteurs had received information that many boys were being held in detention centres with men in conditions that did not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules);
 - (b) confirmed that on the information received there was no legal basis for the detention, noting that detention for children should be used as a measure of last resort;
 - (c) stated the Global Coalition to Defeat ISIL (**the Coalition**), of which

Australia is a member, had provided substantial stabilisation assistance to increase the security of the prison, and in 2020 had provided more than \$2 million dollars for various equipment. There are also reports about the financing for improvement and expansion of detention facilities, with the Coalition being credited as the source of the funds; and

- (d) recommended that the voluntary and human-rights-compliant repatriation of the Australian boys and men occur.
- (6) On 16 February 2022, the Special Rapporteurs, additional Mandates and Working Groups sent a joint letter to the Australian Government reiterating concerns raised in the letter sent on 26 January 2021 about 46 Australian citizens, including thirty children, then held in detention in camps in North East Syria (copy in Annexure). The letter:
- (a) confirmed that, on the information received, there was no legal basis for the detention, and expressed concern about the conditions, which were believed to meet the standard of torture or other cruel, inhuman or degrading treatment or punishment;
 - (b) expressed concern that repatriation was not being facilitated due to an alleged past connection with the IS, and stressed the need to understand the complexities of association with terrorist groups, particularly in cases of women and children, and the distinction between victims and perpetrators;
 - (c) noted that the de facto authorities (the SDF) have expressed willingness to help governments repatriate all their citizens from Al Hol and Al-Roj camps and this information has been corroborated;
 - (d) confirmed that any argument that repatriation had not occurred because of lack of access or difficulties from local authorities was questionable due to the sustained contacts between States and camp authorities, the close proximity to the camps of international military bases and forces, the number of civilian and other official and non-official delegations with access to the camps, and the number of successful repatriations that had already taken place; and

- (e) reiterated that the position of the Special Rapporteurs was that the Australian Government must undertake the voluntary and human-rights-compliant repatriation to Australia of all individuals who are citizens.
- (7) By letter dated 30 March 2022 (copy in Annexure), Amanda Gorely (Ambassador and Permanent Representative of the Australian Permanent Mission to the Office of the United Nations and Conference on Disarmament) informed Beatriz Balbin that the Australian Government:
- (a) was aware that Australians were detained in prisons and other detention centres in North East Syria;
 - (b) continued to “closely monitor conditions in the region and regularly engages Kurdish officials and humanitarian organisations operating in North-East Syria”;
 - (c) “considers all circumstances when approaching the question of repatriations from Syria and responds on a case-by-case basis”;
 - (d) “does not accept that it exercises jurisdiction over detention facilities in North-East Syria such as to engage the extraterritorial application of Australia’s international human rights obligations”; and
 - (e) confirmed that, since 2011, Australia had “committed almost \$500 million in humanitarian assistance in response to the Syria regional crisis”.
- (8) By letter dated 26 September 2022 (copy in Annexure), the Special Rapporteurs, additional Mandates and Working Groups wrote to the Australian Government and stated:
- (a) their concern that three Australian children being held in Al-Roj camp will be transferred to adult detention centres in North East Syria at immense risk to their physical and mental health and expose them to the risk of forced disappearance;
 - (b) that the transfer of children turning 12 years old to adult detention centres without proper judicial processes or human rights protections

must be called out as a complete abrogation of their best interest and a serious violation of numerous fundamental human rights, including the right to life, the absolute prohibition of torture, inhuman or degrading treatment, and the absolute prohibition of arbitrary detention;

- (c) that the Australian Government must undertake “the voluntary and human rights compliant repatriation” of the three children who are Australian citizens. The letter also expressed the Special Rapporteurs’ belief that difficulties accessing the camps can no longer be put forward as a legitimate reason for governments to not repatriate their citizens, given the presence of international military personnel in North East Syria and the number of successful repatriations from, and delegations to, the camps.
- (9) On 1 December 2022, Amanda Gorley sent a letter to Beatriz Balbin (copy in Annexure), expressing appreciation for the letter dated 26 September 2022 and explaining that the Australian Government had repatriated four Australian women and 13 Australian children from an Internally Displaced Persons (**IDP**) camp in Syria in October 2022 and eight Australian children from a Syrian IDP camp in 2019. The letter stated that “Australia will continue to take a managed approach to repatriations from Syria, considering national security advice together with diplomatic, community and welfare factors”. The letter also stated that the Australian Government continued to monitor the situation in Syrian camps and takes all reports regarding the welfare of Australians and “Australia-linked individuals” “very seriously”.
- (10) On 16 February 2023, the Special Rapporteurs on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Fionnuala Ní Aoláin), on trafficking in persons, especially women and children (Siobhán Mullally), on the sale and sexual exploitation of children (Mama Fatima Singhatheh), on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Ashwini K.P.), and on minority issues (Fernand de Varennes), and the Working Groups on discrimination against women and girls, on the use of mercenaries, on enforced or involuntary disappearances and on arbitrary detention

(together, **human rights experts**), released a public statement (copy in Annexure), which included:

UN human rights experts today expressed grave concern about reports that at least 10 boys, some as young as 12 years old were allegedly taken away from Camp Roj during the night of 31 January 2023 by the de facto authorities in North-east Syria.

“The pattern of forcibly removing boys who reach the ages of 10 or 12 from the camps, separating them from their mothers and siblings and taking them to unknown locations is completely unlawful,” said the experts...

“We are extremely concerned that serious harm may befall these boys and fear they may be forcibly disappeared and subject to sale, exploitation and abuse, torture, inhuman and degrading treatment or punishment,” they said. [---]

The human rights experts said the only hope for these children was repatriation to their home countries but expressed dismay that some home countries or third countries were facilitating their detention through the provision of security assistance and building high-security prisons.

“Countries whose boy children are detained in the camps must ensure their immediate safety, prevent their separation from their mothers and other potential violations of their human rights, including enforced disappearance and torture. States shall indeed prioritise the boys’ safe and secure return home consistent with the principle of non-refoulement,” the experts said. “States must urgently repatriate them, together with their mothers, a solution that we now know is absolutely feasible,” they said.

The experts called on all States and other actors engaged in northeast Syria to ensure the protection of these children and their best interest.

- (11) On 16 February 2023, Fionnuala Ní Aoláin and Dr Anne Charbord published an article on the website “Just Security” entitled “Repatriating Alleged ISIS-

Linked Men from Northeast Syria: The Start of Judicial Responses to the Political Statement” (copy in Annexure). The article stated:

- (a) since October 2022, there have been 17 repatriations to Australia, 3 to Barbados, 102 to France, 12 to Germany, 40 to the Netherlands, 38 to Russia, 2 to the UK, 13 to Spain, and just over 2,000 to Iraq, which “show the determination of the Kurdish authorities to support and enable repatriations, as well as the sheer practical feasibility of such movements, contrary to national arguments pertaining to lack of access and risks posed by these operations”;
- (b) men and boys captured between 2017 and 2019 have been held indefinitely by the SDF in overcrowded cells, lacking food, drinkable water and medical care, and “none of these men have ever been brought before a judge to determine whether they are rightfully and lawfully detained, and there is no law that would legally underpin their detention”; and
- (c) the recent earthquake in southern Turkey and northwest Syria “caused few casualties and only limited infrastructure damage in North East Syria, so this should not hinder Western efforts to address the human rights crisis of the detainees”.

(12) The opinions of these UN human rights experts are supported by the facts set out below concerning the conditions in which Australian women and children have been detained, and continue to be detained, in Al-Roj camp.

66 **Eighth**, based on all my knowledge, I believe the AANES remains willing and able, upon request by the Australian Government, to release the remaining Australian women and children from Al-Roj camp and to take any steps necessary to assist the Australian Government to facilitate their repatriation.

(1) At the conclusion of my tour of Al-Roj camp on 18 June 2022, I met with the Co-Administrator of Al-Roj camp. Via a translator, we discussed the tensions between the camp and the community in North East Syria. He indicated that many community members who work in the camps are themselves victims of conflict and have been internally displaced within Syria and many have significant unmet humanitarian needs. He

emphasised the desire of the camp administration that foreign governments take responsibility for repatriating their citizens residing in the camp, in order to alleviate the burden on the camp administration and the AANES of caring for them.

- (2) During that conversation, I asked the Co-Administrator of Al-Roj camp whether the camp administration would be willing to release the Australian women and children and assist their repatriation. The Co-Administrator told me that the AANES and SDF have offered to release the Australian women and children from Al-Roj camp into the custody of the Australian Government and were willing to assist the Government in completing further repatriations. This was consistent with what I understood at the time to be the SDF's position.
- (3) Based on my ongoing engagement with AANES and SDF officials, I understand that the position remains unchanged today.
- (4) In an article titled "Security fears won't stop return of jihadi families" by Ellen Whinnett, published in The Australian on 4 October 2022, she reported:

The news that Australia had reversed its three-year opposition to bringing the woman and families home was welcomed in Syria, where the de facto government, known as the Autonomous Administration of North and East Syria (AANES) has been lobbying for years for western nations to take their citizens home.

The AANES-aligned Rojava Information Centre tweeted that Australia and the Netherlands had both 'announced that they are working on repatriating their citizens held in camps in NES (northeast Syria).' 'Such repatriation missions are welcomed by AANES who have pressed the international community to take responsibility for their nationals,' the centre said.'

The article and a copy of the tweet published on 2 October 2022 are included in the Annexure.

- (5) The information published in the article is entirely consistent with the fact of the repatriation of the repatriated Australian women and children by the

Australian Government, as well as the repatriation by foreign states of their citizens, all of which have occurred since my visit to Al-Roj camp.

67 Based on all that I have been told and observed, my other knowledge, and my experience and expertise, I know of no justifiable basis for the ongoing detention of the remaining Australian women and children.

68 The STCA-authorising remaining Australian women all confirmed to me that they have not been charged with any crime, have not been involved in any judicial procedure to establish their detention, and are not wanted by any country. Nonetheless, they also confirmed that they are detained in Al-Roj camp and cannot leave.

IX. Risk of harm to remaining women and children if not repatriated

69 Before my visit to Al-Roj camp, I was provided with 12 audio recordings obtained from seven women in Al-Roj camp: [REDACTED]. These audio recordings were made on 14 and 18 April 2022 and were provided to me by Mr Dabboussy through WhatsApp. A true transcript of these 12 audio recordings is contained in the Annexure. The recordings are summarised below.

70 As to remaining Australian women and children:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

71 Some of the Australian women who provided recordings were later among the repatriated Australian women and children. Nevertheless, I believe it is important to set out their accounts also, as they are indicative of the kinds of harm suffered and risked by the remaining Australian women and children.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

72 In my meeting with Australian women on 18 June 2022 in Al-Roj camp, after I had asked and received answers to the three questions as described in [33] above, I then had a broad-ranging discussion with the women about their experiences and the living conditions in Al-Roj camp. I set out below a summary of the information that they shared with me:

- (1) there is very limited access to medical treatment, and when treatment is obtained, doctors are unwilling to provide formal diagnoses of health conditions and do not provide supporting documentation;
- (2) many of them, and their children, have serious, untreated medical conditions including a prolapsed uterus, many urinary tract infections (including one woman who fell into a coma as a result), bowlegs, an inverted thighbone, a broken nose, unmedicated diabetes, a damaged liver, and malnutrition;
- (3) there are very limited water and sanitation facilities, often leading to irritable bowel syndrome and diarrheal infection;
- (4) there is limited access to adequate and nutritional food;
- (5) they have faced dangers including coercion, trafficking, enslavement and sexual exploitation, both prior to arriving at, and then in, Al-Roj camp;
- (6) they have witnessed violence and assaults against their own and other children, with one of the women telling me that her child had been sexually assaulted by other detainees in Al-Roj camp;
- (7) they expressed concern that their children would experience violence and assaults from other detainees and guards in Al-Roj camp;

- (8) they expressed concern about fires in Al-Roj camp;
- (9) they felt abandoned by the Australian Government, and are willing to offer their full cooperation with law enforcement authorities in Australia upon their return home.

73 Ten of the women and one of the children with whom I met provided me with handwritten statements, which they had prepared prior to my arrival. Mariam Dabboussy wrote a statement while I was visiting Al-Roj. I spoke with her and the other Australian women, and they discussed with me the details set out in those statements. Copies of these written statements are in the Annexure. Their contents are summarised below.

74 As to the remaining Australian women with whom I met:

[Redacted text block]

[Redacted text block]

[REDACTED]

(3) Another Australian woman provided me with a handwritten statement. She explained Al-Roj camp is not a refugee camp but a prison. Soldiers point their guns at her children while they are at school and abuse them as they walk to the market. They are caged in and do not always have access to medical care. The doctors are abusive and children are generally prescribed Nurofen and then sent home from the doctor. Her son may have an underlying heart condition but she cannot get him tested for it. Her children are being bullied in Al-Roj camp and she has been abused for not wearing a face cover. The electrical cables above Al-Roj camp are unsafe, and they exploded one night causing her tent to almost catch fire. The Australian woman said she was given a tent with a mouldy insert, and when she complained she was told that she should be happy she ended up with a tent in the first place. Snakes, scorpions and spiders are found inside their tents on a regular basis. The Australian woman and her children remain detained in Al-Roj camp.

(4) A further Australian woman provided me with a handwritten statement. She explained that they have no access to medical care. Her daughter has an undiagnosed chest condition and living next to an oil field has exacerbated her condition and caused her to suffer breathing issues. The Australian woman and her daughter remain detained in Al-Roj camp.

75 Some of the Australian women with whom I met were repatriated in October 2022. Nevertheless, I believe it is important to set out their accounts also, as they are indicative of the kinds of harm suffered and risked by the remaining Australian women and children.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

76 Next, I toured the Annex to Al-Roj camp where foreign nationals reside, accompanied by the AANES Deputy Camp Administrator. Our tour included the area in Al-Roj camp where most of the Australian women and children reside, known colloquially as 'Australia Street'.

- (1) I took a photograph of this area of Al-Roj camp (copy in Annexure).
- (2) I continued to converse with the Australian women and toured the tent of one of the Australian women. The tents consist of a concrete base covered by a low-slung synthetic tarpaulin. There is one living area where up to six family members can reside. I took a photograph of the outside of the tent and the living area of an Australian woman's tent (copy in Annexure). Temperatures were almost unbearably hot inside the tents.
- (3) I noticed that Al-Roj camp was in an oil field and that there were oil wells operating in the camp, approximately 50 meters from the tents of the Australian women and children. The smell of gas in Al-Roj camp was overwhelming, and I was told by one of the Australian women that they must cover their mouths while they sleep because the smell is so strong.
- (4) I was also told by an Australian woman that recently a tent burnt down in Al-Roj camp and one of the residents died. She told me that, at 5:00am one morning, the electricity pole situated over her tent started shedding sparks and that she was told by a maintenance worker who attended the following day that she was lucky it did not catch on fire.
- (5) I inspected sanitation and cooking facilities and took photographs (copy contained in Annexure). I was informed by some of the interviewed women that the cooking facilities are often overrun by rats. Many of the interviewed women inquired about their family members back in Australia, told me how

they were concerned about them and missing them, and implored me to do everything in my power to advocate for their repatriation.

- (6) During my visit, I was informed by the women with whom I spoke that the AANES had previously forcibly removed some of the boys aged 11 and 12 from their families without notice and taken them from Al-Roj camp to be detained in an adult prison. I describe these events and the imminent threat to the boys in further detail at paragraphs 79(1) to 80 of this statement.

77 Based on all that I have been told and all that I have observed as described elsewhere in this statement, I believe the following:

- (1) the remaining Australian women and children suffer damaging and difficult conditions, daily and nightly;
- (2) the remaining Australian women fear for the lives and health of their children and themselves;
- (3) the remaining Australian women and children's physical and mental safety and health and the conditions faced by them in the Al-Roj camp do not improve with time but worsen;
- (4) the remaining Australian children with untreated shrapnel wounds require urgent surgery and are suffering with crippling unmedicated pain every day;
- (5) remaining Australian children appear to not be developing normally, and are accruing disabilities due to this traumatising environment, with some presenting as approximately 30% underweight and other serious health issues such as, for example, some having badly decayed teeth; and
- (6) the remaining Australian women and children cannot appropriately nourish themselves.

78 As I reported in the articles I published, described above, children have died waiting to be repatriated from Al Hol and Al-Roj camps, including 74 children in Al Hol camp in 2021 alone. Every day the remaining Australian children remain in the camps, they remain at risk of further injury, illness and death.

79 It is my further belief that the forcible removal of Australian boys from their families in Al-Roj camp to adult male detention facilities in Syria poses a very real threat to the prospects of successfully repatriating those boys, and to the lives of those boys. The basis for my belief is set out below.

- (1) I am aware of recent media reports concerning the imminent forcible removal of Australian boys from Al-Roj camp to adult male detention facilities. For example, on 18 February 2023, The Guardian published an article by Ben Doherty titled “Fears Australian boys in Syrian detention could soon be forcibly removed from families” (copy in Annexure).
- (2) I am aware that forcible separation of the boys from their mothers has been a consistent practice by the AANES, which has previously removed boys reaching the ages of 11 and 12 to camps for adult men. During my visit to Al-Roj camp on 18 June 2022, some of the Australian women informed me that the AANES had recently taken photos and family histories of boys reaching the ages of 11 and 12, and that previously one boy from the camp, Yusuf Zahab, was removed at the age of 14 to a male prison without any warning.
- (3) On or about 18 July 2022, Australian and international media reported that this Australian boy (aged 17 years old at the time), Yusuf Zahab, had died in Syria after being removed from his family in Al-Roj camp without warning when he was 14 years old. It is believed Yusuf was killed after IS attacked the jail he was held in, trying to break their fighters out. Copies of media reports of Yusuf Zahab’s death are contained in the Annexure.
- (4) STCA was able to confirm reports of Yusuf Zahab’s death through a combination of information received from inquiries made by STCI staff on the ground in Syria, and journalists with whom STCA has relationships. On 18 July 2022, I issued a statement about the death of Yusuf, which was published on Save the Children’s website (copy in Annexure). I also wrote an article titled “Bring Aussie kids home from Syria before more lives are lost”, published in The West Australian on 19 July 2022 (copy in Annexure).
- (5) As described by the Special Rapporteurs in the letter dated 26 September 2022 (see [65(8)] above), there exists a spectre of a “cradle to grave” detention cycle for young male children in North East Syria.

80 I believe that there is an imminent threat to the boys detained in Al-Roj camp of forcible removal from Al-Roj camp. If this was to occur, I believe that the repatriation of those children will be seriously jeopardised and they will face a very real possibility of death upon relocation to an adult prison.

81 I am aware that there are fears in Syria that the terrorist group ISIS seeks to establish a new caliphate on Kurdish land in Syria and take control of Al-Roj camp. These fears are detailed in the article entitled 'Life & Death in 'Camp Terror'', by Ellen Whinnett, published in The Weekend Australian on 16 July 2022 (copy in Annexure).

X. STCA's advocacy for repatriation of the Australian women and children

82 Since 2019, STCA has kept the Australian government informed of the conditions in the camps and the devastating effects on Australian women and children held in the camps, and has advocated for the repatriation of the Australian women and children to Australia. Examples of such communications from that date up to the repatriation of the repatriated Australian women and children in October 2022 are set out in [51] above.

83 Since that time, STCA has continued to advocate on behalf of the remaining Australian women and children. Some examples of recent, formal, written communications (copies in Annexure) are included below.

- (1) By letter dated 3 February 2023, on behalf of STCA, I requested from Ms O'Neil the Australian Government's urgent action in respect of the Australian women and children. In that letter, I informed Ms O'Neil that STCA was aware that the AANES had announced to the Australian women that boys born in 2011 would be removed from Al-Roj within 48 hours, and that as a result, [REDACTED] was at risk of separation from his mother, [REDACTED]. The letter referred to reports that camp authorities had separated ten boys from their mothers and siblings; with the boys then being removed from the camp and transferred to so-called 'rehabilitation centres'. I also expressed my growing concern about the health and life of another two women and nine children in North East Syria, before detailing the nature of those individuals' urgent health conditions. The letter urged the Australian Government to immediately repatriate the remaining Australian women and children.
- (2) On 17 February 2023, Mr Feakes sent a letter to STCA in response to my letter dated 3 February 2023. Mr Feakes's letter noted that the Australian Government acknowledges the humanitarian and welfare issues affecting those who remain in Al-Roj camp, and that the Australian Government

continued to monitor the welfare of the Australian women and children. The letter stated that the Australian Government was unable to comment on the matters raised by STCA's letter dated 3 February 2023 due to privacy concerns, but that "humanitarian partners ... have access to the camps".

- (3) By letter dated 9 March 2023, on behalf of STCA, I reiterated to Ms O'Neil the urgent need to repatriate the Australian women and children from Al-Roj camp. The letter noted "the ongoing suffering that they are experiencing and...that the perilous situation they face has been worsened by winter and by the recent terrible earthquakes which have severely strained already limited resources". The letter noted the credible reports STCA had received that the AANES intended to remove boys born in 2012 or earlier from their mothers, and that, in particular, one boy aged 11 might die as a result because of complicated and untreated health issues. I also noted the absence of a response to my letter dated 3 February 2023, and that there was mounting pressure on STCA from the STCI-authorising remaining Australian women and children to commence litigation. I again asked that the Australian Government repatriate the remaining Australian women and children quickly, noting that "[t]he removal of Australian boys detained in the Roj camp would place their lives at imminent risk".
- (4) On 3 April 2023, Mr Feakes sent a letter to STCA in response to my letter dated 9 March 2023. The letter stated that the Australian Government was concerned about the remaining "Australian-linked" women and children located in camps in North East Syria. The letter further stated that the Australian Government continues to partner with humanitarian agencies and monitor the situation in Al-Roj camp, but that due to privacy concerns the Australian Government was unable to comment on specific reports.

84 By way of example of recent in-person advocacy, on 9 May 2023, I met with the Ciara Spencer, First Assistant Secretary, Security Division, DFAT and Clyde Hamilton, Assistant Director, Consular and Crisis Management Division, DFAT, to advocate for the repatriation of the remaining Australian women and children.

XI. Conclusion

85 On the basis of my experience, expertise, and involvement in the successful repatriations by the Commonwealth Government of some of the women and

children held in Al-Roj camp, I believe that the Commonwealth Government has the ability to arrange the repatriation of the remaining Australian women and children and bring their detention to an end.

86 I am unaware of any change in circumstance within Al-Roj camp or known impediments which lessen the ability of the Commonwealth to repatriate the remaining Australian women and children, as compared to when they successfully repatriated some Australian women and children in October 2022.

87 During the course of my communications with numerous representatives of the Commonwealth Government, in the past and up until the present moment, I have not been advised that the Government would be unable to repatriate the Australian women and children who were left behind in October 2022 and remain in detention in Al-Roj camp. While the difficulty of repatriation, and the complexity of the situation in North East Syria, has been raised, neither I nor STCA have ever been told that repatriations cannot be undertaken. Rather, I have been informed that the Australian Government has access to Al-Roj camp and is able to operationalise repatriations when appropriate.

88 On the basis of the information set out above, I believe that the Australian Government is able to obtain the release of the remaining Australian woman and children from Al-Roj camp and their repatriation to Australia, just as it did with some of them in October 2022.

89 I believe, based on my experience, expertise and familiarity with the subject matter and participants in relevant repatriation efforts that the matters referred to in the sources listed above are factually accurate. Each contributes to and confirms my opinion that the Respondents are able to arrange for the release from detention in Al-Roj, and repatriation to Australia, of the Australian women and children.

90 STCA begs you to make a further repatriation decision for the liberation of the remaining Australian women and children, who are your citizens, unlawfully detained in a foreign land. The key to their release and repatriation is in your hand.

Signed  on 18th May 2023

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Constitution

Save the Children Australia ABN 99 008 610 035

A company limited by guarantee

1 Company's name

The name of the company is Save the Children Australia.

2 Company's history and philosophy

Over 100 years ago, the founder of the international Save the Children movement, Eglantyne Jebb, had a vision: to achieve and protect the rights of children worldwide. She was driven by the belief that all children – whoever they are, wherever they are – have the right to a healthy, happy, fulfilling life.

In 1919, Eglantyne Jebb stood in Trafalgar Square bringing the attention of passers-by to starving German and Austrian children, following a punishing Allied blockade during World War One. She faced strong opposition and was arrested, found guilty, and fined for her protest. Yet the judge was so impressed with Eglantyne's commitment to children that he paid her fine. This became the first donation to Save the Children.

Six months later, Australian opera singer, feminist and peace activist Cecelia Annie John established Save the Children's first international branch when she returned to Melbourne, with local branches and State Divisions in Australia growing from that time.

Eglantyne Jebb wanted to build a worldwide movement dedicated to the protection and support of children. She penned five core principles that later formed the basis for the United Nations Convention on the Rights of the Child.

Over more than 100 years, Save the Children has become one of the world's leading independent organisations for children and the Rights of the Child.

The company retains the spirit of its founder in its work to support children and champion their rights.

The company is a member of the international Save the Children Association and is the successor of, and has superseded, the State Divisions.

3 Company's purpose

The company's purpose is to support children in need by, without limitation:

- (a) assisting families in times of emergency;
- (b) protecting children from abuse and neglect;
- (c) enabling access to education and health services; and
- (d) promoting or protecting human rights.



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4 Company's powers

Solely for carrying out the company's purposes, the company may exercise all of the powers of a company limited by guarantee under the Corporations Act.

5 Not for profit

5.1 Application of the company's income and property

- (a) The company's income and property must be applied solely towards promoting the company's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any member or director in their capacity as member or director.
- (c) This rule 5 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

5.2 Payments of directors fees

No directors fees may be paid to the directors.

5.3 Other payments to directors

All other payments to directors must be approved by the directors including, but not limited to:

- (a) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
- (b) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
 - (1) the provision of the service has the prior approval of the directors; and
 - (2) the amount payable is not more than an amount that commercially would be reasonable payment for the service.

6 Membership

- (a) The members are the directors.
- (b) Every member agrees to comply with this constitution and supports the purposes of the company set out in rule 2.



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7 Liability and guarantee of member

- (c) The company must maintain a register of members setting out the name, address, alternate electronic or other address (if any) for receipt of notices and date membership starts and ceases.
- (d) A person immediately ceases to be a member if the person ceases to be a director.

7 Liability and guarantee of member

- (a) The liability of the members is limited to the amount of the guarantee given in rule 7(b).
- (b) Every member must contribute an amount not more than \$10 to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:
 - (1) payment of the company's debts and liabilities contracted before the time the individual ceased to be a member; and
 - (2) expenses of winding up.

8 Winding up

- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, and after application of rule 9 and rule 10, this property must only be transferred to an entity that is charitable at law.
- (b) The entity referred to in rule 8(a) must be decided by the directors.

9 Public benevolent institution status

9.1 Application of this rule

This rule only applies if the company is endorsed as a deductible gift recipient under item 4.1.1 of the table in section 30-45 of the ITAA97.

9.2 Gift Account

- (a) The company must maintain a management account for its purposes (**Gift Account**):
 - (1) to identify and record Gifts and Deductible Contributions;
 - (2) to identify and record any money received by the company because of those Gifts and Deductible Contributions; and
 - (3) that does not record any other money or property.
- (b) Receipts for Gifts or Deductible Contributions must state the;
 - (1) name and ABN of the company;



- (2) the date and amount (or value, if property) of the Gift or Deductible Contribution;
- (3) the name of the donor or contributors;
- (4) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).

9.3 Winding up or revocation of deductible gift recipient endorsement

- (a) Upon:
 - (1) the winding up of the company; or
 - (2) the company ceasing to be endorsed as a deductible gift recipient under the ITAA 97,
 whichever is earlier, any surplus funds in the Gift Account must be transferred to an entity:
 - (3) which is charitable at law; and
 - (4) gifts to which are deductible under the ITAA 97 on the basis that it is characterised as a registered public benevolent institution as described in item 4.1.1 of the table in section 30-45.
- (b) The entity referred to in rule 9.3(a) must be decided by the directors.

10 Overseas aid fund endorsement

10.1 Application of this rule

This rule only applies if the company is endorsed as a deductible gift recipient for the operation of a developing country relief fund under item 9.1.1 of section 30-80 ITAA97 and only to the extent required by relevant law, regulation or guideline applicable to the company, or any administrative requirement or practice of the Australian Taxation Office or any regulator.

10.2 Overseas Relief Fund

- (a) The company must maintain a public fund for the relief of people in developing countries (as declared by the Government) to be known as SCF Overseas Relief Fund (**Overseas Relief Fund**):
 - (1) to identify and record Gifts and Deductible Contributions for these purposes;
 - (2) to identify and record any money received by the company because of those Gifts and Deductible Contributions; and
 - (3) that does not record any other money or property.
- (b) The company must invite the public to contribute to the Overseas Relief Fund to support its purposes.
- (c) Receipts for Gifts or Deductible Contributions to the Overseas Relief Fund must state the:



- (1) name and ABN of the company;
- (2) name of the Overseas Relief Fund;
- (3) the date and amount (or value, if property) of the Gift or Deductible Contribution;
- (4) the name of the donor or contributors;
- (5) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).

10.3 Overseas Relief Fund administration

- (a) The Overseas Relief Fund must be administered by the directors. If there is not a majority of the directors who are individuals who have a degree of responsibility to the general community (**Responsible Persons**), the directors must delegate the power to administer the Overseas Relief Fund to a committee of at least 3 people, the majority of whom are Responsible Persons.
- (b) If at any time the requirement in rule 10.3(a) is required by law and is not met, the board or committee must not exercise any discretion or power in respect to the administration of the Overseas Relief Fund until the requirement is met, except to protect the Overseas Relief Fund or in the case of urgency.

10.4 Winding up or revocation of deductible gift recipient endorsement

- (a) Upon:
 - (1) the winding up of the company; or
 - (2) the company ceasing to be endorsed as a deductible gift recipient for the operation of the Overseas Relief Fund under item 9.1.1 of section 30-80 ITAA 97,
 whichever is earlier, any surplus funds in the Overseas Relief Fund must be transferred to an entity:
 - (3) which is charitable at law; and
 - (4) gifts to which are deductible under Division 30 of the ITAA 97.
- (b) The identity of the entity referred to in rule 10.4(a) must be decided by the directors.

11 Altering this constitution

- (a) The company must not pass a special resolution altering this rule or the constitution, if, as a result, the company would cease to be a charity.
- (b) A resolution purporting to alter this constitution in breach of rule 11(a) will have no effect.
- (c) The company must give notice of any alteration to the regulators as required.



12 General meetings

- (a) The directors may convene a general meeting at such time and place as the directors see fit.
- (b) General meetings must be conducted in accordance with rule 14, with the following modifications:
 - (1) A member may appoint a proxy on behalf of the member. The directors may decide the rules relevant to the appointment and powers of the proxy.
 - (2) A members' resolution may be passed in accordance with rule 14.6 unless a meeting is required by the Corporations Act, such as a resolution to remove an auditor or a director, or a resolution that by law requires a special resolution.

13 Directors

13.1 Appointing directors

- (a) The minimum number of directors is 6.
- (b) The directors may appoint any individual as a director, provided:
 - (1) that individual has signed a consent to act as director;
 - (2) the individual is not disqualified from managing a corporation under the Corporations Act nor disqualified from being a responsible entity under the ACNC Act; and
 - (3) the requirements as to the composition of the directors provided in the board composition policy are met.
- (c) Subject to rules 13.2 and 13.1(d), a director holds office for a maximum of 9 years from the date of appointment.
- (d) By a resolution approved by at least 75% of the directors, the term of a director who has been appointed chair may be extended to allow that director to complete up to 6 years from the date of his or her appointment as chair, provided that the aggregate term of that director shall not exceed 12 years from the date of original appointment as a director.

13.2 Vacation of office

The office of a director becomes vacant:

- (a) if the director resigns by notice to the company;
- (b) if the director is removed from office by resolution of the members;
- (c) if the director is appointed for a specific term of office and is not reappointed;
- (d) if the director is disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible entity under the ACNC Act;
- (e) in the circumstances outlined in the Corporations Act; and



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13 Directors

- (f) if a person is appointed to make decisions on behalf of the director under a law relating to mental health.

13.3 Powers and duties of directors

- (a) The directors are responsible for managing the company's affairs and carrying out the company's purposes set out in rule 2.
- (b) The directors may exercise all the company's powers which are not required, by the Corporations Act or by this constitution, to be exercised by the members in a general meeting.
- (c) The directors must ensure they are aware of, and comply with their duties as directors, including the ACNC governance standards.
- (d) The directors must ensure the company's financial affairs are managed responsibly, including:
 - (1) maintaining financial records that correctly record and explain its transactions and financial performance, and enable true and fair financial statements to be prepared annually;
 - (2) deciding how payments are to be approved or executed by or on behalf of the company; and
 - (3) ensuring the company does not operate while insolvent.
- (e) The directors may delegate any of their powers or functions to one or more of the directors, a committee, an employee, agent or other person as the directors decide.

13.4 Directors conflict of interest

- (a) A director must disclose a perceived or actual material conflict of interest to the other directors.
- (b) Unless the directors decide otherwise and where permitted by law, a director who has a material personal interest in a matter that is being considered at a directors meeting must not:
 - (1) be present while the matter is being considered; or
 - (2) vote on the matter.
- (c) The directors may make a policy or rules relating to disclosure of interests and subsequent requirements of the directors. Any policy or rules will bind all directors.
- (d) An act, transaction, agreement, instrument, resolution or other thing with a third party is not invalid or voidable only because a director fails to comply with the policy or rules.
- (e) A director is not disqualified from contracting or entering into an arrangement with the company as vendor, purchaser or in another capacity merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (f) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.



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- (g) A director who has an interest in an arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with applicable disclosure requirements under this constitution, any policy or rules of the company and the law.
- (h) A director may hold any other office or position (except auditor) in the company or a related body corporate in conjunction with their directorship and may be appointed to that office or position on terms (including remuneration and tenure) that the directors decide.

13.5 Committees

- (a) The directors may delegate their powers to one or more committees consisting of any number of directors and/or others.
- (b) A committee must exercise its powers within the terms of the delegation.
- (c) The procedures in rule 14 apply as far as possible to the decision-making of any committees.

13.6 Validity of acts

An act done by a person acting as a director, a meeting of directors, or a person exercising a power or function delegated to them by a director is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the directors or the committee (as applicable) when the act was done:

- (a) a defect in the appointment of the person as a director or delegate;
- (b) the person being disqualified as a director or having vacated office; or
- (c) the person not being entitled to vote.

14 Decision-making procedures

14.1 Convening meetings

- (a) A director may call a meeting by giving reasonable notice to the other directors, or by the secretary giving notice of the meeting to all directors.
- (b) A notice of meeting:
 - (1) must specify the time and place of the meeting;
 - (2) need not state the nature of the business to be transacted at the meeting;
 - (3) may be given immediately before the meeting; and
 - (4) must be given in accordance with rule 17.1.
- (c) The non-receipt of notice of a meeting, or a failure to give notice of a meeting, does not invalidate any thing done or resolution passed at the meeting if:
 - (1) the non-receipt or failure occurred by accident or error;
 - (2) the director waives notice of that meeting before or after the meeting;



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- (3) the director notifies the company of their agreement to that thing or resolution personally or by post, telephone, email or other electronic means before or after the meeting; or
- (4) the director attended the meeting.

14.2 Digital meetings

- (a) A director who takes part in a meeting by telephone or digital means is taken to be present in person at the meeting.
- (b) The simultaneous linking together by telephone or digital means of a sufficient number of the directors to constitute a quorum constitutes a meeting.
- (c) All the provisions in this constitution relating to meetings apply, as far as they can and with any necessary changes, to meetings by telephone or digital means.
- (d) A meeting by telephone or digital means is taken as held at the place decided by the chair of the meeting, as long as at least one person involved was at that place for the duration of the meeting.
- (e) If a technical difficulty occurs which means that one or more directors cannot participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum remains present, continue with the meeting.

14.3 Quorum

- (a) No business may be transacted at a meeting unless a quorum is present at the time the business is dealt with.
- (b) A quorum consists of a majority of directors.
- (c) If the number of directors in office is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to appoint additional directors, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

14.4 Chair

- (a) The directors may elect one of the directors as chair and may decide the period for which that person is to be the chair.
- (b) The chair must preside as chair at each meeting if present within 10 minutes after the time appointed for the meeting and willing to act.
- (c) If there is no chair or the conditions in rule 14.4(b) have not been met, the directors present must elect one of the directors as chair of the meeting.

14.5 Decisions at meetings

- (a) Except where by law a resolution requires a special majority, a resolution at a meeting must be decided by a majority of votes cast by the directors present.
- (b) Where the votes on a proposed resolution are equal, the chair of the meeting does not have a second or casting vote, and the vote is taken as lost.



14.6 Decisions without a meeting

- (a) A resolution is taken to have been passed if:
- (1) all of the directors who would be entitled to receive notice of a meeting and to vote on a resolution are given a document setting out that resolution;
 - (2) at least 75% of the directors sign or consent to the resolution within the time specified, or if no time is specified, within 14 days of the document being sent to the directors; and
 - (3) the directors who sign or consent to the resolution would have constituted a quorum at a meeting held to consider that resolution.
- (b) A director may consent to a resolution by:
- (1) signing the document containing the resolution (or a copy of that document);
 - (2) giving the company notice agreeing to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (3) telephoning the secretary or the chair and signifying assent to the resolution and clearly identifying its terms.
- (c) The resolution is taken as passed when the last director required to constitute at least 75% of the directors signs or consents to that resolution within the time period specified in rule 14.6(a)(2).

14.7 Minutes and records

- (a) The directors must ensure:
- (1) minutes of general meetings, directors meetings and committee meetings (including all resolutions proposed); and
 - (2) records of resolutions passed by members, directors and committees without a meeting,
- are recorded and kept as part of the company's records. The records must be made within one month after the relevant meeting is held or resolution passed.
- (b) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

15 Secretary

- (a) The directors must appoint at least one secretary who ordinarily resides in Australia and who may also be a director.
- (b) The secretary must provide consent to the appointment.
- (c) The secretary can be removed by the directors.



16 Indemnity and insurance

16.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 16 applies to Indemnified Officers.

16.2 Indemnity

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.
- (b) This indemnity:
 - (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the company;
 - (2) is enforceable without that person having first to incur any expense or make any payment; and
 - (3) operates only to the extent that the loss or liability in question is not covered by insurance.

16.3 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

16.4 Savings

Nothing in this rule 16:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this rule 16; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 16 does not apply.

17 Notice

17.1 Notice from the company

The company may give notice and any communication:

- (a) personally;
- (b) by post to the person's nominated address;
- (c) by email or other electronic means; or



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- (d) by notifying the person by email or other electronic means, that the notice or communication or publication is available at a specified electronic address.

17.2 Notice to the company

Notice may be given to the company:

- (a) by personal service at its registered address;
- (b) by post to its registered address; or
- (c) by sending it to the company's principal email address, or if there is no principal email address, to the email address of the secretary.

17.3 Time of service

- (a) A notice from the company properly addressed and posted is taken to be served at 10.00am on the day that is three Business Days after the date it was posted.
- (b) Where the company sends a notice by email or other electronic means, the notice is taken as served at the time it is sent.
- (c) If service under rule 17.3(b) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the following Business Day.

17.4 Other communications and documents

Rules 17.1 to 17.3 apply, as far as they can, with any necessary changes, to the service of any communication or document.

18 Definitions and interpretation

18.1 Definitions

| Term | Meaning |
|-------------------------|---|
| ACNC Act | <i>Australian Charities and Not-for-profits Commission Act 2012 (Cth).</i> |
| Business Day | Monday to Friday inclusive, excluding New Years' Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day. |
| Corporations Act | <i>Corporations Act 2001 (Cth).</i> |



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19 Corporations Act and ACNC Act

| | |
|--------------------------------|---|
| Deductible Contribution | a voluntary transfer of money or property in relation to an eligible fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97. |
| Gift | a voluntary transfer of money or property (including financial assets such as shares) where the donor receives no material benefit or advantage. |
| Indemnified Officer | <ol style="list-style-type: none"> 1 each person who is or has been a director or executive officer of the company; and 2 any other officers or former officers of the company as the directors in each case decide. |
| ITAA 97 | <i>Income Tax Assessment Act 1997</i> (Cth). |
| State Divisions | <ol style="list-style-type: none"> 1 Save The Children Fund SA Division Inc ABN 85 504 993 227 2 Save the Children Fund (NSW) Division ABN 51 024 688 783 3 Save the Children Fund (Western Australian Division) Inc ABN 54 006 454 034 4 The Save the Children Fund Tasmania ABN 91 399 354 340 5 Save the Children Australia-Victorian Division ABN 14 005 486 331 6 Save the Children Australia-Queensland Division ABN 19 009 938 130 |

18.2 Interpretation

In this constitution:

- (a) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (b) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative; and
- (d) the singular includes the plural and the plural includes the singular.

19 Corporations Act and ACNC Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the company.



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19 Corporations Act and ACNC Act

- (b) If at any time, the company is not a registered charity under the ACNC Act, the Corporations Act applies and (unless it is a replaceable rule) overrides any part of this constitution, or policy of the company, which is inconsistent with the Corporations Act.

No exit and no hope in this living hell

By ELLEN WHINNETT

The Weekend Australian

Saturday 16th July 2022

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Page 4 | Section: THE SYRIA QUESTION

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No exit and no hope in this living hell

ELLEN WHINNETT

The secure detention camps holding families linked to Islamic State in northeast Syria were originally designed to house refugees, but have morphed into prison camps in which more than 60,000 women and children are being held indefinitely.

The main camps, al-Roj and al-Hol, were established in the early 1990s to provide temporary shelter for refugees fleeing across the border to escape conflict in Iraq.

Twenty years on, they have become de facto prisons, holding tens of thousands of people who have no legal status in conditions the UN has described as meeting the definition of “torture”.

Around 60,000 people, including several Australian women and children, are in the al-Hol camp, near the restive city of Hasakah in northeast Syria.

About 60 Australian women and children were moved two years ago from al-Hol to al-Roj, a safer but more heavily guarded camp in a remote area of Syria close to the Iraqi border.

The camps were rapidly expanded after the March 2019 fall of Islamic State’s last redoubt in Baghouz, when tens of thousands of fighters, members and their families surrendered to Kurdish Syrian Democratic Forces and

were taken into custody.

The Kurdish Autonomous Administration of North and East Syria is not officially recognised but controls and runs the Kurdish area of northeast Syria as a de facto government, and was an ally in the Global Anti-ISIS Coalition.

While al-Roj, which mostly houses foreign citizens, is under control of the Kurdish forces and is relatively safe, the SDF controls only the perimeter of the al-Hol camp, whose occupants are mainly Syrian and Iraqi and are controlled by Islamic State members inside the camp.

Islamic State runs the schools, and its morality police prowl the three square kilometres of tents inside its perimeter.

Murders occur almost every week in the camp. Two women were killed in the week when The Weekend Australian was in Syria, including one woman who was beheaded.

The UN Special Rapporteur on Counter Terrorism and Human Rights, Fionnuala Ni Aolain, told The Weekend Australian there were serious concerns about the detention of the women and children in the camps.

“The history of these camps is long but originally al-Hol was established as a bona-fide refugee camp during hostilities ... but is has

long since ceased to be anything close to a bona-fide refugee camp or place of humanitarian shelter,” Professor Ni Aolain said.

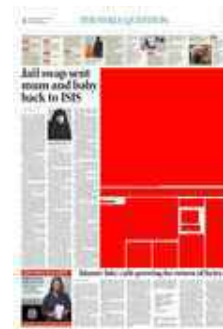
“The UN experts, including my office ... have defined it as a place of mass, systematic, arbitrary detention in which the conditions meet the threshold for torture – inhuman and degrading treatment under international law.

“This is not a holiday camp, it’s not a refugee camp, it’s not a place where the basic needs of human beings including Australian children and women are being met in any way.”

Professor Ni Aolain said her office and the UN Committee on the Rights of the Child had examined the legal status of al-Roj, where most of the Australians are now held, and “similarly found it is a place of arbitrary detention, that the conditions meet the same threshold (of) inhuman treatment under international law”.

“Bear in mind, in none of these settings ... there’s no exit, there’s no legal process,” she said.

“No one has decided that anyone including the youngest children have committed any offence under national or international law. There’s no access to education. Health provision is limited. There’s no meaningful way for people to live dignified lives in these places.”



Al-Roj camp, where Australian women and young children are being held in horrific and inhumane conditions



THE ISLAMIC STATE PRISON CAMPS

Foreign citizens repatriated from the camps in northeast Syria since January 2021

2022

- JUL 3 France:** 16 women and 35 children
- JUN 20 Belgium:** 6 women, 16 children
- JUN 1 Austria:** 2 children
- MAY 27 Albania:** 4 women, 9 children
- MAY 8 Sweden:** 2 women, 3 children
- APR 14 Russia:** 10 orphaned children
- APR 4 UK:** 2 orphaned children
- MAR 30 Germany:** 10 women, 27 children
- MAR 14 Sweden:** 2 women, 2 children
- FEB 23 Russia:** 9 orphaned children
- JAN 26 Sweden:** 2 women, 4 children

Total* 161

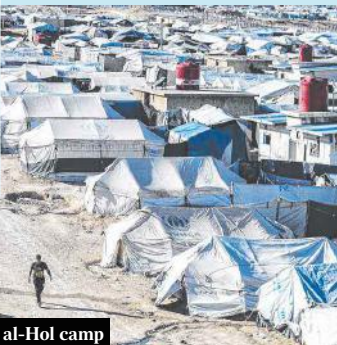
* to July 3

2021

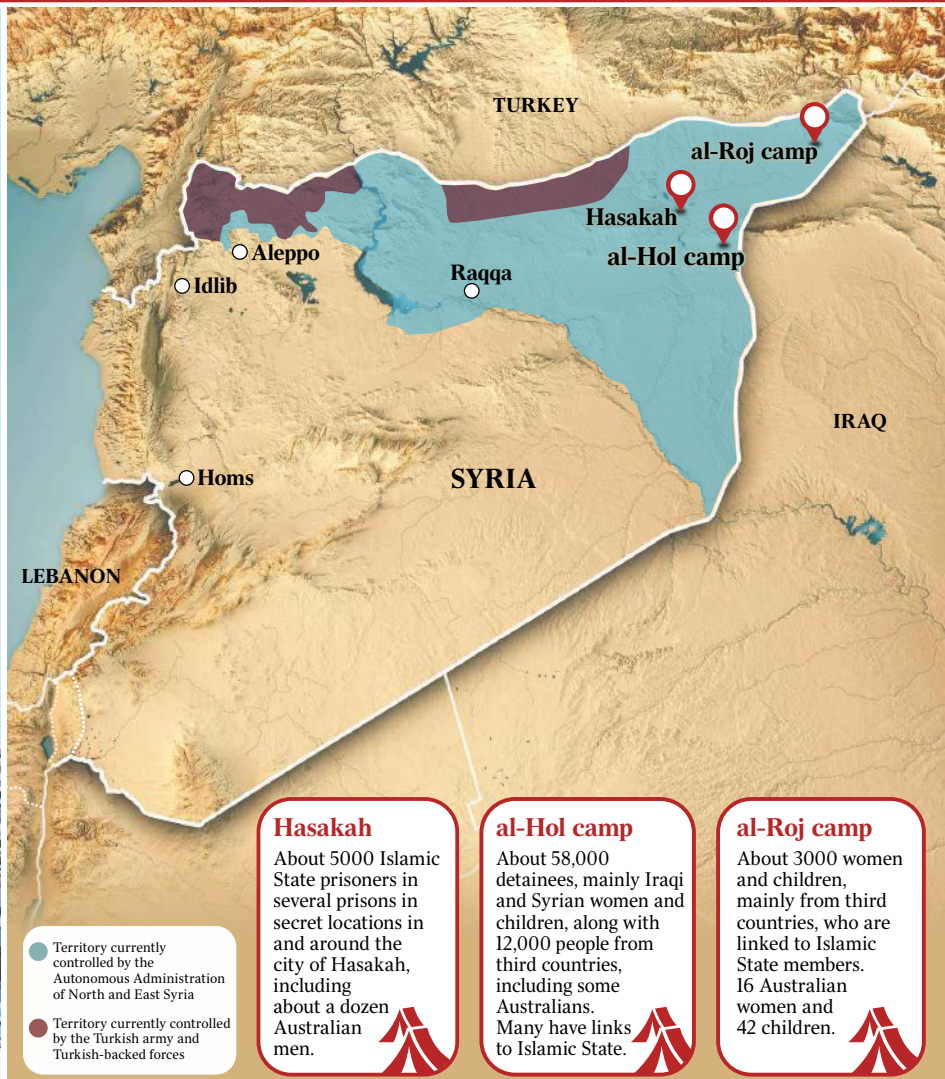
- DEC 10 Finland:** 1 woman, 4 children
- DEC 6 Switzerland:** 2 children
- NOV 22 Norway:** 1 orphaned child
- OCT 20 Sweden:** 3 women, 8 children
- OCT 18 UK:** 3 children
- OCT 6 Germany:** 8 women, 23 children
- OCT 6 Denmark:** 3 women, 14 children
- SEP 5 Sweden:** 3 women, 6 children
- AUG 11 Palestine:** 2 orphaned children
- JUL 3 Russia:** 20 orphaned children
- JUN 5 Netherlands:** 1 woman, 3 children
- APR 30 Uzbekistan:** 24 women, 68 children

Total 197

OCT 2020: US announces it has repatriated all 27 of its known citizens in Syria, of whom 10 adults (male and female) were charged or convicted of terror-related offences. The remaining 17 were children.



al-Hol camp



Hasakah
About 5000 Islamic State prisoners in several prisons in secret locations in and around the city of Hasakah, including about a dozen Australian men.

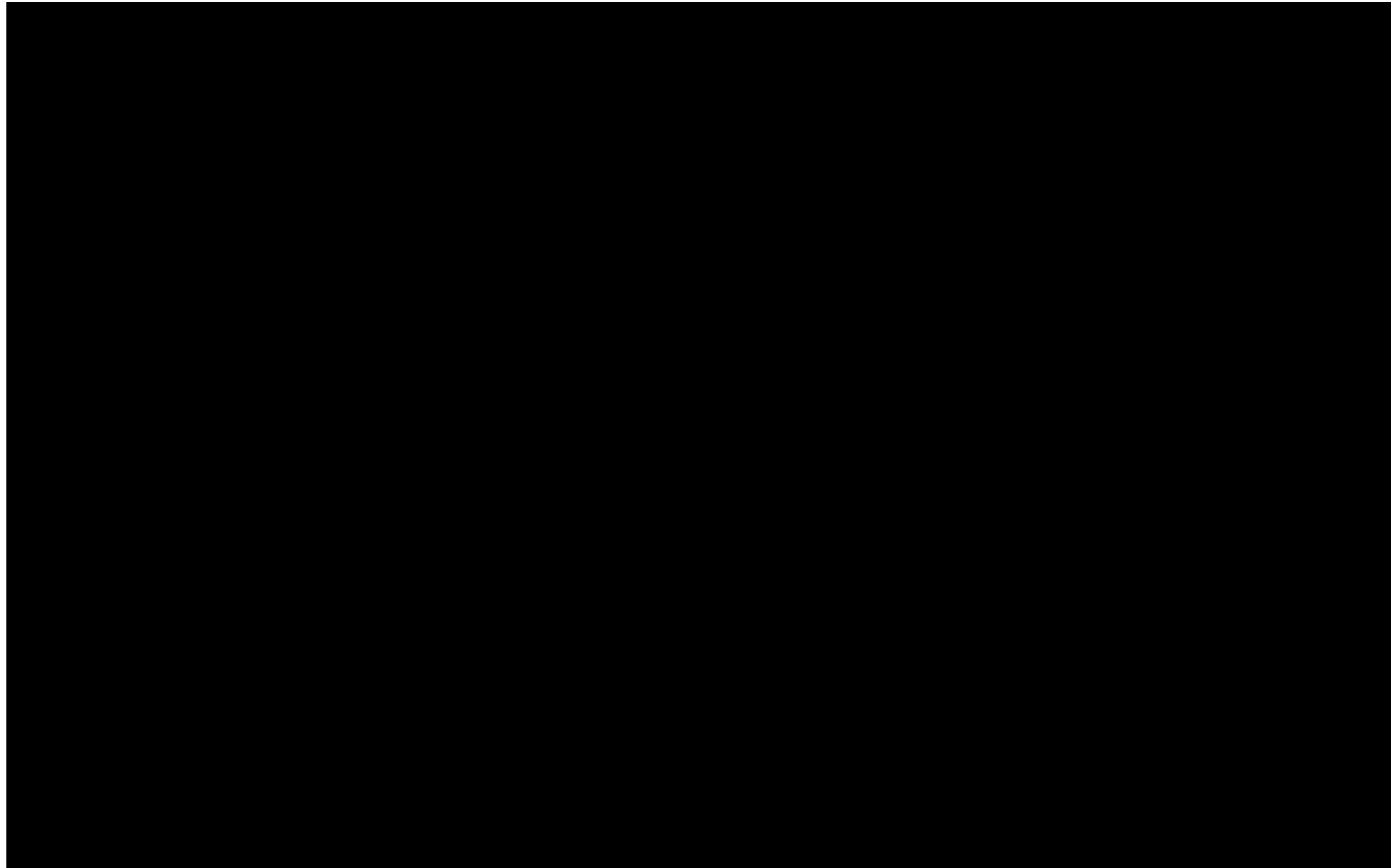
al-Hol camp
About 58,000 detainees, mainly Iraqi and Syrian women and children, along with 12,000 people from third countries, including some Australians. Many have links to Islamic State.

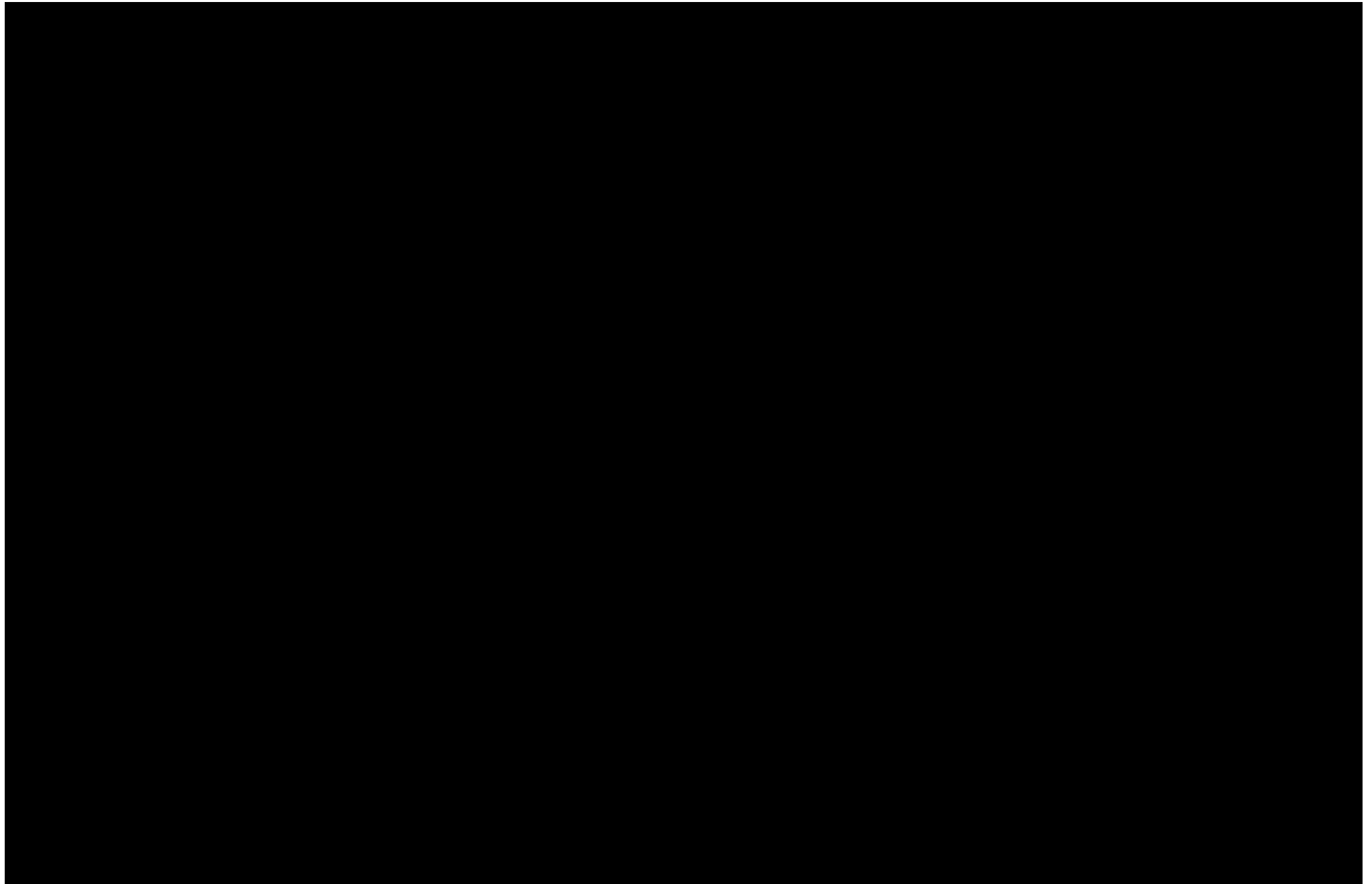
al-Roj camp
About 3000 women and children, mainly from third countries, who are linked to Islamic State members. 16 Australian women and 42 children.

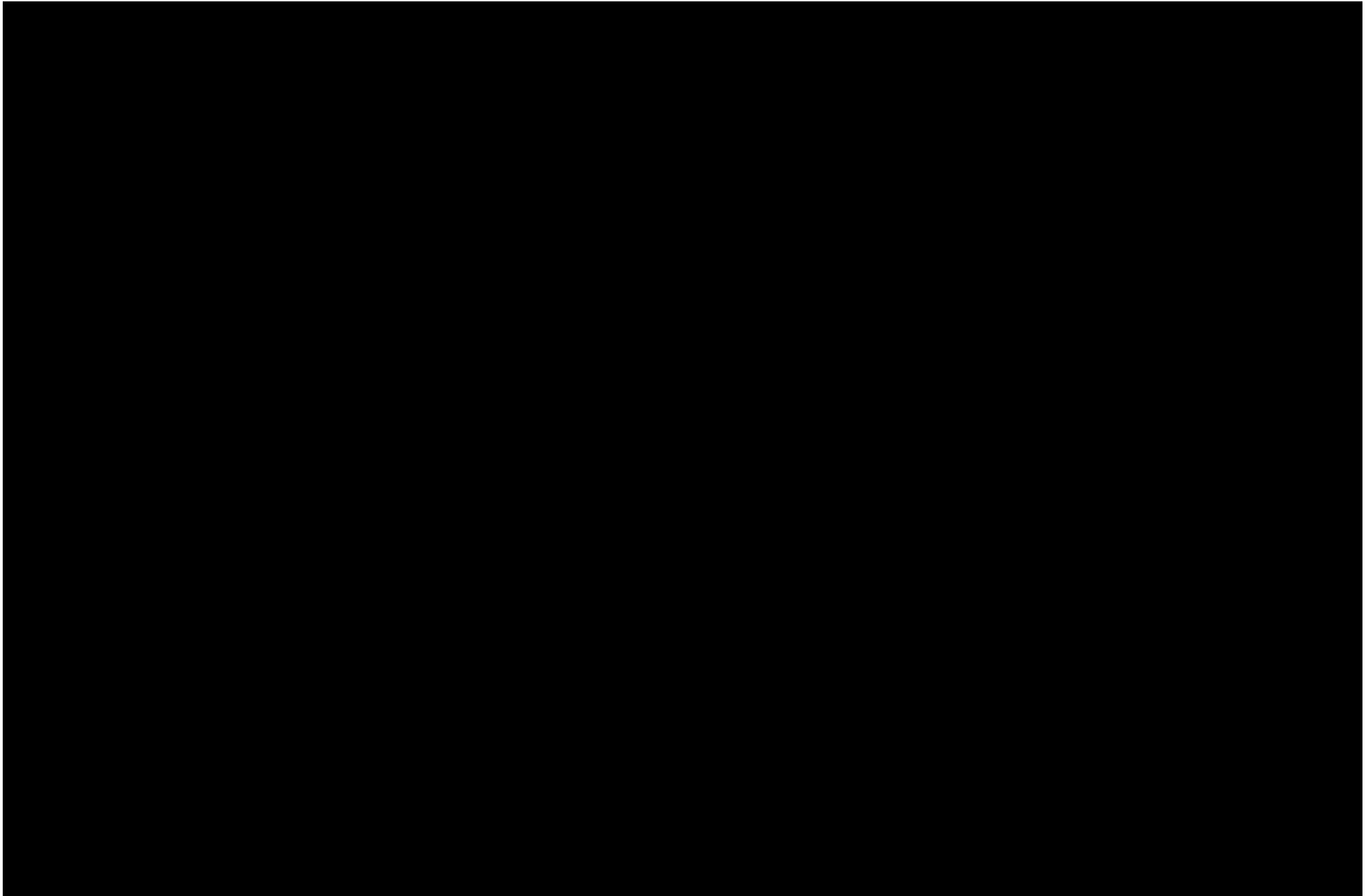
‘It’s not a place where the basic needs of human beings are being met in any way’

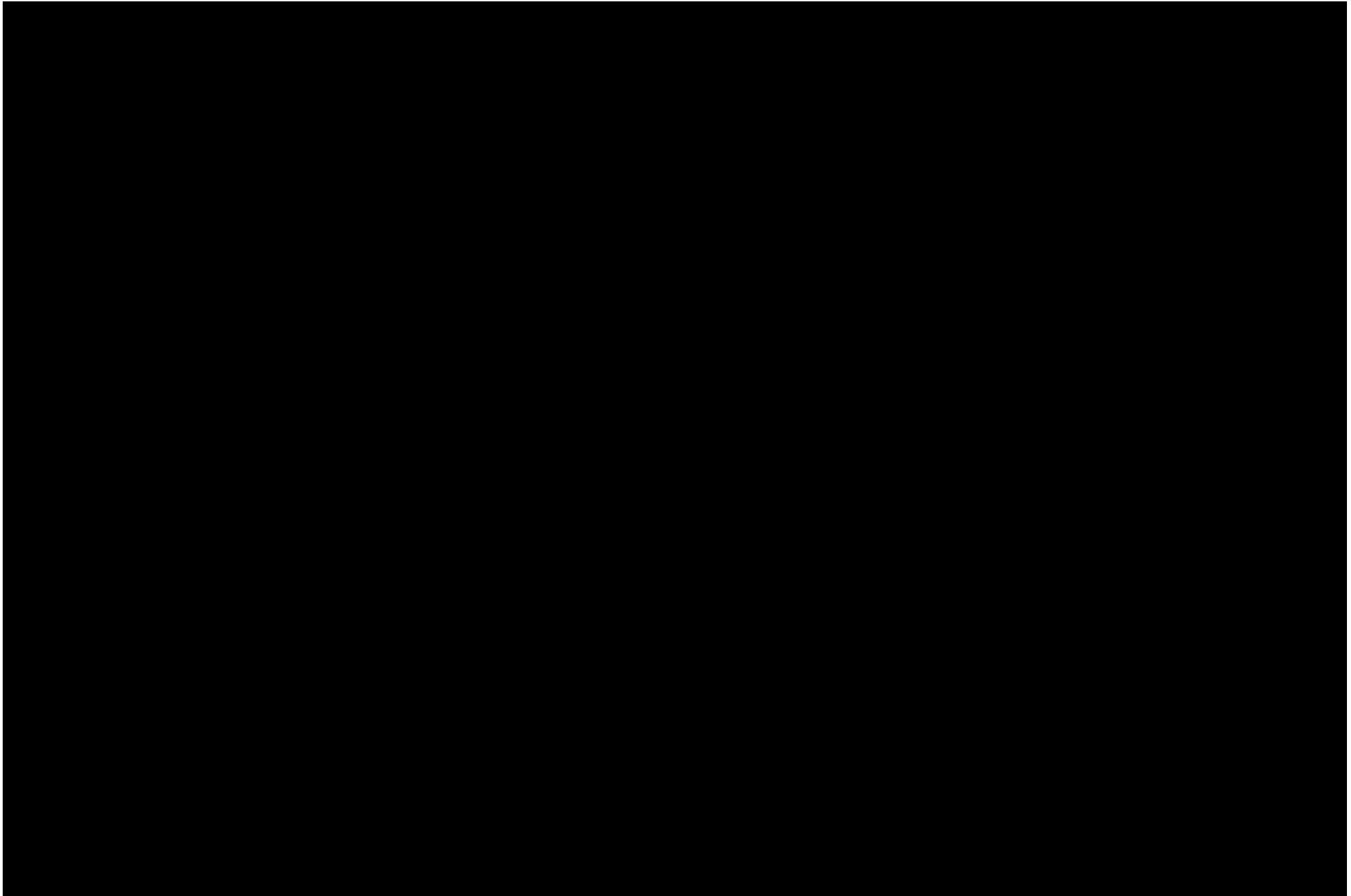
FIONNUALA NI AOLAIN
UN SPECIAL RAPPORTEUR ON COUNTER TERRORISM AND HUMAN RIGHTS

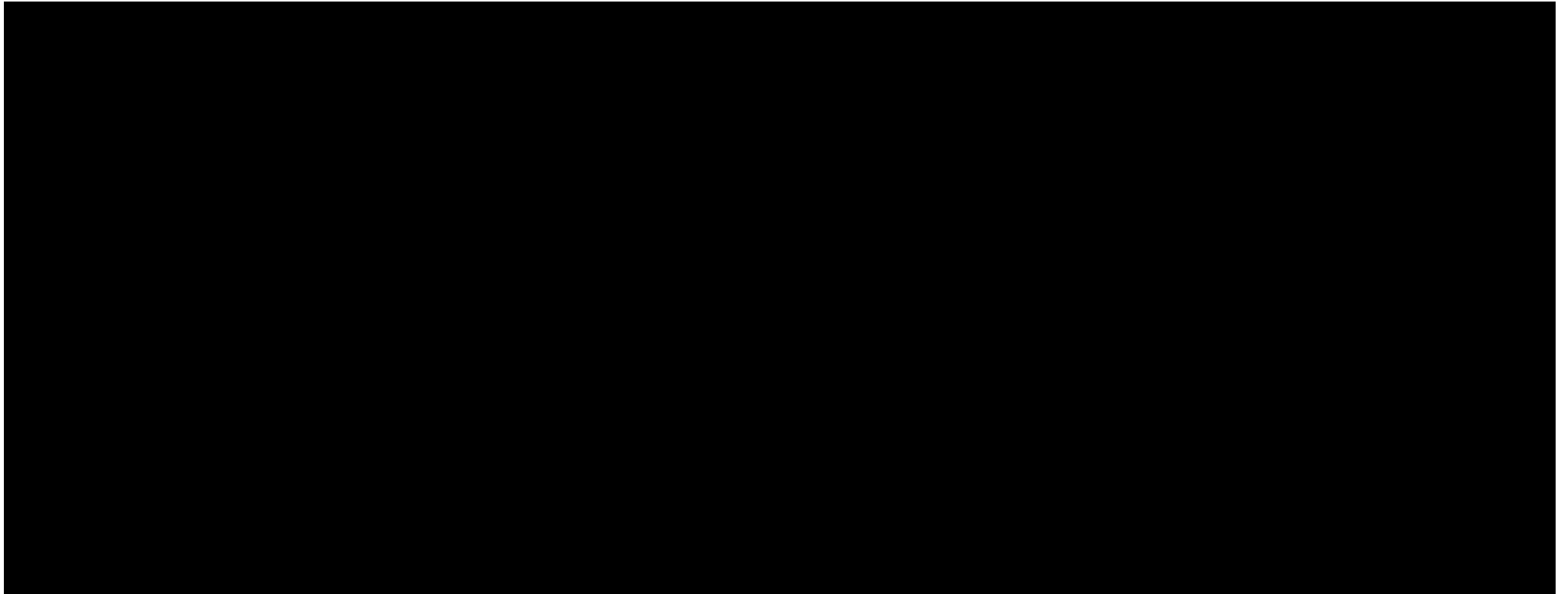
List of STCA-authorising remaining women and children













**Office of Director of Policy &
International Programs
Mat Tinkler**

33 Lincoln Square South
Carlton Vic 3053
03 7002 1789
mat.tinkler@savethechildren.org.au

17 April 2019

Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Cc: Senator the Hon Marise Payne
Minister for Foreign Affairs
Ms Francis Adamson, Secretary, Department of Foreign Affairs and Trade

Dear Prime Minister

Re: Repatriation of Australian children from Syria

I am writing to you regarding the need to repatriate Australian children and their families in Syria.

Save the Children very much welcomes your recent comments, indicating that the Australian Government is open to the repatriation of Australian children and their families. However, we seek clarification as to whether the Australian Government is in communication with the Kurdish Self Administration (SA) or other relevant actors (such as INGOs) and actively pursuing actions to bring these children home.

Humanitarian need

As you are aware, there are nearly 7,000 children from more than 30 countries, including Australia, across three camps in North-East Syria. Of this number now estimated to be living in camps, 6,407 are below the age of 12 and 3,397 are under five (as at 9 April 2019).

In only four months (December 2018 to March 2019), more than 60,000 people, mainly women and children, were displaced in North-East Syria by the fighting to control the last ISIS-held areas of Hajin and Baghouz, in Deir Ezzor governorate. They had to make the 300-kilometre journey to Al Hol camp, in Al-Hassakah governorate, in difficult conditions, mostly at night, in open trucks with just their clothes on their back. Many of the displaced arrived at the camp in critical condition suffering from hypothermia and lack of food.

According to the latest update from the UN, the humanitarian situation in Al-Hol is dire, as the ability of aid workers to respond to needs is overstretched. The total camp population – which was initially planned to host a maximum of 40,000 people - has hit a record of more than 73,000 people, of which 65% are children and 27% women. There are also around 25,000 school-aged children now residing in the camp. And 355 children are unaccompanied or have been separated from their families.

Families with perceived or actual associations with ISIS

The children from families with perceived or actual associations with ISIS are separated from the rest of the population, affecting their ability to obtain access to aid and services. In many cases, they have no official documentation, and their births have not been registered. The lack of civil

documentation, birth certificates or other identity documents mean they are at greater risk of statelessness and denial of their basic rights and services. This environment is not conducive for these children to live in safety, and innocent Australian children should obviously not suffer for the sins of their parents. We are very concerned for their welfare, as we are concerned about all children exposed to the conflict in Syria.

Role of the Australian Government in facilitating repatriation

Children of foreign nationalities trapped in Syria are innocent victims of the conflict and must be treated as such. Some states have taken responsibility for their citizens - such as Sudan, Kazakhstan, France, Belgium – and are now engaging with the Kurdish Self-Administration (SA) and are able to bring some children home. We appreciate the incredibly complex situation of these children falling under the auspice of the Kurdish SA, a non-internationally recognised entity. However, we understand that liaison with the Kurdish SA is the most likely path to facilitate repatriation of foreign nationals at this time, and hence in the best interests of these children.

We consider that Australia is under both a moral and legal obligation, as a party to the United Nations Convention on the Rights of the Child, to take all steps necessary to repatriate children of Australian ISIS fighters back to Australia¹. While we have been heartened by your recent comments, I am writing to seek advice as to whether the Australian Government or its officials are providing support to Australian children and their families caught in this situation, or whether there have been any attempts made to communicate with the Kurdish Self Administration to actively pursue their repatriation? In addition, we would be grateful if you can confirm the Australian Government's understanding of the number of children of Australian foreign fighters currently in Syria, including in camps in North-East Syria.

Save the Children's role

Save the Children is operating in North-East Syria and stands ready to support Australia in helping meet the needs of these children. Our staff have been on the ground at the Al Hol camp reception area 24/7, monitoring and screening the recent arrivals for those with urgent needs. We provide winter kits and distribute life-saving food, non-food items (e.g. jerry cans and heaters) and set up three mobile Child Friendly Spaces, help unaccompanied and separated children and conduct nutrition screening. Save the Children is also providing case management services, health referrals, basic education services and psychosocial support to help support these children, and all children in the camps, to recover from the traumatic experiences they have lived through.

We would welcome the opportunity to discuss these matters with you or your staff.

Yours sincerely



Mat Tinkler

Director, Policy & International Programs

¹ For example, Australia has undertaken to ensure every child has "such protection and care as is necessary for his or her well-being" and to take "all appropriate legislative and administrative measures" to achieve this (UNCRC, Article 39). As Australian children in camps in Syria face squalid, unsafe conditions and need urgent protection, Australia must also take "all appropriate measures" to ensure that a child is protected against all forms of discrimination or punishment on the basis of the activities or beliefs of the children's parents (Article 2, UNCRC).



PRIME MINISTER

Reference: MC19-027078

28 April 2019

Mr Mat Tinkler
Director, Policy and International Programs
Save the Children
33 Lincoln Square South
Carlton VIC 3053

Dear Mr Tinkler

Thank you for your letter dated 17 April 2019 regarding the repatriation of Australian children from Syria.

I am deeply concerned for the wellbeing of Australian children located in Syrian Internally Displaced Persons (IDP) camps, in particular those that are unaccompanied by parents or guardians. Parents who took their children to live in an extreme conflict zone have placed their children in a horrendous position, and exposed them to despicable acts of violence.

As I have recently stated, the Australian Government is working closely with humanitarian partners who have the mandate and expertise in restoring family links in conflict zones. This is with the view to ensuring that these children can be transferred to a location where they can be safely accessed by Australian Government officials. It is also in accordance with my previous advice that Australian Government officials will not be put at risk of harm to bring a child out of a conflict zone.

I am concerned that the increasing public commentary on the repatriation of Australian children is counter-productive, and may hinder our partners' ability on the ground to provide assistance we have requested. Publicity also increases the risks to humanitarian staff on the ground in a dangerous and complex location and to Australian children and families inside the camp. With this in mind, I ask that your organisation treat this matter with the utmost sensitivity.

You can rest assured that the Australian Government is doing everything possible to assist Australian children in Syrian IDP camps. But this is a complicated, challenging situation and swift results cannot be guaranteed. Should current channels prove unproductive, we may seek assistance from other organisations. I trust that you treat this correspondence in confidence.

Parliament House CANBERRA ACT 2600
Telephone (02) 6277 7700
www.pm.gov.au

I have copied this letter to the Ministers for Home Affairs and Foreign Affairs.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Scott Morrison', with a stylized, cursive script.

SCOTT MORRISON

The Hon Scott Morrison MP
Prime Minister of Australia
Parliament House
Canberra ACT 2600

Dear Prime Minister

Re: Urgent repatriation of Australians detained in Al-Hol

We are the families of the Australian women, widows and orphan children who are detained in the Al Hol Camp in Western Syria. All the women are vulnerable but the most vulnerable are those that are pregnant, and the children.

As you are aware, Al Hol was designed to house 15,000 to 20,000 people but now houses over 70,000. Australian women and children make about .06% of the total population, around 45 in total. This small number would fit in a bus, truck or a small aircraft.

In recent times their lives have been threatened resulting in extra security being required to protect them from being injured or, worse, killed. The Kurdish authorities are overwhelmed by the sheer weight of numbers, making it almost impossible to provide proper security. In response mothers, children, pregnant women are guarding their tents 24 hour a day to protect themselves from attacks.

Since their arrival in the camp we have received numerous pleas from loved ones begging us to assist them to leave as soon possible and be brought home.

Save for the Second World War we don't know of the last time Australian women and children have been held in foreign camps and treated like prisoners rather than refugees. The difference from the Second World War is the captors did not actively seek the assistance from the governments of nationals held to assist with repatriation. Australia is one of the countries from which such assistance has been requested. To us the requests have either been ignored or are being acted upon far too slowly even allowing for complexities that may exist on the ground.

Each day our loved ones are attempting to survive in these appalling conditions with inadequate food, water, medical supplies/services and sanitary facilities.

It is public knowledge that over the past weeks our loved ones have had their lives threatened and some women and children have been killed by extremists or died from lack of proper housing, food and medical supplies/services. This is not to say the Kurdish authorities are not trying their best. The threat to life and limb will continue and probably escalate while our citizens remain in the camp. It is horrendous and unacceptable for anyone to live in this squalor.

Our families, widows, children and orphans are malnourished, sick and injured and most have already faced the loss of family members and friends. On daily basis they are doing their best to survive. We have been told the tents provided are basic at best sometimes leaking in wet weather, cold in winter and hot as the weather changes and summer approaches.

We have also been informed that many are highly vulnerable. Some heavily pregnant women, children with disabilities and mothers and children suffering from untreated shrapnel wounds.

It's incomprehensible to us that Australians remain forced to be held in these conditions without being extracted by our government despite offers of assistance being made by the USA, Kurdish authorities and international aid agencies.

According to the International Red Cross, referencing both the Al Hol and Al Roj Camps: "collectively, the children of both camps are among the most vulnerable on the planet, their plight amplified by the fact that their parents' governments are showing next to no interest in them."

We gained some comfort from recent comments you and the Leader of Opposition which indicated to us that you do not want Australian citizens to die or continue to suffer.

Countries including France, Turkey, Russia, Lebanon, Morocco, Tunisia, Uzbekistan, Bosnia, Kosovo and Sweden have removed citizens. This proves there is a safe way to extract and repatriate citizens to their countries of origin. Australia is a wealthy, developed country, which has the means and expertise to do the same. We ask; does it have the political will to do so?

Women and widows were misguided and unfairly influenced into travelling to Syria. One inducement was the promise of a worthy and wonderful life with a right of return. Such inducements, promises and influences are commonly used by traffickers.

Part of ISIS propaganda was to also falsely suggest Western Governments including the Australian Government don't care about their citizens and will jail them if they return to their home country or leave them to rot. If our Government does not act urgently and with compassion, the inaction plays directly into ISIS propaganda. Inadvertently, it may result in more converts to ISIS.

When the situation in Syria was not as described, and attempts were made to leave, those caught were threatened with death or having their children removed and/or being imprisoned. One Australian family that did try to leave but was caught, witnessed the father beaten into a coma. The message was clear.... don't try to escape and dissuade others.

Our loved ones are not part of any leadership group. They are helplessly stranded and desperate to leave and come home. As you would also know, people who have returned from Syria have successfully settled back into society and resumed normal lives despite their horrific experiences.

Every day our citizens remain in the camp they continue to suffer physical and emotional abuse. These vulnerable people have not pledged loyalty to another system or country, they have not been combatants, no other country has a claim to them and our government needs to bring them home. Please don't allow our citizens to continue to suffer.

We are part of the fabric of our society – and we call on you to act urgently and humanely. We are all willing to work with the Government. When they do return, we will help them pick up the pieces of their lives and rehabilitate them so other citizens, the country and you will be proud of them.

Our concern is, though some parts of the government have heard our pleas, we feel we have not received support. We feel confronted by inaction, silence, and in some cases instead of receiving support, inviting scrutiny from law enforcement agencies.

Australia is one of the oldest common law countries in the world. We have the institutions to properly deal with criminal issues if they exist.

We want our country and government as members of the international community to undertake its international legal responsibility to save women, children and innocents and join those countries that have led by example.

Prime Minister, we offer our continued co-operation and support. We ask that you display leadership to respond to us in kind.

We request that you provide us, within the next 48 hours, specific details of the actions the Australian Government is taking to facilitate the return of our loved ones.

We request to meet you urgently and will answer any question raised and provide whatever information we can.

Yours sincerely,

The families of the Australians detained in Al-Hol



PRIME MINISTER

Reference: MC19-028547

10 May 2019

Mr Mat Tinkler
Acting CEO
Save the Children Australia
33 Lincoln Square South
CARLTON VIC 3053

Dear Mr Tinkler

Thank you for bringing to my attention the letter from the families of the Australians currently located in Internally Displaced Persons (IDP) camps in Syria.

I am deeply concerned for the wellbeing of vulnerable Australians located in Syrian IDP camps, in particular children who are unaccompanied by parents or guardians. I am aware that the conditions in the camps are challenging. The parents of these children have exposed them to horrendous conditions.

As I have stated, the Australian Government is working closely with international agencies that have the mandate and expertise to identify Australians in IDP camps and transfer them to a place where they can be safely accessed by Australian Government officials. We are funding a number of humanitarian organisations on the ground, including the United Nations Population Fund, the World Health Organization and the World Food Programme which are providing assistance in these camps and across Syria, including to Australian women and children.

You will appreciate, given the exceptionally dangerous security situation, our ability to provide assistance within Syria is extremely limited. Australian Government officials will not be put at risk to bring people out of Syrian IDP camps. This complicated and challenging situation requires coordinated support across international organisations with access to the camp. Swift results cannot be guaranteed.

If you have not already, you may wish to contact the Australian Red Cross by email on tracing redcross.org.au or phone on 1800 875 199 to lodge a formal tracing request through its Restoring Family Links program. Once a request is lodged with the Australian Red Cross, it will send the information to the International Committee of the Red Cross, which may be able to confirm the whereabouts and welfare of individuals in Syria.

Parliament House CANBERRA ACT 2600
Telephone (02) 6277 7700
www.pm.gov.au

I have copied this letter to the Ministers for Home Affairs and Foreign Affairs.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Scott Morrison', with a stylized, cursive script.

SCOTT MORRISON



Office of the CEO

Paul Ronalds

33 Lincoln Square South

Carlton Vic 3053

P: 03 7002 1789

E: ceo@savethechildren.org.au
savethechildren.org.au

7 June 2019

Senator the Hon Marise Payne
Minister for Foreign Affairs
Minister for Women

Dear Minister,

Repatriation of Australian Women and Children in Syria

We are writing to you to bring attention to the urgent need to repatriate Australian women and children in Syria. We request an urgent meeting, together with a representative of locally based family members of Australian citizens who are trapped in life threatening circumstances in camps in North East Syria.

As you are aware, we have previously written to the Prime Minister in this regard (see attached letter and response). We very much welcome his comments in response, indicating that the Australian Government shares our concerns about the welfare of Australians in Syrian camps and is working with international agencies to identify and transfer them. We have been in dialogue with DFAT and appreciate the willingness to engage on this matter. We have also followed official advice on lodging requests with the Australian Red Cross (ARC) and its tracing service as well as the Australian government's emergency consular services.

Conditions of Australian children and families in the camps

We have provided written and verbal briefings to DFAT on the name, age and conditions facing over 38 Australian mothers, children and orphans in the camps (it is estimated there are 45-50 Australians in the camps). These include women who are heavily pregnant, children suffering from shrapnel wounds, extensive cases of severe depression and anxiety, children facing malnutrition and other health related conditions.

The situation in the camps is dire with a lack of basic health care facilities or services for families. For example, there is no fixed healthcare clinic for the over 11,000 residents, resulting in an inability to treat complex pregnancies and other serious health conditions. The camp also lacks basic hygiene conditions and safe drinking water. Recent reports from the Kurdish authorities have stated that 300 children have died due to malnutrition, lack of medical supplies and/or other health support in the camp.

In the past few days the security situation in Al-Hol camp has become untenable for the Australian women and children. There are reports of riots, including attacks on Australian women and children and shots fired into the crowd of the Australian families. The families are now guarding their tents around the clock. Tents have been burnt with reports that five lives have been lost in very close quarters to the Australian families. The medical condition of some of the Australian women has intensified with at least three women requiring urgent

medical care and hospitalization. Australian women are also facing arbitrary arrest for requesting medical assistance and other critical treatment.

The story of Australian women and children in Syria

The stories of Australian women and children who engaged in the Syrian conflict are diverse and complicated. Some travelled voluntarily while others were coerced by their husbands or were naïve to the consequences of their actions. Whether any participated in crimes is unclear, and will need to be investigated, but what is certain is that children were put at unacceptable levels of risk. All the women in the camp and the local families, that we are working with, are prepared to fully cooperate with law enforcement and security agencies upon repatriation and are already doing so where possible.

Notwithstanding this, all of the stories that we have heard are harrowing. These stories have been recounted by the families.

Take the story of Mariam Dabboussy and her three children, one of the Australian families in Al-Hol camp. Mariam left Australia at age 24, accompanied by her husband and first child, Aisha who was 1 year old. She travelled to Lebanon and was coerced by her husband's family to enter Syria. She had little choice but to travel with him or face immediate threat to her safety.

When Mariam was pregnant (with her second child) her husband was killed in the conflict. After the birth of her second child, Mariam attempted to escape, but was caught and trafficked into another marriage upon the threat of death. After the fall of some ISIS-held areas, Mariam undertook an arduous journey on foot to Abu Kamal, with a 1 day old child and then to Al-Hol camp. Mariam and her children have suffered time in jail, have been deprived of medical care and are malnourished from a lack of food and poor sanitary conditions. The two younger children have deformation in their legs, with the middle child, Khaled, hospitalised twice and requiring ongoing medical treatment.

Repatriation of Australian children and families

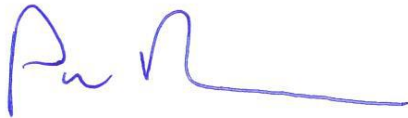
Save the Children is the only NGO with access across all three refugee camps in North-East Syria where hundreds of staff and volunteers provide urgent humanitarian relief. We therefore understand the security situation in the camp first-hand and understand the complexity of the situation on the ground. We appreciate the Government's concerns to ensure the safety of Australian Government officials. Yet, scores of governments including Indonesia, Sweden, Kosovo, France and Belgium are engaging with the Kurdish Self-Administration (SA) and have been able to bring children home or move them to safer locations. Recent reports also indicate over 800 Syrian women and children have been released from the camps after security assessments.

We have engaged with the Australian Government extensively on this matter and to date have been unable to ascertain concrete next steps or a clear path of action. Since these locally based families sought Save the Children's assistance, we have used our best efforts to coordinate their interactions with the Australian Government. However, we fear that the lack of concrete information about the fate of their loved ones may lead the families to take matters into their own hands which will create significant risks, both for family members in the camps and for those in Australia.

The families in Australia, represented by Kamalle Dabboussy and Save the Children, request the opportunity to discuss these matters with you or your staff as a matter of urgency, to understand actions being taken by the Australian Government on this critical issue. We believe that direct interaction with the Mr Dabboussy, representing the families, will be critical to ensure that efforts to repatriate these vulnerable Australians are coordinated, appropriate and safe. In addition, his work with the families will be essential to assist with the reintegration of these families into local mainstream life into the future.

We thank you for your time and look forward to hearing from you as soon as possible.

Yours sincerely,



Paul Ronalds
Chief Executive Officer



Kamalle Dabboussy
On behalf of families in Australia



Office of the CEO

Paul Ronalds

33 Lincoln Square South
Carlton Vic 3053
P: 03 7002 1789
E: ceo@savethechildren.org.au
savethechildren.org.au

26 June 2019

Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Cc: Hon Peter Dutton MP; Minister for Home Affairs
Senator the Hon Marise Payne; Minister for Foreign Affairs, Minister for Women

Dear Prime Minister,

Re: Positive Steps to Repatriate Australian Children and Families from North East Syria

We are writing to commend the positive steps taken by the Australian Government to move eight Australian children from Syrian refugee camps to safety.

We acknowledge the significant planning, logistical and security measures undertaken by Australian representatives to ensure the safe removal of these children from a complex and challenging environment. As you have recognised, these children are innocent victims of war and we are pleased they will soon be reunited with their families back in Australia.

Save the Children has written on previous occasions on behalf of other Australian representatives of children and families trapped in North East Syria. This group now represents 58 women and children, of whom more than half are under the age of five. We appreciate the government's engagement on this matter, particularly the recent meeting with the Commonwealth Counter-Terrorism Coordinator, Linda Geddes. The families were encouraged by proposed plans to bring their loved ones home.

We are hopeful the priority can now shift to these remaining women and children who are still trapped in the camps, and for whom the situation remains dire and the urgent need for repatriation is essential.

Save the Children stands ready to support in any way the Australian Government's ongoing efforts on the repatriation of Australian children and their families. Thank you again for your leadership on this issue.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Paul Ronalds".

Paul Ronalds
Chief Executive Officer



PRIME MINISTER

Reference: MC19-046158

03 SEP 2019

Mr Kamalle Dabboussy
dabboussy_k@hotmail.com

Dear Mr Dabboussy

Thank you for your letter dated 18 July 2019 regarding Australian women and children currently in Syria, including your daughter and grandchildren.

I understand you want to do everything you can to secure the release of your family members from the Al Hawl Internally Displaced Persons camp in Syria. I appreciate that as a father, these circumstances will be extremely distressing and frustrating.

Your family members are in an extremely volatile and dangerous conflict zone, which significantly limits our ability to provide consular and passport assistance. As I have repeatedly stated, the Australian Government will not expose officials to the risk of harm in order to extract people from Syria.

I understand that you have travelled to Erbil, Iraq in an effort to assist your family members. I urge you to depart Iraq immediately, and not to travel into Syria. The Australian Government has classified both Syria and Iraq as 'do not travel' zones, due to the extremely dangerous and volatile security situation in the region.

The Australian Government is working with international organisations in Syria who have access to the camps and have the mandate and expertise to deliver assistance to those in need. We continue to monitor the situation closely and remain conscious of the particular needs and vulnerability of women and children.

I have asked Government officials from the Department of Foreign Affairs and Trade and the Department of Home Affairs to remain engaged with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Morrison', written over a white background.

SCOTT MORRISON

From: Mat Tinkler
Sent: Friday, 5 August 2022 11:50:31 AM
To: Lisa Hamer
Subject: Re: Australian Children in North East Syria

From: Mat Tinkler
Sent: Thursday, 17 October 2019 12:41 PM
To: Peter.Dutton.MP@aph.gov.au <Peter.Dutton.MP@aph.gov.au>
Subject: Australian Children in North East Syria

Dear Minister,

Over recent days you may have become aware that over 60 Australian children and women are currently being held in camps in North East Syria. As circumstances are changing rapidly following the withdrawal of US troops from the region, the already significant risks faced by these Australians have increased.

The fate of more than 40 Australian children, and their mothers, is in the hands of the Australian Government, right now. Most of those children are under 5 years of age. They're toddlers.

Irrespective of the actions of their parents, none of these children deserve to be abandoned. The situation in North East Syria is only going to get worse and action must be taken right now, before it is too late.

When asked why these Australians cannot be brought immediately to safety, the Australian Government has expressed at least two significant concerns.

The first of these concerns is that **it's too dangerous** to send Australian officials into the camps to extract the Australians held there. This is certainly a reasonable concern but if the decision is made to repatriate Australian citizens, it can be done without any need to send Australian officials into Syria. The Kurdish authorities in both Iraq and North East Syria have advised us over the last few days that, if they receive a request from the Australian Government, they remain willing to transfer foreign nationals from the camps to border towns such as Qamishli and Dêrik. No Australian official or soldier need be put in harm's way.

However, as circumstances are changing rapidly and there is no knowing what will happen next, the Kurdish authorities may not be able to continue to extend this offer. Time is running out rapidly.

The second concern that has been raised is that at least some of the women, many of them mothers of these little children, **are a security risk**.

There may be evidence on which these concerns are based but the Australian families of the women and children trapped in camps in Syria have repeatedly assured authorities of their willingness to work with them to reintegrate and, if necessary, deradicalise their loved ones. They are eager to work with all relevant authorities and will be wrapping support and care around their children and grandchildren, nieces and nephews if they can be brought back to Australia. They're committed to doing everything they can to support the reintegration of their family members back into the Australian way of life. We

have global best practice in community support, deradicalisation and reintegration programs at our disposal in Australia.

No-one is disputing that there may be serious questions for the adults to answer when they return. Australia now has extensive laws and powers for authorities to exert to ensure that anyone who is suspected of being a security risk can be dealt with appropriately. Where laws have been broken and crimes found to have been committed, the adults should, without a doubt, face justice for their actions.

The best place for them to face that justice is here in Australia, and as Australian citizens, not in a warzone in the Middle East. Irrespective of what their parents may have done, and for which they will need to face the consequences, the children are not the ones who should be punished.

Save the Children

100 years ago Save the Children was founded on the principle that all children are innocent victims of war.

Our founder defended the children of our enemy who were starving because of the Allied blockade at the end of World War I.

We will continue to defend the most vulnerable children because they are always innocent.

We urge all Members of Parliament to support our call for immediate action to bring these Australians, including more than 40 innocent children, to safety.

Mat Tinkler
Acting CEO Save the Children Australia

Kamalle Dabboussy
Father and spokesperson for Australian families



Australian Government
Department of Home Affairs

Ref No: MC19-022227

Mr Mat Tinkler
Acting Chief Executive Officer
Save the Children Australia
33 Lincoln Square South
CARLTON VIC 3053

Dear Mr Tinkler

Thank you for your correspondence of 17 October 2019 to the Minister for Home Affairs, the Hon Peter Dutton MP, concerning women and children in internally displaced persons (IDP) camps in Syria. The Minister appreciates the time you have taken to bring this matter to his attention and has asked that I reply on his behalf.

The Australian Government is aware of the security conditions in Northern Syria and understands that those who have relatives, friends and fellow community members in IDP camps are seeking to do all they can to ensure their safety.

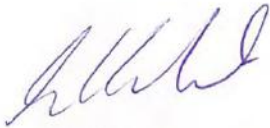
The Government recognises that conditions in the camps are extremely challenging and is concerned about the health and safety of those in the camps. The Government is working with international humanitarian organisations that have access to the camps and the mandate and expertise to deliver assistance to those in need. However, the security situation in Syria is particularly volatile and dangerous and, as the Prime Minister the Hon Scott Morrison MP has stated publicly, the Government is not prepared to expose Australian officials to the risk of harm in order to extract people.

Any Australian that seeks to leave conflict zones in Syria or Iraq is encouraged to contact family members or relevant authorities, including the Department of Foreign Affairs and Trade's Consular Emergency Centre. I also encourage family members and friends to register their details with the Restoring Family Links Program of the Australian Red Cross, or the International Committee of the Red Cross in Syria or Lebanon.

These organisations may be able to assist in tracing loved ones and passing correspondence to them in camps. The Australian Red Cross hotline number is 1800 875 199.

Thank you for raising this matter with the Minister.

Yours sincerely



Linda Geddes
Commonwealth Counter-Terrorism Coordinator

12 December 2019



23 February 2020

Ms Michelle Lowe
 Acting Counter-Terrorism Ambassador
 Counter-Terrorism Branch
 Department of Foreign Affairs and Trade
 RG Casey Building
 10 John McEwen Crescent
 Barton ACT 2600

By email: michelle.lowe@dfat.gov.au

Dear Michelle,

Repatriation of Australians from Al-Roj camp in North East Syria

It was a pleasure to meet you last week on the broader call with the Middle East Branch. We greatly valued the discussion and were pleased to be able to discuss a wide range of issues.

As you are aware from some of those discussions, Save the Children remains deeply concerned about the survival and well-being of more than 60 Australians, including 43 children, detained in Al-Roj camp in North East Syria. As you know, many of the children are under five years old and extremely vulnerable to disease, malnutrition, and physical harm – all of which are rampant in the camps. On 21 January 2021, the United Nations Resident Coordinator and Humanitarian Coordinator in Syria expressed concern over the deteriorating security situation, noting that 12 people have been murdered in Al-Hol since the start of 2021.¹

Save the Children has two offices in North East Syria and is operating in both Al-Hol and Al-Roj. Our team started working with foreign children and families with links to ISIS in July 2017, during the first wave of displacement from Raqqa. In Al-Roj camp, where the 47 Australian children and their families were relocated in September 2020, Save the Children staff are treating children for malnutrition, providing education facilities, and child protection services. Our team know many of the Australian children and their families and are deeply concerned for their well-being.

We note that Australia has previously repatriated eight Australian orphans from the camps in NE Syria and, as previously expressed privately in a letter to the Prime Minister Scott Morrison on 17 April 2019,² and publicly,³ we believe the Australian government has an obligation under the Convention on the Rights of the Child to protect the rights of these children and should take immediate action to bring them, and their mothers, to Australia.

Since October 2020, there have been several important developments that have implications for the Australian government's position on repatriation from these camps. I have outlined these developments below and raised questions about their implications, for which we would appreciate your views.

¹ United Nations Resident Coordinator and Humanitarian Coordinator in Syria, Imran Riza, and Regional Humanitarian Coordinator for the Syria Crisis, Muhannad Hadi – Joint Statement on the Deteriorating Security at Al Hol Camp. 22 January 2021. Available at: <https://reliefweb.int/report/syrian-arab-republic/united-nations-resident-coordinator-and-humanitarian-coordinator-syria-6>.

² Letter to Prime Minister, the Hon Scott Morrison, Senator the Hon Marise Payne Minister for Foreign Affairs, and Ms Francis Adamson, Secretary, Department of Foreign Affairs and Trade, from Mat Tinkler, Director, Policy & International Programs, shared on 17 April 2019.

³ The Australian, Save Aussie kids from Syrian camp hell, Mat Tinkler, 2 January 2020. Available at: <https://www.theaustralian.com.au/commentary/save-aussie-kids-from-syrian-camp-hell/news-story/ed21f7bbdda61265ea8bc5c26b06d9bf>, and The Herald Sun, 'Bring these stranded kids home', Mat Tinkler, Save the Children. 20 December 2020.

Increase in foreign governments repatriating children and women from North East Syria

Over the last few months, a growing number of governments have moved to repatriate children and mothers from detention camps in North East Syria. Since October last year, around 150 women and children have been repatriated by foreign governments, with some governments committing to repatriate all nationals in the coming months.

In January 2021, France repatriated seven children from Al-Roj and Al-Hol, in addition to ten children that were brought home in October 2020. France has so far repatriated 35 children from North East Syria. In December 2020, Uzbekistan repatriated 73 children and 25 women from the camps. In the same month, Germany repatriated 12 children and three women, while Finland brought home a total of eight nationals, including six children and two mothers. In October 2020, Albania repatriated four children and one woman. The Interior Minister has committed to repatriating all 30 Albanian children from North East Syria in the first part of 2021.

Considering the recent movement by multiple foreign governments to repatriate their national children and women from camps in North East Syria, has the Australian government changed its position towards the repatriation of 47 Australian children and their mothers in the same conditions? If not, why not? Has the Australian government spoken to these governments to understand how they undertook such repatriations, acknowledging any COVID-19 risks that were involved?

The Committee on the Rights of the Child finds that States are obliged to protect the rights of children, and comments from United Nations experts

In November 2020, the Committee on the Rights of the Child (the **Committee**) published a decision⁴ regarding the children of French nationals in the Kurdish camps in Syria. The decision asserts that the states of nationality have an obligation to protect the human rights of child nationals in these camps, even though they are under control of a non-state armed group.

While the decision is focused on jurisdiction, it has been suggested that the Committee will likely find that France has the duty to repatriate children of French nationals currently detained in the camps. The Committee draws on the Independent International Commission of Inquiry on the Syrian Arab Republic that has recommended countries of origin of foreign fighters take immediate steps towards repatriating children as soon as possible.⁵ The Committee finds that France has both the capability and the power to protect the rights of children raised in this case.

This decision reinforces legal analysis from a February 2020 report⁶ by two United Nations special rapporteurs, which finds that States are in the best position to protect the rights of children and their guardians in the camps, and notes that in the absence of their engagement and acceptance of legal responsibility, children face death, starvation, and extreme harm.

The presence of positive legal obligations for nationals abroad was reiterated by 11 United Nations special rapporteurs and representatives of the Working Group on Arbitrary Detention and the Working Group on Discrimination against Women and Girls in a statement on 8 February 2021.⁷ The United Nations experts called upon Australia, among other states, to repatriate its nationals without delay, stating that:

⁴ United Nations, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communications No. 79/2019 and No. 109/2019, 2 November 2020. Available at: https://www.ejiltalk.org/wp-content/uploads/2020/12/CRC_C_85_D_79_2019_E-1.pdf.

⁵ United Nations, Human Rights Council, 43rd Session. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, January 2020. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_43_CRP.6_EN.docx.

⁶ The Special Rapporteur on the promotion and protection of human rights while countering terrorism, and The Special Rapporteur on extrajudicial, summary or arbitrary executions, *Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic: Legal Analysis*. Available at: <https://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf>.

⁷ United Nations Office of the High Commissioner for Human Rights, 'Syria: UN experts urge 57 States to repatriate women and children from squalid camps', 8 February 2021. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730&LangID=E>.

“States have a primary responsibility to act with due diligence and take positive steps and effective measures to protect individuals in vulnerable situations, notably women and children, located outside of their territory where they are at risk of serious human rights violations or abuses, where States’ actions or omissions can positively impact on these individuals’ human rights.”

Save the Children notes that the 8 February 2021 statement indicates that United Nations experts have issued an official letter to the Australian government regarding its responsibilities for Australian nationals currently in detained in Al-Roj.

How does the Australian government interpret the November 2020 decision from the Committee on the Rights of the Child with respect to the Australians currently detained in Syria? Has the Australian government re-evaluated its position on repatriation as a result of the decision? Does the Australian government believe that it has an obligation to protect the human rights of child nationals in the Syrian camps? If not, why not? Further to the 8 February 2021 statement from UN experts, does the Australian government intend to publicly release its response?

Australia providing humanitarian assistance in North East Syria

Across Syria, over 11.1 million people are in urgent need of humanitarian assistance. In the northeast, around 65,000 people in Al-Hol, and 2,200 people in Al-Roj, rely on humanitarian assistance. Save the Children has been providing humanitarian assistance in Syria since the beginning of the conflict in 2011. Save the Children’s Syria Response Office operates out of two offices in North East Syria: Derek and Al Hasakah, with operations in the displacement camps and in urban areas, providing child protection, education, non-food items distribution and nutrition assistance.

During the Senate Estimates hearing on 28 October 2020, Senator Janet Rice raised questions about Australia’s involvement in providing humanitarian assistance in North East Syria. This includes funding humanitarian agencies operating in the area, which were answered by Dr Angela Macdonald, First Assistant Secretary, Global Counter-Terrorism, Middle East and Africa Division. However, it is still not clear to Save the Children as to where and how such assistance may be provided across Syria.

Is Australia providing any sort of humanitarian assistance to the Al Roj camp in which Australians are currently detained? If so, is such assistance being provided just to Australians or all nationals in Al Roj and how much and what form of assistance? Is the Australian government providing any humanitarian assistance to agencies supporting the Australian women and children? If not, would the Australian government consider working with Save the Children to provide support to the Australian women and children?

Once again, we valued the opportunity to meet with you and would be grateful for your advice in response to the issues raised in this letter.

Yours sincerely,



Mat Tinkler,
Deputy Chief Executive Officer



Australian Government
Department of Home Affairs

Mr Mat Tinkler
Deputy Chief Executive Officer
Save the Children
33 Lincoln Square South
Carlton VIC 3053

Dear Mr Tinkler

Thank you for letter dated 23 February 2020 regarding the repatriation of Australians from Al Roj camp in Northeast Syria.

The Australian Government is concerned about the challenging situation in internally displaced persons camps in Northeast Syria and the health and safety of those in the camps. The recent fire in Al Hol camp is another example of the vulnerability of the women and children in the camps. We are monitoring as best we can the welfare of Australians.

The Government continues to consult with likeminded countries in relation to the complex challenges associated with foreign fighters and their families. As you know, we fund humanitarian partners who work to support access to health care and protections to the most vulnerable in northeast Syria, including populations in the camps.

The Government's position on the repatriation of Australians from Al-Roj remains unchanged. This takes account of the safety of Australian officials. While the Government takes a case-by-case approach to the question of repatriation of individuals, the ability of the Government to provide consular assistance to Australians in Syria, including in IDP camps, remains limited due to the dangerous security situation. COVID-19 is a further complicating factor. The Government is not prepared to expose Australian officials to the risk of harm in order to extract people from these dangerous situations.

We have shared your letter with relevant Australian agencies and will continue to closely monitor the situation.

I trust this information is of assistance. I would be very pleased to discuss these issues with you at your convenience.

Yours sincerely

A handwritten signature in blue ink that reads 'R. Feakes'.

Richard Feakes
Deputy Counter-Terrorism Coordinator

March 2021



Office of Deputy CEO & Managing
Director, International Programs
Mat Tinkler

33 Lincoln Square South
Carlton Vic 3053
03 7002 1789
mat.tinkler@savethechildren.org.au

26 May 2021

Senator the Hon Marise Payne
Minister for Foreign Affairs

The Hon Karen Andrews MP
Minister for Home Affairs

Parliament House
CANBERRA ACT 2600

Dear Ministers

Repatriation of Australian nationals from detention camps in North East Syria

Save the Children remains deeply concerned for the survival and well-being of over 60 Australian women and children languishing in Al-Roj camp in North East Syria. Of the 40 children detained, more than half are under six, and extremely vulnerable to disease, malnutrition, and physical harm – all of which are rampant in the camps.

We note that in mid-2019, Australia repatriated eight Australian orphans from the camps, and we urge you to take immediate action to bring the remaining children and their mothers to Australia. In particular, we are concerned about the wellbeing of [REDACTED], and their immediate family members.

United Nations human rights experts have warned that detainees in Al-Hol and Al-Roj camps are exposed to violence, exploitation, abuse and deprivation in conditions and treatment that may amount to torture or other inhuman treatment under international law.¹ Over the last two years, at least 700 detainees have died, half of them children, due to crossfire, preventable diseases, lack of medical care, and tent fires. Emergency Relief Coordinator and UN Humanitarian chief Mark Lowcock recently referred to the conditions of the camp as "desperate and really scandalous".²

Beyond the camps, conditions in North East Syria remain dire, with many forced to live in makeshift shelters and without their basic needs met. Fuel shortages have led to limited access to water and electricity (see **Attachment A**). In addition, there is a drastic shortage of medical supplies and functioning health facilities. Research shows all communities fear threat from imminent conflict.³

¹ UN-OCHA, 'UN experts urge 57 States to repatriate women and children from squalid camps' February 2021. Available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730&LangID=E>

² Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Mark Lowcock - Briefing to the Security Council on the humanitarian situation in Syria, 28 April 2021. Available at: <https://reliefweb.int/report/syrian-arab-republic/under-secretary-general-humanitarian-affairs-and-emergency-relief-114>

³ Reach Resource Centre, Humanitarian Situation Overview in Syria, Northeast Syria, February 2021. Available at: https://www.impact-repository.org/document/reach/b07e6a91/REACH_SYR_Factsheet_HSOS_NES_February-2021.pdf

Since October 2020, there have been several developments that highlight the urgent need for the repatriation of the Australian women and children still detained in Syria.

Deteriorating security situation in the detention camps

- Since the start of 2021, there have been reports of increased violence, with over 31 people killed in Al-Hol since the beginning of the year. On 3 March 2021, Mediciens Sans Frontiers denounced the unsafe environment in Al-Hol and suspended operations after one of their staff was killed, and three others injured.

Increase in foreign governments repatriating children and women from North East Syria

- A growing number of governments have moved to repatriate children and mothers. Since October 2020, over 150 women and children have been repatriated by foreign governments, with some governments committing to repatriate all nationals in the coming months.

United Nations experts have emphasised the urgent need for repatriation

- United Nations human rights experts released a statement on 8 February 2021, urging 57 States, including Australia, to repatriate their national women and children from the camps without delay. The statement was preceded by a letter to the Australian government on 26 January 2021, outlining Australia’s obligations. In November 2020, the Committee on the Rights of the Child published a decision regarding the children of French nationals, that noted that States have an obligation to protect the rights of child nationals in these camps, even though they are under control of a non-state armed group.

Save the Children has two offices in North East Syria and is operating in both Al-Hol and Al-Roj (see **Attachment B**). Our team started working with foreign children and families with links to ISIS in July 2017, during the first wave of displacement from Raqqa. In Al-Roj camp, to which the Australian children and their families were relocated in September 2020, Save the Children staff are treating children for malnutrition, providing education facilities, and child protection services. Our team know many of the Australian children and their families and are deeply concerned for their well-being, especially for [REDACTED], and their immediate family members.

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

Save the Children Australia is committed to working with the Australian government to support the safe repatriation of Australian children and women, and continued support through their process of reintegration, and medical rehabilitation.

I would welcome your views on the possibility of repatriating [REDACTED], and their respective family members in the immediate future.

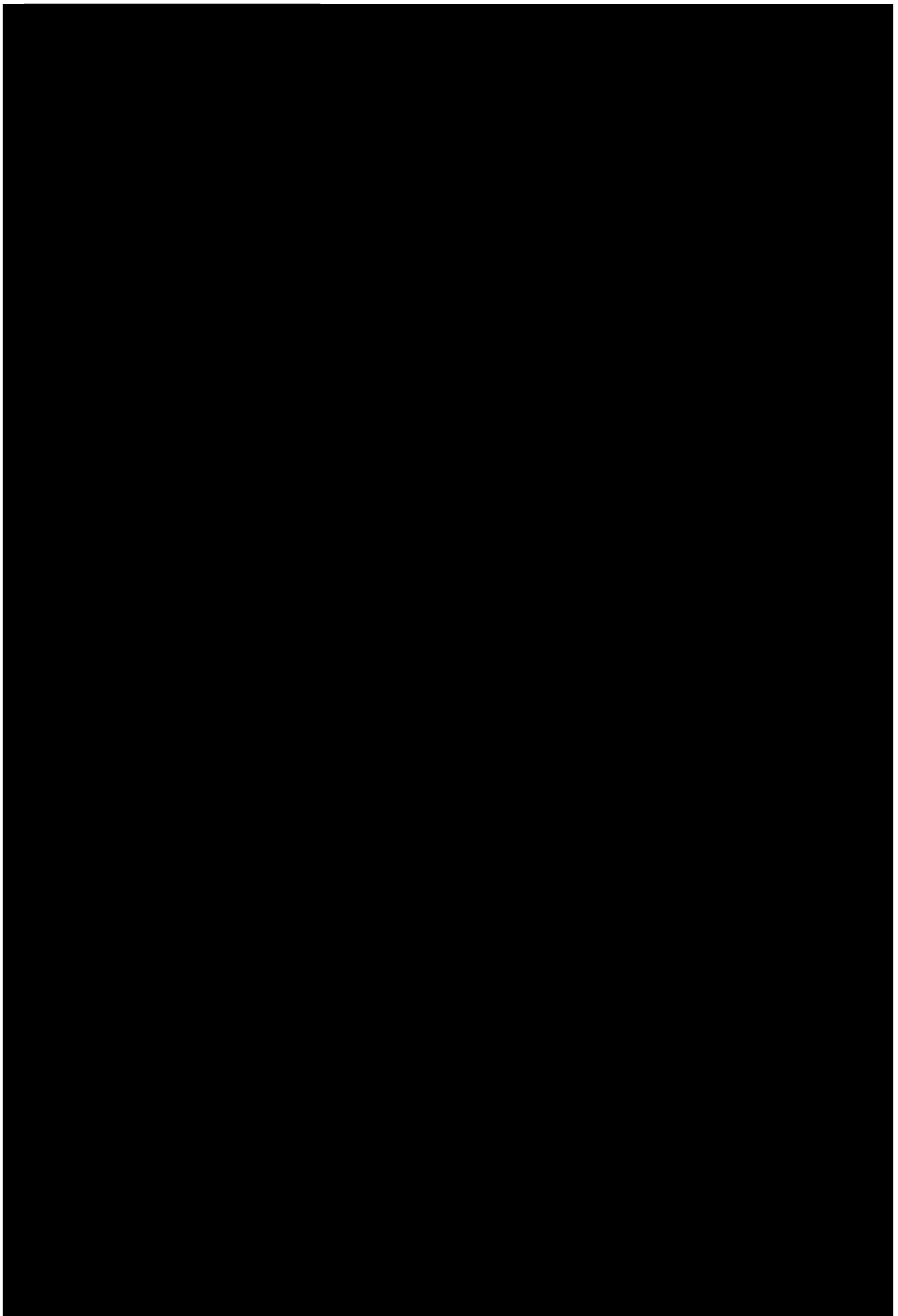
Yours sincerely,

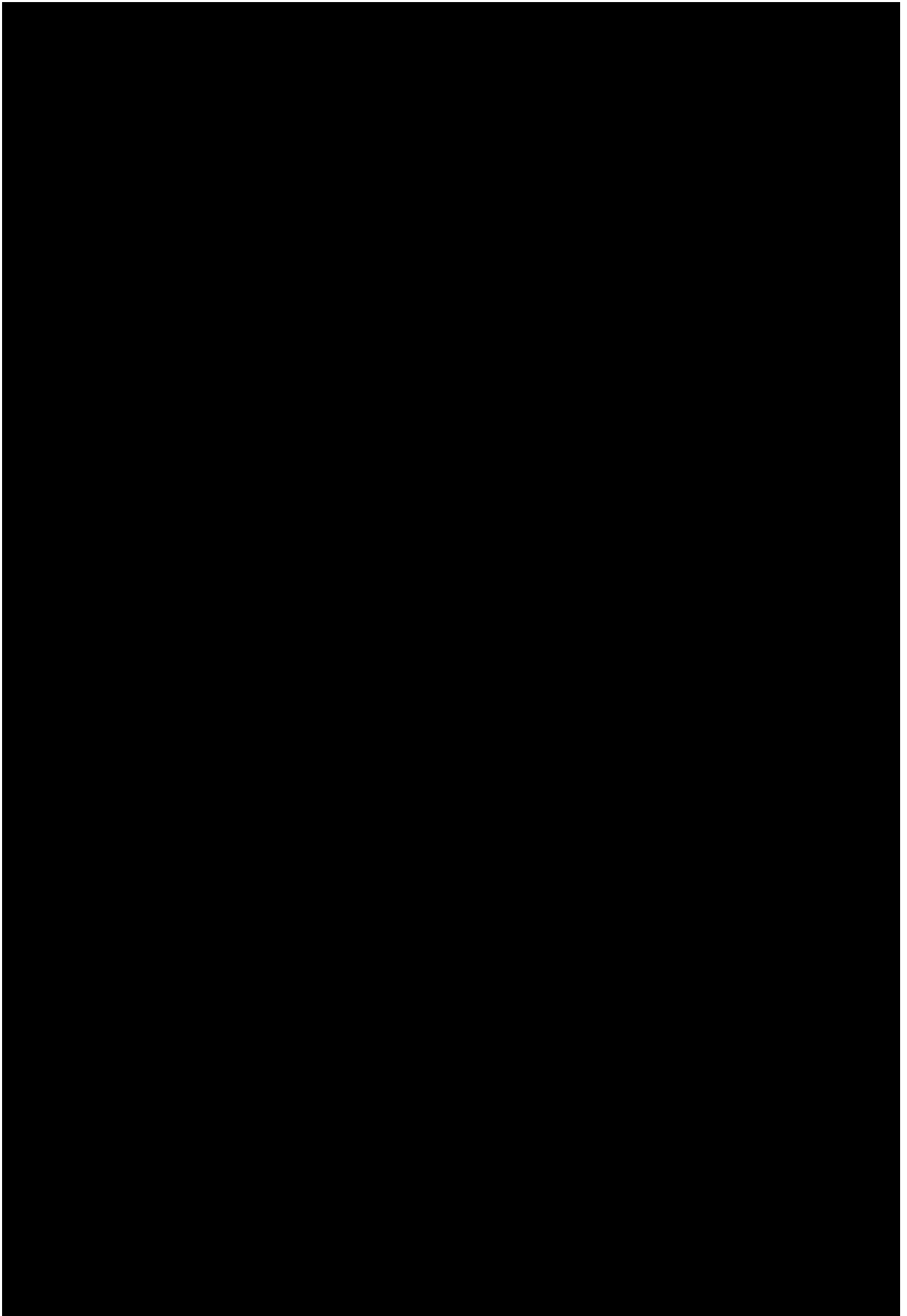


Mat Tinkler,
Deputy Chief Executive Officer

List of Attachments:

- Attachment A: Current Situation in North East Syria
- Attachment B: Maps of North East Syria, Al-Hol, Al-Hol Annex, Al-Roj







**THE HON KAREN ANDREWS MP
MINISTER FOR HOME AFFAIRS**

Ref No: MC21-022466

Mr Mat Tinkler
Deputy Chief Executive Officer
Save the Children Australia
33 Lincoln Square South
CARLTON VIC 3053

Dear Mr Tinkler

Thank you for your correspondence of 26 May and 25 June 2021 concerning Australian nationals in Internally Displaced Persons camps in North East Syria. I appreciate the time you have taken to bring this matter to my attention.

The Australian Government is aware of the challenging conditions in the camps. I share your concerns about the health and safety of Australians in the camps, and have passed on the information you have provided regarding specific individuals and their families to the Department of Home Affairs and the Department of Foreign Affairs and Trade.

We continue to monitor the situation closely and remain conscious of the particular needs and vulnerability of women and children in the camps. However, the security situation in Syria significantly limits our ability to provide consular assistance, and the Government will not expose Australian officials to the risk of harm in order to extract people from Syria.

The Government is working with international humanitarian organisations, such as the World Health Organization and the United Nations Population Fund, that have the mandate and expertise to deliver assistance to those in need. In 2020-21, Australia provided \$4 million to support essential health services in North East Syria, including to organisations with access to displaced persons camps. I also note the invaluable humanitarian services that your organisation provides and appreciate the information you have provided.

Thank you for raising this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Karen Andrews'.

KAREN ANDREWS

12/7/2021



Chief Executive Officer
Mat Tinkler

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4 July 2022

Senator Penny Wong
Minister for Foreign Affairs

The Hon Claire O'Neil MP
Minister for Home Affairs

Parliament House
CANBERRA ACT 2600

Cc The Hon Richard Marles MP, Minister for Defence, and The Hon Mark Dreyfus QC MP, Attorney-General

Dear Ministers

RE: HABEAS CORPUS ACTION ON BEHALF OF AUSTRALIANS DETAINED IN SYRIA

As you are aware, sixty-three women and children remain unlawfully detained in Syria. They are all Australian citizens or entitled to Australian citizenship, and they are desperately in need of repatriation. I am writing to provide notice of legal action intended by Save the Children Australia (**Save the Children**) as litigation guardian for these Australian women and children.

In June of this year, I visited the Australians detained in Al Roj Camp and I received authority from each detainee for writs of *habeas corpus ad subjiciendum* to be filed on their behalf if they are not brought back to Australia voluntarily. The plaintiffs and Save the Children will be represented by Peter Morrissey SC leading a highly accomplished team of barristers, Birchgrove Legal and a national law firm with extensive experience in public interest litigation.

I **attach** an outline of the claims to be filed in the proposed proceedings for your information. Each plaintiff also provided me with undertakings that if repatriated, they are willing to cooperate fully with law enforcement authorities on their arrival in Australia. We take the unusual step of disclosing our proposed course to ensure that we do not disrupt any existing genuine repatriation efforts. Litigation, however, is a serious and immediate prospect, and we urge the government not to seek further delay on the grounds of complexity.

While we acknowledge that this is an issue inherited from the previous Coalition government, we reiterate that it is within the control of the Commonwealth government to secure the detainees' return to this country. We also acknowledge that legal action can be polarising and unhelpful. But this decision is borne of fear, suffering, frustration and despair. The detainees long ago arrived at that point. They suffer damaging and difficult conditions, daily and nightly. They fear for the lives and health of their children and themselves. They are frustrated at the bewildering inactivity and stonewalling they have met under previous governments.

Their circumstances do not improve with time, but worsen. Children with untreated shrapnel wounds require urgent surgery and are suffering with crippling, unmedicated pain every day. Many children appear not to be

developing normally and are accruing disabilities due to this traumatising environment. Some children present as around 30% underweight: their teeth are badly decayed, and they cannot nourish themselves. Some children are reported by their mothers to be ideating suicide. **Attached** is a families list which documents the known medical conditions and injuries.

Save the Children also has credible reports that the Autonomous Administration of North East Syria (AANES) entertains plans to move some of the boys reaching the age of 11 and 12 to camps for adult men. They have taken photos and family histories of the boys in recent days. Forcible separation from their mothers appears imminent and has been a consistent practice by the AANES authorities. Previously, one boy was removed at the age of 14 years to a male prison without warning. Since an uprising in January, no 'proof of life' has been provided despite repeated requests from Save the Children and other international bodies. If further children are forcibly separated from their mothers, their repatriation and their lives will be seriously jeopardised.

Whatever the reason for governmental caution, the conclusion is now inescapable that, left to itself, the previous government was content to leave them in Syria. We know that the possibility of a more mature and humane approach exists, as demonstrated by many comparable foreign governments. However, the detainees cannot live on possibilities. The time has come for this government to act. We implore you to secure the repatriation of these Australians as a matter of urgency.

We recognise that litigation can be highly distracting, and reputationally damaging. Given the indications provided during your time in Opposition and your Government's support for fundamental human rights, we caution against an artificial and inhumane stance in open court in order to secure a litigation victory. We hope you will come to the view that, whatever your chances of succeeding in any pending litigation, a humane approach and political solution is preferable.

The time for delay has now passed. The plaintiffs have languished in inhumane detention for more than three years. Unless undertakings are made by **18 July 2022** to repatriate the plaintiffs to Australia **within 14 days** of the undertaking, we will instruct our solicitors to file proceedings as outlined herein.

Yours sincerely,



Mat Tinkler
Chief Executive Officer

OUTLINE OF HABEAS CORPUS CLAIM

Introduction

- 1 “For an Australian citizen, his or her citizenship is an assurance that, subject only to the operation of the criminal law administered by the courts, he or she is entitled to be at liberty in this country and to return to it as a safe haven in need”.¹ Sixty-three women and children, are unlawfully detained in Syria. They are all Australian citizens or entitled to Australian citizenship. They are desperately in need. It is within the control of the Commonwealth Executive to secure their return to this country.
- 2 Save the Children has been expressly engaged by each of the prospective plaintiffs to secure their repatriation to Australia. We seek, once again, to persuade you to act now to secure their repatriation. We also advise that each detainee has now authorised applications for writs of *habeas corpus ad subjiciendum* be launched. Unless undertakings are made by 18 July 2022 to repatriate the plaintiffs to Australia within 14 days of the undertaking, we will instruct our solicitors to file proceedings.
- 3 Legal action can be polarising and unhelpful. But it is borne of fear, suffering, frustration and despair. The detainees long ago arrived at that point. They suffer damaging and difficult conditions, daily and nightly. They fear for the lives and health of their children and themselves. They are frustrated at the bewildering inactivity and stonewalling they meet. Their circumstances do not improve with time, but worsen. Recently, Save the Children have received credible reports that the Autonomous Administration of North East Syria (AANES) entertains plans to move some of the boys reaching the age of 11 and 12 to camps for adult men. They have taken photos and family histories of the boys in recent days. Forcible separation from their mothers appears imminent and has been a consistent practice by the AANES authorities. Previously, one boy was removed at the age of 14 years to a male prison without warning. Since an uprising in January, no ‘proof of life’ has been provided despite repeated requests from Save the Children and other international bodies. If further children are forcibly separated from their mothers, their repatriation and their lives will be seriously jeopardised.
- 4 Meanwhile, children with untreated shrapnel wounds require urgent surgery and are suffering with crippling, unmedicated pain every day. Many children appear not to be developing normally and are accruing disabilities due to this traumatising environment. Some children present as around 30% underweight: their teeth are badly decayed, and they cannot nourish themselves. Some children are reported by their mothers to be ideating suicide. **Attached** is a families list which documents the known medical conditions and injuries.
- 5 Despair is their reality. Their time in detention has been lengthy and is corrosive. Whatever the reason for governmental caution, the conclusion is inescapable that, left to itself, the previous government was content to leave them in Syria.

¹ *Alexander v Minister for Home Affairs* [2022] HCA 19 at [74] (Kiefel CJ, Keane and Gleeson JJ).

- 6 Litigation loomed as the only remedy left.
- 7 The possibility of a more mature and humane approach exists, but the detainees cannot live on possibilities. The time has come to act. Now that Mr Tinkler has spoken directly to most detainees, each has expressly instructed that they are prepared to file for a writ of *habeas corpus*. Such actions can be launched forthwith. Representation includes Peter Morrissey SC, a team of barristers, Birchgrove Legal and other legal support, plentiful evidence secured, and litigation strategies established.
- 8 We take the unusual step of disclosing the course that may be followed, in order to ensure that we do not disrupt any genuine repatriation efforts. Litigation, however, is a serious and immediate prospect. It will not do to seek further delay on the ground of complexity.
- 9 We recognise that litigation can be distracting. Given the indications provided during your time in Opposition and your Government's support for fundamental human rights, we doubt you wish to adopt an artificial and inhumane stance in open court in order to secure a litigation victory. We hope you will come to the view that, whatever your chances of succeeding in any pending litigation, a humane approach and political solution is simply better.

Habeas corpus

- 10 You are doubtless well aware of the viability of an application for a writ of habeas corpus in respect of each plaintiff. Such an action may be sought by or on behalf of a person unlawfully detained (the plaintiffs) against those who detain (the defendants). You will be aware that jurisdiction to issue the writ resides in the Federal Court and in the High Court of Australia, as well as in the Supreme Court of each state; a habeas action always finds its appropriate court.
- 11 You will be aware that each plaintiff may proceed separately, and that individual plaintiffs may choose the court best suited to their individual application. The writ is a writ of right, though not of course; each detainee enjoys it, individually. However, it is also open to bring proceedings on behalf of a group.
- 12 You will be aware of the procedure governing such applications. In order for the writ to issue, the plaintiff must demonstrate *prima facie* their detention, and its unlawfulness. If successful, the writ will issue, requiring the defendant to make a 'return' to the court justifying their detention; at that time an evidentiary hearing may occur to assess the validity of the return made. Strike-out motions are difficult to sustain unless there is no evidence or prospect of evidence to support an element of the application.² We believe that is an unlikely outcome here.
- 13 The law concerning applications where a detainee is detained abroad by a party other than the defendant is well settled.³ A defendant may be liable for the detention of a plaintiff even where the plaintiff is held physically by a third party abroad, and even where the plaintiff has no apparent de

² Application to strike out was refused in *Hicks v Ruddock (Attorney-General)* (2007) 156 FCR 574.

³ *Barnado v Ford* [1892] AC 326; *R v Secretary of State for Home Affairs; ex parte O'Brien* [1923] 2 KB 361; *Hicks v Ruddock (Attorney-General)* (2007) 156 FCR 574; *Rahmatullah v Secretary of State for Defence & another* [2013] 1 AC614; see also *Plaintiff M68/2015 v Minister for Immigration* [2016] 257 CLR 421, 107 per Gageler J.

jure authority to order the release of the plaintiff. In that setting, the test is one of control; and control is a question of fact and degree, governed by evidence. The detainee must demonstrate unlawful detention, even where the defendant disputes having control liability for any detention. If that is done, however, objection by a defendant that they lack control will not prevent the writ issuing. In other words, only if clear evidence reveals that the defendant does not have the means of procuring a plaintiffs release will the writ be refused, because it would not be ‘proper or efficient’ to issue it. Once the writ issues, the defendant must make a return, producing the plaintiff or showing why it cannot – in this case, why it has insufficient ‘control’. Evidence concerning control or lack of control is contestable, and can generate cross-examination and controversy.

- 14 One matter is irrelevant to the writ: any alleged danger posed by a plaintiff upon arrival in Australia. Even the previous government made clear that there was no gap in the legislative suite of measures designed to protect the community against terror. Any security concern can be dealt with in Australia; it is not relevant to the question of control.
- 15 The crucial issue for each plaintiff will be that of control.

Applications for the current detainees

- 16 Each plaintiff enjoys clear prospects of success upon application. Strong evidence can be led to establish every limb of the application.
- 17 There can be no issue about the standing of any of the 63 Australian women and children. All plaintiffs were born in Australia, have been conferred with Australian citizenship by naturalisation, or are the children of Australian citizens.⁴ Because of their location, and the restrictions placed upon communication (including with legal representation) the plaintiffs are assisted by Save the Children.⁵ Each desires to exercise their lawful right to enter Australia. Each asserts they are detained, unlawfully, in unlawful conditions by the AANES in northern Syria.
- 18 The evidence will comfortably establish that the detainees are detained, and unlawfully so.
- 19 Evidence of the detention of these plaintiffs is powerful and undeniable. The evidence appears in the detainees own accounts, the accounts of their families, eye witness testimony, expert witness testimony, open source material including credible media reporting, detailed reporting by international agencies and aid agencies, and reports and representations by Australian government officials and ministers. These women and children are detained; we would respectfully invite you to concede as much in court, but powerful evidence will be led.
- 20 Evidence of the unlawful nature of that detention is likewise strong. The conditions in which the detainees suffer can be proved – and will be proved at length – to an agonising degree. The conditions are appalling, despite the efforts of the AANES, aid agencies, the Australian government and other parties. Evidence of genuine hardship is overwhelming and heart breaking. Health, mental health, physical safety, education, liberty, access to relevant communication – all are imperilled in

⁴ They are thus in a different position to the ‘rescuees’ aboard the Tampa in *Ruddock v Vadarlis* (2001) 110 FCR 491, 543.

⁵ *Ex parte Lo Pak* (1888) 9 NSWLR 221.

a manner incompatible with any national or international system of law. For example, Maya Assad, 12 years old, has provided the following comment in a handwritten statement:

“...all I want is for me and my mum and my sisters to come back to her home. I sit in the tent the whole day with my cat and my little doll. I want to and [sic] forget about the camp, please take me out of here”

- 21 Furthermore, the detainees are not detained pursuant to any court order, charge or sentence of the AANES or Syrian authorities. The evidence will be they are subject to no foreign or local process whatsoever. Instead, they are detained in irregular circumstances, as unwelcome guests of the imperilled AANES. Far from asserting lawful detention as a bar to repatriation, the AANES overtly request that the detainees be accepted for repatriation by their alliance partner, the Australian government.
- 22 Of course, such indefinite detention without trial or process, in appalling conditions, would not be lawful under any Australian law. It is plainly incompatible with Syrian, AANES and international law. If needed, expert evidence is available on this point. But we would respectfully request that the issue of unlawful detention be conceded at any court hearing; this is not a case where those issues arise in good conscience.⁶
- 23 The question of control is central.
- 24 When control is in dispute in an off-shore setting, the court will ask whether the plaintiff has demonstrated that the defendant has ‘the reasonable prospect of being able ... to secure his production in court’.⁷ If it appears to the court that the plaintiff can show ‘reasonable grounds on which it may be concluded that the respondent will be able to assert that control’,⁸ then the writ will issue, even if there is doubt on the topic. When the court issues the writ, it is not dictating to a minister any particular course of action, but to make a return to the writ.⁹ What the defendant government must provide upon the return is ‘an account as to whether it has in fact control or an evidence-based explanation as to why it does not.’¹⁰
- 25 The question of control is one of fact and degree, to be determined by reference to evidence.¹¹ It is open to argue, as occurred in *Ruddock v Vardalis*,¹² that any restraint is not ‘attributable to the Commonwealth’, but the Court will make factual findings, based on evidence, including cross-examination.
- 26 Our contention will be that the Australian government (and in particular, any named defendants) has control, having the practical ability to secure the release and repatriation of each of the plaintiffs. That argument does not involve a court dictating to a minister, or improperly trespassing into foreign policy. Strong evidence will be led to establish that practical ability, sometimes called ‘constructive control’. That evidence arises from open source material, from representations made

⁶ Contrast the situation in *Zabrowsky v General Officer Commanding Palestine* [1947] AC 246, discussed in *Rahmatullah* at [53].

⁷ *Rahmatullah* [45].

⁸ *Rahmatullah* [64].

⁹ See *Ex parte Mwenya* [1960] 1 QB 241, distinguished in *Rahmatullah* [60].

¹⁰ *Rahmatullah* [68].

¹¹ *R v Secretary of State for Home Affairs; ex parte O'Brien* [1923] 2 KB 361; *Rahmatullah* [46].

¹² (2001) 110 FCR 491, 546-547.

by officials to the detainees and their families and representatives, and from the expert-factual and expert-opinion evidence of persons with experience and expertise in the repatriation of individuals from North Syria. We would obviously seek to contest any evidence or averment to the contrary. We would oppose any effort to ‘strike out’ the application; given the approach adopted by courts in similar cases, we are confident the writ would issue, and a full hearing would ensue.

27 We respectfully suggest that direct and circumstantial evidence will comfortably establish facts which will lead a court to issue the writ and to find, on any contested return, that the Australian government enjoys sufficient capacity to effect repatriation to be found in control. In particular, the evidence would establish the following, at least:

- 27.1. The Syrian Democratic Forces (SDF)/AANES are members of the Coalition against ISIS;
- 27.2. Australia is a coalition member;
- 27.3. Australia is in a position of significant influence over the SDF;
- 27.4. Other successful repatriations have occurred, including as recently as June 2022;
- 27.5. The United States of America (US) urges, supports and will facilitate extraction and repatriation;
- 27.6. Extraction and repatriation are practicable and not relevantly dangerous;
- 27.7. The detention camps are a result of a joint military campaign against a common enemy;
- 27.8. Australia has funded humanitarian efforts within the camps.
- 27.9. Australian officials access the camps, and perform assessments of defendants;
- 27.10. The SDF wants foreign nationals, including the detainees, to be repatriated.
- 27.11. The SDF overtly requested Australia to repatriate the women and children;
- 27.12. The SDF has not refused repatriation of any of them.

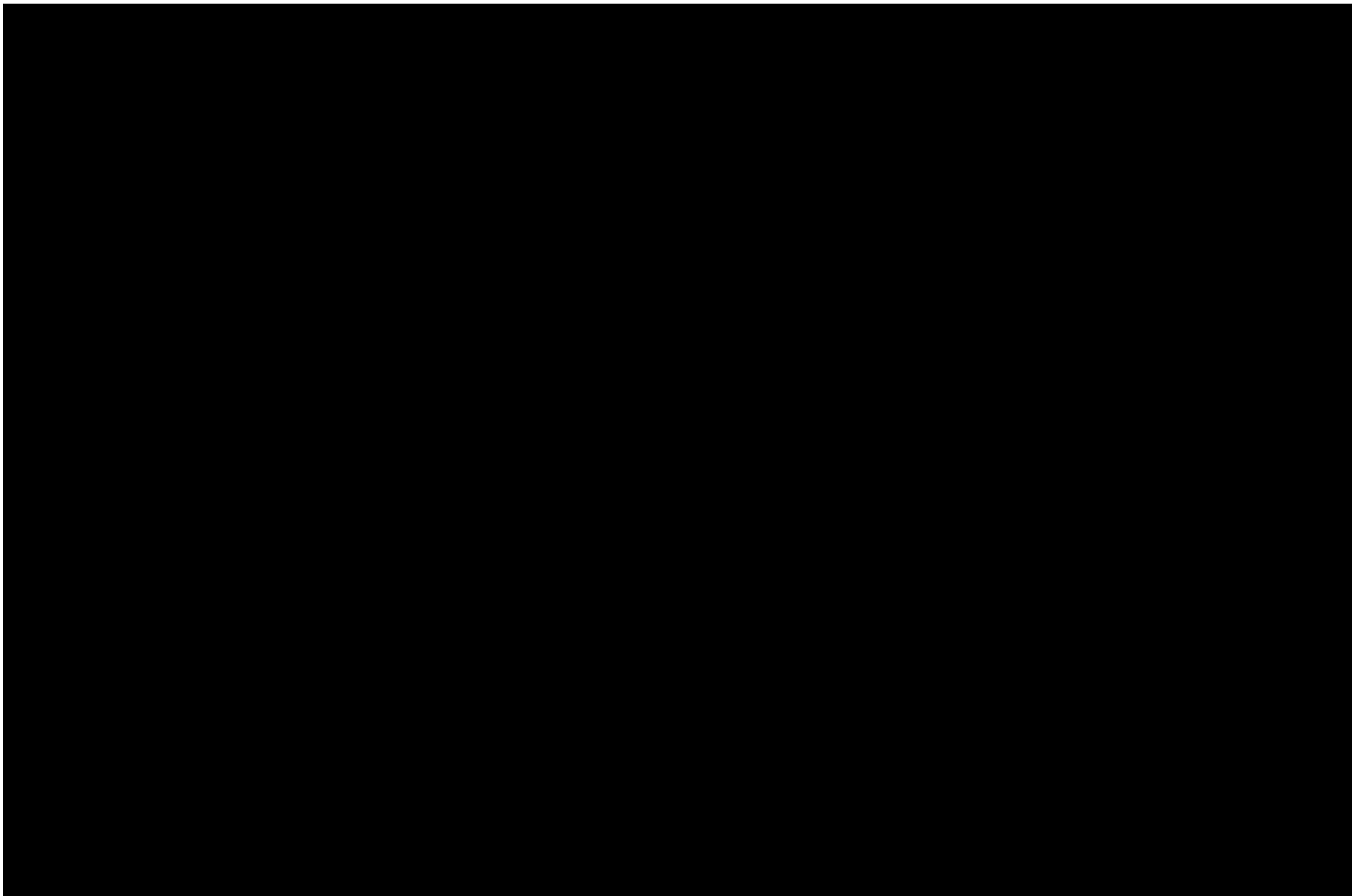
28 Amazingly, the only residual doubt that Australia can in reality secure the detainees and bring them to court arises because Australia declined to ask, despite the clear urging of its allies and the AANES. This would remain an artificial stance. The detainees want to come home; the AANES (an alliance partner) is desperate to enable them to be repatriated; alliance partners, particularly the US, will assist; extraction and repatriation are not prohibitively dangerous; the mechanics of an extraction are straightforward. We respectfully suggest that you would not lead evidence to the contrary. There will be no gainsaying the sufficiency of this evidence to ground the issue of the writ. On the return, we would reserve our right to contest any contrary evidence.

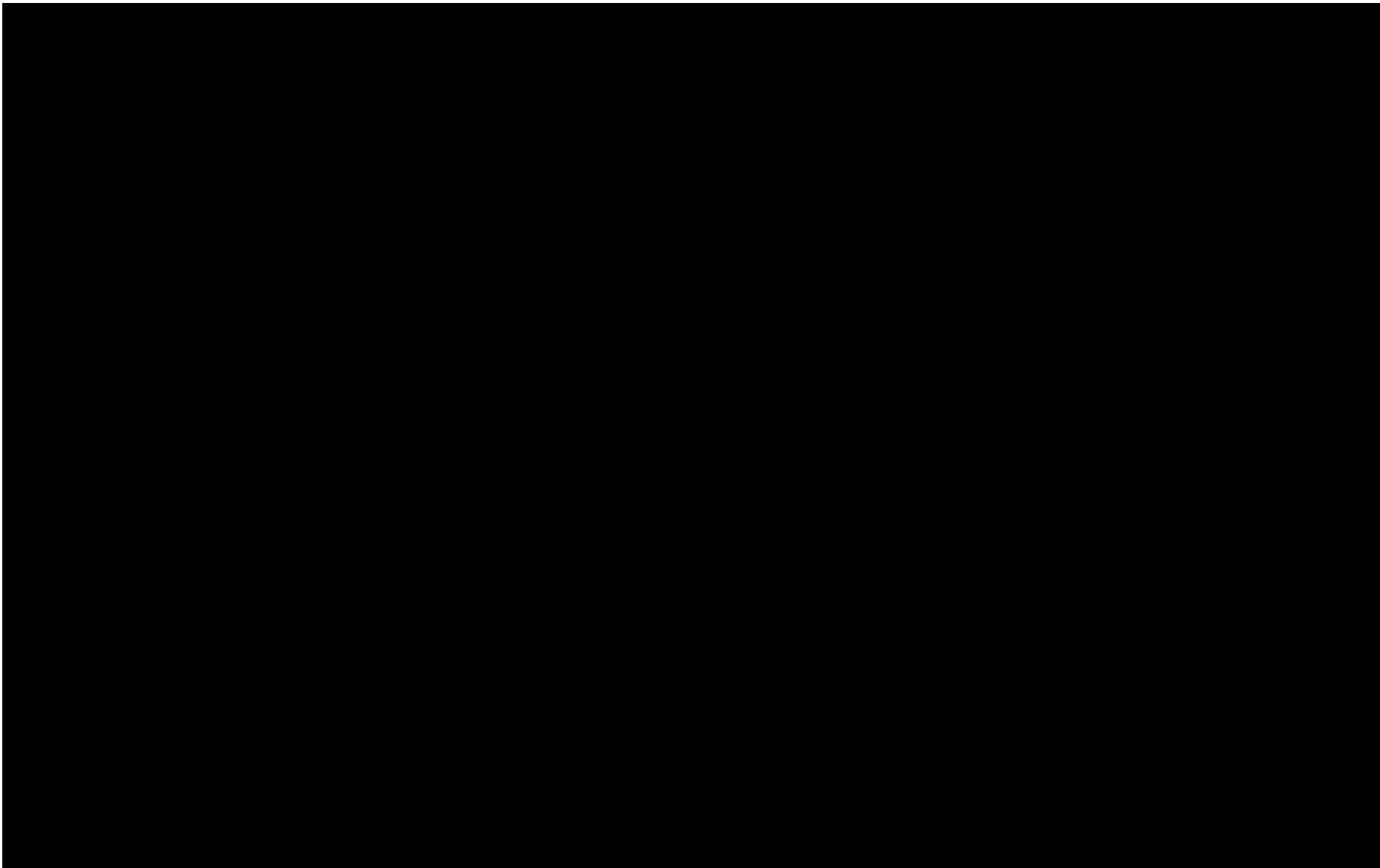
Conclusion

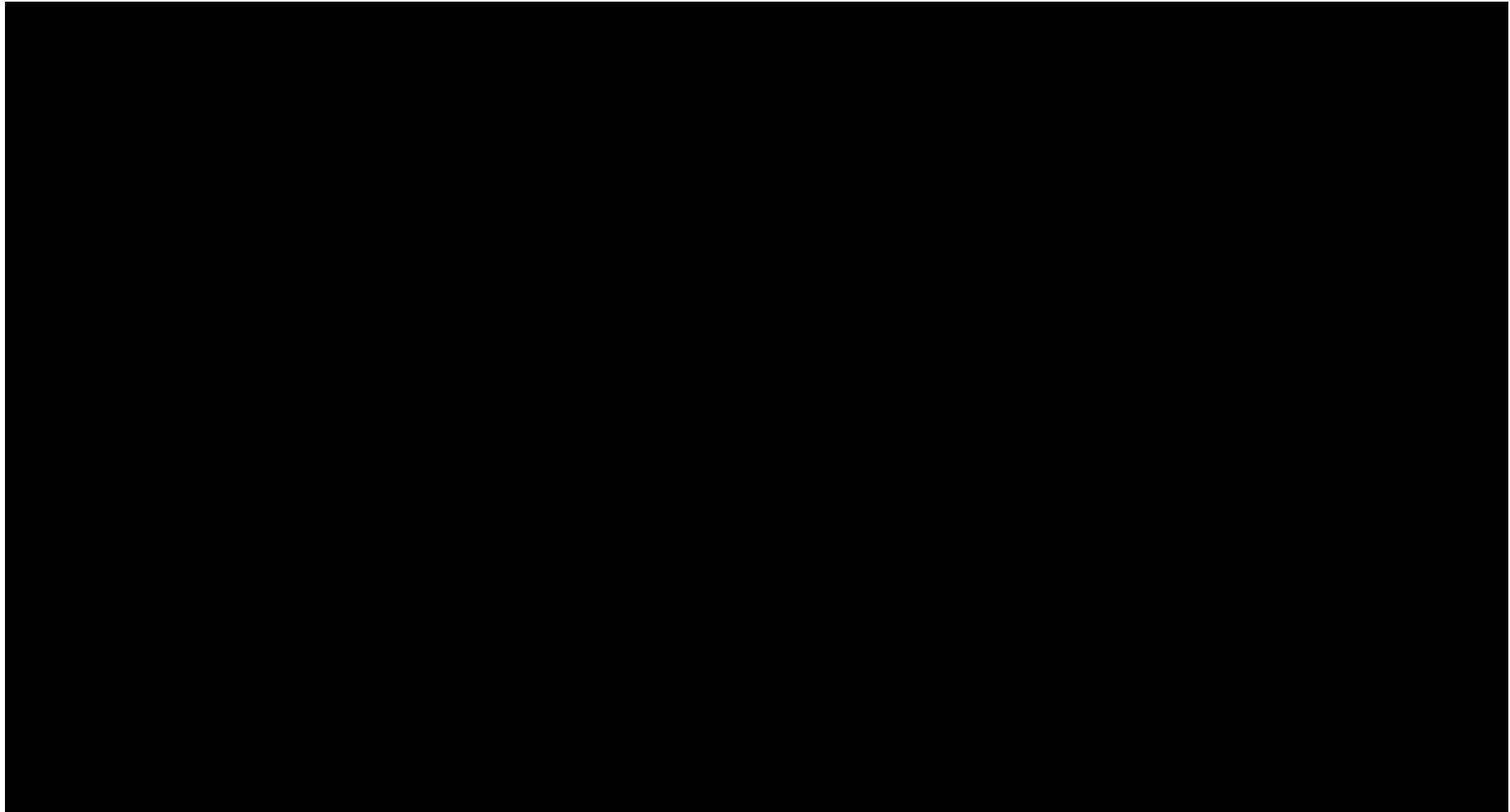
29 It cannot be said that this litigation is premature or irresponsibly polarising or divisive. The plaintiffs have been stranded, inhumanely and wrongly, in camps reluctantly operated by the AANES. There they remain, to their detriment and our shame. The need to prepare for their return, control and reintegration has been obvious, and recognised by government, as parliamentary and extra-parliamentary comments clearly demonstrate.

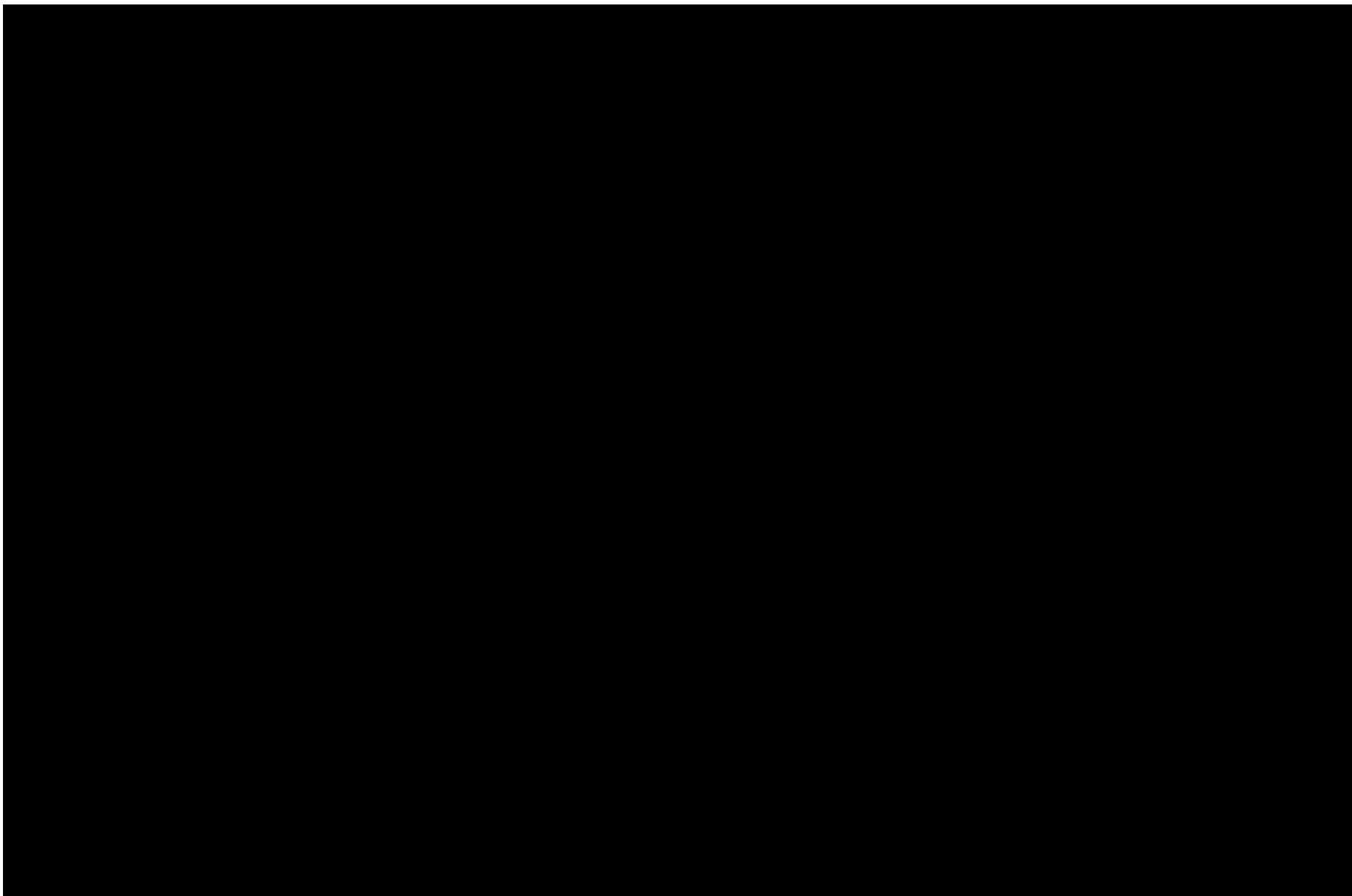
30 It is unusual to present a foretaste of litigation. We do so appreciating that the government must plan the return and subsequent assessment, processing and reintegration of each plaintiff, without the disruptive intervention of hostile or ignorant interveners. We hope to engage, not bluster. We are prepared to proceed cooperatively.

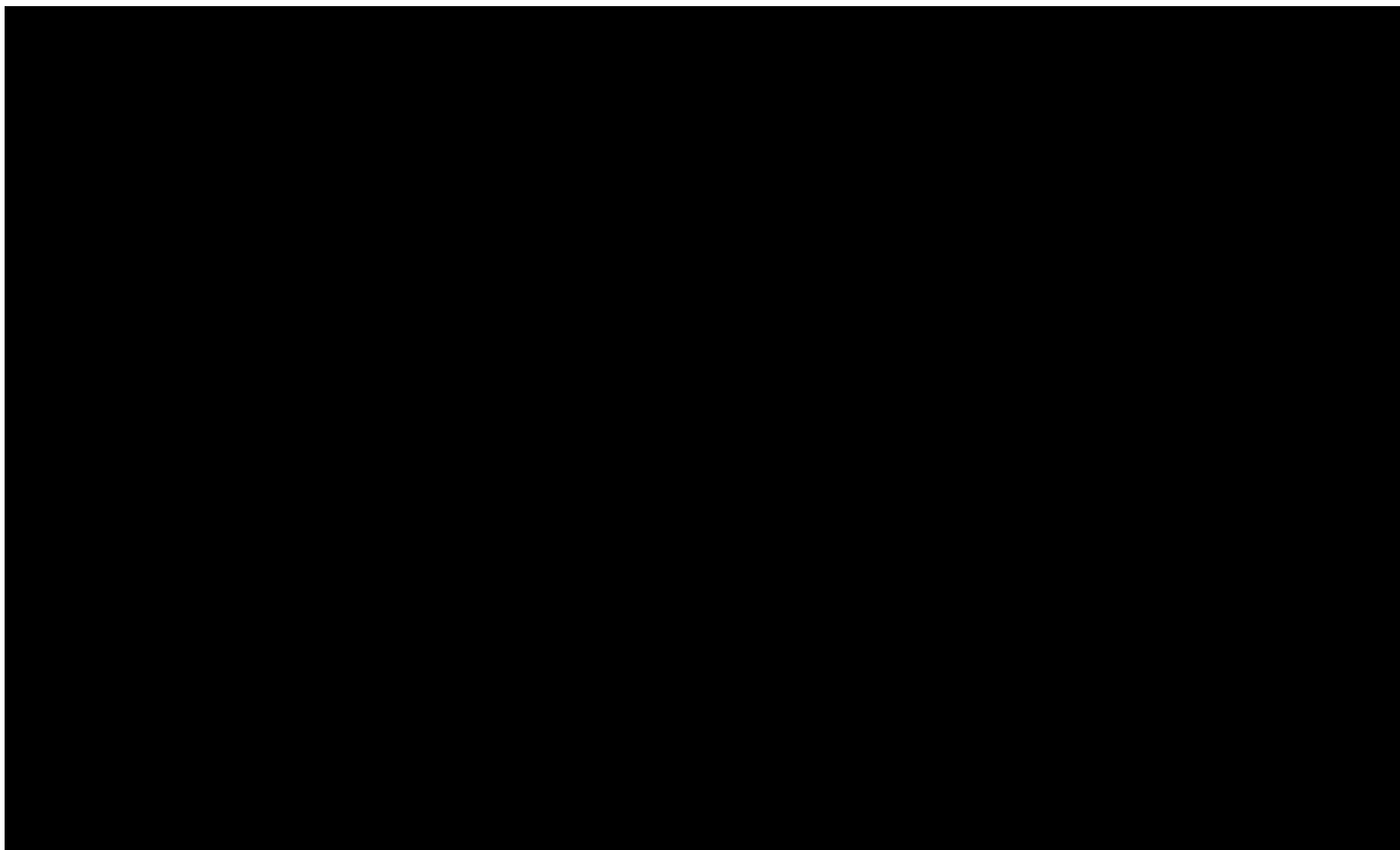
- 31 However, the time for delay has passed. These plaintiffs have suffered detention for more than 3 years. Hope sustains them, and delay extinguishes hope. Unless undertakings are made by 18 July 2022 to repatriate the plaintiffs to Australia within 14 days of the undertaking, we will instruct our solicitors to file proceedings.

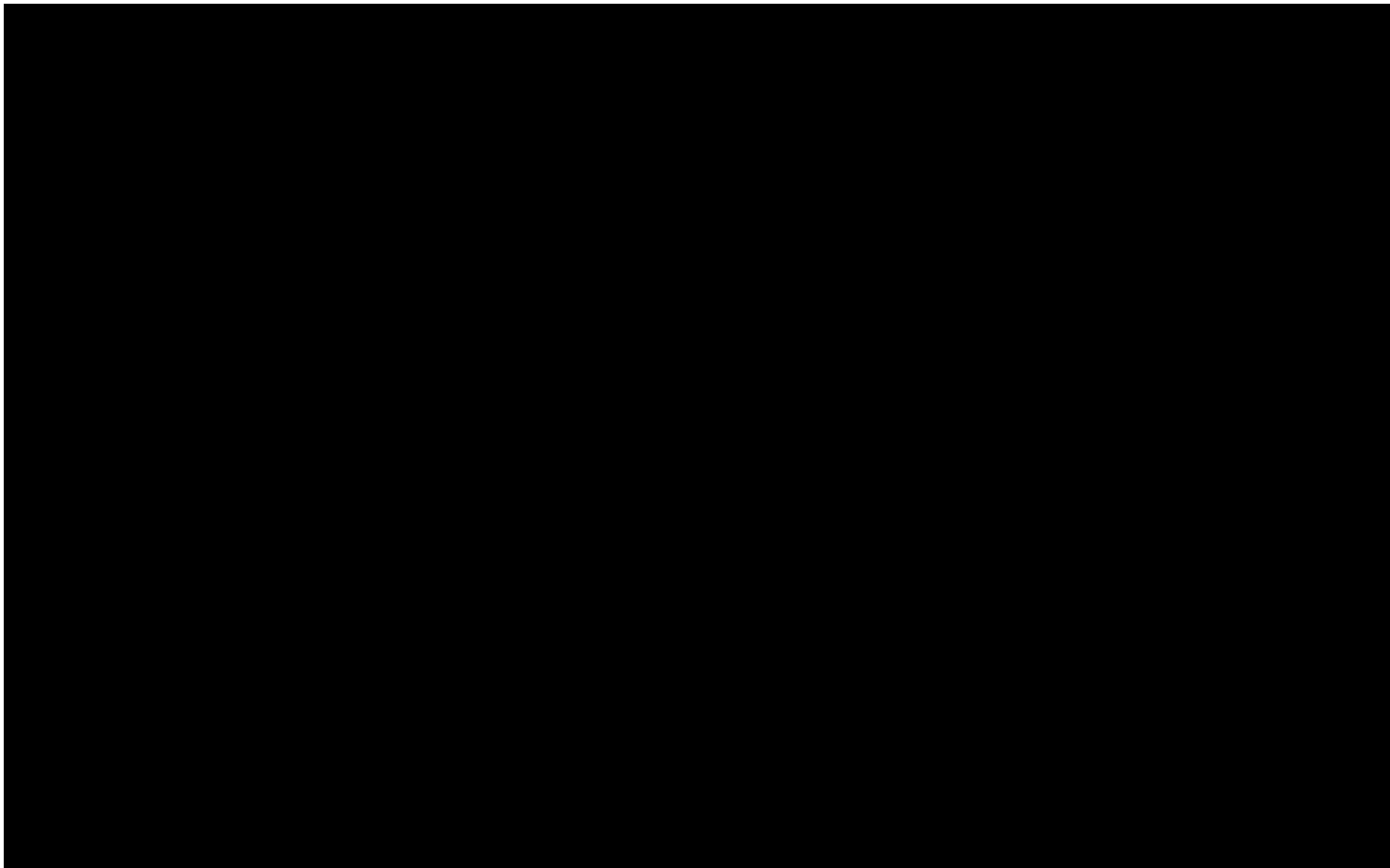


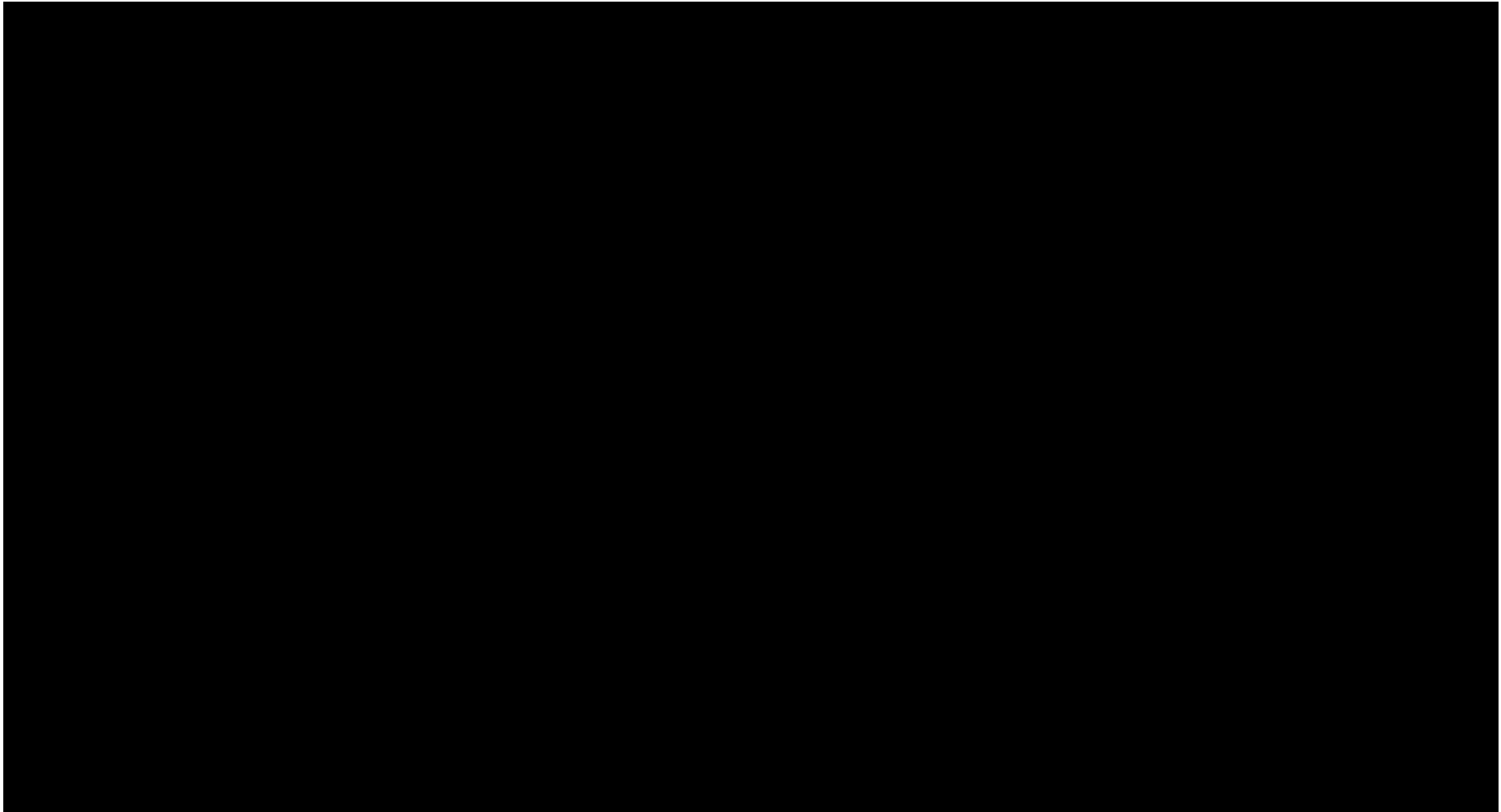


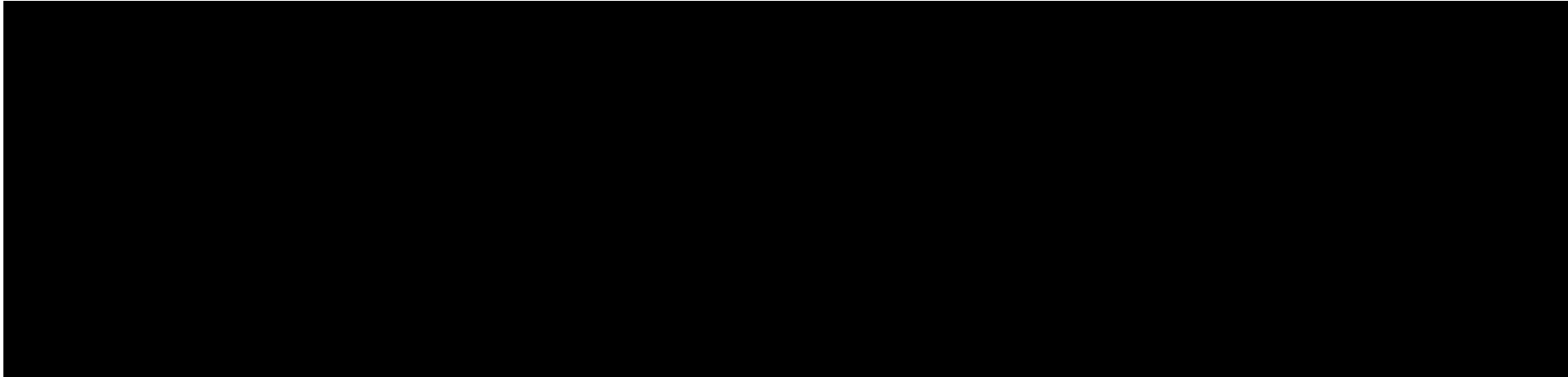














Australian Government
Department of Home Affairs



Australian Government
Department of Foreign Affairs and Trade

DFAT Ref: MC22-006106
Home Affairs Ref: MC22-029586

18 July 2022

Mr Mat Tinkler
Chief Executive Officer
Save the Children Australia
33 Lincoln Square South
Carlton, Victoria, 3053
mat.tinkler@savethechildren.org.au

Dear Mr Tinkler

Thank you for your letter of 4 July 2022, including an outline of claims, to the Minister for Foreign Affairs, Senator the Hon Penny Wong, and the Minister for Home Affairs and Minister for Cyber Security, the Hon Clare O'Neil MP, concerning Australia-linked women and children in northeast Syria. This is an important issue, and we appreciate Save the Children's insights.

We share the deep concern that Australia-linked women and children remain in internally displaced persons camps in northeast Syria. This is particularly concerning for the children involved.

As you will appreciate, there are many security, diplomatic, community and welfare considerations that need to be addressed by the new Government. This is critical and sensitive work which requires time to implement effective long-term solutions in the best interests of the women and children as well as the Australian community.

Accordingly, the Government is not in a position to provide the undertaking you seek by the required date. However, be assured that the appropriate government agencies are working jointly to address this situation.

We look forward to working constructively with Save the Children in support of this effort.

Yours sincerely

Andrew Kefford PSM
Deputy Secretary
Commonwealth Counter-Terrorism Coordinator
Department of Home Affairs

Roger Noble AO DSC CSC
Ambassador for Counter-Terrorism
Department of Foreign Affairs and Trade

From: Mat Tinkler
Sent: Monday, 25 July 2022 1:04:02 PM
To: Simon Henderson; Sophie Coleman
Subject: FW: External: Department of Home Affairs - Response to Ministerial Correspondence[SEC=OFFICIAL]

FYI

From: Mat Tinkler
Sent: Monday, 25 July 2022 12:41 PM
To: Andrew.kefford@homeaffairs.gov.au; Roger Noble <Roger.Noble@dfat.gov.au>
Cc: Tom.mooney@dfat.gov.au; Andrew.downes@homeaffairs.gov.au
Subject: RE: External: Department of Home Affairs - Response to Ministerial Correspondence[SEC=OFFICIAL]

Dear Roger and Andrew

Thank you for your letter dated 18 July 2022. We have conveyed its contents to the detained families and our legal team. We fully appreciate the gravity of planning and logistics that would go into resolving this highly sensitive matter, and you can be assured of Save the Children's commitment to working constructively with the government to bring these families home.

However, as you will appreciate, our influence with the families is limited and the decision to commence proceedings ultimately rests in their hands. Last week, and with the knowledge of your response of 18 July, the families conveyed to us their strong desire to proceed as outlined in Save the Children's letter of 4 July and accordingly, to commence proceedings immediately. I am sure you would have sympathy for that position, given their outrage at the tragic death of Yusuf Zahab, and the ever-growing threat that more of their children may be forcibly removed from their care and condemned to a similar fate.

After lengthy discussions, and in reliance on your assurance that multiple agencies are actively working to address their situation, the families have agreed to hold off filing to provide further time for the government to settle its position. Accordingly, we request undertakings by **12 August 2022** that repatriations will commence within a reasonable (defined) timeframe. We hope you agree that this position demonstrates their good faith and commitment to a controlled resolution.

Please be assured that we have done, and continue to do, what we can to maintain a consistent and considered approach to the situation, as between the families and as between them and Save the Children. We do caution, however, that the position of one or more families may change with little notice, especially if the situation in the camps further deteriorates (for example, if children are removed from their families), in which case we may have to take steps to file immediately.

It is also possible that one or more of the families may lose patience entirely and break from the broader group, seeking instead to proceed with a case using alternative legal representation. We appreciate that such a multiplicity of filings, by diverse plaintiffs in diverse courts, is an undesirable distraction when (as we accept) you are attempting to deal with the very real plight of vulnerable detainees. We believe some indication of progress would ameliorate this danger.

We look forward to your response by 12 August 2022, after which time we will be in a position to file immediately. These families have reached their limit, and simply cannot wait any longer for a meaningful commitment regarding their futures.

We remain hopeful that a public and protracted dispute can be avoided, for the sake of all parties.

Regards,

Mat Tinkler | Group CEO | **Save the Children Australia**

33 Lincoln Square South, Carlton, VIC 3053

Direct line: +613 7002 1764 | Mobile: +614 3859 5049 | Email: mat.tinkler@savethechildren.org.au

Skype: mat.tinkler1 | Workplace: [Mat Tinkler @ Workplace](#)

*I often work irregular hours, trying to take advantage of the early and late times when little people are asleep (in theory). Your wellbeing is important, so there's no expectation that you will respond outside business hours – I assume you will respond during the working hours that suit you.



From: Roger Noble <Roger.Noble@dfat.gov.au>

Sent: Tuesday, 19 July 2022 9:54 PM

To: Mat Tinkler <Mat.Tinkler@savethechildren.org.au>; Marion Stanton
<marion.stanton@savethechildren.org.au>

Subject: External: Department of Home Affairs - Response to Ministerial Correspondence[SEC=OFFICIAL]

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Hi Mat,

I just wanted to make sure you had received a copy of the Australian Government's response to Save the Children Australia's letter.

We share the concerns that Australia-linked women and children remain in internally displaced persons camps in northeast Syria. Government agencies are working jointly to address the situation.

The Government looks forward to working with Save the Children in support of this effort.

Separately, noting today's media reporting, I wanted to reassure you that DFAT is looking into this also. Will stay in touch.

Kind regards

Roger Noble

Ambassador for Counter Terrorism
Department of Foreign Affairs and Trade
Phone +61262612698 | Mobile +61422587874

OFFICIAL

From: noreply@pws.gov.au <noreply@pws.gov.au>
Sent: Monday, 18 July 2022 5:44 PM
To: mat.tinkler@savethechildren.org.au
Subject: Department of Home Affairs - Response to Ministerial Correspondence
[SEC=OFFICIAL]

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Australian Government
Department of Home Affairs



Australian Government
Department of Foreign Affairs and Trade

DFAT Ref: MC22-006106
Home Affairs Ref: MC22-029586

12 August 2022

Mr Mat Tinkler
Chief Executive Officer
Save the Children Australia
33 Lincoln Square South
Carlton, Victoria, 3053
mat.tinkler@savethechildren.org.au

Dear Mr Tinkler

Thank you for your update on Save the Children's engagement with your legal team and the families of those in Syria.

The Government appreciates the concerns expressed by the families and their advocacy in relation to this matter. As noted in our letter, time is required to undertake the critical and sensitive work necessary to implement safe, effective and long-term solutions in the best interests of the women and children, as well as the Australian community. This work requires multiple lines of effort, well beyond planning and logistics, not all of which are within the Commonwealth's domain. To support these considerations, we would welcome Save the Children's advice on how it might engage or support the development of future policy options.

While we are not able to provide further details of the sensitive work being undertaken, the Government is actively engaging with this complex challenge as a priority. Per our previous advice to you on this matter, the Government is not in a position to make the undertaking you seek.

The Government would like to work constructively with Save the Children Australia in support of this effort, but cannot engage in further correspondence seeking undertakings relating to prospective legal action, in light of the matters outlined above.

Yours sincerely

Andrew Kefford PSM
Deputy Secretary
Commonwealth Counter-Terrorism Coordinator
Department of Home Affairs

Roger Noble AO DSC CSC
Ambassador for Counter-Terrorism
Department of Foreign Affairs and Trade

From: Mat Tinkler
Sent: Monday, 22 August 2022 10:01:18 AM
To: Simon Henderson; Kamalle Dabboussy; Sophie Coleman
Subject: FW: External: RE: External: Department of Home Affairs - Response to Ministerial Correspondence[SEC=OFFICIAL]

FYI

From: Mat Tinkler
Sent: Monday, 22 August 2022 9:59 AM
To: Andrew KEFFORD <Andrew.Kefford@homeaffairs.gov.au>; Roger Noble <Roger.Noble@dfat.gov.au>
Cc: Tom Mooney (DFAT) <Tom.Mooney@dfat.gov.au>; Andrew DOWNES <ANDREW.DOWNES@HOMEAFFAIRS.GOV.AU>; Marion Stanton <marion.stanton@savethechildren.org.au>
Subject: RE: External: RE: External: Department of Home Affairs - Response to Ministerial Correspondence[SEC=OFFICIAL]

Dear Andrew and Roger (and Andrew & Tom)

Thanks for your time last Monday and the continuing engagement on this matter. We appreciate your constructive approach.

For your information, we have recently been advised that two other Australian children are currently residing in Al Hawl camp in NE Syria. We have not previously had visibility of these children. Their father is Australian citizen [REDACTED], who is married to [REDACTED] (A Danish/Iranian dual citizen). [REDACTED] is detained in prison facilities in NE Syria while [REDACTED] is in Al Hawl with the two children: daughter, [REDACTED] aged around 6 years; and son [REDACTED] aged around 4 years. Another son born in 2017, [REDACTED], was killed in Baghouz. We do not have further information about their wellbeing at this time.

In relation to the legal proceedings, while we understand your advice that the Government is not in a position to provide the written undertakings that have been sought, we are due to meet Australian based families with loved ones in NE Syria later this week. Ahead of those conversations, it would be helpful to understand any further updates you may be able to share, and in particular whether either Minister is willing to meet Kamalle Dabboussy and I in person.

I will be in Canberra tomorrow for non-related meetings and would be available to meet any of you if further conversations are helpful.

Regards,

Mat Tinkler | Group CEO | **Save the Children Australia**
33 Lincoln Square South, Carlton, VIC 3053
Direct line: +613 7002 1764 | Mobile: +614 3859 5049 | Email: mat.tinkler@savethechildren.org.au
Skype: mat.tinkler1 | Workplace: [Mat Tinkler @ Workplace](#)

*I often work irregular hours, trying to take advantage of the early and late times when little people are asleep (in theory). Your wellbeing is important, so there's no expectation that you will respond outside business hours – I assume you will respond during the working hours that suit you.



From: Ronnie DINN <RONNIE.DINN@HOMEAFFAIRS.GOV.AU>
Sent: Friday, 12 August 2022 5:05 PM
To: Mat Tinkler <mat.tinkler@savethechildren.org.au>
Cc: Tom Mooney (DFAT) <Tom.Mooney@dfat.gov.au>; Andrew DOWNES <ANDREW.DOWNES@HOMEAFFAIRS.GOV.AU>; Andrew KEFFORD <Andrew.Kefford@homeaffairs.gov.au>; Roger Noble (DFAT) <Roger.Noble@dfat.gov.au>
Subject: External: RE: External: Department of Home Affairs - Response to Ministerial Correspondence[SEC=OFFICIAL]

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Good afternoon Mr Tinkler,

On behalf of Deputy Secretary, Commonwealth Counter-Terrorism Coordinator, Andrew Kefford PSM and Ambassador for Counter-Terrorism, Roger Noble AO DSC CSC, please see attached response to your email below.

Thank you.

Kind Regards,

Ronnie Dinn
Executive Assistant to Andrew Kefford PSM
Deputy Secretary
Social Cohesion and Citizenship Group
Department of Home Affairs
P: 02 5127 8330 M: 0435 166 058
E: Ronnie.Dinn@homeaffairs.gov.au

OFFICIAL

From: Mat Tinkler <mat.tinkler@savethechildren.org.au>
Sent: Monday, 25 July 2022 12:41 PM
To: Andrew KEFFORD <Andrew.Kefford@homeaffairs.gov.au>; Roger Noble (DFAT) <Roger.Noble@dfat.gov.au>
Cc: Tom Mooney (DFAT) <Tom.Mooney@dfat.gov.au>; Andrew DOWNES <ANDREW.DOWNES@HOMEAFFAIRS.GOV.AU>
Subject: RE: External: Department of Home Affairs - Response to Ministerial Correspondence[SEC=OFFICIAL]

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Regards,

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33 Lincoln Square South, Carlton, VIC 3053

Direct line: +613 7002 1764 | Mobile: +614 3859 5049 | Email: mat.tinkler@savethechildren.org.au

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Sent: Tuesday, 19 July 2022 9:54 PM

To: Mat Tinkler <Mat.Tinkler@savethechildren.org.au>; Marion Stanton <marion.stanton@savethechildren.org.au>

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Kind regards

Roger Noble

Ambassador for Counter Terrorism
Department of Foreign Affairs and Trade
Phone +61262612698 | Mobile +61422587874

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[SEC=OFFICIAL]

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15/03/2023, 10:55

Federal government says Australians returning from Syrian detention camps will be monitored by security agencies - ABC N...



Federal government says Australians returning from Syrian detention camps will be monitored by security agencies

By political reporter [Stephanie Dalzell](#)

Posted Mon 3 Oct 2022 at 1:29pm, updated Mon 3 Oct 2022 at 1:31pm



Labor frontbencher Tanya Plibersek said there were about 40 Australian children living in Syrian refugee camps. (ABC News: Nick Haggarty)

The federal government has said Australian women and children expected to be repatriated from Syria will be closely monitored by national security agencies, as the Coalition argued the rescue mission is too dangerous.

The details of the repatriation effort are being kept tightly under wraps, but preparations are underway to [rescue around 20 women and 40 children held in detention camps](#) in north-east Syria since the fall of the Islamic State group in 2019.

Many are the wives, widows, and sisters of the so-called Islamic State group fighters, with some arguing they were coerced or tricked into travelling to the Middle East.

Labor frontbencher Tanya Plibersek said the government was following the advice of security

Key points:

- The federal government intends to bring dozens of women and children in Syrian detention camps home to Australia
- A government frontbencher expects security agencies will stay in contact and monitor them
- The former Coalition home affairs minister says she is not convinced it is safe to rescue them

15/03/2023, 10:55

Federal government says Australians returning from Syrian detention camps will be monitored by security agencies - ABC N...

agencies.

"We've got about 40 Australian kids living in one of the most dangerous places on Earth, in a refugee camp," she told Channel 7.

"Some of the women, some of the mothers were taken there as little more than children themselves and married off to IS fighters, some of them tricked, some of them forced to go there.

"When they come back to Australia, I think it's going to be very important that the children in particular receive counselling.

"But I think for everybody involved, there will be an ongoing expectation that our security and intelligence agencies will stay in contact with them and monitor them."

Shadow Home Affairs Minister Karen Andrews told ABC Radio it was too dangerous to repatriate women and children in Syria when she held the ministry.

"I wasn't prepared to risk Australian officials going into Syria to do what they needed to do to get these people out," she said.

"I was concerned about radicalisation, not just of the women, but potentially of the children.

"And thirdly, I was concerned about the risk of these people coming back to Australia, because they may not have been deradicalised and could well have been radicalised."

She also argued the women who travelled to Syria went there voluntarily and said some will face charges and may end up in prison in Australia.

"They made their own decisions to be in Syria and they were complicit generally in the role that they were expected to play, which was to support ISIS and to support the foreign fighters who were there," she said.

"I've seen nothing to alter my view."

Victoria University associate professor Debra Smith, who researches violent extremism, said Australia had an obligation to bring the women and children home.

"I think it's natural for people to be concerned and frightened, but I think for people who work in the space and who understand what this process entails, it is a balance between understanding

15/03/2023, 10:55

Federal government says Australians returning from Syrian detention camps will be monitored by security agencies - ABC N...

potential threats that people hold and how you balance that with the very real need to actually reintegrate people," she said.

"It's through that reintegration process that we actually make ourselves safer."



The government says there are Australian women and children trapped in Syria against their will. (ABC News)

Save the Children chief Mat Tinkler said young Australians held in detention camps in Syria could die if they were not urgently repatriated.

He argued the potential security threats could be mitigated by security and law enforcement agencies.

"The biggest risk right now is one of these Australian children will die if they're not repatriated from these camps quite urgently," he said.

"That's the risk right now, and hopefully the Australian government is preparing to act."

Australian teenager Yusuf Zab, who was taken to Syria when he was 11 years old, [is believed to have died in in July](#) just months after begging for help.

15/03/2023, 10:58

Australian women and children repatriated from Syrian camps



The Hon Clare O'Neil MP

Minister for Home Affairs
Saturday, 29 October 2022

 Media release

Australian women and children repatriated from Syrian camps

The Australian Government has repatriated four Australian women and their 13 Australian children to New South Wales from an Internally Displaced Persons Camp in Syria.

At all times the focus has been the safety and security of all Australians as well as the safety of those involved in the operation. Informed by national security advice, the Government has carefully considered the range of security, community and welfare factors in making the decision to repatriate.

The decision to repatriate these women and their children was informed by individual assessments following detailed work by national security agencies.

The Government's decision follows similar repatriations carried out by the previous Morrison Government in 2019, as well as the United States, Italy, Germany, France, the Netherlands, Belgium, the United Kingdom and, most recently, Canada.

Allegations of unlawful activity will continue to be investigated by the NSW Joint Counter Terrorism Team, comprised of the Australian Federal Police, Australian Security Intelligence Organisation, NSW Police and the NSW Crime Commission. Any identified offences may lead to law enforcement action being taken.

The New South Wales Government is providing extensive support services to assist these women and their children with reintegration alongside law enforcement engagement with these families.

Last updated: 29 October 2022

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The Albanese government has defended its decision to repatriate the families, despite their links to the terror group. Source: AAP / Lukas Coch

Australia

Decision to repatriate Australian families with links to IS 'not taken lightly', Tony Burke says

The government has defended its decision to repatriate Australian women and children from Syria with links to Islamic State, as the mayor of one of Sydney's most multicultural districts said people in the community were concerned.

5 min read

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Decision to repatriate Australian families with links to IS 'not taken lightly', Tony Burke says | SBS News

DECISION TO REPATRIATE AUSTRALIAN FAMILIES WITH LINKS TO IS 'NOT TAKEN LIGHTLY', TONY BURKE SAYS

- The federal minister said it was important to remember that those being repatriating were Australians.
- NGOs have welcomed the repatriations, but said there were still over 30 Australian children in camps in Syria.

Federal minister Tony Burke has stressed the government's decision to repatriate Australian families with links to the self-proclaimed Islamic State was not taken lightly.

Four Australian women, who have been in the Roj camp in Syria since the fall of the terrorist group, as well as 13 children, arrived in Sydney on Saturday, following a secret operation.

Mr Burke defended the decision to repatriate the families, despite the links to the terror group.

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"The government has made these decisions after being informed by the best national security advice, we need to remember the individuals we're talking about here are Australians," he told the Nine Network on Sunday.

"All of these decisions, nothing's been taken lightly."

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The Albanese government earlier this month confirmed a rescue plan was in place for 16 women and 42 children who are families of IS members.

The first to be removed from Syria were assessed as the most vulnerable.

Nationals leader David Littleproud disagreed with the decision, saying Australian citizens needed to be kept safe.

"Sometimes governments have to take tough decisions, have to do it for the greater good, rather than the individual," he told the Nine Network.

"I just hope that that can be translated to the Australian people, they get comfort, that these people have come back and pose us no risk into the future."

Mr Burke said appropriate precautions had been taken.

"We need to remember a lot of the people we're talking about here are children," he said,

"Some of the women that we're talking about were tricked in terms of their own personal circumstances."

Most of the children were born in Syria, meaning they'll be seeing Australia for the first time.

Germany, France and Denmark have also brought their citizens home from Syria.

Opposition Leader Peter Dutton has argued the extractions were not in the national interest, saying their arrival could raise the risk of future terrorism in Australia.

NGOs welcome repatriation, government urged to repatriate those remaining

International aid, human rights, and faith-based community organisations on Sunday commended in a joint statement the Australian government on bringing the women and children home from northeast Syria.

But they said there were still over 30 Australian children stuck in camps in northeast Syria.

"We urge the government to repatriate these children and their mothers as quickly as possible. We will not rest until every Australian child is brought home."

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Chief Executive of the Australian Council for International Development, Marc Purcell said it was "fantastic" the children had been brought back home.

"We should never be in a situation where Australian children are punished for the decisions of their parents and denied access to Australia," he said.



Four Australian women, who have been in the Roj camp in Syria since the fall of the terrorist group, as well as 13 children, arrived in Sydney on Saturday, following a secret operation. Source: AAP / SAVE THE CHILDREN/PR IMAGE

Amnesty International Australia Refugee Rights Advisor, Dr Graham Thom said the young women and children desperately needed support.

"These Australian children and their mothers have been in truly horrendous conditions and suffering terribly, having been separated from their families in Australia for years.

"Anyone accused of any crime can face the judicial system in Australia in accordance with all of our rights to a fair trial. Australian authorities have substantial experience in dealing with these complex re-assimilation efforts, and we are confident they will be handled successfully and sensitively."

Australian Federation of Islamic Councils (AFIC) president Dr Rateb Jneid added that his organisation was "ready to offer our support to help them settle well into Australian society".

Amid concerns, wives of IS fighters 'willing to do whatever is asked'

But the news of the repatriations was not welcome everywhere, with the mayor of one of Sydney's most multicultural districts saying on Saturday people in the community were concerned.

"The community is always in favour of repatriating refugees; we want to help women and children; we want to help people have a better life," said Fairfield City Council Mayor Frank Carbone.

"But what the community is saying is that we want to support those who want to be part of us, not those who want to go away, turn their backs against us and fight against us."

He added that there were also concerns for refugees in Sydney who might have been directly affected by the war in the region.

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"A lot of our community members are refugees, they've been persecuted and ran away from ISIS, so I think this traumatises them and brings a lot of bad memories," Mr Carbone told SBS News.

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Will 'deradicalisation' programs help Australian families of IS fighters settle back home?

The four repatriated women, who had travelled to the country with partners who were members of the militant group, on Saturday expressed their gratitude and apologised for the trouble their links to Islamic State have caused.

"We are deeply thankful to be back home in Australia with our children," the women said in a statement.

"We want to express our regret for the trouble and hurt we have caused, especially to our families."

"We are willing to do whatever is asked of us by government authorities to ensure the safety of our families and the Australian community and we will fully co-operate with all Australian law enforcement agencies."

The mothers, who were partners to IS members, could face continued controls, including ankle monitors and curfews, amid fears they had been radicalised while in Syria.

Additional reporting by Caroline Riches.

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David Speers interview with Minister Clare O'Neil



Australian Government

The Hon Clare O'Neil MP

Minister for Home Affairs
Sunday, 13 November 2022

 Transcript

David Speers interview with Minister Clare O'Neil

Topics: Cyber crime, Medibank and Optus cyber attacks, Migration review, Syria repatriation

DAVID SPEERS: Clare O'Neil, welcome to the programme. So you've announced that this task force of Australian Federal Police and Australian Signals Directorate personnel will be now given a permanent remit to keep going after the cyber hackers. Are you giving them extra resources or powers as well?

CLARE O'NEIL: Thank you, David, and good morning to you and your viewers. Mark Dreyfus and I announced with the Deputy Prime Minister yesterday that we're setting up a permanent standing operation, a partnership of new policing between the Australian Signals Directorate, which are the cyber guns of the Australian Public Service, and the Australian Federal Police. This is an entirely new model of operating for these two organisations. What they will do is scour the world, hunt down the criminal syndicates and gangs who are targeting Australia in cyber attacks and disrupt their efforts. This is Australia standing up and punching back. We are not going to sit back while our citizens are treated like this way and allow there to be no consequences for that.

DAVID SPEERS: OK, just to be clear, though, this task force has been in place for a while, though, hasn't it?

CLARE O'NEIL: No, that's incorrect. So this is a new operation, a permanent standing force of 100 of the best, most capable cyber experts in this country that will be undertaking this task for the first time, offensively attacking these people, David. So this is not a model of policing where we wait for a crime to be committed and then try to understand who it is and do something to the people who are responsible. We are offensively going to find these people, hunt them down and debilitate them before they can attack our country.

DAVID SPEERS: What's your expectation here of what they'll be able to achieve? Because we know whether it's in this new standing operation or in the previous task forces, they've been trying for a while to go after these hackers. The Americans have for years. They did manage to arrest a few of them about a year ago. What's your expectation about what they will realistically be able to achieve?

CLARE O'NEIL: Yes, well, I think there's a perception in the community that it's hard to do anything about cyber attacks and that's actually wrong. There's an enormous amount that we can do. I think we need to shift away from the sense that the only good outcome here is someone behind bars, because that can be hard when we've got people who are essentially being harboured by foreign governments and allowed to continue this type of activity. But what we can do is two really important things. The first thing is hunt these people down and disrupt their operations. It weakens these groups if governments like ours collaborate with the FBI and

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other police forces and intelligence agencies around the world. But the second important thing that we need to do is stand up and say that Australia is not going to be a soft target for this sort of thing. And if people come after our citizens, we are going to go after them.

DAVID SPEERS: So when you say they're being harboured by a foreign government, you're saying the Putin regime is harbouring these criminal gangs?

CLARE O'NEIL: Well, I think there's plenty of public reporting that would suggest that in some cases, there is turning a blind eye. Sometimes it goes beyond that. And it's not just Russia. But, David, this is a really important new crime type for our country. I wish we had been further along than we are now, but I can tell you we have done more about cybersecurity in this country in the last three months than was done in the preceding three years. Without question.

DAVID SPEERS: Okay. The attacks have been escalating, particularly on big companies, Optus, Medibank. Do you think the efforts so far are working? And just coming back to that question around, what's your expectation? Is this new team going to be able to stop these sorts of big attacks that expose our data?

CLARE O'NEIL: Yeah. So I don't think anyone can promise that cyber attacks are going to go away. And one of the things that people need to understand is really how relentless this is at the moment. We had National Australia Bank come out a month or so ago saying they are subjected to 50 million cyber attacks a month. The ATO is subjected to 3 million cyber attacks a month. So we've got to understand here that we have got to adapt our whole approach and our whole thinking about this new crime type. Cybersecurity is hard and it's got to be a partnership between business, government and Australian citizens. And so what we need to do, and what I need to do in my job is drive a whole of nation effort where we see all of these groups in the community lift up their defences together.

DAVID SPEERS: Let's turn to what's being done here to protect our data, keep it safe. Medibank's Chief Executive, as we just saw, says it was the username and password of an employee who had high level access across the network that was stolen. Does that surprise you, even alarm you, that that's all it took to get into the database of millions of customers?

CLARE O'NEIL: So I don't want to provide a running commentary about the technical aspects of every cyber event in Australia, but I will say, I think what we saw with Optus and Medibank is two Australian companies that hold very personal information about Australians, and that means they owe big obligations to Australians to protect that information. And in both of those instances, the proof is in the pudding that the information did get out and that tells us that proper protections weren't in place.

DAVID SPEERS: So, Medibank did not have proper protections in place.

CLARE O'NEIL: Well, I have been quite direct about what I see as these two companies not having fulfilled their duties. But what I would say, David, is that we've got to come at this conversation with a sense of humility. Government holds more private information about Australians than anyone else in the community and we've got cyber issues that we need to fulfil here. So what I would like us to do is come together as a country and have the discussion, which you just started out before on the couch, about what we can do across our country to help this. Just let me make one more quick point. This is a viable problem, David. 2022 has been a big wake up call for Australia. If I look at the US, it was probably last year where they had a number of really big attacks that brought home the personal impacts of this to their citizens. So it's time for us to wake up out of the cyber slumber and I want to push our country now to do better.

DAVID SPEERS: Okay, but just to be clear, on Medibank, was this a sophisticated attack?

CLARE O'NEIL: So there are two criminal investigations underway at the moment into Optus and Medibank and it's not helpful for me to provide a running commentary.

DAVID SPEERS: Well, you did on Optus, you said it was not a sophisticated attack. So in relation to Medibank, was this a sophisticated attack?

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CLARE O'NEIL: Look, David, I am very direct about how I communicate about these things. I have been direct in my discussion with Medibank and Optus. There are criminal investigations on foot, now. I've made it clear that I don't think the defences were where they needed to be. But I say again, we've got to come at this conversation with a bit of humility here. Government's got to step up to the plate too and this is a whole of nation effort here.

DAVID SPEERS: A bit of a different tone to what we heard from you on Optus. Why is that?

CLARE O'NEIL: Well, I don't accept there was any difference in tone. I've said pretty clearly that both companies needed to do better. Both, and I think both have come forward and apologised. I don't think Optus and Medibank are saying anything different.

DAVID SPEERS: Will there be any fines?

CLARE O'NEIL: It's important that we do accept that there is a countrywide problem here and as I said, 50 million attacks a month at NAB. We are, as a nation, being attacked virtually constantly and we need to work together to fix that.

DAVID SPEERS: Will there be any fines? I know you're trying to increase the fines, but the ones that exist at the moment for either Optus or Medibank.

CLARE O'NEIL: Yes, so that's not my decision. The Privacy Commissioner will make a decision about seeking fines there.

DAVID SPEERS: You're looking at ways to stop companies holding too much data for too long. Tell us a bit about what you're looking at there and whether this idea of some sort of national ID database bank is an option.

CLARE O'NEIL: Yes. So just on the data, that's something the Attorney General and I are very concerned about. I heard from lots of constituents during both Optus and Medibank where people hadn't even been a customer of those organisations for sometimes up to a decade and still were contacted to say that their data had been hacked. So what this is for us is a national vulnerability. And what we need to make sure is that companies are only holding data for the point in time where it's actually useful and the data is otherwise disposed of. So, Mark Dreyfus is undertaking a review of the Privacy Act at the moment, and he is looking at that. It's a complex question because, as you noted on the panel, there's a lot of State and territory regulation about the retention of data that needs to be taken account of. So that's something that will be looked at in the context of the Privacy Act review.

DAVID SPEERS: And paying ransoms. You've advised companies not to pay ransoms to hackers. Should it be made illegal?

CLARE O'NEIL: Look just on ransomware payments. So I think it's pretty clear that Medibank were right not to pay the ransom. Because if - I have never seen people that lack a moral code so clearly, then the hackers who are releasing data about -

DAVID SPEERS: And that data had already gone out.

CLARE O'NEIL: - Australians online and the idea that we're going to trust these people to delete data that they have taken off and they have copied a million times is just, frankly silly. So I think that was the right decision. And we're standing strong as a country against this. We don't want to fuel the ransomware business model, David, and that is what happens when ransoms are paid.

DAVID SPEERS: So would you make it illegal to pay a ransom?

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CLARE O'NEIL: So the way that we're thinking about the reform task, which is quite clearly needed here, is a bunch of quick wins, things that we can do fast. And the standing up of the police new police operation is one of those. There's some really big policy questions that we are going to need to think about and consult on, and we're going to do that in the context of the cyber strategy.

DAVID SPEERS: So you'll have a look at that?

CLARE O'NEIL: Yes, so we'll have a look at that.

DAVID SPEERS: At whether to make it illegal.

CLARE O'NEIL: That's correct.

DAVID SPEERS: Okay, let's move to some other issues. The migration. During the week, you announced a review of Australia's migration system, which will help you develop, you say, a new national strategy for migration. It sounds pretty broad. What's it about? What are you trying to achieve here?

CLARE O'NEIL: So, if you look at our country, we've never done anything big or important or meaningful in the last 100 years without asking the best and brightest from around the world to come and help us do it. And when I look at the migration system today, we've come into office, this system is genuinely in a state of disrepair. It has no strategy. We've got enormous complexity in the system, literally hundreds of different visa categories and subcategories. It's expensive, it's complicated, it's bureaucratic. It's not working for migrants, it's not working for business, it's not working for the country. Now, when we look at Australia's future, we've got some really big challenges. We're facing transition to a climate neutral economy. We've got to increase our productivity. We've got to recruit a caring workforce from around the world. And given the context of our region, we need to build sovereign capabilities in a few key areas. The migration system is not the full answer to any of those things, but it's part answer to all of them. So I want to get this system working for the country.

DAVID SPEERS: One of the big problems, and you've identified this, is the long processing time for bringing in skilled workers. It's crazy how long some of the wait time is at the moment. Various suggestions out there to speed things up, get rid of the skills list and simply say to business, you've got to pay a higher minimum salary threshold and you can bring in who you want. Is that a good idea?

CLARE O'NEIL: So it's certainly something that the strategy will look at. And if I can just explain a little bit further for your viewers. One of the things we've got to do is make a shift in our thinking. We've spent almost the whole of the last decade in a big conversation about immigration, about how to keep people out of our country. We are in a global competition to attract the talent that we need for the future. With the US and Canada and New Zealand and all these other countries, they are rolling out the red carpet for the migrants they need. In Australia, it can take you two or three years to get a visa to come here and then we're only going to let you stay for a couple of years and send you back again. So we've actually got to think about this as a competitive mindset, where we want Australia to be a destination of choice and that's not what the migration system is doing at the moment.

DAVID SPEERS: We'll see what that review comes up with. Temporary protection visas. You promised to get rid of them. When is that going to happen?

CLARE O'NEIL: So it is a promise. We've got a number of people living in Australia on temporary protection visas who have been here -

DAVID SPEERS: Ten years.

CLARE O'NEIL: -for more than a decade. Yeah. And I think there's real desire in the community to allow those people to have some sense of permanency.

DAVID SPEERS: So, when will you do that?

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CLARE O'NEIL: That was a commitment that we made at the election and we're working through it slowly and carefully, David. And I hope that your viewers see that one of the hallmarks of our government is deliberateless - deliberateness, calm, methodical, focus. And we are working through how we can do that.

DAVID SPEERS: Can you give me the time frame? I've heard from some people in this situation, being here a decade, still in limbo, in the next six months, next year, when are they going to be given some permanency?

CLARE O'NEIL: I'm not going to give you a time frame. I'm just going to tell you that we've committed to doing it, we will do it, but we're going to do it calmly, methodically and carefully.

DAVID SPEERS: What about the so called legacy caseload of 9000 or so people who came by boat back then but were denied a refugee visa, found not to be a refugee. People like the Biloela family, what's going to happen to them?

CLARE O'NEIL: Well, that's one of the complexities that we're still working through, David, and what you find when you come into office and the immigration system has been woefully neglected for almost a decade.

DAVID SPEERS: And so it's on your watch now. So, 9000 of these people, you're not sure what to do ?

CLARE O'NEIL: I don't have a straightforward answer to you yet. It's a really, really complex and difficult problem. We're five months into a new government, David. We will work through these issues over time.

DAVID SPEERS: Okay? This has been a problem for a decade.

CLARE O'NEIL: We'll work through it over time.

DAVID SPEERS: Your junior Minister, the Immigration Minister, Andrew Giles, has reportedly been the star attraction at some Labor Party fundraisers in the lead up to the Victorian election. Fundraisers to raise donations from Tamil and Indian communities. Are you okay with that or do you have a problem here?

CLARE O'NEIL: David, raising money is a part of the work that we do as members of Parliament.

DAVID SPEERS: But using the Immigration Minister as the draw card is the -

CLARE O'NEIL: This is not a Labour or a Liberal thing. I look at the teals and the Greens, they're raising far more money than I ever have for my campaign.

DAVID SPEERS: I'm asking you about using the Immigration Minister as a draw card to rattle a tin from ethnic communities. Is that different? Is that a problem?

CLARE O'NEIL: I don't see it as being any different, David. And I'm unsure as to why this is garnering media attention. I mean, last night around the country, there were probably half a dozen member members of Parliament doing exactly the same thing. And I'm actually not sure why he's been targeted.

DAVID SPEERS: They're not the Immigration Minister. I'm specifically asking about using the Immigration Minister as a fundraising draw card in ethnic communities. No problem?

CLARE O'NEIL: Yeah. Again, I'd say, David, this is a part of our role and Andrew is going to community events and talking to community groups. This is part of our job as members of Parliament and it's certainly no different to what I've seen previous and I'm not sure why this is garnering media interests. This is part of the work that we do.

DAVID SPEERS: Finally, a number of community groups and local mayors in Western Sydney have been concerned about the decision to resettle families of ISIS fighters in their suburbs. You've made it clear that you've done this based on national security advice. I accept that. But what about their concerns in Western Sydney? Are you going to or have you met with any of them to discuss what's happening?

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CLARE O'NEIL: Well, a decision like this is, I think, always going to be one where there are different views expressed in the community and I absolutely respect people's right to have a different view. If I can just explain what the Australian government has done has brought back four women and 13 children, the oldest of which is a 13 year old girl, to resettle back in Australia. What I really want people to understand about this is that the people at the heart of this issue here are Australian citizens. And the reason I make that clear is because these people will be able to come back to Australia. They can demand, as of right, an Australian passport at any time. The national security question for us is, do we want these children growing up in a squalid refugee camp where they have no access to health and education, where they are subjected every day to radical, violent ideology that tells them to hate their own country? Or do we want them to grow up here with Australian values? So that's the choice for us.

DAVID SPEERS: But just quickly on this, I am asking about the concerns in the communities which are legitimate. Are you going to meet with them? Why haven't you met with them?

CLARE O'NEIL: I've talked to the members of Parliament who have raised those concerns, and if there are other members of Parliament that I haven't spoken to -

DAVID SPEERS: Are you going to talk to the mayor and the community leaders?

CLARE O'NEIL: So, the person who has been most vocal on this is Dai Le. I'm organising a detailed briefing from my department about the arrangements that have been made.

DAVID SPEERS: Why don't you go to Western Sydney, though, Minister and talk to the Yazidi and Assyrian leaders and say, look, here's why we're doing what we're doing and here's the monitoring that's in place. Why don't you do that?

CLARE O'NEIL: So, what I've spoken to the members of Parliament that who represent those areas about is just having a discussion about what the most constructive way for me to engage with those communities is. And I'm happy to do that, David. It's part of my work and I understand that this announcement will have different impacts on different types of Australians. I agree. I've got those obligations.

DAVID SPEERS: All right. So, you're open to doing that? Clare O'Neil, thanks for joining us.

CLARE O'NEIL: Thanks, David. Thanks so much.

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Interview with Greg Jennett



Australian Government

The Hon Clare O'Neil MP

Minister for Home Affairs

Thursday, 24 November 2022

 Transcript

Interview with Greg Jennett

Topics: Syria repatriation, New Zealand resettlement and bridging visas

GREG JENNETT: First, though, freed of commitments here in Canberra this week, Home Affairs Minister Clare O'Neil is heading to Sydney tomorrow to try to sooth any community leaders there worried about the return of so-called ISIS brides and their children who've been brought back from detention camps in Syria. Since the repatriation of four women and 13 children there's been an outpouring of concern from some mayors and community representatives. Clare O'Neil joined us here in the studio a short time ago.

Clare O'Neil, great to have you back in the studio. Tomorrow you'll be heading to Sydney for a forum to catch up with what we understand to be some irate locals claiming a failure to consult over the repatriation of these 17 people, mostly women and children. What are you going to change, though, in these consultations?

CLARE O'NEIL: Greg, first, before we get into that, let me just quickly explain the context here. So all of the people who the Australian government has decided to repatriate recently are women and children – four women and 13 children, the oldest of whom is a 13-year-old girl. The reason that we are doing this is because there are a number of Australian women and children who are in Syria at the moment who are Australian citizens. They are at some stage in the future going to be able to make their way back to Australia, and so the question for us as Australians is what is the safest path forward here. Is it to let these children grow up in a camp where they are subjected to radical violent ideologies every day which teach them to hate their country, or is it better to bring them back in a planned manner now, so that we can control their re-entry and try to allow those children to grow up with Australian values? So this is fundamentally a national security question for the country and one in which with regard to these specific individuals, the right thing to do is to bring them back to Australia.

GREG JENNETT: That's the rationale, and thank you for stating it. But there is undeniable community anxiety, would you accept, when one of the people you might meet, Fairfield mayor, Frank Carbone says, "Let me tell you, it won't be a glossy bit of PR." This is your discussion tomorrow. "Because we'll be making it clear we don't want them resettled in western Sydney." So what in substance might you do or are you open to doing as a result of the consultation?

CLARE O'NEIL: Yep, so, Greg, I've had really constructive discussions with western Sydney community leaders. And I think what I read in the papers doesn't reflect at all the complexity of the views that are held in western Sydney about this matter. I've had very deep thoughtful conversations with people who can see the difficulty

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Interview with Greg Jennett

that's being faced here and can see that if we don't do something about this problem now it will resolve itself of its own volition. Most of these people will make their way back, but not in a planned way where I can manage their arrival.

So why are we having those conversations? I think people in those communities have got really legitimate questions about the ways in which we've thought about community safety with regard to this. And I'll be there with the Australian Federal Police and also a representative from our security agency in Australia who assisted us in advising on this repatriation, and we'll be able to answer those questions.

GREG JENNETT: Okay, because some questions might revolve around ASIO. I think they've assessed them, all 17, as low risk. But are they subject to monitoring, ongoing monitoring?

CLARE O'NEIL: I mean, I think for very obvious reasons, Greg, it's not appropriate for me to advise about the specifics of how people are being monitored or whether or not they are being monitored in Australia. Obviously that is not appropriate. But I can tell you that this has been thoughtfully done over a long period of time. The individuals at the heart of it have been individually assessed as low risk by ASIO. And I will have the police with me tomorrow and ASIO representatives to speak about what's been put in place to support the transition back into the community.

GREG JENNETT: Low risk, even if they should come into contact with individuals who now call Sydney home but who may have fled the ISIS regime? I'm talking about in school or religious settings.

CLARE O'NEIL: I mean, I think you're raising an interesting point there, Greg. You know, I'm going to western Sydney tomorrow to do some consultation. You'll remember that we went through this conversation in 2019 when the former government did exactly the same thing as the current government is doing. No consultation as far as I'm aware of was done at all. None at all. Like, literally the members of parliament who represent the regions in which those people were resettled did not get so much as a phone call or a conversation with the Home Affairs Minister at the time, who was Peter Dutton –

GREG JENNETT: Although they were smaller numbers, much smaller numbers.

CLARE O'NEIL: Well, I think at the time it was eight people, and this is, you know, a little bit more than that. But, Greg, I just say, you know, let's try to apply the same standards to everyone here.

Now, I believe in consulting and having these conversations because people are entitled to have different views about this. Of course they do. But what my experience in dealing with this matter is when I've got the opportunity to sit down and talk to people about the fact that if we don't do this now, it's not like these people disappear. It's not like they cease to be Australian citizens. This is a problem that has to be managed and we can't just put our heads in the sand and pretend that these individuals don't exist.

GREG JENNETT: Yeah, understood. It is a dilemma, and a security one at that, I imagine. As far as total numbers, will there be further cohorts numbering out to a total is it around 60?

CLARE O'NEIL: We haven't made any decisions about further repatriations, Greg. We've repatriated this small group of people, all of whom have been assessed to be low-risk, and we haven't made a decision about anything further.

GREG JENNETT: And what would make a decision pending on any further – what factors would come into play when deciding further cohorts?

CLARE O'NEIL: Well, we make a decision about national security risks and in this instance, it's clear that the best way to manage the risk is to bring these individuals to Australia. That won't be the decision that's made about each of these people. What we've done here is repatriate a small group of low-risk people full stop.

GREG JENNETT: Are any subject to charges in Australia?

15/03/2023, 11:50

Interview with Greg Jennett

CLARE O'NEIL: Well, thankfully, Greg, we don't live in a country where politicians get to determine these matters. The charges will be a decision of the Joint Counterterrorism Operations, and I'll leave them to do their very important work. It's certainly not appropriate for a politician to decide whether that occurs or not.

GREG JENNETT: Not to decide, but do you understand that's being at least investigated?

CLARE O'NEIL: It's up to the police and to the legal system as to whether that occurs, Greg.

GREG JENNETT: Okay. Now, what about public communication on this? Have you been briefed by federal police on where they're up to in what we'd broadly describe as a leak investigation, public domain information becoming public before the mission itself was carried out?

CLARE O'NEIL: Yep, so there was some information which was leaked, and the Australian Federal Police are looking into that at the moment.

GREG JENNETT: Have you been briefed on its progress?

CLARE O'NEIL: I'm not going to get into what the police brief me or the Attorney-General, who oversees the Australian Federal Police.

GREG JENNETT: There are public protocols, though, aren't there around sensitive investigations, about keeping relevant ministers up to date? Does that occur or has it occurred on this case?

CLARE O'NEIL: I think we've dealt with that one, Greg. I'm not going to share with you – much as it might be of interest to you, I'm not going to share with you what the police talk to me about.

GREG JENNETT: All right. I might move on to cover a couple of other areas by way of catchup really in your portfolio. You've recently returned from New Zealand, and not long after that we had confirmed by your office that six of up to 150 people that New Zealand would be prepared to have resettled from Nauru and I think Manus included, have travelled. What remains of the balance?

CLARE O'NEIL: So there's 92 people left on Nauru at the moment. And so we're working through how to find permanent homes for those people. I think it's really important that that first group of people has left for New Zealand. They did that on Tuesday. It's been eight years in the making, would you believe, Greg. Eight years ago that New Zealand first made an offer to resettle refugees who were living in Nauru, and it's taken our government to make that a reality. And that's a small start but an important step forward I think to resolving this longstanding issue for the country.

GREG JENNETT: Yes, so 92 into a balance for New Zealand anyway of 142 goes fairly comfortably. Would it be reasonable to expect that all of those 92 could be removed to New Zealand within this year's intake there?

CLARE O'NEIL: I don't think we're going to see as fast movement as that, Greg. And I think this would have been an issue that could have been resolved much more quickly if we'd gotten on to it sooner. But unfortunately, I've arrived into the Home Affairs portfolio and there's messes in every corner in which I look which have been left for this government to clean up. And this is one of them. I dearly wish that the Australian government had done something about this in the previous nine years. They did not do it, and so it is going to take some time for us to deal with the Nauru matter, but it is something I'm committed to.

GREG JENNETT: Fair enough. And a quick one we dealt with on this program in absentia, because I think you were in New Zealand at the time: a little kerfuffle over letters to people who are here on bridging visas but will never settle in Australia. The department, your department, said that these letters were not sent in error. You've told them to stop. What will the tone of future letters, future communications to this group of people be now that you've ordered the cessation of these letters?

15/03/2023, 11:50

Interview with Greg Jennett

CLARE O'NEIL: Greg, I've got great respect for you and for the ABC, but I think this is a little bit of a storm in a teacup. What has happened here is my department has accidentally sent out a few hundred letters to people. They were draft letters, as I understand it. I didn't sign them; I'd never seen them.

GREG JENNETT: But they cited your name as the authority –

CLARE O'NEIL: But, Greg – Greg, we know that they were sent out in error because the letter said at the top, "Dear [insert recipient name]". So if I can say very respectfully I think that question doesn't quite meet the bar that we like to see on Afternoon Briefing. And it was a small error made by my department. I think it's probably not worth a national conversation.

GREG JENNETT: All right. We'll cop that and leave it there. Clare O'Neil, thanks for joining us.

CLARE O'NEIL: Great to talk to you, Greg. Thanks.

– END –

Last updated: 24 November 2022

From: [REDACTED]
Sent: Thursday, 2 June 2022 9:14 PM
 [REDACTED]
 [REDACTED] Mat Tinkler <mat.tinkler@savethechildren.org.au>
 [REDACTED]
 [REDACTED]
Subject: FW: border crossing request from KRI to NES on 6th, 15th and 18th of June 2022 .

You don't often get email from [REDACTED]. [Learn why this is important](#)

Dears

Hope you all are doing well
Kindly fund your border crossing approval to NES.

Please have a copy of your passport with SCI ID when crossing.

Best

[REDACTED]

From: [REDACTED]
Sent: Thursday, June 2, 2022 12:13 PM
To: [REDACTED]
Subject: Re: border crossing request from KRI to NES on 6th, 15th and 18th of June 2022 .

CAUTION: **This email originated from outside Save the Children. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hello [REDACTED]

I hope you are doing well. The 3 requests have been approved.

Regards,
[REDACTED]
Department of Public Relations.

[REDACTED]

On Wed, 1 Jun 2022 at 3:44 PM [REDACTED] wrote:

Dear Sir/Madam

Hope you are doing well.

This is [REDACTED]

Asking your continually support for SCI international staffs to cross from KRI to NES as following:

Crossing date – June 06, 2022:

[REDACTED]

From KRI to NES on 15th of June 2022:

[REDACTED]

Crossing date – June 18, 2022:

Mathew Tinkler the SCI CEO.

so we asking you kind and continual support.

All necessary papers for mentioned staff are attached with this request letter.

Best regards

[REDACTED]

[REDACTED]

Bring Aussie kids home from Syria before more...

By MAT TINKLER

The West Australian

Tuesday 19th July 2022

507 words

Page 13 | Section: General

270cm on the page



Bring Aussie kids home from Syria before more lives are lost

**MAT
TINKLER**



The reported death of Australian teenager Yusuf Zahab in north-east Syria is a tragedy that was both shocking and preventable.

For more than three years, this was the news we had been dreading. That an innocent Australian child would lose their life in Syria while waiting to be brought home.

I met Yusuf's mother just last month when I travelled to Roj camp, near the border with Iraq, where more than 40 Australian children are trapped with their mothers. She clutched my hand and pleaded through tears for news of her son. She was a mother desperate to know if her child was safe and well, but I had no information to share. There was nothing I could do to allay her fears, because at that point his fate was unknown.

She has now received the devastating news of her son's death. The painful reality is that Yusuf will never return

home to his family. But others still have a chance. His reported death should be a devastating wake-up call for the new Government, which now has the power to prevent another innocent life being lost. They may have inherited three years of inaction, but they have the chance to change course and do what is right. A group of eight orphans were repatriated in 2019, demonstrating what is possible when political will exists. Save the Children, along with other organisations such as Human Rights Watch, repeatedly told the previous government of the risks facing Australian children left behind in Syria.

The Australian children and their mothers have faced dangers including coercion, trafficking, enslavement and sexual exploitation. Many now suffer from health issues, are traumatised, or have old shrapnel injuries that require surgery. All this in a camp with only the most basic of medical facilities, and with little in the way of education.

One little girl in the camp told me she was eight years old, but looked no bigger than my

own five-year-old daughter. Her teeth were either rotten or had completely fallen out and she was showing signs of stunting, an indication of poor nutrition.

No child, no matter the alleged actions of their parents, should have to live like this. And we cannot wait for another child to die before acting.

Australia has a moral and legal responsibility for the Australian women and children in the camps. There are no practical or legal barriers to their repatriation. Countries

including the US, Germany and Sweden have already brought home their citizens from Syria, with the US even offering Australia help to do the same. Earlier this month, France repatriated 51 women and children. Yusuf's family are heartbroken and angry. Because Yusuf never had the same chance. They are pleading for the Albanese Government to repatriate the remaining children and their mothers from the camps before another life is lost. Time is well and truly running out. We must bring these children home.

Mat Tinkler is CEO of Save the Children Australia

It's time to bring these youngsters home from...

By MAT TINKLER

The Weekend Australian

Saturday 16th July 2022

771 words

Page 13 | Section: General

294cm on the page



MAT TINKLER

It's time to bring these youngsters home from Syria

Just weeks ago I crossed the border from Iraq into Syria to meet the Australian women and their children in al-Roj camp, where they are living in what can be described only as an endless limbo.

More than 40 Australian children, some of whom are just toddlers, have been languishing in tents in the desert of northeast Syria with their mothers for more than three years.

Repatriating them was a task deemed too high risk by the previous government.

Yet I was able to safely visit al-Roj, where Australian citizens are trapped. It's one of two camps where thousands of women and children from Syria, Iraq and abroad live.

The temperature was in the mid-40s when I arrived. While the heat was unbearable, it was seeing the conditions of the camps that was hardest to bear.

I sat down with a group of Australian women and met many of their children.

Each mother pleaded with me to bring them home to their families and loved ones in Australia. Each declared their willingness to co-operate fully with law enforcement authorities.

I will never forget the face of an eight-year-old girl whose frame was so small and frail that she looked much smaller than my own daughter, who is just five. Her teeth were rotten or missing and she was showing signs of stunting, which indicates poor nutrition.

These camps are no place for

children. I want it to be crystal clear that these women and children are Australian. It is the moral and legal responsibility of the Australian government to repatriate them.

When I left for this trip, I said goodbye to my three children, held them tight and told them I would be back in no time. And I knew they would be safe at home in Melbourne with my wife.

But the children in Syria are thousands of kilometres away from their loving extended families, with no immediate prospects of returning home to Australia where they belong.

And the reality is that many children in the camps will never go home because they are no longer with us.

Children have died in these camps waiting to go home, including 74 children in the al-Hol camp in 2021 alone. Every day that they remain in the camps, Australian children are at risk of further injury, illness or even death.

Other countries, such as Germany, Sweden and The Netherlands, have already shown it is possible to safely bring home women and children from the camps. Just last week France repatriated 51 people, including 35 children.

Even the previous Australian government brought eight orphans home, and officials have travelled to and from the camps in recent years. Clearly, where there is a will there is a way.

But the Morrison government

was unwilling to do any more, despite offers from the local Autonomous Administration of North and East Syria and our allies in the US to help repatriate the Australian children and their mothers.

These children have faced incredible dangers, including coercion, trafficking, enslavement and sexual exploitation.

They are now being denied their rights to education, health-care and freedom.

The camp administration is doing its best to support these families. But this is northeast Syria, which has been racked by conflict for a decade. Many staff servicing the camp are internal refugees themselves. Supporting foreign citizens should not be their responsibility.

Each day children spend in the camps, more harm is being done. Some have serious injuries that require immediate treatment, such as removing shrapnel, surgery that camp medical facilities are ill-equipped to carry out.

These families feel abandoned by the Australian government. State governments have appropriate support services available to manage their transition and reintegration back into Australian society. Non-governmental organisations such as Save the Children also stand ready to assist.

While in Syria I was given a letter by a 12-year-old girl. The last few lines remain etched in my mind.

"All I want is for me and my mum and my sisters to come home," it read. "I want to forget about the camp, please take me out of here."

I made a promise to myself, that I would do whatever it takes to bring them home and reunite them with their families.

This is now in the hands of the new government. It may be early in its term, but these children cannot wait much longer.

If the Labor government wants to create a positive legacy for children, let this be it. Let them bring our kids home.


Mat Tinkler is the chief executive of Save the Children.

19/07/2022, 10:08

Too dangerous? Save the Children chief proves Syria extraction trip can be done

THE AUSTRALIAN

Too dangerous? Save the Children chief proves Syria extraction trip can be done

By **ELLEN WHINNETT**, ASSOCIATE EDITOR12:00AM JULY 19, 2022 •  1 COMMENT

For years, the Morrison government said it was too dangerous to travel to Syria to extract the women and children held indefinitely in prison camps for Islamic State families in the Syrian desert.

So in June, in a trip organised before the May election, Save the Children's Australian chief Mat Tinkler made the journey himself, to prove it could be done.

"I wanted to see for myself what conditions were like here on the ground," Mr Tinkler said from the town of Derik, also known as al-Malikiyah, in northeast Syria.

"We've been communicating with these women and children and their families back in Australia for over three years now. We've been talking to our staff who are going in and out of the camps every day. But there's nothing like understanding something to see it for yourself and I really wanted do that. And I'm just so glad I've been able to get in and see the Australian women and the innocent children here in the camps."

Mr Tinkler caught a commercial flight into Erbil, the capital of Kurdish-controlled northern Iraq, then made the three-hour drive north through Dohuk to the border crossing at the Iraqi village of Faysh Khabur on the Tigris River.

He went through passport control, then boarded a mini bus that traversed a pontoon bridge across the river, arriving into the checkpoint at the Syrian village of Semalka. The bus stopped before it crossed the river for a roll call of names, and his passport was handed back on the other side.

From Semalka, it was barely 20 minutes' drive to al-Roj, the detention camp housing about 2000 women and children linked to Islamic State families, including about 60 Australians.

19/07/2022, 10:08

Too dangerous? Save the Children chief proves Syria extraction trip can be done

The road through the Syrian oilfields was rough and heavily potholed, and sheep and goats had right of way. But the security situation was calm. The camp lies outside the village of Xana Sere, in a remote part of the country close to the Iraqi border in a white desert landscape dotted with derricks extracting oil.

The drive to al-Hol camp, in the village of the same name outside the restive city of Hasakah about three hours away, was a riskier proposition due to the presence of Islamic State sleeper cells, but has been completed dozens of times by Australian journalists, and foreign officials from numerous European and Western democracies, as well as intelligence officers.

“I wanted to prove number one that it’s doable to get into these camps, we have proven that today,” Mr Tinkler said.

He said the fact a charity worker could make the journey “relatively easily” showed there were no insurmountable security concerns preventing the Australian government from extricating its citizens.

“The most challenging part of the trip was witnessing the distress and suffering of the innocent Australian children and their mothers who have been marooned in these camps for years,” he said.

“I strongly urge the Labor government to uphold the rights of these innocent children, and commit to repatriating them and their mothers immediately.”

ELLEN WHINNETT, ASSOCIATE EDITOR

Ellen Whinnett is The Australian’s associate editor. She is a dual Walkley Award-winning journalist and best-selling author, with a specific interest in national security, investigations and features. She is a ... [Read more](#)



Transcript: The Australians trapped in Syria

Source: Radio National, ABC News broadcast on Monday 18 July 2022 at 8:35 am

URL: <https://www.abc.net.au/radionational/programs/breakfast/the-australians-trapped-in-syria/13977302>

Transcribed: 22 July 2022 at 9:54 am

PATRICIA KARVELAS: More than 70 Australians who joined Islamic State now remain trapped in Syria, either jailed by Kurdish forces or held in squalored refugee camps. While some left Australia voluntarily, many were taken to Syria as children by parents or siblings and found themselves unable to escape. Mat Tinkler is the CEO of Save the Children Australia and he just returned from Syria and he joins us now on breakfast. Mat Tinkler welcome.

MAT TINKLER: Good morning PK thank you for having me on the show.

PATRICIA KARVELAS: You met with Australian women and their children being held in camps in Syria, how many are there and what kind of conditions are they being held in?

MAT TINKLER: Well in the camp I visited, known as Al Roj in north eastern Syria there is over 60 Australians, a dozen or so women and their children and when I was there it was about 45 degrees celsius, so it was baking hot. These camps are in the middle of the Syrian desert. They are actually in the middle of an oil field so you have working oil wells right around the tents that the women and children are living in and all of the gasses and fumes that come out of that. So the conditions are really desperate there and I heard from these women and children how desperate they are to come home.

PATRICIA KARVELAS: Are those camps under threat from Islamic State?

MAT TINKLER: Look, while I was there it was a very calm and stable environment. Clearly there is a large US military presence still in the region. I saw the very large US tanks rolling past while I was there. My journey at least was very straightforward, you know, we drove to the camps, we went through checkpoints, we met with camp officials and then we entered the camps. Our own staff are going in and out of this region every single day so I don't think the security environment poses any barrier whatsoever to Australia repatriating our citizens.

PATRICIA KARVELAS: So what are the women and the children telling you about how they ended up in Syria? How many do you believe went there voluntarily?

MAT TINKLER: Well these stories are really mixed, so some were children when they were taken there by their parents. I met one woman who is 21 now, she was 15 when she was taken by her parents and by the age of 19 she had been married to a fighter from Islamic State and had three children of her own. Other women who have children were also taken as children, some women say they were coerced, some say they were tricked or duped to cross the border. Others went there willingly with their partners. So the stories are varied but what's really certain is that all of the children who are there, and all of the women who were taken as children are innocent. They were children, they had no choice or say in this matter and they deserve our protection and support.

PATRICIA KARVELAS: So you say they deserve our attention and support, we have had a change of Government, what are we understanding about the way that this new Government is responding to this situation?

MAT TINKLER: Well, the new Government has inherited a legacy of inaction for the last three years. At any point along this journey, the previous Government could have taken steps to repatriate Australian citizens, indeed they did that for a group of orphan children back in 2019 so it was political will that was getting in the way in my view. The new Government, when in opposition, was supportive of the case for repatriation. We have briefed new Ministers, we have briefed Department of Foreign Affairs and Home Affairs consistently over the last three years and again since I returned from the camps. We are seeking a change in sentiment we feel like the Government believes that these women and children should be repatriated, but they are also concerned about the perceived complexity and they are also asking for forbearance of time given that they have only just stepped into Government and they need to get their head around these issues.

PATRICIA KARVELAS: You have no doubt seen this reporting in the Australian newspaper of Yusuf Zahab who is believed to have died in January during an Islamic State assault on the prison he was being held in. What more do you know about how common stories like this are?

MAT TINKLER: Well this is the news we have been hearing PK for three years that an innocent Australian child would die in these circumstances if the Australian Government didn't take action to repatriate them to safety so it's devastating news, when I went into the camps a few weeks ago, the very first woman who grabbed me and caught my attention was Yusuf's mother and she was pleading at that stage, in tears, desperate for information about the wellbeing of her son and she had no information at that point. Unfortunately, this is a common practice where as boys reach a certain age, when they go through puberty, the camp administration are separating them from the women and children for what they believe are safety and wellbeing grounds and they

are being placed into adult prisons, without charge, so they are not alleged to have, or nor are they charged or convicted of any crime, but are being held in adult prisons and unfortunately, from those reports, what we are hearing is that poor Yusuf Zahab succumbed to the violence in the prison earlier this year and is no longer with us.

PATRICIA KARVELAS: So, how many people do you believe could represent a security threat if they were brought home?

MAT TINKLER: Look this is the other argument the Australian Government has made all along, one that it was too hard to extract them from what they perceived as an insecure environment in north east Syria, I have demonstrated in the last month that it's easy enough to get into that part of the world and get into the camps and gain access, other governments are doing it every second week at the moment. The other argument was some of these women may have been radicalised, may have committed crimes in the conflict with ISIS and may pose a risk to Australian's back home. What I asked every single woman in the camp when I met them was are you willing to co-operate fully with law enforcement authorities in Australia? They all said yes. Previously, the women have offered to be subject to a terrorism control order which would manage every aspect of their lives, they could wear an ankle bracelet, have their communications monitored, they could be under house arrest, so I think any risk that they may pose can be mitigated by a very sophisticated national security and support architecture that exists here in Australia, that shouldn't come at the cost of innocent lives of Aussie kids who are still stuck in Syria.

PATRICIA KARVELAS: I mentioned the previous Government and the previous Government did take the view that it was too dangerous in Syria to risk sending consular staff over to get people out. Has any of that shifted? What are your conversations with people in high places obviously trying to negotiate these things?

MAT TINKLER: Well this was always a red herring this excuse that it was too difficult to extract. We know that Australia extracted orphan children in 2019, we know that security officials visit these camps from time to time, we know that people like me, you know Mat Tinkler from West Melbourne can go into these camps in north east Syria as well, so I think the new Government understands that this isn't the main barrier to repatriation. Of course, you need to work with the Kurdish administration, the Autonomous Administration of North East Syria, other partners in the region to make sure that these things are planned carefully and that any risks are mitigated in their extraction but I think the Government understands that and they are working through those complexities now.

PATRICIA KARVELAS: And Kurdish Forces have asked all countries to take responsibility for their citizens. As we say, Australia so far has not been doing that, apart from that case you mentioned. Does that make us, in your view a bad global citizen?

MAT TINKLER: Absolutely. The two things you really need to understand here PK is that the Kurdish supported Western allies in the fight against ISIS in the Middle East those years ago, so they were our allies in the military conquest and they have suffered immensely as a result. I met my own staff who have lived in north east Syria for the last decade, they can't leave, they have been displaced, they have been through a war. This is the case for the entire Kurdish population in north east Syria and they are then being asked to provide humanitarian support to foreign nationals who want to go back to their country of origin. So it is really letting down our partners in the region for countries like Australia not to take legal responsibility, moral responsibility, political responsibility for their own citizens in this situation.

PATRICIA KARVELAS: Mat thank you so much for joining us this morning.

MAT TINKLER: Thanks very much for having me.



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The Netherlands Joins in Repatriations from Northeast Syria

Care for Returned Children Is Essential



Letta Tayler

Associate Director, Crisis and Conflict Division

[@lettatayler](#)



A boy lugs water in Roj camp in northeast Syria, May 2022. © 2022 San Saravan for HRW

This week, the [Netherlands](#) took the significant step of repatriating 12 Dutch women and their 28 children from northeast Syria. The Dutch nationals had been unlawfully detained for years in life-threatening and often inhuman conditions in camps for Islamic State (ISIS) suspects and family members.

The Netherlands is the latest of several governments, including [Germany](#) and [Canada](#), to recently bring home or resume repatriations of women and children from the squalid detention camps in northeast Syria. In countries such as the [Netherlands](#) and [France](#), the repatriations took place amid

07/04/2023, 13:05

The Netherlands Joins in Repatriations from Northeast Syria | Human Rights Watch

rulings or looming decisions on the detainees by domestic courts and the European Court of Human Rights. In [Australia](#), the repatriations followed a change in government and the [death](#) of an Australian boy unlawfully detained in a [northeast Syrian prison](#) with thousands of foreign men.

Even if governments have repatriated these nationals reluctantly, they can now set examples for other countries by providing these returnees with the reintegration services they need to rebuild their lives.

The children, most of whom were born in or brought to Syria by their parents, have endured [years of unimaginable suffering](#), first under ISIS, then in the squalid, life-threatening camps guarded by a US-backed regional force. Yet social workers, foster parents, and others tell Human Rights Watch that many previously [repatriated children](#) are [adjusting well](#) to life in their home countries. There is every reason to assume that these newly returned children can, too. When feasible, providing the children with prompt, sustained access to family members is important to helping them adapt.

While ensuring that any repatriated women who committed grave crimes face justice, the authorities should take into account that many women may, like their children, be victims of ISIS. Some may be [survivors of human trafficking](#).

Tens of thousands more foreigners from about 60 countries, most of them children, remain unlawfully detained in northeast Syria. Their countries of origin should promptly ensure that all detainees who wish to return can come home. In the meantime, they should work with the northeast Syrian authorities to immediately improve conditions for detainees who remain.

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21/03/2023, 17:31

Spain starts repatriating families of IS fighters from Syrian camps | Spain | The Guardian



Spain

🕒 This article is more than 2 months old

Spain starts repatriating families of IS fighters from Syrian camps

Two Spanish women and 13 children brought to military airbase near Madrid in 'complex' operation

Sam Jones in Madrid

🐦 @swajones

Wed 11 Jan 2023 02:14 AEDT

Madrid has begun repatriating the Spanish families of [Islamic State](#) fighters from Syrian refugee camps, the government announced on Tuesday, making it the latest country to start bringing its citizens home since the ground war against the militant group ended almost four years ago.

In a statement, the government said two Spanish women and 13 Spanish children had arrived at the Torrejón de Ardoz military airbase near Madrid in the early hours of Tuesday.

The women, who have not been officially named, were immediately taken into custody by the Policía Nacional and are expected to appear at Spain's highest criminal court, the Audiencia Nacional, later this week. The 13 children were put in the care of social services in the Madrid region.

The Audiencia Nacional issued arrest warrants for three Spanish women and a Moroccan woman in September 2019, and those returning could face charges of collaborating with a terrorist organisation.

"With this operation, which stretched on for several months because of its complexity and the risky situation in the Syrian camps, Spain joins its European neighbours - Germany, Belgium, Norway, Ireland, Sweden, Finland and the Netherlands, among others," the statement said. "Spain is thus fulfilling its legal obligations which derive from international treaties."

The repatriations come two months after [El País reported that Spain's socialist-led coalition government had decided to bring home](#) four Spanish women who were the wives or widows of Islamic State fighters, and 16 Spanish children. The Spanish citizens had been held in camps in northern Syria since the militants were [driven out of their last stronghold in the town of Baghuz in March 2019](#).

According to Human Rights Watch (HRW), [more than 42,000 foreigners with links to IS](#) remain in camps and prisons in north-east Syria. HRW said that at least 34 countries had so far repatriated or allowed home more than 6,000 citizens, and that 4,000 of them had returned to neighbouring Iraq.

21/03/2023, 17:31

Spain starts repatriating families of IS fighters from Syrian camps | Spain | The Guardian

In October last year, [a British woman who was repatriated from a Syrian camp](#) with her child became the first adult to be allowed back to the UK since the end of the ground war.

Although the Foreign Office said that British policy regarding those held in [Syria](#) was unchanged, and that it considered requests for help on “a case by case basis”, campaigners said it was a significant first step.

About 60 Britons - including 35 children - are thought to be in indefinite detention in Syria, among them Shamima Begum, who travelled from London to Syria when she was 15. Begum, now 23, is [appealing against the British government's decision to remove her UK citizenship](#) and bar her from returning to the UK.

France, which had long resisted calls to bring home women who left to join IS, changed its approach last year. In July, Paris moved to repatriate 16 women and 35 children, some of them orphans, in chartered planes. On arrival in France, eight women were taken into custody for questioning and the other eight were detained on arrest warrants. The children were placed in the care of social services.

Last September, the [European court of human rights](#) ruled that [France's refusal to repatriate the women and children from Syria was in violation](#) of the right of a person to “enter the territory of the state of which they are a national”.

HRW, which visited camps, prisons and detention centres in north-east Syria in May 2022, found that medical care, clean water, shelter and education and recreation for children there were “grossly inadequate”. It said: “Mothers said they hid their children in their tents to protect them from sexual predators, camp guards, and Isis recruiters and killers.”

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The repatriation involved 32 children and 15 women who will undergo medical and social monitoring, the French foreign ministry says.



The family of alleged ISIL members are detained at the camps in northeastern Syria, which are controlled by the US-backed Syrian Democratic Forces [File: Delil Souleiman/AFP]

24 Jan 2023



France has brought back 47 French nationals from northeastern Syria, the country's foreign ministry said, after a United Nations committee condemned Paris for failing to protect its citizens held in the war-torn country.

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The operation involved 32 children and 15 women, the ministry said in a statement on Tuesday.

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Hundreds of women and children, many of them holding [foreign nationalities](#), have been held in camps in the region since the collapse of ISIL (ISIS) in 2019, although the statement did not specify which camps the repatriated women and children had been held in.

“The minors have been handed to the services in charge of child assistance and will be subjected to medical and social monitoring,” the ministry said, thanking the Kurdish-run local administration in northeastern Syria for its collaboration.

Tuesday marks France’s third large-scale repatriation. In October, [40 children and 15 women were returned](#).

The repatriation comes as human rights campaigners have long urged governments to step up their efforts to bring back their nationals, especially children, from the camps, which were set up to hold the family of alleged ISIL members. Civilians also live in the camps.

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Thousands of people had in the past decade travelled to Syria to join the armed group, many of them bringing their family members to live in ISIL’s self-declared state.

While ISIL has lost all the territory it once controlled in Iraq and Syria, the transfer of foreign ISIL detainees and their family members has become a thorny issue for European countries, with the Kurdish-majority Syrian Democratic Forces warning that it may be forced to abandon the camps.

More than 1,464 children and women have returned since 2019, according to local authorities cited by Save the Children in a [report](#) published in December last year. While the rights group has praised the repatriation effort, it noted that it was not enough, as people trapped in the camps face violence and trauma.

One of the [biggest and most overcrowded camps](#) is al-Hol, where more than two people died every week in 2021, according to Save the Children.



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It also warned that “it would take up to 30 years” to repatriate all the children housed in al-Hol and Roj camps if the rate of repatriation stayed the same as it was in 2021.

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The French government had long refused the mass repatriation of the hundreds of French children detained in the camps, dealing with them on a case-by-case basis that rights groups criticised as deliberately slow.

Last week, a UN committee condemned France for violating the Convention against Torture by refusing to repatriate French women and children from Syria.

“The United Nations Committee against Torture confirms it: our country chooses to abandon children and their mothers in war zones in full awareness of the suffering they endure and the violence to which they are exposed,” read a statement from lawyer Marie Dose, who represents several relatives of French women and children detained in Syria.

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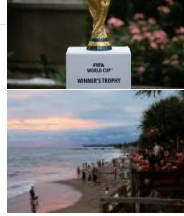


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U.S. Welcomes Kyrgyzstan's Repatriation of Nationals from Northeast Syria

PRESS STATEMENT

NED PRICE, DEPARTMENT SPOKESPERSON

FEBRUARY 20, 2023

Last week, the Government of Kyrgyzstan repatriated 18 women and 41 children from displaced persons camps in northeast Syria. We are grateful to Kyrgyzstan and to our local partners, the Syrian Democratic Forces, for working with us to help resolve the ongoing humanitarian and security challenges presented by al-Hol and Roj camps. ISIS remains a persistent threat to the region, including to the thousands of vulnerable residents in these displaced persons camps, more than half of whom are under the age of 12.

Repatriation is the only durable solution to this urgent humanitarian and security situation. Approximately 10,000 residents of al-Hol and Roj displaced persons camps are from more than 60 countries outside Syria and Iraq. We urge all governments to follow Kyrgyzstan's example and repatriate their nationals, especially women and children.

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Childhood lost: 'sometimes I feel like time has...

By ELLEN WHINNETT

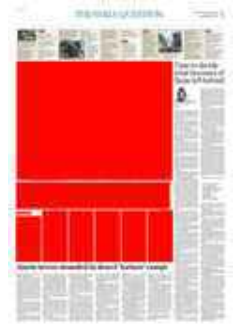
The Weekend Australian

Saturday 16th July 2022

965 words

Page 5 | Section: THE SYRIA QUESTION

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Childhood lost: 'sometimes I feel like time has stopped'

ELLEN WHINNETT

Shayma Assaad was 15 years old when her parents took her and her two little sisters from Sydney to Syria.

There, she found herself living in Raqqa, the Syrian capital of the Islamic State caliphate, where she was "married" to a Sydney man seven years older than her, and had her first baby at the age of 16.

Now 22, she has four children, and has spent the past three years detained in the prison camps housing Islamic State families in the desert in northeastern Syria.

She tries to describe a future for her family, and tells how she struggled to home-school her children in a tent, given she had barely finished Year 9 in high school before she was taken from Australia.

"It's actually really hard," she tells The Weekend Australian in an interview on a 44C day inside the al-Roj camp in Kurdish-controlled Syria, near the Iraqi border.

"Sometimes I feel like time has stopped. Living in a 4 x 4 tent and your child waking up in the night telling you he can't breathe from the heat, that's actually really hard.

"And I can't really let them outside because this is the only sort of shade we have," she says, gesturing to the metre or so of shade cast by the cement wall of a tiny communal kitchen.

The plight of Shayma Assaad is one of the most troubling of the group of women and children held in al-Roj camp. She was just a child herself when she was taken to Syria, and now has four children under seven: sons Alaa, 6, Dawood, 5, Umayr, 4, and little Mariam, 3, who was born in the camp and has never taken a step outside her wire compound.

Her husband, former Sydney tradie Mohammed Noor Masri, is in prison several hours away in Hasakah, where he has been held incommunicado for more than three years.

Her mother Bessima and little sisters Assya, 15, and Maysa, 12, are in the tent next door. All were taken into custody by the Syrian Democratic Forces at Baghouz in March 2019.

Her father Ahmad Assaad is in prison near Hasakah. He has previously claimed he only took the family to Syria in an effort to rescue two of his sons, and that they inadvertently became "stuck" in Islamic State territory.

Ms Assaad, 151cm tall, emotional and in tears as she speaks, told how her youngest child, three-year-old daughter Mariam, was born at the notoriously dangerous al-Hol camp, near Hasakah.

"Mariam was born in the camp, in Hol. She was actually born in a tent, not a hospital. She was born two o'clock in the morning in a tent with no doctor support at all," Ms Assaad said.

"We had a neighbour, she had a bit of experience with delivering children, she was our only hope. We had to actually ask her for help so she came to my rescue."

The Australian families were moved to the safer al-Roj camp two years ago, in the Syrian oilfields in a remote part of the country close to the Iraqi border.

In winter it freezes and snow falls on their tent, which is heated with a kerosene heater. In summer, it routinely hits more than 45C during the day.

"It's actually a risk for them to stay in the tent because fires are caused by electricity," Ms Assaad

said of her children.

"It is also a risk of them going out in the sun and burning. As you can see, my daughter's turned

black from the sun. The days here are actually really long, hard. You have to struggle for water. Every 48 tents there's a fence, as you can see. Schooling is hard as well because children get scared to go to school."

The Australians largely keep their children out of the rudimentary school on the other side of al-Roj camp and try to teach them in their tents.

"It's what we give them, what I teach my sons ... how to read," Ms Assaad said.

"I barely knew. I left school at Year 9. I didn't even start Year 10 when I left school."

Like other occupants of the camp, Ms Assaad gets a two-minute window once a week to send messages to Australia via a WhatsApp messaging service monitored by the camp administration.

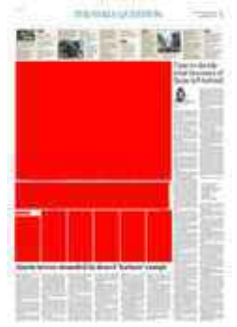
"I would really love to go back to Australia. I want my kids to get a

better education, to live like a normal child. To know what life is beyond the fences," she said.

Asked if she posed a threat to the people of Australia, she replied: "No, of course not!"

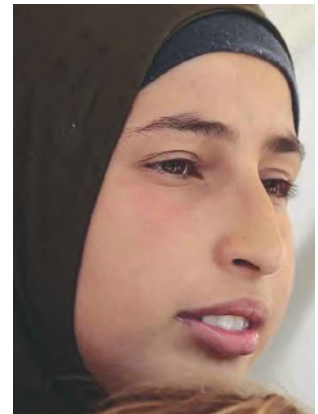
"I want to study again, I want to finish my education. One thing I regret is not finishing, not being able to finish my education. I would have been able to give my kids more than I gave them.

"For them, everything they missed out on, I want them to have. A normal childhood, the education, going to the park, the circus, going to the movie, everything a kid would love to do. Going to a shopping centre and being



able to buy what they want.”

She asked the Australian government to consider that “every day that we spend here, we can never get back. I want them to have mercy on us and the children,” she said.



Shayma Assaad, above, and her family moved to Turkey when two of her brothers joined Islamic State; her husband, Mohammed Noor Masri, below, is in prison in Hasakah; left, Shayma Assaad's children, brothers Alaa, 6, Dawood, 5, (back left and right), Umayr, 4, and sister Mariam, 3, are being held with her in the al-Roj camp in Syria

MAIN PICTURE: ELLEN WHINNETT



Future of jihadi brides and families must be...

The Weekend Australian

Saturday 16th July 2022

827 words

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Future of jihadi brides and families must be resolved

The camps, another cruel Islamic State legacy, pose a security threat

Home Affairs Minister Clare O'Neil is approaching the problem of what should happen to about 60 Australian women and children held in camps for Islamic State families in northeast Syria from the soundest of principles. That is the national security of Australia, she tells The Weekend Australian. The complexity of the cases reported on Saturday raises important challenges for law enforcement and intelligence agencies, and especially for the Albanese government. Unlike a few years ago, when conditions on the ground could have endangered Australians sent to Syria to repatriate those in the camps, the situation has changed. Allied nations such as the US, Germany, The Netherlands, France, Belgium, Finland and Sweden have taken their citizens home or are doing so. The US announced in October 2020 that it had repatriated all of its 27 known citizens in Syria, of which 10 adults (male and female) were charged or convicted of terrorism-related offences. The remaining 17 citizens were children. The history of the world since 9/11 shows this country has no reason to be naive or soft. Australians were among the victims of terrorist attacks around the globe.

But it is time to make decisions. Repatriating about 42 Australian children and 16 women from al-Roj camp near the Iraqi border and a smaller group from the al-Hol camp near Hasakah would be relatively simple compared with what would follow. Back in Australia, all the families would need careful monitoring, which would add to the heavy workloads of security and intelligence

services. Such surveillance is expensive. The government may need to increase ASIO and Australian Federal Police funding.

Lowy Institute nonresident fellow Rodger Shanahan believes the women likely would be brought back together as a "job lot" and would be remanded in prison pending prosecution. The children would be cared for initially by family or go into state care for a time. But what would happen to individual families in the medium to longer term would need to be decided carefully on a case-by-case basis. Some of the women, but not all, would be likely to face terrorism offences. In those cases, the issue of who cared for their children would become vitally important. Much would depend on extended families' attitudes towards extremism and jihad. The children would need to be introduced or reintroduced to Australian society.

It is encouraging that all of the women have agreed to accept terrorism control

orders if returned to Australia. All have been detained without charge for more than three years. Their children range in age from three to 16, with the younger children born in the camps. Some of the children's fathers are in jail in the Middle East for terrorism.

If the youngest children, in particular, are to have any prospect of stable, productive lives, there is a clear argument for getting them to Australia, provided safeguards are enacted. While not always effective, deradicalisation and rehabilitation programs would be vital to their wellbeing

and to our wider society. In the longer term, not rehabilitating the children could sow the seeds of a future terrorist disaster. The US, behind the scenes, wants Australia and other nations to act. It is keen to empty the camps – including the al-Hol camp, which houses 60,000 women and children, and is controlled by Islamic State – fearing another security crisis could emerge in such a hothouse environment.

Australians will never forget the lurid brutality of Islamic State, including that of Australian jihadists. Many Australians understandably will balk at the prospect of these women and their children returning. It is a question of national responsibility. Those who fled Australia for Islamic State, or their parents, repudiated our nation's values. But Australia has the chance to assert the strength of those values now by doing the decent thing and taking these citizens back, albeit with a firm hand, and accepting their children, who are innocent of wrongdoing. Some of the women have had their citizenship stripped, an issue likely to be tested in the High Court.

Some are more culpable than others. One woman, Shayma Assaad, 22, was 15 and just out of year 9 when she and her younger sisters were taken to Syria by their parents. She married an alleged Islamic State supporter from Sydney and now has four children, the youngest of whom has never been beyond the camp wire. Like many, the family has languished for years in a tent, where she homeschools the children to the best of her ability, in 45C summers and freezing winters. Her husband and her father are both in jail. She wants to return to Australia. Provided national security is safeguarded, that opportunity could be a turning point for such families. It even could head off a looming security threat to the world in Syria. But long-term vigilance and a hard-headed approach in Australia would be essential.

Islamic fate: the lost heirs of Aussie terror

By ELLEN WHINNETT

The Weekend Australian

Saturday 16th July 2022

2108 words

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Islamic fate: the lost heirs of Aussie terror

ELLEN WHINNETT

EXCLUSIVE

AL-ROJ CAMP, SYRIA

A push is under way to repatriate dozens of Australian women and children held in camps for Islamic State families in northeast Syria, amid fears their indefinite detention is leading to a humanitarian and national security disaster.

The Kurdish Autonomous Administration of North and East Syria is demanding the Albanese government take responsibility for about 60 women and children in Syria, insisting they be sent to Australia.

“The problem is the political decision. If the Australian government takes this decision, everything will be solved,” Foreign Minister Abdulkarim Omar said.

The Weekend Australian met families in Syria, including Mariam, 3, and Abdul Rahman, 4, two of five Australian children born in the camps, and have lived in tents inside wire compounds for the past three years. Australia has struggled to resolve one of the most troubling legacies of Islamic State’s reign of terror.

Mariam’s mother is Shayma Assaad, a former Sydney schoolgirl who was taken to Syria by her parents when she was just 15, married to an alleged Islamic State supporter, Sydney tradie Mohammad Noor Masri, and had her first baby at 16. She now has four child-

ren and Mariam, her youngest, was born in the camp in 2019.

Abdul Rahman is the son of Sydney woman Nesrine Zahab and notorious Islamic State fighter Ahmed Merhi, who is in jail in Baghdad. He was born in the camps after his mother escaped from Islamic State when she was pregnant in December 2017, but she says she was prisoner-swapped back into Islamic State hands a few months later when Abdul Rahman was just 29 days old.

She returned to the camps with the other Australians and their families following the fall of Islamic State at Baghouz in March 2019.

With advanced democracies such as Germany, The Netherlands, the US and Finland now repatriating their citizens, pressure is building on the Albanese government to resolve the politically difficult problem it inherited from the Coalition government. France repatriated 16 women and 35 children last month, while Belgium took six women and 16 children from al-Roj camp on the day

The Weekend Australian visited the camp.

There are around 42 Australian children and 16 women in al-Roj camp near the Iraqi border, and another handful of women and children in al-Hol camp, near Hasakah. All the women have been detained without charge for more than three years.

The children range in age from three to 16 years. Some of the

women have had their Australian citizenship stripped in a decision likely to be tested in the High Court, off the back of a similar case involving a man last month.

The Kurdish autonomous administration, security officials, US government and aid groups are pleading for the foreign nationals to be repatriated, saying their ongoing detention is a human rights disaster and a security ticking time bomb.

While the Coalition government refused to bring the families home, claiming it was too dangerous for officials to go to Syria, it’s understood consideration is being given by Labor to potentially repatriating the Australians in small family groups.

While the decision is ultimately a political one, state and federal law enforcement and national security and intelligence agencies are giving thought to how to manage and fund the enormous surveillance effort required to monitor the group, sometimes for years, after they were returned.

It’s believed that of the women waiting to be brought home, fewer than 10 would likely be charged with terrorism offences.

Those who do face the courts would likely be charged with entering a proscribed area, namely the Syrian city of Raqqa, which became Islamic State’s de facto capital in 2014.

And while the crime, which existed only from late 2014-2017,



ELLEN WHINNETT

Mariam, 3, and Abdul Rahman, 4, are among children living in the al-Roj detention camp in northeastern Syria



| THE SYRIA QUESTION | |
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Islamic fate: calls growing for return of heirs of

Continued from Page 1

carries a maximum penalty of 10 years' jail, most of the women seem unlikely to be in line for a maximum penalty and would be released into the community on terrorism control orders, which they have each voluntarily agreed to submit to.

The vast majority of the women and children are also sick, deeply traumatised and will require support from state education, housing, welfare and health agencies to rebuild their lives in Australia. Some may still hold extremist views, or come under pressure from relatives who do.

Rodger Shanahan, nonresident fellow at the Lowy Institute, said he believed the women would likely be brought back together as a "job lot" and be remanded in prison pending prosecution. He said children would be cared for in the first instance by family or, more likely, go into state care for a period of time. "In due course the women would face court and if they're found guilty, given whatever sentence and then at the end of that sentence likely go on a control order for one, perhaps two years," he said.

Children would undergo a period of deradicalisation and rehabilitation into society, while some children born in Syria would have to be introduced into Australia society.

Dr Shanahan said it was too early to tell how successful overseas repatriations had been

because many of the women were still in jail, and deradicalisation would take years. He said control orders were an effective way of monitoring compliance. "At some point you have to bring them back. When is the right time? The right time would be when you've got arrest warrants or sufficient evidence against everybody who is detained overseas, all the adults who are detained overseas.

"They are Australia's problem at the end of the day and the children, in my opinion, are a much more urgent problem than the adults because you need to get the deradicalisation program started early to give them the best possible opportunity to grow up in some kind of normalised environment."

The new Home Affairs Minister, Clare O'Neil, said: "The former government sat on this problem for the best part of a decade. Our approach will be driven by one single factor: the national security of Australia."

Dr Omar said his office stood ready to help Australia take its citizens home. He revealed that in the absence of formal discussions with Australia, he had established a back-channel with our embassy in Lebanon for preliminary discussions.

"This problem is an international problem for the international community so we want each country to repatriate their citizens," he said. "We are ready to cooperate with them and we

together can solve this problem.

"We have this conversation and meeting between us and the ambassador of Australia in Lebanon about the situation in the area and we talk about the situation with the Australian people."

In an interview in his office in Qamishli, near the Turkish border, Dr Omar dismissed claims by former prime minister Scott Morrison and home affairs minister Peter Dutton that it was too dangerous to travel to the region to bring its citizens home. "You are here; did you see anything dangerous for you here?" he asked.

"It will be easy to repatriate. The practical things would be so easy, the procedures. We are ready

to co-operate with your government as we co-operate with other governments in this situation. We will be so flexible and ... helpful."

Australia's most important ally, the US, has repatriated all of its citizens and is strongly urging Australia to do the same, offering its substantial military assets to assist.

The Home Affairs Department said "repatriation assistance offered by the US or any other actor would not negate the need for Australian officials to be present".

"The government is of course concerned about Australian women and children in the internally displaced persons' camps in northeast Syria," a spokesperson said. "Repatriations require a whole-of-government approach and the balancing of risks ... As this matter also raises national security considerations and other sensitive

Aussie terror stranded in desert 'torture' camps

matters, it would not be appropriate to comment further."

The comments are markedly different in tone to the Coalition's continued assertion that it was too dangerous. Two groups of Australian orphans were repatriated in

2019, and ASIO and DFAT officials quietly travelled in and out of northeast Syria at the same time as Mr Morrison and Mr Dutton were insisting "not one" life would be put at risk to assist the women and children.

While Labor is holding firm on

Australia's existing border control and national security settings, some in the government are deeply uncomfortable with the plight of the children and some of the women in Syria.

The youngest Australian child



is little Yahya, 3, the son of Kirsty Rosse-Emille, who is also in al-Roj.

His father is Nabil Nadmiry, a much older Moroccan-Australian Islamic State supporter who has had his Australian citizenship revoked. He is in jail near Hasakah.

Layla, 3, is the daughter of Zeinab Ahmed, also in al-Roj, while another little boy, Hamza, 3, lives with his mother, Rayyan Hamdoush, in the notorious al-Hol camp. The three-year-olds were all born in al-Hol after the fall of Baghouz.

Abdul Raham was also born in al-Hol, but taken back into Islamic State territory when Ms Zahab was prisoner-swapped a month after he was born. She returned to the camps following the fall of Baghouz and Abdul Rahman turned one in the camps, and has remained there.

UN Special Rapporteur on Counter Terrorism and Human Rights, Fionnuala Ni Aolain, said it was time for Australia to make a decision about repatriation.

"Australia is one of the countries with the most significant capacity to repatriate its nationals. It has an extraordinary wealth of resources both in terms of its judicial systems, its social welfare and child welfare systems," she said from Geneva.

"And, uniquely, it has the support of the families whose nationals are currently located in northeast Syria, to help the government and the state officials engage in a successful repatriation/reintegration program. Australia

is behind the curve and I think that's deeply regrettable for a country that is a leader on global counter-terrorism issues as well as a leader on humane and human rights-compliant foreign policies.

This failure to repatriate really places Australia at the outskirts of international practice by democracies and that's not where Australia should be."

Professor Ni Aolain likened the indefinite detention of the women and children to both the US off-shore prison, Guantanamo Bay, in Cuba, and the detention of up to one million Uighur minority peoples in Xinjiang, China.

She said the conditions in al-Hol and al-Roj camps met the legal threshold for torture, and the camps were places of arbitrary mass detention.

"One of the really unfortunate anomalies of this case is we have created a category which has no legal basis in international law – association. Meaning these women and their children ... by virtue of their presumed or actual affiliation with a man or a family member who is deemed to be a member of a terrorist group, are put into this category that, by virtue of this association, strips them of all of their legal rights," she said.

"And we don't really have a precedent ... Classic international law, which Australia defends in every venue it can, defines rights of refugees, defines in situations of conflict the distinction between civilians and combatants with par-

ticular rules and obligations applying to those categories."

Save the Children Australia has been lobbying for years for Australia to repatriate the families.

CEO Mat Tinkler said it was "painfully clear" the children were suffering damage to their well-being and development.

"We are talking about innocent children, who are Australian citizens, who have endured years of suffering in horrendous conditions in these camps, despite the best efforts of the camp administration," he said.

"Though Labor inherited a legacy of inaction on this issue, there are no practical or legal barriers preventing the repatriations.

"We've seen dozens of children and their mothers safely returned to other countries like France, Germany and Sweden. Australia has a moral and legal obligation to follow suit. We appreciate this is a complex scenario for a new government, but these innocent children don't have time to wait. We need the government to step up and take action without delay."

Save the Children contributed to The Australian's travel costs for this report.

'They are Australia's problem and the children ... are a much more urgent problem than the adults'

RODGER SHANAHAN
LOWY INSTITUTE

LIFE & DEATH IN 'CAMP TERROR'

By ELLEN WHINNETT

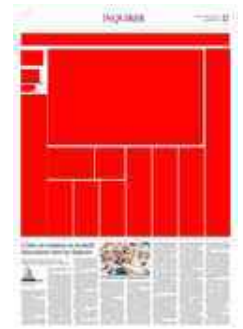
The Weekend Australian

Saturday 16th July 2022

2080 words

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1295cm on the page



LIFE & DEATH IN 'CAMP TERROR'



ELLEN WHINNETT

HASAKAH, SYRIA

The world has abandoned these families to the evil clutches of Islamic State

Terrorist group Islamic State wants to establish a new caliphate on Kurdish land in Syria, and the teeming al-Hol detention camp, home to 60,000 women and children, is at the heart of its ambitions.

The jihadist group once controlled territory across Iraq and Syria, but was defeated militarily in March 2019, when its final redoubt, the village of Baghouz on the Euphrates River in eastern Syria, was retaken by Kurdish fighters.

But it has spent the past three years regrouping and recruiting, and Kurdish officials now fear it plans to form a new caliphate, based around the restive Arab majority city of Hasakah.

The al-Hol detention camp, a squalid, dangerous three-square-kilometre area a short distance out of Hasakah, is acting as a honey pot, with Islamic State seeking to take control and break out the thousands of Islamic State adherents who live there.

Western officials do not believe Islamic State is yet ready to relaunch a caliphate, similar to the one it once controlled encompassing major cities in Iraq and Syria including Mosul and Raqqa. However, the group managed to carry out a sophisticated attack on

the al-Sina'a prison in Hasakah in January which claimed around 500 lives and was only quelled with the help of American air strikes.

The attack, using suicide bombers, a truck bomb and 300 fighters who plotted with some of the 5000 Islamic State prisoners held in indefinite detention by the Syrian Democratic Forces, showed that Islamic State had significant capacity to act in a co-ordinated manner, with access to weapons, explosives and a large group of committed fighters.

In the days after the attack, SDF officials told US broadcaster Voice of America the operation was part of a larger plot by Islamic State to take and hold territory.

"They wanted to launch a large-scale attack on the area to spread once again their terrorism," the SDF was quoted as telling Voice of America, adding the area was to be called the "Second Islamic State".

Kurdish Autonomous Administration of North and East Syria Foreign Minister Abdulkarim Omar said Turkish military operations in northwest Syria would displace hundreds of thousands of people and divert the SDF away from Hasakah.

"Our military section, like SDF, will be busy to protect their people and protect their territory and it will be a chance for ISIS to become active and exist again and will become stronger so they will announce again a caliphate," he told The Weekend Australian.

Dr Omar said the SDF had intelligence that Islamic State was planning to attack al-Hol camp to take control of it.

"The aim of attacking this prison was to liberate all ISIS that are in the prison. After that, they control Hasakah city, after that they will go to the al-Hol camp also, control it, and announce once again their caliphate in Hasakah," he said.

Australian expert Dr Haroro J. Ingram, a senior research fellow at

George Washington University's Program on Extremism, said he believed Islamic State was "a while away" from being able to establish the type of full-scale control of cities it had in 2014-15.

But he also said it was wrong to use the height of its caliphate as the benchmark for whether Islamic State should be taken seriously.

"The Islamic State movement transitioned to a global insurgency in 2018, and this is evident not only in the way it tries to present itself in its propaganda but its operational activities," he said, adding that the group posed a "persistent threat in Syria, especially in the north".

"The fact that its senior leaders have been found in the north suggests, I suspect, that the Islamic State has a degree of comfort/confidence in these areas."

He said the detention camps and the prisons holding Islamic State members would always be a target for Islamic State propaganda and operations.

"Prisons played an important role in the folklore around the generation of Islamic State leaders that helped the group rebuild after its near decimation in 2007-08.

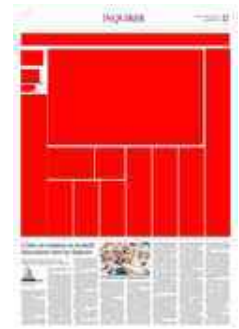
"ISIS propaganda targeting detention facilities will continue to leverage those narratives of struggle and revenge reinforced by 'breaking the walls' operations."

Ingram said he was concerned about the impact of Turkish operations across Syria and Iraq.

"ISIS thrives on chaos and will look to exploit opportunities that emerge due to distracted/fighting adversaries."

The al-Hol camp remains a deep concern for Kurdish and US officials, who are lobbying for foreign countries to repatriate their citizens. Numerous women have escaped, including Australian jihadi bride Zehra Duman, who made it to Turkey, where she lives in the community with her children.

Apart from being an irresistible



draw for Islamic State members, many of whom have families detained inside, the camp also allows the group to fundraise, and to money-launder and obscure the source of their funding.

A senior researcher at West Point's Combating Terrorism Center, Audrey Alexander, detailed how extremists were using the camps for financial gain.

"Put simply, detention facilities like Al-Hol and Roj camps pose a security threat because they serve as financial hubs ripe for exploitation by violent extremists, designated terrorist groups, criminal networks, and corrupt officials," Alexander wrote in her September report *Cash Camps*.

"Despite the efforts of the Syrian Democratic Forces and the Global Coalition to Defeat ISIS, evidence suggests that the camps are a growing asset for the Islamic State because they serve as hubs to draw and move funds, build ideological and financial support for the cause, and establish channels that benefit the organisation.

"Violent extremist groups and criminal networks, namely but not exclusively those associated with the Islamic State, use the camps holding Islamic State detainees for numerous activities involving the movement, use, and obfuscation of funds," she wrote.

Alexander noted Islamic State propaganda had directed attention toward the plight of Islamic State detainees in the prisons and camps.

"Al-Hol is especially useful to violent extremist groups because of its security vulnerabilities, population, and its formal and informal economy and financial infrastructure," she wrote.

While the borders of al-Hol are controlled by the Kurdish SDF, Islamic State controls the interior, running the schools, and meting out murderous justice to those deemed to have breached its rules. Citizens of 57 countries live there, including families of foreign fighters stuck in limbo because their home countries refuse to repatriate them. The women are forced to

wear face-covering niqabs, and often hide their identities, moving between tents and giving false names.

Around 27,000 Iraqi detainees are held there, along with up to 19,000 Syrians and 12,000 mainly women and children from third countries. A handful of Australians are there, although the majority were moved to the safer al-Roj camp near the Iraqi border two years ago.

Around 100 people have been murdered in the camp in the past 18 months, according to the UN, including two women killed in May. The Syrian Democratic Forces intelligence unit, Asayish, reported an Iraqi woman was found handcuffed and decapitated.

The camp was built to house Iraqi refugees fleeing conflict in 1991, but was expanded and became a detention camp when the SDF was inundated with tens of thousands of women and children following the fall of Baghouz.

The joint executive director of international legal charity Reprieve, Maya Foa, said children languishing in camps could fall prey to Islamic State.

She said the US had been leading the way on repatriations because it was the right thing to do and "the sensible thing to do from a security perspective".

"Australia and the UK are really among a small and diminishing number of countries that are holding out," Foa said.

"In terms of why they are doing, all I can say is it's a failing policy, a really reckless and irresponsible policy, governed perhaps by fear of headlines rather than proper politics, the interests of the security of the country.

"What we know from the experts – and this is what's driving the countries that are repatriating – it is much safer to repatriate these families and men from northeast Syria than leave them here.

"The children are getting older, they're getting more distressed. There are more rather than fewer of these – it's a growing population,

growing in terms of the ages but also the numbers, so it's really unthinkable that the international community would be abandoning the Kurds, who don't have huge amounts of resources to deal with this.

"They want to be focusing their efforts elsewhere, they have their own security to worry about, why should they be hosting the world's prisons for all of the people who, without charge or trial, are perceived to be affiliated with Islamic State?

"It's completely unsustainable and the Kurds know that and they are living with this community of people and they are calling for the international community to repatriate these families because they know it's the right thing to do.

"And if anybody knows about the risk, it's them. If they are saying that these people should go home, either be prosecuted or could freely live among us.

"They should know and the other countries should take their lead ... and do what's responsible."

The UN's Special Rapporteur for Counter Terrorism and Human Rights Professor Fionnuala Ni Aolain said "citizen-dumping" practices such as that applied by Australia and other countries was deeply problematic.

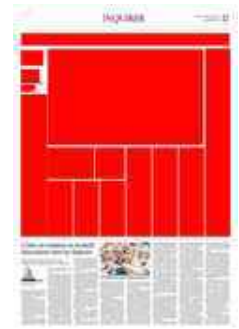
"In this case, a non-state actor (the Kurdish administration), which has no rights or legitimacy under international law, is given all of the responsibility – including the security headache of managing a population which they are unable to manage," she said.

"The Kurds have been very clear about this. They do not want these nationals, these nationals are a security risk because, as the attack on al-Hasakah prison in January (shows), it's like honey to bees.

"We have the spectre of ongoing Islamic State attacks to liberate or have access to these individuals."

Ni Aolain said as long as the camps and prisons continued to exist, they would pose a "massive security risk".

"I sent a letter to the Australian



government in respect of 56 Australians, women and children, who are currently held in the camps, making a really clear case around Australia's obligation to repatriate them," she said.

"I have not had a formal response from the government yet."

She was hopeful that the change of government under Anthony Albanese would "set a new tone" on Australia's foreign policy and international law obligations.

"Many governments find themselves in a difficult place on this question," she said. "Some of that is because of the perceptions by the general public. These are not always a sympathetic group of nationals to bring home. There are fears for the security of the country

with bringing home people who in the public's eye, or in the media's eyes, have been played as dangerous, radical terrorists or (have) associations with terrorism.

"What I would say is the countries that have successfully repatriated their nationals – and I have visited a number of those countries as Special Rapporteur – one of the key elements of successful repatriation is for governments to clearly articulate first of all that their child nationals are victims of terrorism.

"These children did not choose to be born to either their parents, or in northeast Syria. They are victims of terrorism and deserve to be treated as victims of terrorism."

Home Affairs Minister Clare O'Neil told The Weekend Australian the Albanese government's

approach would be driven by "one single factor – the national security of Australia".

The Department of Home Affairs said it was "of course concerned about Australian women and children" in the camps and was keeping the matter under review.

Omar said the best solution was for each country to take their citizens back. "In this case, you will cut the road of danger," he said.

"Unfortunately ... after we defeated ISIS militarily, the international community, they turned their back and the ISIS prisoners and ISIS (families) are left with us to solve the problem.

"We cannot solve this alone. If they don't help us, we can't stand alone in front of this problem."



A little girl faces a grim future at the Kurdish-run al-Hol Islamic State prison camp in Syria, below left, which holds 60,000 women and children; below right, the Foreign Minister of the Kurdish Autonomous Administration of North and East Syria, Abdulkarim Omar

AFP, ELLEN WHINNETT



Two of the saddest little girls you'll meet

By ELLEN WHINNETT

The Australian

Monday 18th July 2022

516 words

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1599cm on the page



Two of the saddest little girls you'll meet

ELLEN WHINNETT

They're two of the saddest little girls you'll ever meet.

For the past seven years, Assya and Maysa Assaad have lived either under the rule of Islamic State, or locked in a secure camp in the desert of northeastern Syria.

Brought to Syria by their parents when they were just eight and five, their childhood in Sydney is a fading memory, and their world has shrunk to the 48 tents that make up their compound in the new annex of the al-Roj camp for Islamic State families, near the Iraqi border.

All they want to do is go to school.

In a handwritten letter addressed to "Dear the Australian Government", Maysa wrote about Cookie, the stray cat she had adopted in the camp, and said she wished she was at school making friends. Instead, she wrote that she "sit(s) in the tent the whole day with my cat".

"All I want is for me and my mum and my sisters to come back home," she wrote.

"I want to ... forget about the camp.

"Please take me out of here."

The Australian spoke to Assya

and Maysa in the camp at the request of their mother, Bessima, who lives with them in their UN tent next door to the girls' older sister, Shayma, and Shayma's four young children.

Asked how they were, Assya replied in an Australian accent: "I'm sick. I probably have diabetes and I have a back problem." She told how she loses feeling in her hands and feet and is believed to have nerve damage at the base of her spine.

Maysa also has an unknown health complaint that causes her to lose consciousness. Bessima described how Maysa once collapsed unconscious on the ground.

"Once we were walking to the shops and she just collapsed to the floor," she said.

"We started screaming for help and no one came. Around her lips went blue and it took her a while to regain consciousness again. I had to hold her and run with her all the way to the gate, there was no medical aid or anything for her."

The girls' father Ahmad Assaad is in prison in Hasakah, several hours away, and has had no contact with the family since they all surrendered to Syrian Democratic Forces soldiers in Baghouz, Islamic State's final piece of territory, in

March 2019. He has claimed he brought the family to Syria to rescue his sons, and inadvertently became "stuck" in IS territory.

Their two older brothers, who were the first in the family to come to Syria, have both been killed.

Bessima said the family wanted to return to Sydney. She struggled to get by in the camp due to a prolapsed uterus that made it difficult for her to carry water and other heavy objects.

She urged Australians to consider the plight of her daughters and allow the family to return.



ELLEN WHINNETT

Assya, 15, left, and her sister Maysa Assaad



التاريخ: / / :٤٩٠
dear the Australian government my
name is maysa Assaad I am 12
years old I have a little cat that
looks like a cookie so I named
her cookies she is very playfull she
keeps me company when I have no
one to play with I give her the

Part of the letter from Maysa Assaad to the federal government

Plea for kids to have 'chance at real future'

By ELLEN WHINNETT

The Australian

Monday 18th July 2022

709 words

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Plea for kids to have 'chance at real future'

ELLEN WHINNETT

Mariam Raad wants what most parents want: stability and an education for her children, and a job for herself.

But as a widow with four children living in a 4mx4m tent in a prison camp in northeast Syria, her future is precarious, and relies on the political will of the federal government

Ms Raad is the widow of Muhammad Zahab, the former Sydney maths teacher who became a prolific Islamic State recruiter and is responsible for luring dozens of his family members to Syria.

Five of the 16 Australian women remaining in al-Roj camp near the Iraqi border are his relatives and several dozen children, including the four he had with his teenage bride, sons Dujana, 11, and Haritha, 10, and daughters JuJu, 7, and Sumaya, 5.

The boys were born in Australia and the girls in Syria. Their father, who became a senior figure in Islamic State, was killed in a targeted air strike in 2018.

Ms Raad, now 31, has been detained in al-Hol and al-Roj camps for more than three years.

Little Sumaya appears to have developmental delays although has received no diagnosis or medical reason for why she didn't crawl until she was 15 months old, and

only took her first steps at three.

Both boys face the likelihood of being removed from their mother and placed in a harsh juvenile prison when they reach their teens, with no further contact with their family.

"I want to go back (to Australia)," Ms Raad said.

"I want my kids to have a chance at a real future. I want them to start their education and I want to know what's wrong with my daughter.

"I'm stressed. It's not easy being a single mother with four children in a camp. The boys are growing older and I go to sleep every night imagining they will be taken away from me."

Sumaya struggles with her balance, and Ms Raad spends her days on a fruitless campaign to get rid of the white rocks and gravel around their tents which make the ground unstable.

"The rocks are an issue for my youngest daughter because she still can't walk properly, she keeps on falling and look, she always has bruises everywhere, even on her face. One time she was even bleeding," she said.

Ms Raad said she has never had contact with Australian officials.

She said she was just focused on her routines at the camps.

"Wake up in the morning and if there's water, we have to fill up with water. If it's our shopping day

we have to go and get everything we need," she said, detailing the visit to the official supermarket within the camp walls.

"It is a long walk to bring bulk stuff back, like the water we have to bring. Also you have to make sure the tent is in good condition because the tent, from the weather conditions it's ripping apart. I'm

staying in the same tent for two years now. I'm supposed to get one every six months but it's been two years."

The tents have electric wiring to power a small bar-sized fridge and kerosene heaters.

Fire is a big risk, and the women are too afraid to have heaters, fans or portable air conditioners if they are not in the tents to supervise their children.

"It is very dangerous. If it's on you have to be in the tent 24/7, you can't leave it. There has been fires from the kerosene."

Ms Raad was 23 or 24 when she moved from Australia to Syria with her husband.

She said she posed no threat to Australia.

"My goal if I go back to Australia, I want to be a working mother and I want my kids to have an education, I want to put my kids in schools, to be educated, and to be smart. I really do want my daughter to have a diagnosis because if there is something wrong with her, I want to catch it before it's too late."



ELLEN WHINNETT

Dujana, 11, and Haritha, 10, with sisters JuJu, 7 and Sumaya, 5, are being held in al-Roj camp with their mother Mariam Raad

THE AUSTRALIAN

'Give them a childhood': mum

Pressure is mounting on the Albanese

government to deal with the problem it inherited from the Coalition and repatriate Australian citizens from Syria.

By ELLEN WHINNETT

From [Inquirer](#) July 20, 2022
7 MINUTE READ •  215

Aisha is nine years old. She is a bright, bubbly little girl who was born in Sydney to Australian parents.

Sitting next to her four-year-old sister, in jeans and with neat plaits in her hair, it is hard to comprehend the five-year age difference. Aisha's frame is tiny. She struggles to eat due to problems with her teeth, and her nutrition is compromised. There is no chance of getting the problems fixed in al-Roj camp, where she is detained along with her mother, sister and six-year-old brother.

Her mother is Mariam Dabboussy, who went to Syria with her husband, Khaled Zahab, when Aisha was 18 months old, and has been the public face of the fight to repatriate the group of Australian women and their children held without charge in the prison camps set up to detain the families of Islamic State in northeast Syria.

"I'm 31," Ms Dabboussy said.

"I think from memory I was 23 or 24 (when I left Australia). It's been for what feels like forever."

Aisha has spent a third of her life in prison camps. Her siblings, whom their mother has chosen not to publicly identify, were born in Syria and barely remember a life outside the camps.

“Every day is a day lost,” Ms Dabboussy said of the time the families were detained.

She said it would have been preferable for the Australian government to bring the families back years ago, while the children were young, and that all the women had voluntarily offered to submit to terrorism control orders, to ensure the Australian public felt comfortable they posed no threat.

THE SYRIA QUESTION



‘Give them a childhood’: mum

Pressure is mounting on the Albanese government to deal with the problem it inherited from the Coalition and repatriate Australian citizens from Syria.



‘I didn’t do anything wrong. I want to come back’

An Australian member of Islamic State locked up in a Syrian prison is begging for forgiveness from his parents and wants to come home, saying he poses no threat.



ISIS families stranded by domestic laws

Government is not legally required to bring ISIS families home, but should do so to meet international obligations, law expert says

“The kids didn’t even need to understand what was happening. It’s been three years and some of them have grown up and they’re asking questions they didn’t need to ask,” she said.

“It would have just been a lot simpler reintegration for the kids.

“The adrenalin now, it hasn’t ended. We are constantly feeling threatened by things

around us.

“This camp was not built to house people for two years. The electrical wires are indoor wires. They’re not meant to be outside.

“The Kurdish administration are under pressure themselves and they’re asking and it’s falling on deaf ears. They’re asking for help from the countries to take their people and it’s just falling on deaf ears.”

Seeking a restart

Ms Dabboussy and her three children are among 16 Australian women and 42 children currently detained in al-Roj camp. They have been there for two years, after being moved from al-Hol, the teeming detention centre near the city of Hasakah, which, at its peak, held 77,000 women and children.

The majority of the detainees in al-Hol and al-Roj are families who were taken into custody by the Kurdish Syrian Democratic Forces following the fall of Islamic State’s final holdout at Baghouz, in March 2019.

The women and children, and around a dozen Australian men held in prisons in Hasakah, have now been detained for three years without charge.

A 17-year-old Sydney boy, Yusuf Zahab, who was taken into custody at the age of just 14, died this year in prison.

Pressure is mounting on the Albanese government to deal with the problem it inherited from the Morrison government, and repatriate its citizens.

Ms Dabboussy, who was forced to remarry twice after Khaled Zahab was killed in late 2015, has spoken of her shock and disgust at the actions of her brother-in-law, the infamous Islamic State recruiter Muhammad Zahab, who, she says, tricked her late husband and other relatives into taking her and other family members into

Syria.

With her father, Kamalle Dabboussy, she has advocated for the women to be returned, and said the entire group of about 60 women and children was desperate to be repatriated.

She said the group posed no threat to Australians, and just wanted to restart lives and provide an education and safe childhood for the children.

“I know that the girls have agreed to control orders and that was them reaching out their hands to ensure that people felt comfortable for their safety, and for themselves,” she said.

“We are actually trying really hard to get out of here. That’s an indication in itself, for the people involved in our cases, to know that we are willing to do what’s needed (to get home).”

Ms Dabboussy said the youngest Australian child in the camp was three and the oldest was 16.

Ready to work

Prior to marrying into the Zahab family, Ms Dabboussy was not a particularly religious woman – she didn’t wear a hijab and she worked in migrant services in Sydney.

She hopes one day to be able to re-enter the workforce in Australia, probably working with refugees and migrants.

“My short-term (aim) is I really need to make up for lost time for my kids,” she said.

“I think as Australians we have high expectation of what we think our kids are able to do. So we have to work for the kids, work on getting them settled, and from

there, wherever life takes us.

“(I) definitely can’t do nothing at all, I have to do something. I’m looking forward to getting back into something meaningful.

“What I would like to do is maybe see what community programs are available.

“I worked with migrants and refugees before, so now that I’ve been here I really, really understand what kind of life they might have seen before.

“So if I can use those skills in the field, understanding what they faced, where they came from before.

“Good work experience, good placement! It’s a nightmare but a good placement,” she joked about her three years detained in the camps.

‘Rips me up inside’

Ms Dabboussy is cognisant of the challenges her children will face in Australia with their education.

“The older ones need a little bit of help. But we literally have to use cardboard, pieces of cardboard, ripping up boxes because we don’t have access to pens and paper. Just literally utilising whatever we can. Reading off the TV if there’s teletext, trying to pause that whatever it is,” she said.

She is saddened that her children missed out on their early primary school years.

“One of the things that rips me up inside is primary school is meant to be the best time of your life.

“Doesn’t matter if you’ve come from a refugee family, if you’re rich, if you’re poor, if your parents are divorced or together.

“It doesn’t matter where you’ve come from, you get to leave everything behind you and you go to school and it’s literally the best memories you have.

“Our kids have never had the chance to experience what arts and crafts is. Or run through a field of grass and played a game of sport on a field of grass. They don’t even know what it’s like to feel the sand between their toes.

“My son watching TV sometimes will see the jungle or he’ll see a beach and he gets really frustrated and he asks ‘Mum, is the sea real? Is it actually real or make--believe like in the movies that we’re watching?’. You die a little bit inside and I explain to him this is actually real and he gets choked up and says ‘Why can’t I go there?’. He’s very interested in nature, he wants to go, he sees BBC Earth-type shows and he wants to go and see a jungle.

“It’s really ... you die a little inside, every time. Every time.”

Ms Dabboussy said the long period of detention had proven impossible for some families, who were no longer able to remit money to the camps to provide income support for the women and children inside.

“It’s been so long, so long.”

She made the point that the Australians were not refugees, and the UN should not have to support them and the others detained in the camps.

“With the other crises that are happening in the world, they’re funding these camps of people who shouldn’t really be here. We don’t need to be. We are not refugees,” she said.

“We are taking the rights of other people.

“There’s famines all across the world.”

Keeping a low profile

Each compound in al-Roj camp has 48 tents. Ten of the tents in one row of the new annex are filled by Australians.

The camp is of a reasonable standard compared to some refugee camps, although water is scarce, packs of aggressive stray dogs roam the camp, and its location in the middle of the oilfields fills the air with pollution and black dust. A working derrick even pumps oil in the middle of the camp. The camp has heavy security and is safe.

By comparison, while the Syrian Democratic Forces controlled the perimeter of al-Hol camp, Islamic State ruled its interior, and the women there were required to wear black hijabs and face-covering niqabs. Such coverings are banned at al-Roj, yet all the Australian women still wear headscarves and cover their faces with surgical masks.

“I have a saying, when in Rome, do what the people are doing. We just like to keep a low profile. Like a uniform,” Ms Dabboussy said.

She said the children occasionally went to the school on site, but mainly to learn the discipline of sitting in class and formal lessons. Most of their teaching happens in English in their tents.

Ms Dabboussy said the children’s best chance of an education was in Australia.

“The thing that strikes a chord is primary school ... just let them be kids, give them a chance to have a childhood. Let them be kids.”

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Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic:

Legal Analysis

1. The Special Rapporteur on the promotion and protection of human rights while countering terrorism and the Special Rapporteur on extrajudicial, summary or arbitrary executions take this opportunity to set out their views, a significant portion of which are already in the public domain, concerning the legal status of children and their mothers who are located in camps, prisons, or elsewhere in the northern Syrian Arab Republic.
2. The Special Rapporteurs recall that the urgent return and repatriation of foreign fighters and their families from conflict zones is the only international law-compliant response to the increasingly complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in inhumane conditions in overcrowded camps, prisons, or elsewhere in the northern Syrian Arab Republic and Iraq. Such return is a comprehensive response that amounts to a positive implementation of Security Council resolutions 2178 (2014) and 2396 (2017) and is considerate of a State's long-term security interests.
3. States, in their view, have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of international human rights law. This includes flagrant denial of justice, the imposition of the death penalty, torture or cruel, inhuman or degrading treatment, sexual violence, or deprivation of liberty in grave violation of human rights standards, including arbitrary detention, incommunicado detention, and detention that fails to comply with the most basic standards of humanity.
4. In light of the inhumane, degrading and increasingly dangerous situations of detention, the Special Rapporteurs cannot accept that stated practical challenges faced by States in the return process, including the lack of consular representation in areas where nationals are present and the shortage of information on the whereabouts of and conditions faced by nationals in conflict zones who frequently find themselves in the power of armed groups operating as de facto authorities, be used as excuses to obstruct returns. The Special Rapporteur on the promotion and protection of human rights while countering terrorism has seen first-hand that partnerships can be optimized in tracing, identifying and delivering the practical means to extract individuals from territories under the

control of non-state actors and ensure their safe return to home countries.¹ She has also seen that a number of steps can be taken to ascertain nationality, to obtain assistance from state and non-state actors to move individuals from camps and assist in air transport, as well as in the provision of humanitarian assistance and medical care before, during and after transit.² While both diplomatic protection and effective consular assistance can play a preventive role when facing a risk of flagrant violations or abuses of human rights, the remedial nature of consular assistance frequently means that it cannot effectively prevent an irreparable harm from being committed.³

5. The Special Rapporteurs further stress that an effective return process includes holding individuals accountable for serious violations of national and international law for serious and systematic crimes committed in Syria and Iraq. It is, in fact, the only way to close the gaping impunity gap for which the inadequate and dysfunctional judicial system in both Iraq and Syria is not an answer.
6. Returning children is a humanitarian and human rights imperative.⁴ The argument that children are not deserving of protection constitutes a moral failure by their home countries, particularly those who have ample resources. State and non-state actors at all levels should affirm and respect the fundamental vulnerability of children caught up in armed conflict, through a range of circumstances almost always not of their own making, or from contexts which have no meaningful exit. Children enjoy special protection in accordance with the Convention on the Rights of the Child and its Optional Protocols as well as international humanitarian law. They also note the important legal obligations articulated by States on support to children in situations of armed conflict.⁵ Children must always be treated primarily as victims, while the best interest of the child must always be a primary consideration. States have obligations to undertake individualized assessments for each child, determining what integration needs may be based on comprehensive, multiagency and

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25510&LangID=E>.

² Preliminary Findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Kazakhstan:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24637&LangID=E>.

³ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Visit to Belgium, 8 May 2019, A/HRC/40/52/Add.5, para. 80. “*The Special Rapporteur wishes to emphasize the important role that effective consular assistance plays as a preventive tool when faced with a risk of flagrant violations or abuses of human rights, while also noting that the remedial nature of diplomatic protection proceedings.*” See also *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to France*, 8 May 2019, U.N. Doc. A/HRC/40/52/Add.4, para. 61 “*The Government is strongly encouraged to activate positive legal and diplomatic protection for French citizens in conflict zones overseas, particularly children. This includes taking positive steps to support nationality determination and interventions where French nationals face serious human rights violations in detention, including but not limited to torture, extrajudicial execution, sexual violence and the imposition of the death penalty.*”

⁴ Noting the joint position of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism with the Special Representative of the UNSG on Children in Armed Conflict <https://childrenandarmedconflict.un.org/2019/11/joint-statement-on-human-rights-and-humanitarian-concerns-related-to-conflict-affected-women-and-children-in-syria-and-iraq/>.

⁵ UN Security Council Working Group on Children and Armed Conflict <https://www.un.org/securitycouncil/subsidiary/wgcaac>.

multidisciplinary approaches, while preventing discrimination based on nationality, birth status, immigration status, and statelessness.⁶

7. In this context, the Special Rapporteurs have been requested to provide their views on the legal exercise of jurisdiction. They set out their assessment below based on a broad analysis of applicable international law including but not limited to human rights law.
8. A State's jurisdiction under human rights law is primarily territorial.⁷ However, it is well established that a State may also have jurisdiction in respect of acts which are performed, or which produce effects, outside its national borders.⁸ A guiding principle when considering extra-territorial jurisdiction is the need to avoid allowing a State to perpetrate violations on the territory of another State, which it could not perpetrate on its own.⁹
9. At the European Court of Human Rights (ECtHR), for example, a State's jurisdiction outside its border is primarily established on the basis of (i) the control that the State exercises over foreign territory (*ratione loci*) or (ii) the control that is exercised by the state over a person (*ratione personae*).¹⁰
10. The acts (and omissions) of States in relation to their nationals currently held in camps in the northern Syrian Arab Republic are most likely to engage their jurisdiction *ratione personae*.¹¹ Should any State assume additional territorial or effective control over the camps that position might change and should be kept under review.
11. International human rights law recognises a number of ways in which states may assume extra-territorial jurisdiction, including cases involving detention overseas,¹² use of force by state agents abroad,¹³ consular and diplomatic agents acting abroad,¹⁴ and the exercise of law enforcement and other legislative and administrative powers, including the issuance of passports.¹⁵ The consistent

⁶ Cf. Convention on the Rights of the Child, Art 2(2) mandating the elimination of "all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members".

⁷ *Al-Skeini and Others v. United Kingdom*, Application No. [55721/07](#), 7 July 2011, para. 131; *Soering v. United Kingdom*, Application No. [14038/88](#), 7 July 1989, para. 86. This analysis draws primarily from jurisprudence of the ECtHR and jurisprudence construing other comparable jurisdiction provisions, in particular Article 2(1) International Covenant on Civil and Political Rights (ICCPR): "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant."

In relation to UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the clause "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." has been interpreted to also include extra-territorial obligations (see Interim Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc A/70/303, 7 August 2015, para. 33.

⁸ *Al-Skeini and Others v. United Kingdom*, (op. cit.), para. 131.

⁹ *Lopez Burgos v. Uruguay*, Communication No. [052/1979](#), 29 July 1981, para. 12.3.

¹⁰ *Al-Skeini and Others v. United Kingdom*, (op. cit.), para. 131.

¹¹ See, e.g., *Drozdz and Janousek v. France and Spain*, Application No. [12747/87](#), 26 June 1992, para. 91.

¹² See, e.g., *Al-Skeini and Others v. United Kingdom* (op. cit.).

¹³ See, e.g., *Isaak v. Turkey*, Application No. [44587/98](#), 28 September 2006; *Andreou v. Turkey*, Application No. [45653/99](#), Admissibility Decision, 3 June 2008.

¹⁴ See paragraph 21ff below.

¹⁵ See paragraph 27ff below; paragraph 32 on passports.

theme in cases before other international human rights bodies is to examine the extent of the state's control over the applicant¹⁶ – or over some of their rights.¹⁷

12. When a State exercises authority and control over some but not all of an individual's rights, the State will have jurisdiction over just those rights over which it has control – in this way, Convention rights can be “divided and tailored.”¹⁸ When assessing a State's jurisdiction a court must therefore consider the *extent* of the State's control in order to assess what extra-territorial obligations it owes. In relation to the situation of a child held in the camps in the northern Syrian Arab Republic, a State might, for example, have sufficient control over the child's right to enter their own country in order to have jurisdiction in respect of that right, but not have sufficient control over their right to property to have an obligation to guarantee that right while they remain in the camp.
13. The closer the connection between a State's acts and the repercussions for the individual, the more likely it is that the State will be considered to be exercising jurisdiction. In *Ilaşcu and Others v. Moldova and Russia* the Court considered that “A State's responsibility may [...] be engaged on account of acts which have *sufficiently proximate* repercussions on rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction.”¹⁹ Similarly, in the context of armed forces operating outside a State's national territory, both the ICJ and ECtHR recognises that acts of a State which impact on the Convention rights of an individual outside that State's national territory may fall under the jurisdiction of the Convention, even when the person is not in the custody of the State, provided that the rights violations flow directly from the State's acts.²⁰

¹⁶ See, inter alia, at the Human Rights Committee: *Lopez Burgos v. Uruguay*, (op.cit.) para. 12.3; at the Inter American Commission on Human Rights: *Coard v. United States*, Report No. [109/99](#), Case 10.951, 29 September 1999, para. 37 and *Armando Alejandro Jr and Others v. Republica de Cuba*, Report No. [86/99](#), Case No 11.589, 29 September 1999, para. 25.

¹⁷ See paragraph 12 below.

¹⁸ *Al-Skeini and Others v. United Kingdom*, (op. cit.), para. 137.

¹⁹ See for example, *Ilaşcu and Others v. Moldova and Russia* [GC], no. [48787/99](#), para. 317 (emphasis added). In *Ilaşcu and Others v. Moldova and Russia* the Court had to consider whether detainees in the region of Transnistria, a break-away region of Moldova which had declared its independence from Moldova but failed to get international recognition, could be considered to fall under the jurisdiction of Moldova. The Court held that irrespective of Moldova's lack of effective control over the territory it retained positive obligations to take those measures “in its power” in order to “secure to the applicants the rights guaranteed in the Convention”.

²⁰ See, for example *Andreou v. Turkey*, Application No. [45653/99](#), Admissibility Decision, 3 June 2008, in which the applicant was shot by a bullet fired by Turkish troops based in a Turkish controlled area, but while she was standing outside of that area. The Court found that Turkey had jurisdiction, repeating that “*in exceptional circumstances, the acts of Contracting States which produce effects outside their territory and over which they exercise no control or authority may amount to the exercise by them of jurisdiction within the meaning of Article 1 of the Convention*”. Turkey had jurisdiction because its acts were the “direct and immediate cause” of the applicant's injuries. See also *Issa & others v. Turkey*, Application No. [31821/96](#), Admissibility Decision, 16 November 2004, para. 71 and *Pad v. Turkey*, Application No. [60167/00](#), Admissibility Decision, 28 June 2007, para. 54 – 55.

See also, *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, 19 December 2005, I.C.J., para. 216-17. In *Armed Activities on the Territory of the Congo*, the Court interpreted Article 2(1) of the ICCPR and concluded that the provisions in the ICCPR and those of other human rights instruments, such as the Convention on the Rights of the Child and the African Charter of People's Rights, should be applicable extra-territorially. The Court adopted similar reasoning to that which it had previously articulated in *Advisory Opinion on the Legal Consequence on the Construction of a Wall in the Occupied Palestinian Territory*, where it found that Israel had human rights obligations both within and outside its

14. The Human Rights Committee has affirmed in its General Comment No. 36 that a State may exercise control over a person's rights by carrying out activities which impact them in a direct and reasonably foreseeable manner. In relation to the right to life, the Committee considers that:²¹

“In light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State, whose right to life is nonetheless impacted by its military or other activities in a direct and reasonably foreseeable manner.”²²

15. A State's responsibility to protect may thus be invoked extra-territorially in circumstances where that particular State has the capacity to protect the right to life against an immediate or foreseeable threat to life. The determination of whether States have acted with due diligence to protect against unlawful death is based on an assessment of: (a) how much the State knew or should have known of the risks; (b) the risks or likelihood of foreseeable harm; and (c) the seriousness of the harm.²³
16. States may be said to have jurisdiction over their nationals detained abroad or held in camps abroad because their actions directly influence their right to life.
17. Such a duty of protection, implemented extra-territorially, applies to the circumstances of the children, women and men detained or held in the northern Syrian Arab Republic. States with nationals there must act with due diligence to ensure that the lives of their nationals are protected, including against acts of violence committed by state actors or armed groups, against ill-treatment, or against living conditions which endanger their physical and mental health or their life.²⁴
18. Further, no State can argue convincingly that they do not know that (a) serious risks to the physical and mental integrity of those currently held in the northern Syrian Arab Republic exist, (b) they are likely to bring foreseeable harm, and (c) the harms include those of the most serious kind such as torture, enforced disappearance and death.
19. It goes without saying that the obligation to protect the right to life, must not be subject to discrimination, including on the grounds of religion or political or other opinions. The Human Rights Committee has understood the term “discrimination” to “imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has

territory (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, 9 July 2004, para. 107-08.).

²¹ General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36.

²² Para. 63. Footnotes omitted.

²³ *Osman v. The United Kingdom*, Application No. [23452/94](#), 28 October 1998, at para. 32-33.

²⁴ See the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Application of the death penalty to foreign nationals and the provision of consular assistance by the home State, 20 August 2019, A/74/318: <https://undocs.org/A/74/318>.

the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”²⁵

20. Should a State party to the ICCPR decide to withhold essential life-saving protection from an individual on the grounds of their purported crime, or on the grounds of the purported crimes of their spouses or parents this would violate both the State’s obligation to protect the right to life and the prohibition against discrimination. The Special Rapporteurs suggest that the “other status” reference in the ICCPR anti-discrimination provision should cover the alleged crimes committed by foreign nationals since “[a] flexible approach to the ground of “other status” is needed to capture other forms of differential treatment.”²⁶

Examples of extra-territorial jurisdiction relevant to State acts and omissions in camps, prisons and elsewhere in the northern Syrian Arab Republic:

21. The ECtHR has long recognised that the acts of diplomatic and consular agents outside the State’s territory may amount to an exercise of jurisdiction where those agents exercise authority and control over others.²⁷ The Special Rapporteur on the promotion and protection of human rights while countering terrorism is directly aware of ongoing diplomatic/political engagement by a number of States with the non-state actors responsible for the administration of camps in the northern Syrian Arab Republic. While this occurs outside of formal recognition of the status of these authorities, it points to a degree and substance of capacity and influence on the lives of those under their control which ought not to be ignored by Courts in the context of protection of fundamental non-derogable and derogable rights.²⁸
22. In the European Commission case of *X v. Federal Republic of Germany* the Commission concluded that Germany had jurisdiction over the applicant in relation to acts carried out by German consular

²⁵ Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, para. 7.

²⁶ UN Committee on Economic, Social and Cultural rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, 2 July 2009, E/C.12/GC/20, para. 27. See also the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Application of the death penalty to foreign nationals and the provision of consular assistance by the home State, op. cit.

²⁷ *Banković and Others v. Belgium and Others* [GC], Application No. [52207/99](#), 12 December 2001, at para. 73; *Al-Skeini and Others v. United Kingdom*, (op. cit.) para. 131.

See also the Committee on the Rights of the Child’s *Concluding Observations on the second periodic report of the Holy See* (25 February 2014) CRC/C/VAT/CO/2, and the Committee against Torture’s, *Concluding observations on the initial report of the Holy See* (17 June 2014) CAT/C/VAT/CO/1, which discussed the obligations of States in the context of allegations of abuse of children by the Catholic Church. The CAT affirmed that “the State party’s obligations under the Convention concern all public officials of the State party and other persons acting in an official capacity or under colour of law. These obligations concern the actions and omissions of such persons wherever they exercise effective control over persons or territory.” (*Concluding observations on the initial report of the Holy See*, (17 June 2014) para. 8).

²⁸ As to the existence of a right of a national abroad to consular assistance, it is well established that a State has the right to exercise diplomatic protection on behalf of a national. In contemporary State practice, there is also significant support in domestic legislation and judicial decisions for the view that there is an obligation, either under national or international law, for the State to protect its nationals abroad when they have been subjected to serious human rights violations. See for example *Kaunda v. President of the Republic of South Africa*, 2004(10) BCLR 1009 (CC), 2 August 2004, at para. 29-33, 25-29, 51-66, 60-81 (S. Afr.). In *Kaunda*, the Court found that various international human rights treaties ratified by the South African Government, including the ICCPR, obliged the government to make use of the remedies provided in the international instruments when the rights contained had been violated or threatened. At para. 169.

agents in Morocco, explaining that: “in certain respects, the nationals of a Contracting State are within its “jurisdiction” even when domiciled or resident abroad [...] in particular, the diplomatic and consular representative of their country of origin perform certain duties with regard to them which may, in certain circumstances, make that country liable in respect of the Convention”.²⁹

23. This applies to both acts and omissions of consular agents. In *Cyprus v. Turkey*, the Commission recognised that:

*“authorised agents of a State, including diplomatic or consular agents and armed forces, not only remain under its jurisdiction when abroad but bring any other persons or property “within the jurisdiction” of that State, to the extent that they exercise authority over such persons or property. Insofar as, by their acts or omissions, they affect such persons or property, the responsibility of the State is engaged.”*³⁰

24. In *X v. United Kingdom*, a British national living in the UK, whose daughter had been taken to Jordan by the child’s father, complained that the British consular authorities in Jordan were not doing enough to restore her custody of the child. The Commission agreed that the alleged omissions of the British consular authorities in Jordan triggered the application of Article 1, even though they were outside UK territory:³¹

“The applicant’s complaints are directed mainly against the British consular authorities - in Jordan. It is clear, in this respect, from the constant jurisprudence of the Commission that authorised agents of a State, including diplomatic or consular agents bring other persons or property within the jurisdiction of that State to the extent that they exercise authority over such persons or property. Insofar as they affect such persons or property by their acts or omissions, the responsibility of the State is engaged Icf. Applications No. 1611/62, Yearbook 8, p. 158 (168); Nos. 6780/74, 6950/75, Cyprus v. Turkey, Decisions and Reports 2, p. 125 11371). Therefore, in the present case the Commission is satisfied that even though the alleged failure of the consular authorities to do all in their power to help the applicant occurred outside the territory of the United Kingdom, it was still “within the jurisdiction” within the meaning of Article I of the Convention”.

25. Similarly, in *M v. Denmark*, a case brought by a German national against Denmark, arising from the conduct of the Danish ambassador towards the Applicant in the Danish Embassy in the former German Democratic Republic, the Commission concluded that the Applicant was under Danish jurisdiction because of the activities of the ambassador, despite not being in Danish territory.³²
26. Thus, to the extent that a State is conducting consular activities – or failing to do so – in respect of individuals in the camps in the northern Syrian Arab Republic those individuals may fall under the jurisdiction of the State in relation to the rights affected by the State’s conduct.

²⁹ *X v. Germany*, Application No. [1611/62](#), Commission Decision, 25 September 1965, Yearbook 8, p. 158, at p.168.

³⁰ *Cyprus v. Turkey*, Application No. [6780/74 and 6950/75](#), 26 May 1975, p. 136.

³¹ *X v. United Kingdom*, no. [7547/76](#), Commission Decision, 15 December 1977, DR 12, p. 73

³² *M v. Denmark*, Application No. [17392/90](#), 14 October 1992.

27. The ECtHR has also recognised that in some circumstances, jurisdiction can arise from a State exercising authority and control over a person through law enforcement or legislative powers that produce effects in a different state, with the consent of that second state.³³
28. In *Stephens v. Malta*,³⁴ the Court found that Malta had jurisdiction in relation to the Article 5 rights of a UK national who was detained in Spain pursuant to a defective extradition request made by Malta to Spain. Despite the applicant being physically under the authority and control of Spain during the period of his detention, the Court found that “the applicant’s deprivation of liberty had its sole origin in the measures taken exclusively by the Maltese authorities” and that “Accordingly, the act complained of by Mr Stephens, having been instigated by Malta on the basis of its own domestic law and followed-up by Spain in response to its treaty obligations, must be attributed to Malta notwithstanding that the act was executed in Spain.”³⁵
29. Similarly, where a State commences criminal proceedings against a person not in that State, the State will have jurisdiction over the person in relation to those proceedings, despite them not being physically present in the territory. Thus, a Contracting State has jurisdiction over the Article 6 rights of a person subject to trial in absentia, regardless of whether they are physically present in the state.³⁶
30. As to a State’s domestic legislation which has effects outside the State’s national borders, in *X. and Y. v. Switzerland*³⁷ the Commission found that a German national prevented from entering Lichtenstein (at a time not a party to the ECHR) by Swiss law, could bring a claim against Switzerland for breaches of his Convention rights (Articles 3 and 8) caused by the refusal to enter: “Acts by Swiss authorities with effect in Liechtenstein bring all those to whom they apply under Swiss jurisdiction within the meaning of Article 1 of the Convention.”³⁸
31. The Human Rights Committee has adopted similar reasoning. In *Ibrahima Gueye et al v. France*, which concerned the underpayment of retired Senegalese soldiers in Senegal by the French State,

³³ See also, *Association Pour la Sauvegarde de la Paix au Burundi v. Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*, African Commission on Human and Peoples’ Rights, Communication No. [157/96](#), 29 May 2003, which considered an embargo imposed on Burundi by Tanzania, Kenya, Uganda, Rwanda, Zaire, Ethiopia and Zambia. The Commission ultimately found that there had not been a breach of the African Charter on Human and Peoples’ Rights, however it proceeded on the basis that the States had extra-territorial duties – reasoning that there was no breach because the embargo was proportionate: “[t]he critical question and one which may affect the legitimacy of the action is whether such action as has been determined is excessive and disproportionate, is indiscriminate and seeks to achieve ends beyond the legitimate purpose” (para. 75). In this case there was no State consent to the measure.

³⁴ *Stephens v. Malta (No. 1)*, Application No. [11956/07](#), 21 April 2009.

³⁵ *Stephens v. Malta (No. 1)*, (op. cit.), para. 51 – 52. See also *Soering v. United Kingdom* in which the Court found that the UK’s decision to extradite a German national resident in the UK to the US fell under UK jurisdiction even though the repercussions of the decision (real risk of torture or inhuman or degrading treatment) would be felt outside the UK (*Soering v. United Kingdom*, (op. cit.), para. 86 - 91).

³⁶ See for example *Sejdovic v. Italy*, Application No. [56581/00](#), 1 March 2006, in which a national of the former Federal Republic of Yugoslavia was tried in Italy in absentia, having absconded to Germany. The Court did not question that the Applicant was entitled to the protections of Article 6, despite the fact that he was outside the territory of Italy.

³⁷ *X. and Y. v. Switzerland*, Application No. [7289/75 and 7349/76](#), 14 July 1977, Admissibility Decision, at p.73.

³⁸ *X. and Y. v. Switzerland*, (op. cit.) at p.73.

the Committee found that France had jurisdiction, despite the fact that the soldiers were not within French territory, because their right to a pension derived from French law.³⁹

32. The Human Rights Committee has also consistently found states to have jurisdiction over their nationals living abroad in relation to the State's exercise of the power to issue a passport. In *Martins v. Uruguay*,⁴⁰ the Uruguayan authorities refused to issue a passport to a Uruguayan national residing outside of Uruguay and the Human Rights Committee found that the applicant was within Uruguay's jurisdiction:

*“Article 1 of the Optional Protocol applies to individuals subject to the jurisdiction of the State concerned who claim to be victims of a violation by that State of any of the Covenant rights. The issue of a passport to a Uruguayan citizen is clearly a matter within the jurisdiction of the Uruguayan authorities and he is “subject to the jurisdiction” of Uruguay for that purpose.”*⁴¹

33. The Committee has adopted the same reasoning in a number of subsequent cases relating to the refusal to issue passports.⁴²
34. To the extent that a State directly impacts the rights of an individual in the camps, for example through law enforcement, or the issue or refusal of identification documents, or giving consent and capacity by allowing medical staff to ascertain parentage, that individual may fall under the jurisdiction of the State in relation to the rights affected by the State's conduct.
35. The Special Rapporteurs point out that States are in the best position to ensure the protection of human rights for children and their guardians in camps in the northern Syrian Arab Republic. In the absence of their engagement and acceptance of legal responsibility, children face death, starvation, and extreme physical and emotional harm, as do their mothers. In this context, they note that in the very specific circumstances of these camps in the northern Syrian Arab Republic it is undeniable that the State of nationality for citizens have the only tenable legal claim to protect their citizens, and the capacity to make such claims materialize. The Special Rapporteurs also underscore that the relevant Kurdish authorities have made consistently clear their willingness and capacity to support returns to States and their inability to manage the humanitarian catastrophe they face, a fact that is demonstrated by multiple successful return processes.⁴³

³⁹ *Ibrahima Gueye et al v. France*, Communication No. [196/1985](#), 3 April 1989, para. 9.4.

⁴⁰ *Vidal Martins v. Uruguay*, Communication No. [57/1979](#), 23 March 1982, para. 7.

⁴¹ The Committee continued: “Moreover, a passport is a means of enabling him “to leave any country, including his own”, as required by article 12(2) of the Covenant. It therefore follows from the very nature of the right that, in the case of a citizen resident abroad it imposes obligations both on the State of residence and on the State of nationality. Consequently, article 2(1) of the Covenant cannot be interpreted as limiting the obligations of Uruguay under article 12(2) to citizens within its own territory.” (para. 7).

⁴² *Lichtensztejn v. Uruguay*, Communication No. [77/1980](#), 31 March 1983, at para. 6.1; *Mabel Pereira Montera v. Uruguay*, Communication No. [106/1981](#), 31 March 1983, para 5; *Varela Nunez v. Uruguay*, Communication No. [108/1981](#), 22 July 1983, para. 6.1; *Loubna El Ghar v. Libya*, Communication No. [1107/2002](#), 15 November 2004, (concerning the refusal of the Libyan consular authorities in Morocco to issue a passport to a Libyan national residing in Morocco).

⁴³ <https://www.urdupoint.com/en/world/romania-returns-15-nationals-from-syria-via-t-686284.html>; <https://www.arabnews.com/node/1545586/middle-east>; <https://www.reuters.com/article/us-germany-syria/germany-takes-back-four-islamic-state-children-from-syria-idUSKCN1VA0UY>. Noting also the applicability of Protocol 4,

36. **States that have de facto control over the human rights of children and their guardians in camps in the northern Syrian Arab Republic have positive obligations to prevent violations of those rights. Whether a State has such control is a question of fact. Relevant factors are likely to include the proximity between the acts of the State and the alleged violation, the degree and extent of cooperation, engagement and communications with the authorities detaining children and their guardians, the extent to which the home State is able to put an end to the violation of the individual's rights by exercising or refusing any positive interventions to protect and promote the rights of their nationals, and the extent to which another State or non-state actor has control over the rights.**

European Convention on Human Rights, Art. 3: "No one shall be deprived of the right to enter the territory of the State of which he is a national." (the Special Rapporteurs stress that there is no limitation clause to this provision unlike art. 12 ICCPR).

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Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the human rights to safe drinking water and sanitation; and the Working Group on discrimination against women and girls

REFERENCE:
AL AUS 1/2021

26 January 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; Special Rapporteur on the right to privacy; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on the human rights to safe drinking water and sanitation; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 40/16, 42/22, 44/5, 32/8, 43/14, 43/6, 43/8, 37/2, 43/36, 43/22, 43/20, 44/4, 41/17, 42/5, 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a registration and verification exercise in Al-Hol and Roj camps located in North-East Syria where your nationals, primarily women and children, are currently deprived of their liberty. In these makeshift locked camps made up of unstable tent-like structures which collapse in strong winds or flood with rain or sewage, hygiene is almost non-existent: limited drinking water is often contaminated, latrines are overflowing, mounds of garbage litter the grounds, and illnesses including viral infections are rampant. Food, water, health care and essential non-food supplies are provided by under-resourced humanitarian groups and organisations. According to the Turkish Red Crescent, at least 517 people, 371 of them children, died in 2019, many from preventable diseases, in Al-Hol camp alone. In August 2020, eight children under the age of five died in that camp in less than a week, with four caused by malnutrition-related complications and the others were due to dehydration from diarrhoea, heart failure, internal bleeding

and hypoglycaemia, according to UNICEF. Covid-19 has increased these difficulties, with a reduction in the number of workers operating in the camp.

According to the information received:

A 'registration and verification exercise' by Camp Administration authorities took place in early June 2020 in Al-Hol for all third country nationals, which include individuals from your country. It is alleged that a similar exercise had also taken place in Roj in May 2020.

During this process, all third country nationals, approximately 700 families, mostly women and children over the age of 10, housed in the Annex in Al-Hol, were required to provide personal information which included their country of origin, DNA samples (through the drawing of blood), finger or palm prints, and facial, iris, or retina and other biometric data. Further, in order to proceed with the registration, families were asked to leave their tents together with several other families in the annex and stay in the reception area of the main camp, and were not allowed to return to their tents until the registration of all the families of their group was finalised, which could last up to 24 hours. A request by UNHCR for protection oversight of the reception area was denied.

Also during that exercise, all humanitarian actors delivering essential, life-saving goods and services to those individuals deprived of their liberty in the camps were denied access to the camp during the entirety of the exercise, in complete disregard of the key international law obligation to allow humanitarian access to organisations carrying out principled humanitarian action. All humanitarian actors were barred from entering the camp, including medical personnel, without any forewarning, and a request by UNHCR for a two-week pause in the exercise, to allow humanitarian actors to find solutions to ensure the continuation of the provision of humanitarian aid, was denied. Those individuals concerned by the exercise were told that they would be provided with only drinking water and bread during the exercise. Medical staff were also denied access to the camp. Referrals for serious medical cases were to be done by the military, and that at least three requests for referrals, including one involving severe child malnutrition, were denied by camp administration. At the same time, more than 1,000 additional military officers, presumably Syrian Democratic Forces (SDF), were present in the camp during the exercise.

A note was circulated by camp authorities to the residents informing them that this exercise would be "in compliance with human rights" although no specific as to which mechanisms, processes and actions would be taken to that end. Other informal statements, reportedly by camp authorities, informed that the registration operation was designed to "improve security and control within the camp and the surrounding area by moving tents apart, disrupt radicalisation activities, prevent the operation of sharia courts, prevent criminal activities including assassinations and the smuggling of people and material; and confirm numbers and identities of individuals housed within it".

Potentially linked to this registration, data-collection and relocation exercise, we have recently been made aware of an extension or the creation of an

additional campsite in Roj camp, to which approximately 200 families, mostly third country nationals from European States, have been moved. In some of the reports, it is stated that these families are considered as high security threats, although no information is available on the basis or legal foundation upon which such an assessment would be made. It remains unclear whether your Excellency's Government has been informed of this exercise and material change in detention circumstances for your nationals. Such information appears to be exchanged either informally, through the good offices of humanitarian organizations, or by direct information sharing between the SDF and certain governments.

Without pre-judging as to the accuracy of the information received, it is our view that the allegations relating to the 'registration and verification' exercise itself and the manner in which it was carried out, as well as the move of several families to an enlarged camp raise very serious human rights concerns. These concerns are, in our view, relevant to your government whose nationals are present in the camps and who have either undergone the registration and verification exercise or have been displaced. They are also relevant given the concern about the use/purpose of the information collected in such exercise.

Humanitarian access

We express our serious concern that essential humanitarian access and protection were jeopardized in the implementation of the registration operation. Indeed, the denial of access of humanitarian actors to the camp — absent advance warning—, the authorities refusing a request by UNHCR for a two-week pause on the exercise to enable humanitarian actors to organise themselves to maintain a modicum of aid; the provision of water and bread alone during the period of the exercise, including to a large number of children raise deep concerns regarding the implementation of the most basic of survival rights and protections for your vulnerable nationals.

Humanitarian actors play a critical life-saving role in providing humanitarian aid and assistance, including food and medical services, to all those individuals deprived of their liberty and living in squalid conditions in the camps in North East Syria.

In line with this, we wish to recall that the State's obligation to allow access to humanitarian services is contemplated by international law in several legal instruments¹. In this regard, a State has two sets of obligations: a positive obligation to agree to and facilitate such services and a negative obligation not to impede the offer and provision of humanitarian services to individuals and populations in need. International humanitarian law clearly imposes an obligation to respect and protect humanitarian actors. Parties to an armed conflict must protect civilian humanitarian actors, not just from attack, but also from harassment, intimidation, arbitrary detention and any other activities that might impede their work. Protecting humanitarian actors is an indispensable condition for the delivery of essential care. Under this framework, when the civilian population is not adequately supplied, no party to an armed conflict may arbitrarily withhold consent to offers of legitimate humanitarian services from an impartial humanitarian body.²

¹ Article 3(2) of the four Geneva Conventions, article 18 AP II and UNSC resolution 2175 para.3.

² Ibid.

Furthermore, we are deeply concerned by the dire, and sometimes fatal, conditions children are facing in these camps. Several UN bodies have insisted on the obligation imposed to all parts of a conflict to provide special protection to children and respect the civilian and humanitarian character of camps and settlements. In its general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child noted that for rights to be meaningful, effective remedies must be available to redress violations (para. 24).

Another vulnerable group that can be severely impacted by the conditions of detention in these camps and the lack of humanitarian aid are women deprived of liberty. Such deprivation could produce a disproportionate effect on women's health, including specifically their reproductive health, and on living conditions and would constitute an act of violence against them. It should be considered that both causes and consequences of the deprivation of liberty of women are gendered. Additionally, they experience their confinement in specific ways and are often at risk of heightened gender-based discrimination, stigma, and violence. How women experience this deprivation will also differ, not only because of gender dynamics, but also because of characteristics, such as age, disability, race or ethnicity or socioeconomic status, that combine to produce distinct forms of discrimination and vulnerability.

In addition the situation of those individuals deprived of their liberty in the camps is also addressed by international human rights law. In this regard, we highlight in particular the right to food, to health and to an adequate standard of living, as well as the absolute prohibition of torture, inhumane and degrading treatment as guaranteed under the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights.

It is our assessment that these rights absolutely fail to be adequately provided to those individuals held in the camps. The failure to provide access to those in charge of delivering humanitarian assistance only compounds the abuses and violations of fundamental rights, including the non-derogable right to life and the right to be free from torture, inhuman and degrading treatment that are taking place on a daily basis in the camps, increasing human suffering and, potentially, the number of unlawful deaths, particularly of women, girls and children.

We therefore reiterate that humanitarian services should never be denied. Humanitarian actors assist States in meeting their obligations to protect and fulfil the inherent right to life, without discrimination, and to prevent the arbitrary deprivation of life. By preventing or otherwise deterring those services through their criminalization, for instance, or other measures, States violate their obligation to prevent, combat and eliminate arbitrary killings and the deprivation of life³.

The heightened military presence in the camps to oversee the registration exercise, included over 1,000 additional military officers, is also a cause for concern. Intensified military presence in these camps can raise the fears of those deprived of their liberty and create additional tensions within the camps. We are concerned that the excessive militarization in the camps could also be linked to violence against women and are among the risks specifically faced by women in these camps. We are

³ Saving life is not a crime", Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/73/314): <https://undocs.org/A/73/314>.

also very concerned about reports that women who have been displaced to the newly created space in Roj camp have not been able to contact anyone, including their families, about their situation, to confirm their presence, whereabouts or wellbeing, since having been transferred. There are also suggestions of an extended incommunicado quarantine period upon transfer from Al-Hol to Roj, as a result of COVID-19. This may amount to incommunicado detention which is prohibited under international law.⁴

Collection and use of biometric data

Regarding the collection and use of markers related to the physiological characteristics during the ‘registration and verification exercise’ we note that UN Security Council 2396 (2017) requires States to “develop and implement systems to collect biometric data (...) in order to responsibly and properly identify terrorists, including foreign terrorist fighters” in compliance with all their obligations under international law. Indeed, the resolution affirms that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures and are an essential part of a successful counter-terrorism effort. The resolution confirms the importance of respect for the rule of law so as to effectively prevent and combat terrorism. We stress that failure to comply with these and other international obligations, including under the Charter of the United Nations, is one of the factors contributing to increased radicalization to violence and fosters a sense of impunity. Where such data is being collected by a non-State entity on your country’s nationals and as it may be shared with other States, or accessed by either the territorial State of collection or by other States directly or indirectly, we stress that particular obligations lie with the country of nationality to seek to prevent the collection, storage use or transfer of such data in ways that would be inconsistent with international human rights law.

Biometrics data provides for a singularly useful tool for accurate and efficient identification and authentication of a person,⁵ and is therefore particularly sensitive. There are human rights implications to the use at each stage of data usage, including collection, retention, processing and sharing. Indeed, the use of biometrics data can seriously impact on the right to privacy (article 17, ICCPR), which functions as a gateway right to the protection of a range of fundamental rights. Mass collection also creates a need for secure systems for data storage and processing to mitigate the risk of unauthorized access. The unique transborder aspects of data collection, use, storage and transfer make the obligations of states of nationality in respect of their citizens’ rights particularly acute.

Further, due to its sensitive character, biometric data, should always be collected and handled in line with recognized data protection principles, including the principles of lawfulness and fairness, transparency in collection and processing, purpose limitation, data minimization, accuracy, storage limitation, security of data and accountability for data handling. While applying data protection rules in an amended format to national security processes may be warranted, such adjustments must not lead to curtailed safeguards, insufficient transparency or inadequate oversight. Importantly, the principle of purpose limitation must be respected. Purpose

⁴ CCPR/C/CG/35, paras. 35 and 56.

⁵ Certain biometric markers, including finger- and palm prints, facial/ iris scans, may be less reliable in case of children. For this reason (among others), their collection and use is not always appropriate in the case of children. UNICEF has developed guidelines biometrics and children: <https://data.unicef.org/resources/biometrics/>.

limitation requires data to be collected with a specific, defined and legitimate purpose in mind (purpose specification) and not used for a purpose that is different from or incompatible with the original purpose (compatible use). In the particular case of children, “the best interest of the child” must be respected throughout the process and the assessment of the necessity and the proportionality of the measures must be strict. In this case, it seems entirely unclear, based on the information available to us, how collection of data on your Excellency’s minor nationals can meet any best interest test in these circumstances.

We recognise the use of biometric data may be uniquely helpful and serve the interest of the child in a number of instances. This includes cases when such data is employed to prove the child’s parentage and reunite them with their family or with the aim of using such parentage information to ascertain the child’s nationality in view of their repatriation. At the same time, we would like to stress our concerns related to data usage and, in particular, long-term retention of biometric data of minors based on the child’s family affiliation. Data collection and retention, if carried out by a non-State entity to serve the security interests of third party States when it is for monitoring or surveillance purposes, should in normal circumstances be based, among others, on a threat assessment, and the necessity for the data to be retained and for children to be included in databases or watch lists would be human rights proofed. In these circumstances, the clear and present dangers to your Excellency’s minor nationals cannot be overstated. Collection, retention and treatment of data belonging to children must always comply with the safeguards contained in the Convention on the Rights of the Child and, in particular, with the requirement that any relevant measures be “in the best interest of the child”. Relevant measures must also be subject to independent oversight. Such oversight should include review by a public authority specifically tasked with protecting the rights of the child (such as an ombudsperson) or ensure that experts duly specialized in children’s rights are part of the oversight body’s composition.

Furthermore, the Special Rapporteur on the right to privacy has cautioned that the processing of biometric data should be undertaken only if there are no other less intrusive means available and only if accompanied by appropriate safeguards, including scientifically recognized methods, and strict security and proportionality protocols.⁶ Relevant authorities must pay due regard to data minimization by restricting collection and processing measures to data that is necessary or relevant for accomplishing the legitimate purpose for which data was collected.

We have serious concerns that in the case of the registration and verification exercise, respect for these principles and requirements was entirely lacking. We are concerned about the lack of information regarding measures taken to ensure informed consent prior to providing data, or to protect the data collected and ensure its confidentiality or on measures taken to manage the data in line with standards of data protection, taking into consideration a possible trans-border aspect that increases opacity and further reduces control and oversight of these practices and accountability for violations of human rights.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has taken the view that States must avoid any form of cross-border counter-terrorism cooperation that may facilitate human rights violations or abuses. States must also be mindful that state responsibility

⁶ A/HRC/43/52, para. 48 (v).

under international law may be triggered through the sharing of information that contributes to the commission of gross human rights violations. Cross-border intelligence-sharing arrangements raise particular human rights concerns. International human rights mechanisms have repeatedly warned against such arrangements falling short of international human rights norms and standards, particularly the lack of a human rights-compliant legal basis and of adequate oversight.⁷ Private or sensitive information concerning individuals shared with foreign intelligence agencies without the protection of a publicly available legal framework and without proper safeguards, make the operation of such regimes unforeseeable for those affected by it. It states the obvious that the situation in which your nationals find themselves, specifically indeterminate detention in makeshift tents with few material resources and under the control of a non-State actor does not make the materialization of these protections likely. *Thus, the collection of intimate and private data in these circumstances makes the responsibilities of states toward their nationals detained in these camps all the more compelling, to exert all available resources and influences to ensure the protection of their nationals.*

In this respect, we are gravely concerned at the lack of clarity and opacity concerning the reasons for which such information was collected, and whom they will ultimately benefit, contrary to the key principles of purpose limitation and compatible use, existence of a legitimate aim, and respect for the principles of proportionality and necessity, which cannot be evaluated given the lack of transparency. Where governments benefit from the collection of such data, particularly in the intelligence or security realm there is a corresponding necessity to ensure that human rights obligations are optimized in these sub-optimal circumstances. This is compounded by an apparent lack of legal basis, which cannot be replaced by an open letter to residents, as well as an absence of any oversight and safeguards for your nationals in these detention sites.

Biometric data collection and non-discrimination

International human rights law is based on the premise that all persons, by virtue of their humanity, should enjoy all human rights without discrimination on any grounds. The prohibition on racial discrimination has achieved the status of a peremptory norm of international law and as an obligation *erga omnes* which is enshrined in all core human rights treaties.

The use of emerging digital technologies exacerbate and compound existing inequities, many of which exist along racial, ethnic and national origin grounds. In some cases, this discrimination is direct, and explicitly motivated by intolerance or prejudice. In other cases, discrimination results from disparate impacts on groups according to their race, ethnicity or national origin. And in yet other cases, direct and indirect forms of discrimination exist in combination, and can have such a significant holistic or systemic effect as to subject groups to racially discriminatory structures that pervade access to and enjoyment of human rights in all areas of their lives.

In her report to the Human Rights Council (A/HRC/44/57), the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance highlighted that examples from different parts of the world show that the design and use of different emerging digital technologies can be combined intentionally and unintentionally to produce racially discriminatory structures that

⁷ See e.g. A/69/397 and A/HRC/13/37

holistically or systematically undermine enjoyment of human rights for certain groups, on account of their race, ethnicity or national origin, in combination with other characteristics.

In her report to the General Assembly (A/75/590), the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance addresses the impact of and concerns resulting from the use of emerging digital technologies on migrants, stateless persons, refugees and other non-citizens including the risk of racial and ethnic profiling in border enforcement. Data collection and the use of new technologies, particularly in such contexts characterized by steep power differentials, raise issues of informed consent and the ability to opt out. It is unclear what happens to the collected biometric data and whether affected groups have access to their own data. In this context [Al-Hol Camp], the affected population have no control over how the data collected from them is shared. The rise of “surveillance humanitarianism”, whereby increased reliance on digital technologies in service provision perversely results in the exclusion of refugees and asylum seekers from essential basic necessities such as access to food. Conditioning food access on data collection removes any semblance of choice or autonomy on the part of refugees – consent cannot freely be given where the alternative is starvation. In the current context of conflict, potential harms around data privacy are often latent and violent in conflict zones, where data compromised or leaked to a warring faction could result in retribution for those perceived to be on the wrong side of the conflict. Data may be shared in ways that increased their risk of *refoulement*, increasing their vulnerability to human rights violations in the event of forcible and other forms of return of these groups to a country where their safety is at risk.

Specific impact on women and children due to their alleged association with terrorist groups

We are gravely concerned that the verification and collection exercise also targets women and children, a concern made particularly acute given the particularly harsh situation faced by women and children deprived of their liberty, due to their alleged links to terrorist groups.

At the outset, we note that the human rights impact surrounding data collection practices are likely to be amplified in case of groups and persons who are already marginalized or discriminated against, including women, children, members of minorities and groups and persons in vulnerable situations, such as persons affected by armed conflict and other types of violence.

We are particularly mindful of the critical need to understand that women’s and girls’ association with terrorist groups is highly complex. It involves a range of factors, including their age, and backgrounds, and States must be mindful of the potential for coercion, co-option, grooming, trafficking, enslavement and sexual exploitation when examining their agency, or lack thereof. States must always undertake individualised assessments pertaining to the specific situation of women and girls.⁸ States must be conscious of the gender-specific traumas than can be experienced by women and girls, as well as the various human rights violations that they are subjected to in the context of their detention and the impact of those conditions on their mental and physical health. Adequacy of alternatives to detention

⁸ See in particular CTED Trends Report on the Gender Dimensions of the Response to Returning Foreign Terrorist Fighters (2019) and UNDP/ICAN, Invisible Women (2019).

for persons in vulnerable situations and in particular, victims of trafficking is critical. Victims or potential victims of trafficking should not be placed under detention or any alternative to it, they should be promptly identified and referred to the appropriate services for early support and long term assistance. It is imperative that State responses do not perpetuate or contribute to further victimisation of those who have already experienced profound violence and trauma.⁹

Furthermore, we would like to draw the attention of your Excellency's Government to the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking; States have an international obligation not only to identify traffickers but also to identify victims of trafficking. It is highlighted that a failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. The Recommended Principles and Guidelines state, therefore, that such victims must be provided with protection, not punishment, for unlawful acts committed as a direct consequence of being trafficked. Recommended Principle 7, concerning protection and assistance to victims of trafficking, provides that "trafficked persons shall not be detained, charged or prosecuted." Recommended Principle 8 prescribes that States shall ensure victims of trafficking "are protected from further exploitation and harm and have access to adequate physical and psychological care."

In addition, with regards to women deprived of liberty, the Working Group on Discrimination against Women and Girls expressed in its thematic report (A/HRC/41/33) that measures to combat terrorism and corresponding national security measures sometimes profile and target women, in particular those from certain groups and sometimes even women human rights defenders. It has further recommended States to ensure that measures addressing conflict, crisis, terrorism, and national security incorporate a women's rights focus and do not instrumentalise women's deprivation of liberty for the purposes of pursuing government aims. As highlighted in its thematic report on Health and Safety (A/HRC/32/44), the Working Group stresses that women's safety should be addressed as an integral aspect of women's health. Women's exposure to gender-based violence in both the public and private spheres, including in conflict situations, is a major component of women's physical and mental ill health and the destruction of their well-being, and constitutes a violation of their human rights.

The fact that children were included in this exercise is also a cause for profound concern. We remind your Excellency's government that children deprived of their liberty in Al-Hol and other places in North East Syria remain acutely vulnerable to violence and abuse. Children held in these camps are victimised on multiple ground and continue to be denied the protection to which they are entitled under international humanitarian and international human rights law. Indefinite detention without any process or review constitutes in itself a serious violation of human rights law. From the conditions of their detention and the lack of basic care, sufficient food, shelter from the elements, safe water, adequate sanitation medical services and education to risks of harassment, violence, exploitation and sexual and other forms of abuse, the impact of their situation on their most basic rights is not only severe but complete. As a result of repeated exposure to violence and insecurity, children exhibit signs of trauma, including psychological and behavioural disorders,

⁹ The UN Global Compact/CTITF Working Group on promoting and protecting human rights and the rule of law while countering terrorism, "Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters" (2018)

as well as chronic fatigue and acute stress.¹⁰

We have been informed that families of foreign ISIL fighters, including women and children, suffer discrimination on the basis of their alleged affiliation with the group, in violation of international humanitarian law, facing restrictions on their movements and access to (sometimes refusal of) medical facilities, as well as harassment, abuse and looting of tents by camp guards.¹¹ Inside camps in areas under the control of the SDF, “foreign children with familial links to ISIL fighters continued languishing in despair while increasingly vulnerable to abuse, years after they were brought into the country”.¹² The United Nations Global Study on Children deprived of liberty¹³ has highlighted that “the trauma experienced by minors (and adults) has not stopped with the physical liberation from ISIS. For some, placement in detention centres or segregated IDP camps not only prolongs physical isolation and deprivation but also solidifies their new identity as ‘IS families’”.¹⁴ Many children carry the stigma of association, whether they were involved or not, and face rejection, and reprisals from their home communities, which might lead into re-recruitment by armed groups.¹⁵ Children should not have to carry the terrible burden of simply being born to individuals related to or associated with designated terrorist groups¹⁶.

Due process and security

We wish to highlight our concerns about the lack of clarity around the purpose of the exercise, particularly as it has been reported that reasons for the verification and collection exercise appear to relate to the security situation in the camp (improve security and control within the camp and the surrounding area by moving tents apart, disrupt radicalisation activities, prevent the operation of sharia courts, prevent criminal activities including assassinations and the smuggling of people and material). Notwithstanding the security concerns that can exist in a precarious environment, we note the difference of treatment in this respect between ‘third country nationals’ and other individuals detained in the camps. We respectfully recall the key principles of equality and non-discrimination, which require that a justification be provided for difference of treatment between categories of individuals apparently in a similar situation. Significant threats to the security of the camp can emanate from ‘third country nationals’ and other individuals detained in the camps. The difference between the two groups does not appear immediately, or without objective justification, as relevant to the determination of requisite measures to address a security threat in the camp. The discriminatory character of the exercise would also deprive it of other fundamental requirements of necessity and proportionality. Indeed, the singling out of a category of individuals for this exercise cannot be seen as either necessary or proportionate if other individuals who are in the same situation are not treated alike.

The Special Rapporteur on trafficking has raised in her previous reports specific concerns about the use of profiling techniques.¹⁷ We would like also to remind that the OHCHR Recommended Principles and Guidelines on Human Rights

¹⁰ A/HRC/43/CRP.6, para. 3.

¹¹ A/HRC/43/57, para. 61.

¹² A/HRC/43/57, para.96-97

¹³ See <https://omnibook.com/Global-Study-2019>

¹⁴ Joana cook and Gina Vale, ‘From Daesh to Diapora: Tracing the women and Minors of Islamic State’, ICSR, 2018, p.53, quoted in the Global Study on Children deprived of their Liberty y, p. 606.

¹⁵ Global Study on Children deprived of their Liberty, p. 607.

¹⁶ UNCRC, article 2.2.

¹⁷ A/HRC/38/45 para 67.

at Borders (2014), provides that measures taken to address irregular migration, or to counter terrorism, human trafficking or migrant smuggling, shall not be discriminatory in purpose or effect, including by subjecting migrants to profiling on the basis of prohibited grounds, and regardless of whether or not they have been smuggled or trafficked. Further the Guidelines provide that: “States and, where applicable, international and civil society organizations, should consider: [...] (2) Ensuring that non-discrimination provisions in legislation are applicable to all border governance measures at international borders; (3) adopting or amending legislation to ensure that respect, protection and fulfilment of all human rights, including mandatory protection and assistance provisions, are explicitly included in all border related legislation, including but not limited to legislation aimed at addressing irregular migration, establishing or regulating asylum procedures and combating trafficking in persons and smuggling of migrants.”

Consequently, we have serious and grave concerns about the legitimacy of the aim of the exercise and its purpose, concerns that are compounded by the lack of an objective justification for the sole inclusion of third country nationals, including women and children. We fear that this exercise was in fact aimed at identifying third country nationals who may pose a security risk, and evaluating the degree of that risk, information that could be further communicated and used by states of origin, as a basis for deciding the further course of action for their nationals, including trial and repatriation, or children’s separation from their families, including that of male children for further detention. These concerns are compounded by recent reports indicating that the individuals transferred to Roj were the ones apparently identified as posing a high-security risk, although the legal and practical basis for such a determination is not shared nor is any legal process available to challenge it.

Determining the security risk posed by individuals and using any ensuing classification as a basis for measures that can significantly impact human rights is likely to be fundamentally arbitrary and at odds with basic principles of due process. The implications of widespread assumptions about the threat posed by any individual transferred to a camp, in circumstances where there is no clarity about the basis for the transfer, and no way in which these transfers could be either prevented or contested, will inevitably lead to increasing and continuing stigmatisation of these families. This would raise very serious human rights questions related to due process, the right to a fair trial, the treatment of individuals, including the absolute prohibition of arbitrary detention. And the right to physical integrity, as well as the arbitrary deprivation of nationality and freedom of movement, including the right to enter one’s country, the right to a family life, and the deprivation or denial of other rights based on the data collected.

Under international law as well as under UN Security Council resolutions, States have obligations to hold individuals accountable for the serious and systematic crimes committed in Syria and Iraq, while strictly complying with the right to a fair trial. We take the view that this cannot be currently done in the region, given the profound fair trial and rule of law concerns about judicial systems in Iraq and Syria and the implications should trials be conducted by a non-State actor in the region. While recognising that there are some advantages to trials occurring near evidence, victims and witnesses, the reality is that in the absence of fair and thorough procedures, there will not be effective justice in the region, most particularly for the victims of such crimes.¹⁸ UN reports find that basic fair trial standards were not

¹⁸ <https://news.un.org/en/story/2020/01/1056142>;

respected in terrorism-related trials in Iraq, thus placing defendants at a serious disadvantage and compromising the trial outcomes and the justice process as a whole.

There is no substitute for fair trial and meaningful accountability. Weak and compromised accountability undermines the rights of victims and contributes to further instability in the region and beyond. There is an absolute obligation on States whose nationals are subject to the mandatory death penalty in patently unfair trial settings to vindicate and protect their legal rights. Governments also have a duty to protect the absolute prohibition of torture and of refoulement.

There is an urgent need for justice, truth and reparation for all of the victims of the very serious violations of human rights and humanitarian law that have occurred in the region. States that can deliver justice in accordance with international human rights law therefore have a responsibility to prosecute individuals against whom there is sufficient evidence of criminal behaviour, and sanction them appropriately through fair trials that comply with due process.

We are extremely concerned at the continued detention, on unclear grounds, of these women and children in these camps. We wish to remind your Excellency's government of the prohibition of arbitrary detention,¹⁹ recognised both in times of peace and armed conflict, and that together with the right of anyone deprived of liberty to bring proceedings before a court in order to challenge the legality of the detention, are non-derogable²⁰ under both treaty law and customary international law. Arbitrary deprivation of liberty can never be a necessary or proportionate measure, given that the considerations that a State may invoke pursuant to derogation are already factored into the arbitrariness standard itself. Thus, a State can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital interest or proportionate to that end. Further, administrative security detention presents severe risks of arbitrary deprivation of liberty.²¹ We are mindful of the exceptional circumstances of the deprivation of liberty of these individuals. We remain nonetheless deeply concerned that in the present case, none of these conditions - which remain applicable in the most extreme situations - appear to be respected and that no steps towards assessing individual risk or terminating or reviewing the legality of detention, have been taken, despite many of these individuals being in the camps for a year and a half.

We highlight that, according to international law, children are considered vulnerable and in need of special protection based on their age. Consequently, States must treat children, including children related to or associated with designated terrorist groups, primarily as victims when devising responses, including counter-terrorism responses.²² International law is very clear concerning the detention of children. In all cases, detention should be used as a measure of last resort and for the shortest amount of time possible, in conformity with the best interest of the child also taking into account the extreme vulnerability and need for care of unaccompanied-

¹⁹ UN Human Rights Committee, General Comment 35, para. 12.

²⁰ Human Rights Committee, general comment No 29 (2001) on derogation during a state of emergency, paras. 11 and 16. See also Draft Principles and Guidelines on remedies and procedures on: The right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before a court without delay, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful, Principle 4.

²¹ UN Human Rights Committee, General Comment 35, para. 15.

²² See United Nations Office on Drugs and Crime (UNODC), Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (Vienna, 2017), chap. 2.

minors.²³ Children who were detained for association with armed groups should be recognised as victims of grave abuses of human rights and humanitarian law, recovery and reintegration and, where possible, family reunification should be prioritized.²⁴ In this respect, we also note the fundamental right to a child's family life, which includes the right to not be arbitrarily separated from their parents and to maintain contact with their parents if separation occurs (article 9 UNCRC). States should always place the child at the centre of considerations, and help ensure their rights, even when the child is considered a potential security risk,²⁵ or where the child's interests conflict with the State's perceived security interests. States and other parties to the armed conflict must not detain children illegally, or arbitrarily, including for preventive purposes.²⁶ In line with UN Security Council resolution 2427, States should adopt and implement standard operating procedures for the immediate and direct handover of children from military custody to appropriate child protection agencies. All States have a fundamental duty always to take measures in the best interest of the child, and to respect, protect and fulfil the rights of children that are immediately impacted, particularly the right to life, and the right to be free of inhumane and ill treatment and all forms of physical and mental violence, neglect, and exploitation. Children who were detained for association with armed groups should be recognised as victims of grave abuses of human rights and humanitarian law, recovery and reintegration and, where possible, family reunification should be prioritized.²⁷

Duty to act with due diligence to protect the rights of nationals deprived of their liberty in the camps

We would wish to highlight a few points that may be of relevance regarding issues raised in this communication and impact on any further course of action. In our view, States have a duty to act with due diligence and take positive steps and effective measures to protect vulnerable individuals, notably women and children, located outside of their territory where they are at risk of serious human rights violations or abuses, and where their actions or omissions can positively impact on these individual's human rights.²⁸ It is also inherent in a State's obligation to take positive preventive operational measures to protect the right to life.²⁹ This is also rooted in the need to avoid allowing a State to perpetrate violations on the territory of another State that it could not perpetrate on its own,³⁰ which is a guiding principle when considering extra-territorial jurisdiction. A state's responsibility may be engaged on account of acts which are performed, or which produce effects, outside its national borders, or which have sufficiently proximate repercussions on rights guaranteed under international human rights law, even if those repercussions occur outside its

²³ CCPR/C/CG/35, para. 18.

²⁴ Global Study on Children deprived of their Liberty , p. 615.

²⁵ UN Counterterrorism Centre, "Handbook on Children affected by the FTF Phenomenon", 2019, para. 62.

²⁶ Global Study on Children deprived of their Liberty , p. 615.

²⁷ Global Study on Children deprived of their Liberty , p. 615.

²⁸ For the full position on this issue, see Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Special Rapporteur on arbitrary, summary and extra-judicial executions in the case of H.F. and M.F. v. France (Application no. 24384/19) before the European Court of Human Rights, https://www.ohchr.org/Documents/Issues/Terrorism/SR/Final-Amicus_Brief_SRCT_SRSsummex.pdf.

²⁹ ECtHR, *Opuz v Turkey*, Application No 33401/02, 2009; ECtHR, *Osman v United Kingdom*, Application No. 23452/94 (1998), *Z and Others v the United Kingdom* [GC], Application no 29392/95 (2001) and *Talpis v. Italy*, 41237/14.

³⁰ *Lopez Burgos v. Uruguay*, Communication No. [052/1979](#), 29 July 1981, para. 12.3.

jurisdiction.³¹ This is particularly relevant, where a State's actions and omissions can impact on and provide protection to rights that are essential to the preservation of values enshrined in international treaties and customary international law, human dignity and the rule of law and amount to jus cogens or non-derogable customary law norms.³²

Such an approach is already grounded in many well-established aspects of international human rights law, such as existing prohibitions relating to the transfer of individuals between jurisdictions where there is a risk of exposure to treatment that is contrary to fundamental human rights, and in a State's positive obligation to provide effective protection to children and other vulnerable persons and to take reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.³³

It is also inherent in a State's obligation to take positive preventive operational measures to protect the right to life,³⁴ namely that a State may exercise control over a person's rights by carrying out activities which impact them in a direct and reasonably foreseeable manner, meaning that a State's responsibility to protect may thus be invoked extra-territorially in circumstances where that particular State has the capacity to protect the right to life against an immediate or foreseeable threat to life.

The sustained reporting and investigation on the situation in the camps – from UN bodies, including the International Independent Commission of Inquiry on the Syrian Arab Republic,³⁵ NGOs, National Human Rights Institutions,³⁶ the media³⁷ and

³¹ See ECtHR, *Soering v. The United Kingdom*, 7 July 1989, app. no. 14038/88; ECtHR, *Drozd and Janousek v. France and Spain*, 26 June 1992, app. no. 12747/87; ECtHR, *Ilascu and Others v. Moldova and Russia* (48787/99) (2004), paras. 317 and 330-31; and *Al-Skeini and Others v. United Kingdom*, para. 131. See also Human Rights Committee *Vidal Martins v. Uruguay*, Communication No. [57/1979](#), 23 March 1982, para. 7, concerning State jurisdiction over nationals living abroad in relation to the State's exercise of the power to issue a passport.

³² One example of the link between prevention and obligations beyond the principle of jurisdiction can be found in the exclusionary rule contained in article 15 of the CAT and included in article 3 of the ECHR: judicial and administrative authorities of states parties are prevented from invoking information extracted by torture in any proceedings, irrespective of the facts of where and by whom the respective act of torture was perpetrated. According to Manfred Nowak, "in the age of globalization, these extraterritorial obligations of the CAT become increasingly important and may also serve as a model for other human rights treaties. To some extent, recently adopted UN Conventions on the Protection of All Persons from Enforced Disappearance and on the Rights of Persons with Disabilities have been modelled on the extraterritorial obligations of the CAT and confirm this global trend". Manfred Nowak, 'Obligations of states to prevent and prohibit torture in an extraterritorial perspective' in Mark Gibney and Sigrun Skogly (eds), *Universal Human Rights and Extraterritorial Obligations* (Pennsylvania Press 2010).

³³ Article 3 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ECtHR, *Soering v. the United Kingdom*, Application No. 14038/88, 1989; ECtHR, *Saadi v. Italy* [GC], Application no. [37201/06](#), 2008, ECtHR, *Othman (Abu Qatada) v. the United Kingdom*, Application No. 8139/09, 2012.

³⁴ ECtHR, *Opuz v Turkey*, Application No 33401/02, 2009; ECtHR, *Osman v United Kingdom*, Application No. 23452/94 (1998), *Z and Others v the United Kingdom* [GC], Application no 29392/95 (2001) and *Talpis v. Italy*, 41237/14.

³⁵ <https://www.ohchr.org/en/hrbodies/hrc/iicisyrria/pages/independentinternationalcommission.aspx>. In August 2020, the Commission of Inquiry reported that it had reasonable grounds to believe that - in holding tens of thousands of individuals in Hawl camp and its annex, the majority of them children, for 18 months with no legal recourse - the Syrian Democratic Forces have held individuals in inhuman conditions and that the on-going internment of these individuals continues to amount to unlawful deprivation of liberty. A/HRC/45/31, para. 80.

³⁶ Commission Nationale Consultative des Droits de l'Homme, Opinion on the French Under-Age Nationals Detained in Syrian Camps, 24 September 2019.

³⁷ See e.g. https://www.washingtonpost.com/world/middle_east/syria-al-hol-annex-isis-caliphate-women-children/2020/06/28/80ddabb4-b71b-11ea-9a1d-d3db1cbe07ce_story.html

national judicial bodies³⁸ renders it impossible for any State to argue convincingly that they do not know the risks to the mental and physical integrity of those individuals held in northern Syrian Arab Republic, the foreseeable harm, and the seriousness of the harm.

Both Al-Hol and Roj camps, which are run and administered by a non-State actor representing the Turkish authority, were established as a response to a humanitarian catastrophe to host individuals who were displaced from former ISIL-controlled territory. We have received information in relation to sustained contact of a number of States with camp authorities and interventions regarding foreign nationals in the camps.³⁹ These are reflected in the ability to return some nationals to their countries of origin, or to sufficiently impact on camp authorities to allow or deny family members from accessing individuals in the camps. This, in our view, reveals the exercise of de facto, or constructive jurisdiction⁴⁰ over the conditions of their nationals held in camps specifically because they have the practical ability to bring the detention and attendant violations to an end through repatriation.⁴¹ We have received information indicating that the SDF have expressed their willingness to assist governments in repatriating their citizens from the camp. As these ‘camps’ now appear to function as detention and security facilities for over an approximate 10,000 women and children, including your nationals, your legal obligations as a result of the continued detention of your nationals are more significant.

In practical terms, a number of actions and measures can be taken in order to positively protect the fundamental rights of the individuals held in the camps, as the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has, in the context of her country work, seen operationalized first hand. These include returning individuals to their country of origin, either directly or through counterparts (other States, non-State actors or humanitarian actors) present in the camps. We outline that under the Palermo Protocol (article 8(1)), State Parties shall facilitate and accept, with due regard to the safety of the person, the return of their nationals when they were victims of human trafficking. The same duty is imposed for individuals who had only the permanent right of residence at the time of entry into the territory of the receiving State. Partnerships can be optimized in tracing, identifying and delivering the practical means to extract individuals from territories under the control of non-state actors and ensure their safe return to home countries.⁴² A number of steps can be taken to ascertain nationality,

³⁸ Both the United Kingdom’s Special Immigration Appeals Commission and the Court of Appeal of England and Wales have recently accepted that the conditions in both Roj and Hawl were sufficient desperate that they met the threshold of inhuman or degrading treatment for the purposes of article 3 of the ECHR. United Kingdom SIAC, *Shamima Begum v. the Secretary of State*, Appeal No: SC/163/2019, 7 February 2020, para. 130. See also [2020] EWCA Civ 918 Case No: T2/2020/0644, T3/2020/0645 and T3/2020/0708, Court of Appeal on appeal from SIAC (T2/2020/0644) (sitting also as a divisional court in CO/798/2020) (T3/2020/0708) and on appeal from the administrative Court (T3/2020/0645) *Shamima Begum v. SIAC and Secretary of State for the Home Department* and (1) the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism and (2) *Liberty*, 9 July 2020, para. 11.

³⁹ This information was gathered by RSI in the course of interviews conducted on the ground in the camps in early February 2020. This information will be published in a forthcoming report from RSI, due for release at the end of October 2020. See also Commission Nationale Consultative des Droits de l’Homme, *Opinion on the French Under-Age Nationals Detained in Syrian Camps*, 24 September 2019, pp.8-9.

⁴⁰ Note also the position of the French Commission Nationale Consultative des Droits de l’Homme: “The CNCDDH thus considers that the French nationals detained in the camps come under France’s jurisdiction in the meaning of article 1 of the ECHR”, *Opinion on the French Under-Age Nationals Detained in Syrian Camps*, 24 September 2019, p.8.

⁴¹ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the 75th session of the General Assembly, October 2020. See <https://undocs.org/A/75/337>.

⁴² A/HRC/43/46/Add.1.

obtain assistance from state and non-state actors to move individuals from camps and assist in air transport, and to provide humanitarian assistance and medical care before, during and after transit.⁴³

The provision of consular assistance and the delivery of identity documents, either directly or through counterparts, can also have a positive impact on the rights of those individuals in the camps, bearing in mind nonetheless that the remedial nature of both diplomatic protection and effective consular assistance frequently means that it cannot effectively prevent an irreparable harm from being committed.⁴⁴ Conversely, withholding essential life-saving protection from an individual on the grounds of their purported crime, or on the grounds of the purported crimes of their spouses or parents, would violate both the State's obligation to protect the right to life and the prohibition against discrimination. The attribution of criminal behaviour to children, particularly very young children in the camps, underscores the problematic logic of state positioning in this regard. While cognisant of the difficulties at a practical level that States may encounter in exercising their authority and duties in the camps, these do not, however, displace the jurisdictional question, but will have to be taken into account when it comes to assessing the proportionality of the acts or omissions complained of.⁴⁵

Finally we recall that the Special Rapporteur on the promotion and protection of human rights while countering terrorism considers the urgent return and repatriation of foreign fighters and their families from conflict zones as the only international law-compliant response to the increasingly complex and precarious human rights, humanitarian and security situation faced by those women, men and children who are detained in inhumane conditions in overcrowded camps, prisons, or elsewhere in northern Syrian Arab Republic and Iraq. Such return is a comprehensive response that amounts to a positive implementation Security Council resolutions 2178 (2014) and 2396 (2017) and is considerate of a State's long-term security interests.⁴⁶

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide any additional information and/or comment(s) you may have on the above-mentioned transfer of families to the newly-

⁴³ Preliminary Findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Kazakhstan: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24637&LangID=E>.

⁴⁴ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Visit to France, 8 May 2019, A/HRC/40/52/Add.4, para. 47. "*The Special Rapporteur wishes to emphasize the important role that effective consular assistance plays as a preventive tool when faced with a risk of flagrant violations or abuses of human rights, while also noting that the remedial nature of diplomatic protection proceedings*".

⁴⁵ ECtHR, Sargysan v. Azerbaidjan, Application No. 40167/06, 2017, para. 150.

⁴⁶ <https://www.ohchr.org/Documents/Issues/Terrorism/PositionSRreturnsFFsOct2019.pdf>

- extended camp in Roj and on the legal basis for their transfer and detention. Please provide any information you may have on the measures your Government has taken to maintain contact and ensure their well-being since the transfer.
3. Please clarify whether your Government was informed about the registration, data-collection and relocation exercise and its purpose.
 4. Please explain whether your Government has been informed by the authorities carrying out this exercise about the next step following their relocation to the other camp.
 5. Please explain whether your Government was in any way involved in requesting this exercise, or if the data collected or assessments made were communicated to your Government.
 6. Please explain what data-protection measures are available in your national legal system to protect against the exploitation and use of such data collected, stored, and used by other State actors with whom data was shared as well as non-state actors against your nationals.
 7. Kindly also explain how the collection of biometric data has complied with medical ethics, the adequate provision of information and with people's right to informed consent.
 8. Please provide information on the actions taken by your government to protect the rights of children from your country being held in Al-Hol and Roj camps to prevent irreparable harm to the lives, health and security.
 9. Please provide any information available on specific measures taken to protect women and girls against acts of gender-based violence they may face within the detention facilities and in the camps and to ensure their access to health services, specifically in relation to their reproductive health.
 10. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure access to an effective remedy, including through domestic judicial mechanisms, for your nationals being held in Al-Hol and Roj camps who may be victims of human rights abuses, including trafficking in persons.
 11. Please provide any information you may have about the basis for the transfer of families from Al-Hol to Roj, and the measures your Government has taken maintain contact and ensure their well-being since the transfer.
 12. Please explain the measures that your government might have taken to ensure that the rights of your citizens mentioned in this communication were respected in this exercise.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information at hand is sufficiently reliable to indicate a matter warranting prompt attention. We also believe that the wider public should be alerted to the potential human rights implications of the above-mentioned allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform that a similar communication has been sent to other countries whose nationals are also in detention in Al-Hol and Raj camps.

A copy of this communication has been sent to the Syrian Arab Republic and the UNHCR.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri
Special Rapporteur on the right to food

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fernand de Varennes
Special Rapporteur on minority issues

Joseph Cannataci
Special Rapporteur on the right to privacy

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Mama Fatima Singhateh

Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Siobhán Mullally

Special Rapporteur on trafficking in persons, especially women and children

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Pedro Arrojo-Agudo

Special Rapporteur on the human rights to safe drinking water and sanitation

Elizabeth Broderick

Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we respectfully call your Excellency's Government's attention to the relevant provisions enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). More specifically we consider the international human rights standards applicable under article 26 of the ICCPR, article 2 of the ICESCR and article 1 of the ICERD which prohibit discrimination; article 14 of the ICCPR and 10 of the UDHR which guarantee the right to fair criminal proceedings; article 17 of the ICCPR which prohibits arbitrary and unlawful interference with one's privacy. We also consider several protective norms contained in the United Nations Convention on the Rights of the Child (UNCRC) and in several General Assembly and United Nations Security Council's resolutions on this matter.

Humanitarian access:

We would like to refer your Excellency's government to the international law obligation to allow humanitarian access to principled humanitarian actors and to allow principled humanitarian action,⁴⁷ so that these actors are able to respond to the needs of civilians where neither the government nor a non-State party to the conflict is able to do so. In this regard, the Security Council has also urged parties to allow full unimpeded access by humanitarian personnel to all people in need of assistance.⁴⁸

We would like to remind that pursuant article 6 of the ICCPR, every human has the inherent right to life. Therefore, saving lives should never be a crime⁴⁹. Under international human rights law, the inalienable right to life entails a negative obligation on the State not to engage in acts, such as the prohibition, criminalisation, or impediment of humanitarian actions, which would jeopardise the enjoyment of that right. Acts prohibiting or otherwise impeding humanitarian services violate the obligation of States to respect the right to life. Any death linked to such prohibition would constitute an arbitrary deprivation of life, which engages the responsibility of the State⁵⁰.

In relation to this, we also wish to recall that the Human Rights Committee recognised that the right to life should not be interpreted narrowly, noting that it places not only negative obligations on States (e.g. to not kill), but also positive obligations (e.g. to protect life), to ensure access to the basic conditions necessary to sustain life. It has affirmed that measures that restrict access to basic and life-saving services, such as food, health, electricity and water and sanitation are contrary to article 6 of the ICCPR that protects the right to life. For instance, denying access to

⁴⁷ The rules applicable in non-international conflicts are Common article 3(2) of the four Geneva Conventions and article 18 AP II. Customary international law rules apply alongside these treaty provisions. According to the ICRC's study of customary rules of international humanitarian law, these treaty provisions are mirrored in customary law and the rules regulating humanitarian relief operations are essentially the same in both international and non-international armed conflict.

⁴⁸ UNSC resolution 2175, para. 3.

⁴⁹ "Saving life is not a crime", Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/73/314): <https://undocs.org/A/73/314>.
Ibid.

water, through disconnections or otherwise, can be deemed to be in violation of the right to life. Likewise, the failure of States to provide access to health care, including through restrictions on health-care providers may violate the right to life⁵¹.

Furthermore, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) encourages States to cooperate with non-governmental organisations in training law enforcement, immigration and other relevant officials (article 10(2)). The Palermo Protocol also encourages States to provide for the recovery of victims of trafficking in persons in cooperation with non-governmental organizations (article 6(3)). Cooperation with non-governmental organizations is similarly encouraged in the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (Principle 6(1) and (2)).

We also wish to stress that the Security Council has resolved, through a certain number of resolutions, that the protection of children from armed conflict is an important aspect of any comprehensive strategy to resolve conflict, and should be a priority for the international community.⁵² Likewise, the Security Council has called upon parties to armed conflict to respect the civilian and humanitarian character of camps and settlements, and to take into account the particular needs of women and girls, including in their design.⁵³ The General Assembly and other UN bodies have repeatedly called for special protection afforded to children by all parties to conflict.⁵⁴ The Secretary-General identified six grave violations during armed conflict, based on their suitability for monitoring and verification, their egregious nature and the severity of their consequences on the lives of children,⁵⁵ whose legal basis lies in relevant international law, including international humanitarian law, international human rights law and international criminal law. Denial of humanitarian access, care and protection to children is one such violation. Denial of humanitarian access to children and attacks against humanitarian workers assisting children are prohibited under the 4th Geneva Convention on the protection of Civilian Person in time of War and its Additional Protocols I and II.⁵⁶ Moreover, it is a principle of customary international law that parties to conflict must allow and facilitate aid that is impartial and conducted without adverse distinction to any civilian population in need, subject to their

⁵¹ Saving life is not a crime”, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/73/314): <https://undocs.org/A/73/314>.

⁵² See, for example, United Nations Security Council Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011) and 2068 (2012).

⁵³ See United Nations Security Council Resolution 1325 (2000), para. 12, and similar subsequent resolutions 1820 (2009); 1888 (2009); 1889 (2010); 1960 (2011); 2106 (2013); 2122 (2013); 2242 (2015), 2467 (2019), and 2493 (2019).

⁵⁴ UN General Assembly Declaration, A World Fit For Children, appended to A/Res/S-27/2 (2002) which was unanimously adopted. See also A/RES/62/141 (2008), A/RES/63/241 (2009).

⁵⁵ S/2005/72. See also UNSCR 1612 (2005) that tasks the UN Secretary-General to implement the monitoring mechanism (para. 3).

⁵⁶ Art. 23, 24, 38, 108 and 142 Geneva IV; art. 18 AP II. Such a denial of access may constitute a war crime: see article 8(2)(b)(c)(e) of the Rome statute

⁵⁷ Customary Rule 55 “The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control” in: International Committee of the Red Cross (Henckaerts, Doswald-Beck eds.), Customary International Humanitarian Law Vol. 1: Rules, Cambridge University Press (2005), p. 193. See also: art. 55 Geneva IV.

control.⁵⁷

We respectfully recall that the particular rights applicable to children, protected under the UN Convention on the Rights of the Child (UNCRC) and its Optional Protocols, state that children must always be treated primarily as victims and the best interest of the child must always be a primary consideration. Under the UNCRC, children have the right to life (article 6); physical and mental wellbeing, care and protection, and to prevent the abduction of, the sale of or trafficking in children for any purpose or in any form (articles 3, 19, 36 and 35); birth registration, name and nationality (article 7); identity (article 8); play, leisure and culture (article 31); and an adequate standard of living (article 27), all of which are severely impaired in the camps. We stress, in particular, the right to health (24(2)), notably through the provision of adequate nutritious foods and clean drinking-water, health care for mothers and the right to a standard of living adequate for the child's development. States must ensure that the rights provided for in the CRC are respected and that appropriate measures are taken to protect and care for the child (article 3), to the maximum extent of available resources and, where needed, within the framework of international co-operation (article 4). States also have an obligation to take all appropriate legislative and administrative measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, mistreatment or exploitation, including sexual abuse (article 19).

Furthermore, according to the General Recommendation of the Committee on the Elimination of all forms of Discrimination Against Women (General Recommendations No. 19, 28, 30 and 35)⁵⁸, conflict-related violence happens everywhere, and detention facilities are places with a very high risk for women to be exposed to violence. Such acts constitute a breach of the Convention on the Elimination of all forms of Discrimination Against Women to which your Excellency's Government is a party to and which provides that States have an obligation to prevent, investigate, prosecute and punish such acts of gender-based violence. The Working Group on Discrimination against Women and Girls emphasizes in its report on Women Deprived of Liberty (A/HRC/41/33) that women's deprivation of liberty is a significant concern around the world and severely infringes their human rights.

As per the conditions of the detention in the camps, we would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156, which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished". Holding persons incommunicado violates their right

⁵⁷ Customary Rule 55 "The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control" in: International Committee of the Red Cross (Henckaerts, Doswald-Beck eds.), Customary International Humanitarian Law Vol. 1: Rules, Cambridge University Press (2005), p. 193. See also: art. 55 Geneva IV.
General recommendation No. 19 -- eleventh session, 1992 violence against women; General recommendation No. 28 -- forty-seventh session, 2010 - The Core Obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/GC/28); General recommendation No. 30 (fifty-sixth session, 2013) on women in conflict prevention, conflict and post-conflict situations (CEDAW/C/GC/30); General recommendation No. 35 -- sixty-seventh session on gender-based violence against women, updating general recommendation No. 19 (CEDAW/C/GC/35).

to be brought before a court under article 9 (3) of the Covenant and to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant. Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.

Collection and use of biometric data:

The use of biometrics data can seriously impact on the right to privacy (article 17, ICCPR), which functions as a gateway right to the protection of a range of fundamental rights. As one of the foundations of democratic societies, it plays an important role for the realization of the rights to freedom of expression, opinion, peaceful assembly and association⁵⁹. It can also have adverse impacts on the right to equal protection of the law without discrimination, the rights to life, to liberty and security of person, fair trial and due process, the right to freedom of movement, the right to enjoy the highest attainable standard of health, and to have access to work and social security. As such, any such interference to the right to privacy must be implemented pursuant to a domestic legal basis that is sufficiently foreseeable, accessible and provides for adequate safeguards against abuse. Any restriction must be aimed at protecting a legitimate aim and with due regard for the principles of necessity, proportionality, and non-discrimination.

Biometric data collection and non-discrimination

Under international human rights law, the principles of equality and non-discrimination are codified in all core human rights treaties. Article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The Convention aims at much more than a formal vision of equality. Equality in the international human rights framework is substantive and requires States to take action to combat intentional or purposeful racial discrimination, as well as to combat de facto, unintentional or indirect racial discrimination.

Article 26 of the International Covenant on Civil and Political Rights states that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The International Covenant on Economic, Social and Cultural Rights also prohibits discrimination on these grounds.

The International Convention on the Elimination of All Forms of Racial Discrimination articulates a number of general State obligations that must be brought to bear in the specific context of emerging digital technologies. It establishes a legal commitment for all States parties to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity

⁵⁹ General Assembly resolutions 68/167 and 73/179, stress in particular that there may be particular effects on women and children and those who are vulnerable and marginalized. See also report of the UN High Commissioner for Human Rights, A/HRC/27/37.

with this obligation. Instead, States parties must pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.

Specific impact on women and children due to their alleged association with terrorist groups

Article 2 of the UNCRC protects the right of children to be free from discrimination, including on the basis of the activities or status of their parents. Policy responses that lead to a lowering of children's human rights protection because their parents or family were related to or associated with terrorist groups violate this key principle of international law. Further, States are to give special consideration to children who have been affected by their parents' conflict with the law, including those parents accused or convicted of being foreign fighters. States are to ensure that these children are treated as victims and do not have their rights infringed upon because of their parents' status.⁶⁰ In line with UN Security Council Resolution 2427 (2018), States should recognise that children who are detained for association with armed groups are first and foremost victims of grave abuses of human rights and international humanitarian law.

In its resolution 2331 (2016), the Security Council recognized the nexus between trafficking, sexual violence, terrorism and transnational organized crime. The resolution also laid a crucial normative framework for tackling previously unforeseen threats to international peace and security, including the use of sexual violence as a tactic of terrorism by groups that traffic their victims internally, as well as across borders, in the pursuit of profit and with absolute impunity. The resolution sets out that the link emerges from the implication of terrorist groups in the trafficking of women and girls in conflict-related areas and from the fact that trafficking serves as an instrument to increase the finances and power of those organized criminal groups.

Due process and security

The right to fair criminal proceedings is safeguarded by article 10 of the UDHR article 14 of the ICCPR. In particular, we wish to highlight that equality before the law and the principle of equality of arms are key requirements of a fair trial, in criminal and civil proceedings.⁶¹ This demands that resort to 'secret' evidence, intelligence information and information collected, preserved and shared by the military to be used as evidence be strictly limited, and outright excluded when it does not allow the defendant to be in a position to defend themselves effectively, in full respect of this principle.

The Convention on the Rights of the Child provides that States shall take all feasible measures to ensure the protection and care of children affected by armed conflict, and all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims of armed conflict.⁶² According to the European Court of Human Rights, measures applied by the State to protect children against acts of violence falling within the scope of articles 3 and 8 ECHR should be effective and include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such

⁶⁰ UN Counterterrorism Centre, "Handbook on Children affected by the FTF Phenomenon", 2019, para. 63.

⁶¹ Human Rights Committee, General Comment 32, para. 13.

⁶² UNCRC articles 38-39.

serious breaches of personal integrity.⁶³

Duty to act with due diligence to protect the rights of nationals deprived of their liberty in the camps

The determination of whether States have acted with due diligence to protect against unlawful death is based on an assessment of: (a) how much the State knew or should have known of the risks; (b) the risks or likelihood of foreseeable harm; and (c) the seriousness of the harm.⁶⁴ This duty to act with due diligence to ensure that the lives of their nationals are protected from irreparable harm to their life or to their physical integrity applies where acts of violence and ill-treatment are committed by state actors or other non-State actors party to a conflict.⁶⁵

⁶³ S derman v. Sweden [GC], no. [5786/08](#), 81, ECHR 2013

⁶⁴ General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, para. 63. See also ECtHR: Opuz v Turkey, Application No 33401/02, 2009; Osman v United Kingdom, Application No. 23452/94 (1998), Z and Others v the United Kingdom [GC], Application no 29392/95 (2001) and Talpis v. Italy, 41237/14 (2017).

⁶⁵ See the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Application of the death penalty to foreign nationals and the provision of consular assistance by the home State, 20 August 2019, A/74/318: <https://undocs.org/A/74/318>.



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
GENEVA

Geneva, 23 August 2021

Ms Beatriz Balbin
Chief, Special Procedures Branch
United Nations Office of the High Commissioner for Human Rights (OHCHR)
Palais des Nations
1211 Geneva 10
Switzerland

Dear Ms Balbin,

I have the honour to refer to your letter number AL AUS 1/2021 of 26 January 2021 concerning a registration and verification exercise in Al Hol and Al Roj camps located in northeast Syria in June 2020.

The Australian Government is deeply concerned about the situation in internally displaced persons camps administered by Turkish authorities in northeast Syria. The Government is aware of the presence of Australian citizens, including children, in the camps, and in June 2019 took steps to remove from the camps all unaccompanied Australian minors known to us at that time. The Australian Government understands that local authorities administering the camps are not permitting repatriation of any other category of individuals at this time.

The security situation in the area of the camps prevents Australian consular officials from visiting the camps in person. Australian officials monitor conditions in the camp through regular engagement with Turkish officials and humanitarian partners operating in northeast Syria. Australian officials are also in communication with family members of individuals in the camps.

The Australian Government funds humanitarian partners who work to support access to healthcare and protections to the most vulnerable in northeast Syria, including vulnerable populations in IDP camps. Australian funding to UNFPA is provided to meet the needs of women, girls and children in Syria, including vulnerable populations in the northeast. Australian funding to the WHO provides critical health services including COVID-19 prevention preparedness and response, nutrition assistance, and water, sanitation and hygiene activities.

As set out in Australia's formal statement to the UN Human Rights Committee in 2009, the Australian Government accepts that there may be exceptional circumstances in which Australia's human rights obligations may be relevant beyond the territory of a State party. The Australian Government has accepted that its human rights obligations extend outside Australian territory where it exercises 'effective control'. Consistent with this position, and noting that Australia does not administer the Al Hol and Al Roj camps, the Australian Government does not accept it exercises jurisdiction over the conditions of Australian

nationals in those camps such as to engage the extraterritorial application of Australia's international human rights obligations.

Yours Sincerely,

A handwritten signature in blue ink that reads "Sally Mansfield". The signature is written in a cursive, flowing style.

Sally Mansfield
Ambassador and Permanent Representative
Australian Permanent Mission to the Office of the United Nations and Conference on
Disarmament

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: AL AUS 1/2022
(Please use this reference in your reply)

1 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 40/16, 42/22, 44/5, 32/8, 42/16, 43/14, 42/9, 43/36, 43/20, 44/4 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of a number of boys and men holding your Excellency's citizenship currently detained in North-East Syria.

According to the information received:

Since 2019, there are approximately 10,000 men and 750 boys, some as young as nine, detained for alleged association to ISIL in approximately fourteen detention centres throughout North-East Syria, mostly converted schools and hospitals. Of these at least 2,000 men and 150 boys are reportedly third country nationals. Some boys are allegedly detained together with adult men, some are held in the same facilities but separated from adults, and at least 100 boys between the ages of 11 to 17 from 35 nationalities are detained in the closed Houry "rehabilitation" centre.

Most of these boys were reportedly transferred from the camps of al-Hawl and Roj to detention centres upon reaching the age of 10 to 12, some taken away

from the care of their mothers and separated from their siblings. Incarcerated third country national boys are not allowed to visit their families in the camps. None of these detention sites or “prisons” allegedly meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). Prisoners are held in overcrowded collective cells of 20 to 25 people in inhumane conditions, with limited access to food and medical care, open latrines, and poor ventilation, which means that infectious diseases, such as tuberculosis and scabies, might be rampant. Concerns about the spread of COVID-19 in these conditions remain high. Hundreds of individuals have died in the prisons, and there have been several riots, which appear to be aimed at improving their extremely poor detention conditions, demanding family access and some form of legal process. The detainees have allegedly not gone through any judicial process to determine the legality or appropriateness of their detention, nor have they been brought before a judicial authority. There are also reports of incommunicado detention.

One of the largest of these prison facilities is Al-Sina’a military prison, found in the Ghwayran neighbourhood of Hasakah, which reportedly holds approximately 5,000 individuals. While approximately 50 children are detained together with men, most are detained in a separate annex for children, which holds approximately 640 children, including 150 third country nationals. It was reported that on 20 January 2022 this prison was attacked by ISIL and that significant numbers of the children held there are being used as human shields.

The Global Coalition to Defeat ISIL, led by the United States and composed of 84 members and of which your country is a member, has provided substantial stabilisation assistance to increase the security of the prison, notably training and equipment to increase local authorities’ capacity to manage the detention facility. In 2020, the Coalition provided more than 2 million dollars for riot equipment and security equipment, including cameras, structural security wire, improved doors and personal protective equipment to stop the spread of COVID-19. There are also reports about the financing for improvement to and expansion of existing detention facilities, crediting the Coalition generally as the source of funds, notably with plans to expand the capacity of rehabilitation centres for boys to accommodate up to 500 more children.

Special Procedures mandate holders have expressly affirmed the obligations of States regarding their third country nationals to urgently repatriate those nationals, subject to the principle of non-refoulement. Your Excellency’s Government has already received a communication on this issue (AL AUS 1/2021) on 26 January 2021. We thank Your Excellency’s government for its response dated 23 August 2021.

While we do not wish to pre-judge the accuracy of the above-mentioned allegations, we would like—through the present communication—to express our profound concern regarding the detention situation of the men and boys in North-East Syria, including that of citizens of your Excellency’s government.

We are extremely concerned at the continued detention of the male children and adult men in the various detention centres in North-East Syria including nationals of your Excellency’s Government. According to the information received, there is no

legal basis for the blanket detention, no judicial authorisation, review, control or oversight of these detentions which entirely lack in predictability and due process of law.

We underscore that the prohibition of arbitrary detention, recognised both in times of peace and armed conflict, is well-established under international law and can be considered as a peremptory or *jus cogens* norm of international law. Together with the right of anyone deprived of liberty to bring proceedings before a court in order to challenge the legality of the detention, these rights are non-derogable under international treaty and customary law. Arbitrary deprivation of liberty can never be a necessary or proportionate measure, given that the considerations that a State may invoke pursuant to derogation are already factored into the arbitrariness standard itself. Thus, a State can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital security or other interest or proportionate to that end. The sub-contraction or direct facilitation of liberty deprivation by non-State actors does not negate a State's obligations to protect, promote and fulfil its human rights treaty obligations.¹

We also note that administrative security detention presents severe risks of arbitrary deprivation of liberty. As noted by the Human Rights Committee, such detention would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available in countries of citizenship.

We are deeply concerned at the facilitation of mass arbitrary detention by States both directly and indirectly in these detention facilities in North-East Syria. Administrative – including security – detention can only be invoked by States under the most exceptional circumstances where a present, direct and imperative threat exists. The burden of proof lies on States to show that an individual poses such a threat which cannot be addressed by alternative measures. States also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 of the ICCPR. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken. There is no legal basis in international human rights law for non-State actors to engage in administrative, security or other detention practices.² We stress that there is no human rights based legal basis for the detention by the non-State actor, which would be a necessary condition for any detention, during or after conflict. In any event, both international human rights law and international humanitarian law clearly prohibit arbitrary and indefinite detention where individuals are held without proper charge, due process of law, and on the basis of individual responsibility for imperative reasons, which requires an individual assessment of the risk, and a right of review by a judicial authority. There is also no permissible human rights basis for States to sub-contract directly or indirectly administrative or security detention to non-State actors on the territory of third States.

¹ This obligation extends to the work in question between carried out by private entities *Yassin et al. v. Canada*, Comm. No. 2285/2013, Human Rights Committee, (26 July, 2017) para. 6.5

² <https://digital-commons.usnwc.edu/ils/vol91/iss1/5/>

We remain extremely concerned that in the cases of deprivation of liberty of the men and boys in North-East Syria, including your nationals, despite the exceptional circumstances, none of the conditions to prevent arbitrary detention – a right so fundamental that it remains applicable even in the most extreme situations – are respected, and that no steps towards terminating or reviewing the legality of detention have been taken, despite many of these individuals being detained for almost three years, which in practice amounts to the possibility of indefinite detention. We are profoundly concerned that what is now emerging is capacity building and technical assistance provision supporting indefinite mass detention of men and boys including your nationals enabled and supported in part by the Coalition of which your Excellency's government is a member.

We are gravely concerned at the continued detention in multiple prisons and prison-like 'rehabilitation' centres of a large number of male children and adolescent boys – at least 850 – in North-East Syria on what appears to be multiple spurious grounds. We have confirmed that these children include citizens of your Excellency's government. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stresses that boys were primarily brought to Syria or Iraq by parents or other family members or were born in Syria to individuals who travelled there. An unknown number of children were allegedly conceived from acts of rape and sexual coercion during the conflict, or forced marriage. No child is responsible for the circumstances of his birth and cannot be punished, excluded, deemed unworthy of human rights protection by virtue of the status or acts of his parents. Children do not enjoy the independence, agency and range of choices open to adults, and the situations described above can never be considered as including meaningful consent.

We recall that, according to international law, children are considered vulnerable and in need of special protection. Consequently, States must treat them, including children related to or associated with designated terrorist groups, primarily as victims when devising responses, including counter-terrorism responses. Children who are detained for association with armed groups should be recognised as victims of grave abuses of human rights and humanitarian law. We underscore that under international law, child association with terrorist groups is considered as involving some form of coercion or constraint. We stress the evidence at hand that many of the boys have been abused by ISIS as child soldiers and in that context forced to commit serious crimes under international law.

We therefore decry ill-grounded presumptions that all male children, over the age of 10 to 12 in the Syrian conflict zone are to be presumed violent extremists, terrorists, or foreign fighters. Given the lack of agreed definition on all of these terms their application to male children who have experienced systematic violations of their human rights is profoundly regrettable. Extending the arm of counter-terrorism to children associated with non-state armed groups designated as 'terrorist' shifts the discourse from protection to punishment, from protected victim to security threat. In turn, this also changes the protection to which they are entitled notably regarding detention, applicability of criminal law and treatment under criminal justice, as well as their rights, away from a child right perspective and the question of responsibility for violations of the rights of the child, including recruitment and use. The interplay of serious violations of international law committed by persons who are or were previously child soldiers is not new to international criminal law. Recovery,

reintegration and family reunification should be prioritized,³ in line with the fundamental right to a child's family life, the right to not be arbitrarily separated from their parents and to maintain contact with their parents if separation occurs. States should always place the child at the centre of considerations, and help ensure their rights, even when the child is considered a potential security risk,⁴ or where the child's interests conflict with the State's perceived security interests.

The Special Procedures mandate holders underscore that international law is very clear concerning the detention of children. In all cases, detention should be used as a measure of last resort and for the shortest amount of time possible, taking into account the extreme vulnerability and need for care of unaccompanied minors (CCPR/C/CG/35, para. 18). Yet, as far as we can assess, no human rights and rule of law compatible determination has been made to justify their detention, either in prisons or in rehabilitation centres. In all these contexts, the children concerned were treated with no attention to their best interests (UNCRC, article 3); no legal process has been undertaken to determine the appropriate care, responsibility rights or needs of these children (UNCRC, articles 27 and 40); traumatic separation from mothers has been conducted without any legal regulation or recourse (UNCRC, articles 9 and 16); physical and psychological violence to young boys has no remedy (UNCRC, articles 19, 20, 24, 34 and 37); health is profoundly compromised by sub-human standards of indefinite detention including augmented risks by virtue of the Covid-19 pandemic (UNCRC, article 24). Moreover, the technical and capacity building support to enable those actors to continue to secure and extend their detention, directly implicates your Excellency's government in the process of and responsibility for their continued detention. Moreover, the reports of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/47/34) highlight the principle of non-punishment, which must be applied without discrimination to all trafficked persons.

We are also concerned at the conditions in which prisoners are held in overcrowded collective cells, which amount to a violation of the right to an adequate standard of living, including food and housing, which applies to everyone without distinction of any kind, regardless of any status, as enshrined in article 25(1) of the Universal Declaration of Human Rights, as well as article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

For the boys, including your nationals, placed in 'rehabilitation' centres, similarly, none have had any or adequate legal basis to justify their detention; none were legally represented in any judicial or administrative process placing them there; no 'best interest' test was or could have been adequately applied to decide on their detention; no assessment of their protection or other needs has been conducted; no child has meaningful exit from these places of detention unless and until he is repatriated to his country of citizenship in accordance with international law. The fact of their detention and the support of third country States to facilitate and sustain that incarceration correspondingly creates direct obligations in respect of their conditions of detention.

Further, we express our concern at the automatic transfer of all boys including potentially your nationals, from various child detention centres to adult detention

³ Manfred Nowak, "The United Nations Global Study on Children Deprived of Liberty", p. 615.

⁴ UN Counterterrorism Centre, "Handbook on Children affected by the FTF Phenomenon", 2019, para. 62.

centres at the very latest when they turn 18. We underscore that the unlawfulness of detention as a child does not render such detention lawful once a child crosses the threshold of adulthood. There is no lawful basis to detain an adult based on their newly acquired adult status when previous detention was in violation of international law. The “status” of such individuals remains that of presumed victim until evidence of specific acts constituting serious crimes under domestic or international law are adduced. The spectre of a ‘cradle to grave’ detention cycle for male children including your child nationals in North-East Syria, supported and enabled by third country States, is of profound concern to us.

The entrenchment and protraction of the alleged arbitrary deprivation of liberty in these inhumane conditions in North-East Syria of men and boys is premised on the direct security assistance provided by the Coalition, which your Excellency’s government has supported, to a non-State entity. This concern is heightened by the alleged presence of some of your Excellency’s nationals in the detention centres. We maintain the firm opinion that the perpetuation of a situation where detainees’ non derogable right to not be arbitrarily detained and to have their detention judicially authorised and reviewed remains violated can raise serious questions of State responsibility and of complicity in the facilitation, sustainment and continuation of the serious human rights violations that are taking place in the prisons and detention centres in North-East Syria.

We recall that in addition to a due diligence duty aimed at ensuring that any security aid or assistance is compliant with international human rights law (A/76/261), where serious breaches of international law are committed, States must not render aid or assistance in maintaining the situation created by the serious breach and must cooperate to bring it to an end. The requirements of effectively demonstrated due diligence have an element of proportionality: the greater the links and control a state exercises, the greater the standards of diligence that this state shall demonstrate.

Considering the above, and particularly in light of recent developments, we reiterate again that the voluntary and human rights compliant repatriation of boys and men who are citizens of your Excellency’s government is the only international law-compliant response to the complex and precarious human rights, humanitarian and security situation faced by those detained in inhumane conditions in overcrowded prisons or other detention centres in North-East Syria. As we had already stressed and as recent security developments confirm, given the geopolitical fluidity of the region currently controlled by various non-State armed groups, repatriations are key to States’ long-term security interests. Any repatriation must comply with international law, including with the absolute prohibition of torture, ill treatment, and refoulement. The building and support to the maintenance of prisons designed to keep these boys in ‘cradle to grave’ detention is incompatible with your Excellency’s government obligations under international law, particularly given the specific nature of the prohibition of arbitrary detention as a *jus cogens* or non-derogable customary law norm.⁵

Given the proximity of an international military base very close to Hasakah prison, the number of civilian and other delegations that have had access to the camps and the prisons, and the number of successful repatriations including of men that have taken place, the lack or the difficulties of access to the detainees who are nationals of your Excellency’s government should not be put forward as a reason for not

⁵ On the question of functional jurisdiction, see UN Committee on the Rights of the Child, CRC/C/85/D/79/2019-CRC/C/85/109/2019 and CRC/C/86/D/R.77/2019 and AL AUS 1/2021.

repatriating your nationals.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned assessment of the detention of boys and men, nationals of your Excellency's Government in North-East Syria.
2. Please provide information on the actions taken by your government to protect the fundamental rights of boys and men, particularly nationals of your country, held in the prison in Hasakah and other detention centres in North-East Syria.
3. Please explain the measures that your government has taken to repatriate your citizens from the prisons and detention centres in North-East Syria and provide them with adequate procedures that will ensure respect for their right to liberty and security and to a fair trial.
4. Please provide any additional information you may have regarding the security support and stabilization assistance provided by the Coalition, its funding and the use of these Coalition funds, as well the actual financial or other engagement of your Excellency's government in this process.
5. Please provide any information you may have on how access to safe drinking water, water for hygiene purposes, adequate sanitation and medical care, is being ensured in the detention centres, given the spread of diseases and the current COVID 19 pandemic.

We would welcome an early response to this letter. This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may consider to publicly express our concerns in the near future as, in our view, the information at hand is sufficiently reliable and alarming to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. Any expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform that a similar communication has been sent to other countries whose nationals are also in detention in North-East Syria including in prisons such as Hasakah, other detention centres and Al-Hawl and Raj camps.

A copy of this communication has been sent to the Syrian Arab Republic.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri
Special Rapporteur on the right to food

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Sorcha MacLeod
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we respectfully call your Excellency's Government's attention to the relevant provisions enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention on the Rights of the Child (UNCRC). More specifically we consider the international human rights standards applicable under article 9 of the ICCPR; article 14 of the ICCPR and 10 of the UDHR which guarantee the right to fair criminal proceedings and a set of protecting provisions contained in the UNCRC. We also consider several concrete interpretations provided by the Human Rights Committee on related issues and protective norms contained in several General Assembly and United Nations Security Council's resolutions on this matter.

Prohibition of arbitrary detention and detention of boys:

In its 2021 Report (A/HRC/46/55), the Independent International Commission of Inquiry (IICI) on the Syrian Arab Republic explained that regardless the security threat posed by many alleged former ISIL members, blanket internment of civilians who originally resided in areas formerly controlled by ISIL through violence cannot be justified. Moreover, this Commission specified that among the civilians interned since 2018 there are tens of thousands of children, elderly, infirm, disabled persons, and other individuals who do not represent any imperative security threat. Consequently, the ongoing internment of these encamped residents continues to amount to arbitrary detention.

The Working Group on Arbitrary Detention has consistently sustained that all forms of arbitrary deprivation of liberty are prohibited by international law. In its Deliberation No. 9 (2012), this Working Group thoroughly analysed the definition and scope of arbitrary deprivation of liberty and concluded that this violation of fundamental freedoms constitutes a peremptory or jus cogens norm of international law. The Human Rights Committee (Comment No. 29) attained the same conclusion adding that the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention also falls under the category of non-derogable rights. The Committee also insisted on the fact that even in emergency situations, these guarantees must be upheld.

We also wish to recall that anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. According to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37),⁶ the right to challenge the lawfulness of detention before a court is in fact a peremptory norm of international law which applies to all forms of deprivation of liberty and to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including security detention and detention under counter-terrorism measures. Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation.

⁶ See also A/HRC/13/30, at paras. 76-80.

Additionally, the UN Human Rights Committee (Comment 35, para. 15) considers that administrative detention or internment as a security measure disregarding prosecution on a criminal charge presents severe risks of arbitrary deprivation of liberty. This kind of detention amounts to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available. Even if, under absolutely exceptional circumstances, a present, direct and imperative threat is invoked as the basis of the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention.

International law provisions applicable to children in camps:

Regarding the detention of boys, we wish to stress that detention should be used as a measure of last resort and for the shortest amount of time possible, taking into account the extreme vulnerability and need for care of unaccompanied minors (CCPR/C/CG/35, para. 18). No human rights and rule of law compatible determination has been made to justify their detention, either in prisons or in rehabilitation centres. The UN Convention on the Rights of the Child (UNCRC, art 37(b)) provides that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, (art. 8) also refer to this aspect. Through article 40 of the UNCRC, States recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

We respectfully recall that the particular rights applicable to children, protected under the UN Convention on the Rights of the Child (UNCRC) and its Optional Protocols, state that children must always be treated primarily as victims and the best interest of the child must always be a primary consideration (UNCRC, article 3). Under the UNCRC, children have the right to life (article 6); physical and mental wellbeing, care and protection (article 20 and 37), and to prevent the abduction of, the sale of or trafficking in children for any purpose or in any form (articles 3, 19, 36 and 35); birth registration, name and nationality (article 7); identity (article 8); play, leisure and culture (article 31); and an adequate standard of living (article 27), all of which are severely impaired in the camps. We stress, in particular, the right to health (article 24(2)), especially in the Covid-19 pandemic context and the right not to be arbitrarily deprived of liberty (article 37 and Paris Principles). Indeed, deprivation of liberty for children should be used only as a measure of last resort and for the shortest appropriate period. Furthermore, children shall not be separated from his or her parents against their will (article 9) and shall not be subjected to any arbitrary or unlawful interference with his or her family (article 16). States must ensure that the rights provided for in the UNCRC are respected and that appropriate measures are taken to protect and care for the child (article 3), to the maximum extent of available resources and, where needed, within the framework of international co-operation (article 4). States also have an obligation to take all appropriate legislative and

administrative measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, mistreatment or exploitation, including sexual abuse (articles 19 and 34).

In line with the Convention on the Rights of the Child, UN Security Council Resolutions 2427 (OP20) and 1314 (2000), General Assembly Resolution 60/1, the 2007 Paris Principles and the Guidelines on Children Associated with Armed Forces or Armed Groups, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Position on the human rights of adolescents/juveniles being detained in North-East Syria, 2021), considers that children detained for their alleged association with terrorist groups must be treated primarily as victims of terrorism. Children do not enjoy the independence, agency and range of choices open to adults. Even in cases where boys may have travelled to Syria to join ISIS or were not otherwise forcibly recruited, most child association with terrorist groups involves some form of coercion or constraint (Report UN HCHR, A/HRC/40/28, para. 36).

Duty to act with due diligence to protect the rights of nationals deprived of their liberty in the camps

As stated above, both States and international entities must respect a due diligence duty to ensure that any assistance in the area of security is consistent with international human rights standards. Moreover, article 41 of the International Law Commission's provisions on Responsibility of States for Internationally Wrongful Acts stipulates that where a serious human rights violation occurs, States must not contribute to its perpetration and must take action to put it to an end.

The Human Rights Committee in its General Comment No. 36 (2018) on the right to life (article 6 of the ICCPR) established that the determination of whether States have acted with due diligence to protect against unlawful death is based on an assessment of: (a) how much the State knew or should have known of the risks; (b) the risks or likelihood of foreseeable harm; and (c) the seriousness of the harm. In its Report Application of the death penalty to foreign nationals and the provision of consular assistance by the home State (A/74/318), the Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that this duty to act with due diligence to ensure that the lives of their nationals are protected from irreparable harm to their life or to their physical integrity applies where acts of violence and ill-treatment are committed by state actors or other non-State actors party to a conflict.

It is noteworthy that according to the Standard Minimum Rules for the treatment of prisoners, approved by the UN Economic and Social Council, prisoners should be provided with water and articles necessary for health and cleanliness as well as drinking water, that shall be available to every prisoner whenever needed (Resolutions 663 C (IV) of 31 July 1957 and 2076 (L II) of 13 May 1977). These standards are minimum and should always be granted, even more, with the current spread of COVID 19, which has shown worldwide the paramount relevance of water for hygiene and cleanliness purposes.

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Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights to safe drinking water and sanitation and the Working Group on discrimination against women and girls

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16 February 2022

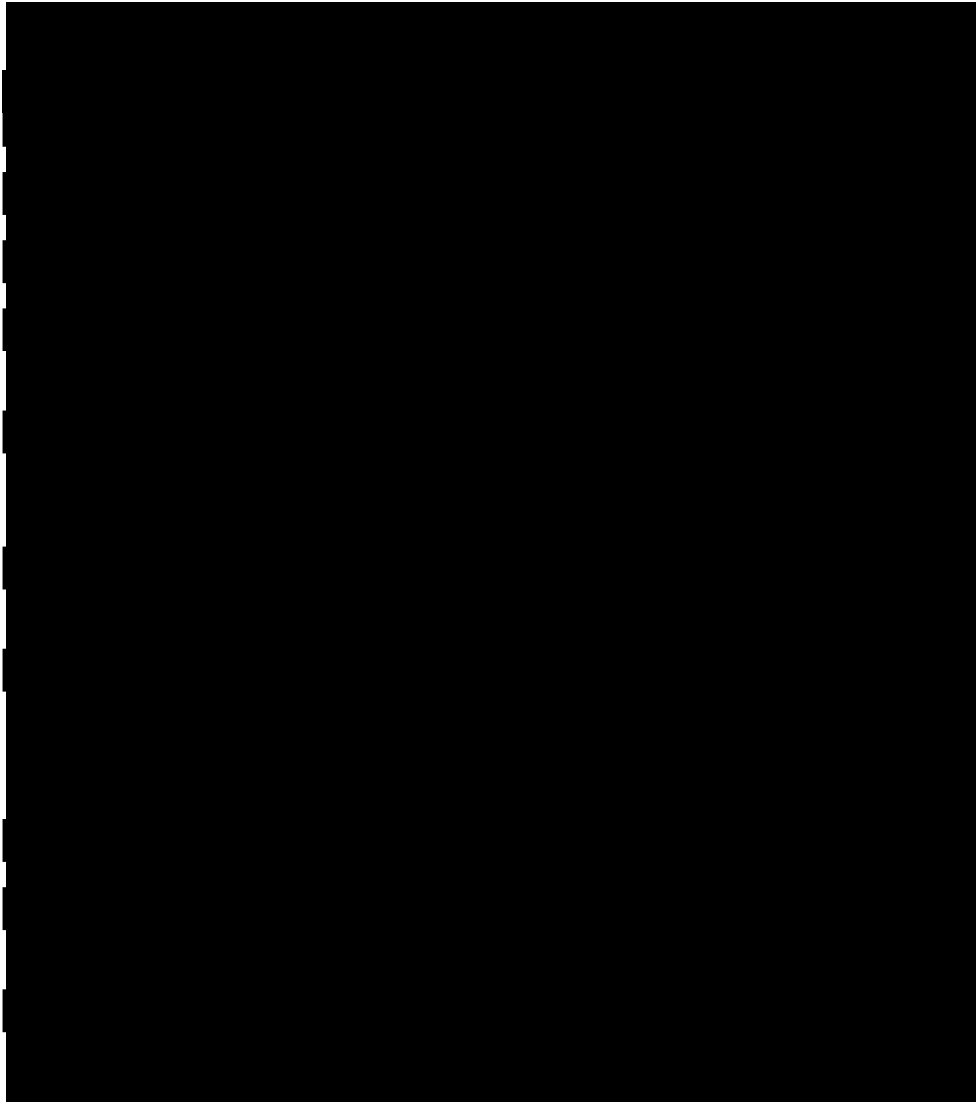
Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the human rights to safe drinking water and sanitation and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 40/16, 42/22, 44/5, 32/8, 42/16, 43/14, 43/8, 43/36, 43/20, 44/4, 42/5 and 41/6.

In this connection, we would like to bring to the attention of your Excellency’s Government information we have received concerning the situation of forty-six Australian citizens, including thirty children, who are currently being held in different camps in North-Eastern Syria. We have deep concerns about the conditions of detention in the camps, notably Al-Hol and Roj where most of these individuals are held and are deprived of their liberty without any judicial process. These concerns have already been raised in a communication sent to Your Excellency’s Government on January 26, 2021 ([AUS 1/2021](#)). We thank Your Excellency’s Government for the response received on 23 August 2021, and wish to pursue our exchange and our recommendations on this critical issue with the following.

According to the information received:

[REDACTED]



These individuals, twenty-seven of whom (seventeen children and ten adults) are held in Roj camp, have been deprived of their liberty in conditions that we believe constitute a violation of a number of human rights, and meet the standard of torture or other cruel inhuman or degrading treatment or punishment. We understand with concern that some of those detained, including children are being deprived of their citizenship by the Australian authorities. Others have practical difficulties accessing the rights and support that follow from Australian citizenship.

We are well aware that the camps are managed and administered by a non-State actor representing the Kurdish authority, and that food, safe drinking water for consumption, and water and sanitation, access in terms of hygiene, health care and essential non-food items are provided by under-resourced humanitarian groups and organisations. The medical situation of these persons is extremely worrying. Adults and children alike suffer from post-traumatic stress disorder and are underweight. Further, many have complex urgent health concerns including shrapnel in different parts of their bodies, including the head, which cannot be extracted given the lack of proper medical facilities in the camps. Due to malnourishment, dire housing and sanitary conditions and

other serious deficiencies to which they have been subjected in recent years, the children, many of whom are very young, present diversified and disturbing medical conditions including anaemia, asthma, skin irritations, chronic infections, and grave dental problems. Moreover, owing to their repeated exposure to violence and insecurity, they show signs of trauma, including psychological and behavioural disorders, as well as chronic fatigue and acute stress. The conditions related to food, water and health are exacerbated now, with the risks associated to the COVID 19 pandemic. According to the UN Standard Minimum Rules for the treatment of prisoners, approved by the UN Economic and Social Council, prisoners must be provided, ad minima, with sufficient food, safe drinking water, water for hygiene, as well as basic articles necessary to maintain their health and hygiene. These standards are minimum and should always be granted, even more, with the current spread of COVID 19, which has shown worldwide the paramount relevance of water for hygiene and cleanliness purposes.

Without prejudging the accuracy of the information received, we believe that the allegations relating to the situation of these individuals, especially the children, are sufficient credible and corroborated to warrant serious attention. We wish to express our deepest disquiet about the humanitarian situation of these persons in situation of vulnerability in an environment as complex, uncertain and sordid as the camps in north-eastern Syria, which amounts to a violation of ICESCR (ratified by your Excellency's Government on 10 Dec 1975) in particular articles 11 and 12 relating to the rights to food, adequate housing and safe drinking water and sanitation. We also wish to identify the risks associated with their continued detention in conditions which may amount to torture or other, cruel, inhuman degrading treatment or punishment, and which are universally protected under the UDHR, the ICCPR, the Convention on the Rights of the Child and the Convention against Torture. These concerns, which have already been brought to Australia's attention in greater detail in communication AUS 1/2021, remain valid and are heightened due to the passage of time.

Furthermore, we deem it pertinent to underline the need to protect the right of these individuals and their relatives, who are deprived of any national legal protection, as well as the right of their lawyers, to unhindered access to and communication with the United Nations, its representatives and mechanisms in the field of human rights without fear of intimidation or reprisals of any sort.

Continued deprivation of liberty

We remain particularly concerned at the continued deprivation of liberty of these Australian citizens - men, women and children - in North-East Syria. According to the information we have received, there is no legal basis for this broad detention policy which entirely lacks in predictability and due process of law, judicial authorisation, review, control or oversight. We note that for some, the detention has already lasted four years, without any formal legal process and could continue indefinitely.

The prohibition of arbitrary detention, recognised both in times of peace and armed conflict, is well-established as a non-derogable¹ right that is considered as a

¹ Human Rights Committee, general comment No 29 (2001) on derogation during a state of emergency, paras. 11 and 16.

peremptory or jus cogens norm of international law.² Arbitrary deprivation of liberty can never be a necessary or proportionate measure, given that the considerations that a State may invoke pursuant to derogation are already factored into the arbitrariness standard itself. Thus, a State can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital security or other interest or proportionate to that end. The sub-contraction or direct facilitation of liberty deprivation by non-State actors does not negate a State's obligations to protect, promote and fulfil its human rights treaty obligations.³

Administrative security detention presents severe risks of arbitrary deprivation of liberty⁴. as other effective measures addressing the threat, including the criminal justice system, would be available in countries of citizenship. Administrative – including security – detention can only be invoked by States under the most exceptional circumstances where a present, direct and imperative threat exists that cannot be addressed by alternative measures. States also need to show that detention does not last longer than absolutely necessary, that its overall length is limited and that the guarantees provided for by Article 9 of the ICCPR, including prompt and regular review by a court of the detention, are respected.

There is no legal basis in international human rights law for non-State actors to engage in administrative, security or other detention practices.⁵ We have not found any legal human rights basis for the detention by the non-State actor, which would be a necessary condition for any detention, during or after a conflict. In any event, both international human rights law and international humanitarian law clearly prohibit arbitrary and indefinite detention where individuals are held without proper charge, due process of law, and on the basis of individual responsibility for imperative reasons, which requires an individual assessment of the risk, and a right of review by a judicial authority. There is also no permissible human rights basis for States to sub-contract directly or indirectly administrative or security detention to non-State actors on the territory of third States.

We are cognizant of the circumstances surrounding these detentions. It is our considered view that any argument based on the extreme nature of the situation cannot be used to justify such already lengthy detentions and the complete lack of steps taken by your Excellency's government to remedy the sheer obliteration of the rights of Australian citizens resulting from their arbitrary deprivation of liberty. The absolute prohibition of arbitrary detention in international law is considered so fundamental that it remains applicable even in the most exceptional situations.

We also recall that according to international law, children are considered vulnerable and in need of special protection. States must treat children, including children related to or associated with designated terrorist groups, primarily as victims when devising responses, including counter-terrorism responses. No child is responsible for the circumstances of his birth and cannot be punished, excluded, deemed unworthy of human rights protection by virtue of the status or acts of his parents. Children can only be detained as a measure of last resort and for the shortest amount of time possible. We have not been able to find any basis or process for the

² Working Group on Arbitrary Detention, Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty, Report of Working Group on Arbitrary Detention, A/HRC/22/44, 24 December 2012.

³ This obligation extends to the work in question between carried out by private entities Yassin et al. v. Canada, Comm. No. 2285/2013, Human Rights Committee, (26 July, 2017) para. 6.5

⁴ UN Human Rights Committee, General Comment 35, para. 15.
<https://digital-commons.usnwc.edu/ils/vol91/iss1/5/>

children's continued deprivation of liberty.

It is our understanding that these individuals are detained due to their alleged past association with the Islamic State, and we are concerned that this factor is the basis for not facilitating their repatriation to Australia. We stress the need to understand that the association with terrorist groups, especially in the case of women and children, is highly complex, notably regarding the distinction between victims and perpetrators. Australia must be mindful of the potential for coercion, co-option, trafficking, enslavement, sexual exploitation, and harm upon joining or being associated with a non-state armed group, not to mention on-line grooming and recruitment for marriage, sexual or household services or labour for the organization. States must always undertake individualised assessments pertaining to the specific situation of individuals concerned, especially women and girls.⁶

We understand that some of the women may have been coerced or trafficked into Syria. We urge your Excellency's government to be conscious of the gender-specific traumas experienced by women and girls, as well as the various human rights violations that they are subjected to in the context of their arbitrary detention and the impact of those conditions on their mental and physical health. It is imperative that State responses do not perpetuate or contribute further harm to those who have already experienced profound violence and trauma.⁷

In this regard we would also like to draw Your Excellency's Government attention to the application of the principle of non-punishment for victims of trafficking. This is a general principle of law, recognized in international and regional legal instruments, as well as in domestic legislation and in case law of regional and domestic courts. As a principle, it is essential to the object and purpose of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Your Excellency's government on 14 September 2005, namely, to protect and assist victims of trafficking with full respect for their human rights. It is also set out in full in the Principles and Guidelines for Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

Recalling the report of the Special Rapporteur on trafficking, especially women and children, A/HRC/47/34, the implementation of the principle entails that as soon as there are reasonable grounds to believe that a person has been trafficked, a victim or potential victim must not be punished for any unlawful activity carried out by a trafficked person as a direct consequence of their trafficking situation, regardless of the gravity or seriousness of the offence committed (para 55 and 57). As it has been raised in the report of the Special Rapporteur, forms of punishment may also include detention or/and the arbitrary deprivation of nationality (para 41).

Deprivation of citizenship

We also raise concern against the use of citizenship-stripping measures legislation to address threat of terrorism. Given the serious and permanent impact of

⁶ See in particular CTED Trends Report on the Gender Dimensions of the Response to Returning Foreign Terrorist Fighters (2019) and UNDP/ICAN, Invisible Women (2019).

⁷ The UN Global Compact/CTITF Working Group on promoting and protecting human rights and the rule of law while countering terrorism, "Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters" (2018)

deprivation of citizenship, it should never be the first measure sought. States are prohibited from exercising powers of deprivation causing statelessness, absent certain conditions, including respect for the right to a fair hearing.⁸ States may also not deprive a citizen of nationality based on their own assessment that the individual holds another nationality where the other implicated State refuses to recognize the individual as a national.⁹ Further, States are not justified in depriving a person of nationality for the sole purpose of denying a national entry into the national territory, given that nationals have the right, enshrined in article 13(2) of the UDHR, to return to their country of nationality.¹⁰ Similarly, article 5 (ii) of ICERD affirms that every person, without discrimination of any type, shall enjoy “[t]he right to leave any country, including one’s own, and to return to one’s country”. We also note that where citizenship-stripping legislation, policies and procedures apply only to citizens with dual nationality, they disproportionately affect certain communities and further stereotypes by associating terrorism with people of certain ethnic and national origins. Failures to treat mono and dual nationals as equals vis-à-vis citizenship deprivation has impacts that are incompatible with international human rights principles of equality and non-discrimination.¹¹ Additionally, deprivation of nationality is an administrative sanction that not only violates the non-punishment principle, but also increases risks of trafficking or re-trafficking.

In our view, in the context of individuals deprived of their liberty in North East Syria, given the absence of any meaningful capacity for those who are the subject of such conditions of detention to access adequate legal representation, participate in proceedings, provide adequate consent to legal process that implicates their fundamental human rights, and be free from coercion as their legal rights are determined, any withdrawal is likely to amount to arbitrary deprivation of citizenship. The practice of simply ‘informing’ an individual of a deprivation decision (often by sending the decision to their last known address) renders the notice and the independent review requirements of citizenship stripping, effectively meaningless.

The Committee on the Rights of the Child has asserted that States may not deprive a child of his or her nationality on any ground, regardless of the status of his or her parents.¹² In the same line, in its resolution 26/14, The Human Rights Council urged States to refrain from automatically extending the loss or deprivation of nationality to a person’s dependents.¹³ States have a legal obligation to provide a child who has been illegally deprived of some or all of the elements of his or her identity with appropriate assistance and protection, with a view to re-establishing speedily his or her identity. States must also ensure the availability of an effective remedy in the

⁸ Convention on the Reduction of Statelessness 989 U.N.T.S. 175 (1961), art. 8(1)-(4).

⁹ UN Human Rights Council, Interpreting the 1961 Statelessness Convention and Avoiding Statelessness Resulting from Loss and Deprivation of Nationality: Summary Conclusions (2014), para. 6.

¹⁰ Institute on Statelessness and Inclusion, ‘Principles on Deprivation of Nationality as a National Security Measure’, Principle 7.2.1.2 and UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Intervention in the case of Shamima vs. Secretary of State for the Home Department, UK Court of Appeal (2020), para. 19. See also UNHCR Guidelines on Statelessness No. 5’ (May 2020).

¹¹ UN Special Rapporteur on Racism, Visit to the Netherlands, A/HRC/44/57/Add.2, para. 60. In its 2020 report following its official visit to the Netherlands, the UN Special Rapporteur on Racism stated that “although being neutral on the face of it, the Netherlands citizenship-stripping legislation, policies and procedures apply only to citizens with dual nationality and therefore disproportionately affects Netherlanders of Moroccan ... descent. Because of its limited applicability, citizenship-stripping legislation in the Netherlands aggravates stereotypes of terrorism by associating terrorism with people of certain ethnic and national origins. The associated policies and their effects are incompatible with international human rights principles of equality and non-discrimination”.

¹² CRC/ C/UKR/CO/3-4, para. 38.

¹³ A/HRC/25/28, para. 24

context of arbitrary deprivation of nationality.¹⁴

Under article 6 of the 1961 Convention on the Reduction of Statelessness, a contracting State may not permit automatic loss of nationality of spouses or children of individuals whose nationality it has withdrawn where it would render that child or spouse stateless. Since the arbitrary deprivation of nationality places children in a situation of increased vulnerability to human rights violations, the Human Rights Council has recommended that States ensure such children are not denied the enjoyment of other human rights.¹⁵

We also highlight the very profound consequences that the deprivation of a parent's citizenship can have on their children, particularly if they are their primary caregiver. The burden that a mother's deprivation of her nationality will inevitably have on their underage children, even if their right to a nationality is not formally affected, must be a key aspect of the proportionality assessment carried out in the deprivation process. We also raise concerns about processes in which the children in the camps are allowed to return to their home country on the condition they consent to separation from their mothers and/or vice versa. Forced separation in a context where meaningful consent cannot be procured absolutely undermines the dignity of the child and can never be in their best interest.

Repatriation

Considering the above, our position remains that the voluntary and human rights law compliant repatriation to Australia of all individuals who are citizens of your Excellency's State is the only legal and humane response to the complex and precarious human rights, humanitarian and security situation faced by those currently deprived of their liberty in North-East Syria. Given the geopolitical fluidity of the region currently controlled by various non-State armed groups, repatriations are key to States' long-term security interests. ***Any repatriation must comply with international law, including with the absolute prohibition of torture and other, ill-treatment, as well as the peremptory principle of non-refoulement.***

Furthermore, the Special Rapporteur on trafficking notes the strict obligation imposed on States parties to the Trafficking in Persons Protocol regarding repatriation as stated in article 8 (1):

“The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.”

States which have citizens in these camps¹⁶ have a positive obligation to take necessary and reasonable steps to end the flagrant violations of their nationals' rights who have been detained for over three years outside the protection of any law. This

¹⁴ Human Rights Council, *Impact of the arbitrary deprivation of nationality on the enjoyment of the rights of children concerned, and existing laws and practices on accessibility for children to acquire nationality, inter alia, of the country in which they are born, if they would otherwise be stateless*: Report of the Secretary General, 16 December 2015, A/HRC/31/29. Para. 14.

¹⁵ Ibidem, para. 46.
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position has been corroborated by the UN Committee on the Rights of the Child.¹⁷ As these “camps” now appear to function as detention and security facilities for several thousand women and children, including the individuals in question, the legal obligations of the Australian authorities resulting from their continued detention are greater.

Specific Impact on Women

As stated above, women’s and girls’ association with terrorist groups is complex, notably regarding the distinction between victims and perpetrators. We recommend that states remain mindful of the potential for severe violations of their rights as described earlier. It is critical that States always undertake individualized assessments pertaining to the specific situation of the persons concerned, especially, but not only, women and girls.¹⁸ We draw again your Excellency’s government to the gender-specific traumas that may have been experienced by women and girls, as well as the various human rights violations that they continue to be subjected due to their continued detention outside any legal protection, and the impact of those conditions on their mental and physical health. It is imperative that State responses do not perpetuate or contribute further harm to those who have already experienced profound violence and trauma.¹⁹

In its resolution 2331 (2016), the Security Council recognized the nexus between trafficking, sexual violence, terrorism and transnational organized crime. The resolution also laid a crucial normative framework for tackling previously unforeseen threats to international peace and security, including the use of sexual violence as a tactic of terrorism by groups that traffic their victims internally, as well as across borders, in the pursuit of profit and with absolute impunity. The resolution sets out that the link emerges from the implication of terrorist groups in the trafficking of women and girls in conflict-related areas and from the fact that trafficking serves as an instrument to increase the finances and power of those organized criminal groups.

In addition, the Convention on the Rights of the Child provides that States shall take all feasible measures to ensure the protection and care of children affected by armed conflict, and all appropriate measures to promote their physical and psychological recovery, as well as social reintegration. Articles 38 and 39 of the CRC are of particular relevance to children affected by armed conflict and to children who are victims of any form of exploitation, as is the Optional Protocol to the Convention on the involvement of children in armed conflict.

In a decision on admissibility in *L.H., L.H., D.A, C.D. and A.F. v France* (30 September 2020) the Committee on the Rights of the Child specifically addressed the issue of whether the State Party (France) (CRC/C/85/D/79/2019–CRC/C/85/D/109/2019) has competence *ratione personae* over the children detained in the camps in north-eastern Syrian Arab Republic. In its decision, upholding admissibility, the Committee recalled that under the Convention,

¹⁷ UN Committee on the Rights of the Child, CRC/C/85/D/79/2019-CRC/C/85/109/2019 and CRC/C/86/D/R.77/2019

¹⁸ See in particular CTED Trends Report on the Gender Dimensions of the Response to Returning Foreign Terrorist Fighters (2019) and UNDP/ICAN, *Invisible Women* (2019). The UN Global Compact/CTITF Working Group on promoting and protecting human rights and the rule of law while countering terrorism, “Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters” (2018)

States have the obligation to respect and ensure the rights of the children within their jurisdiction, but the Convention does not limit a State's jurisdiction to "territory" (para.9.6). Territorial jurisdiction was deliberately left out of article 2 (1) of the Convention.[1] The Committee concluded that a State may also have jurisdiction in respect of acts that are performed, or that produce effects, outside its national borders. Specifically in the migration context, it was noted that the Committee has held that under the Convention, States should take extraterritorial responsibility for the protection of children who are their nationals outside their territory through child-sensitive, rights-based consular protection (para. 9.6). In its decision, the Committee concluded that the State party, as the State of the children's nationality, has the capability and the power to protect the rights of the children in question by taking action to repatriate them or provide other consular responses. The relevant circumstances cited by the Committee, include, "the State party's rapport with the Kurdish authorities, the latter's willingness to cooperate and the fact that the State party has already repatriated at least 17 French children from the camps in Syrian Kurdistan since March 2019." (para. 9.7)

We note that the de facto authorities (the Syrian Democratic Force) have expressed its willingness to help governments repatriate their all their citizens from Roj and also from Al-Hol, information which has been corroborated by our mandates. It is therefore our clear position that any argument relating to the lack or the difficulties of access or the limitations placed by the local authorities as a reason for not repatriating your nationals is questionable by the sustained contacts between a number of States and camp authorities which can and have led to interventions concerning third country national nationals in the camps,²⁰ the close proximity to the camps of international military bases and forces, the number of civilian and other official and non-official delegations that have had access to the camps, and the number of successful repatriations of women and children that have already taken place.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

²⁰ This information is the result of independent interviews and source verifications carried out by the Special Rapporteur, together with open sources such as Rights and Security International (RSI) "Europe's Guantanamo", 25 November 2020 and National Consultative Commission on Human Rights, Opinion on French minors detained in Syrian camps, September 24, 2019, pp. 8-9.

2. Please provide information on the measures taken by your Excellency's Government to protect these forty-seven Australian nationals, whose stay in these camps makes them particularly vulnerable to multiple violations of human rights, in order to avoid irreparable damage to their life, integrity, health and safety.
3. Please indicate what measures have been taken by your Excellency's government to maintain contact with these individuals and with those detaining them in view of the protection of their rights
4. Please provide information on measures taken by your Excellency's Government to repatriate these individuals in compliance with Australia's international human rights obligations, in particular by taking into account their age, sex and vulnerability.
5. Please indicate what measures are taken to protect these individuals against the risk of violence, including trafficking and to ensure that specialized assistance measures are provided to them.
6. Please provide information on how your Excellency's government is liaising with the de facto authorities in Syria to improve the protection of the most fundamental rights to security, food, water and sanitation and health of your citizens while detained and during their repatriation;
7. Please indicate what measures are taken to work with and support the families and communities of these individuals who are in Australia.
8. Please provide any information about steps that your Excellency's Government may have taken to deprive any of these individuals from their citizenship, and how such deprivation is consistent with Australia's human rights obligations under the treaties it has signed.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure.

While awaiting for a response to this communication, we may consider publicly expressing our concerns in the near future, as in our view, the information is reliable, and indicates a matter warranting serious attention by the Government. We also believe that it may be of interest to the wider public concerned with the enjoyment and exercise of human rights. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

A copy of this communication has been sent to the Syrian Arab Republic.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri
Special Rapporteur on the right to food

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Fernand de Varennes
Special Rapporteur on minority issues

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
TO THE UN GENEVA

30 March 2022

Beatriz Balbin
Chief, Special Procedures Branch
Office of the High Commissioner for Human Rights

Dear Ms Balbin

On behalf of the Australian Government, I would like to express appreciation for Communications AL AUS 1/2022 of 1 February 2022 and UA AUS 2/2022 of 16 February 2022. I have the honour of responding in relation to the complex situation of detention facilities and internally displaced person (IDP) camps administered by Kurdish authorities in North-East Syria.

The Australian Government remains concerned about the situation in North-East Syria. The Government is aware of the presence of Australians in this region, including those detained in prisons and other detention centres. Although Australia's ability to provide consular assistance to Australians in Syria is limited, the Australian Government continues to closely monitor conditions in the region and regularly engages Kurdish officials and humanitarian organisations operating in North-East Syria.

Australia considers all circumstances when approaching the question of repatriations from Syria and responds on a case-by-case basis. In June 2019, the Australian Government facilitated the return of all unaccompanied Australian minors known to us at that time.

As set out in Australia's formal response to the UN Human Rights Committee in 2009, and reiterated in the Australian Government's response to AL AUS 1/2021, Australia does not accept that it exercises jurisdiction over detention facilities in North-East Syria such as to engage the extraterritorial application of Australia's international human rights obligations.

The Australian Government's view is that detention in North-East Syria must be in accordance with applicable international law, including international humanitarian law and international human rights law.

Australia is opposed to terrorism and violent extremism in all its manifestations. Our close cooperation with partners, including through non-financial contributions to international coalitions such as the Global Coalition to Defeat Daesh, are key in ensuring sustained diplomatic efforts to counter the threat posed by Daesh and other ideological and religiously motivated groups.

Australia takes all reports regarding the welfare of Australians, and Australia-linked individuals, very seriously and thanks organisations on the ground for their assistance in this challenging environment. Since 2011, Australia has committed almost \$500 million in humanitarian assistance

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in response to the Syria regional crisis, including funding to the World Health Organization to provide critical health services such as COVID-19 prevention preparedness and response; nutrition assistance; and water sanitation and hygiene activities

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Gorely', written in a cursive style.

Amanda Gorely
Ambassador and Permanent Representative
Australian Permanent Mission to the Office of the United Nations and Conference on Disarmament

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Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on trafficking in persons, especially women and children and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: UA AUS 4/2022
(Please use this reference in your reply)

26 September 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 49/10, 42/22, 45/3, 44/5, 49/13, 42/16, 43/14, 42/9, 43/8, 43/36, 44/4 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of three Australian children currently being held in Roj camp in North-Eastern Syria.

According to the information received:

██████████ born on ██████████ ██████████, born on ██████████ ██████████ and ██████████ born on ██████████ are three Australian boys who have been in detention in Al Roj camp in North-eastern Syria since they were between ages six to eight. These three children, all under the age of 12, have been deprived of their liberty in conditions that we believe constitute a violation of a number of human rights including the right to be free from torture and other cruel inhuman or degrading treatment or punishment for more than four years, without any steps being taken for their repatriation to Australia for reunification with their families. These three boys

will be transferred to one of the detention centres in North-East Syria since they will soon be turning 12 years old.

We continue to have deep concerns about the deteriorating security and humanitarian conditions of detention in Al Roj camp where these children are deprived of their liberty without any judicial process. General concerns regarding the conditions in that camp have been raised in communications to Your Excellency's Government on 26 January 2021 ([AUS 1/2021](#)) and on 16 February 2022 ([AUS 2/2022](#)). We are also deeply concerned about the risks of trafficking in persons, for children in the camps, for the purposes of sexual exploitation and labour exploitation, including worst forms of child labour. This present communication raises further extremely serious concerns about the possibility of the transfer of these three boys to one of the detention centres in North-East Syria because of their age and their gender, a general concern that we have already raised in the above referenced communication to Your Excellency's Government ([AUS 2/2022](#)).

Indeed, we have been made aware through consistent reporting and first-hand information that most third country male children around the age of 12 are violently taken away from their mothers and siblings, often in traumatic circumstances, in the camps in North-East Syria and transferred to adult detention centres. These centres are primarily locales in which adult males are detained without judicial process. The spectre of a 'cradle to grave' detention cycle for young male children in North-East Syria supported by third country States, including Your Excellency's Government, is of extremely profound concern to us.

We note that the situation in the prisons is extremely fraught, and increasingly so. Children are at particular risk, as clearly evidenced by the attack on Al-Sana'a prison in Hassakah in January 2022, where children were allegedly used as human shields.¹ Since the attack, it is alleged that children detained there still suffer from untreated wounds and malnourishment, and that the fate of an estimated 100 children who were arbitrarily detained in that prison still remains unknown, including one Australian boy, who is missing.² These cases may amount to enforced disappearances. It is further reported that any access – humanitarian or otherwise, including for the purpose of the provision of medical health care and medical supplies – to the children detained in this prison has almost grounded to a complete halt. We are therefore acutely concerned at the possibility that any child would be transferred to these detention centres where their lives, physical and mental health and well-being would clearly be at immense risk.

This practice of transfer and separation of children reaching the age of 12, from one place of detention where they are living with their mother, to a prison setting absent any human rights and rule of law compatible process to justify their indefinite detention, either in the camps or the prisons must be called out as a complete abrogation of their best interest and a serious violation of numerous fundamental human rights. This includes their right to life, the absolute prohibition of torture, inhuman or degrading treatment and the absolute prohibition of arbitrary detention.

¹ <https://www.ohchr.org/en/2022/01/syria-un-expert-urges-states-save-their-boys-caught-isil-prison-attack>

² <https://www.ohchr.org/en/press-releases/2022/04/syria-un-experts-profoundly-concerned-missing-and-injured-children-after>

We recall that under any circumstance, the detention of children must always be used as a measure of last resort and for the shortest duration possible as required by Article 37 (b) of the Convention on the Rights of the Child and Article 9 of the International Covenant on Civil and Political Rights. It is also a violation of children's right to liberty and security, of children's right to a fair trial under juvenile justice standards, and of their presumption of innocence, as well as right to health, to a family life including to not be separated from their parents.

Discriminatory views and practices that all male children over the age of 12 in these circumstances are to be presumed violent extremists or terrorists remain unacceptable and inconsistent with international law standards protecting all children equally. The application of these stigmatizing and dehumanizing terms to boy children who have experienced systematic violations of their human rights is profoundly regrettable. It is a clear discriminatory practice that would be decried if it applied solely to the girl child.

Children detained for their association with individuals themselves detained for association with armed groups also designated as terrorist are first and foremost victims of grave abuses of human rights and humanitarian law. These are also victims of terrorism. We underscore that under international law, any child association with a non-State armed group, even those designated as 'terrorist', is always considered as engaging some form of coercion or constraint. Children do not enjoy the independence, agency and range of choices open to adults, and these three boys who were between the ages of six and eight when their detention started can never be said to have given any meaningful consent to the situation they find themselves in.

In light of the above, our mandates consider that the voluntary and human rights compliant repatriation of these boys who are Australian citizens is the only international law-compliant response to the complex and precarious human rights, humanitarian and security situation in North-East Syria. Given the geopolitical fluidity of the region currently controlled by various State and non-State armed groups, and the metastatic growth of non-State armed groups also designated as terrorist in the region, repatriations are critical to States' long-term security interests. It is clear to us, as well as to many national security experts that we have engaged with, that the current situation cannot be reconciled with any position that States who are leaving their nationals in the camps and prisons in North-East Syria, including Your Excellency's Government, are effectively addressing international threats to peace and security, notably terrorism and violent extremism.

It also remains our clear position that given the presence of international military personnel in North-East Syria, the number of national and other delegations that have had access to the camps and the prisons, and the number of successful repatriations, including of children, that have taken place, the lack or the difficulties of access to the camps and prisons can no longer be put forward as a reason for not repatriating your nationals. The profound concerns for the extremity and uniqueness of the material situation in the camps have been recently addressed by the European Court of Human Rights in the case of *H.F. and Others v France* as constituting "a real and immediate threat to [women and children's] lives and physical well-being, on

account both of the living conditions and safety concerns in the camps, which were regarded as incompatible with respect for human dignity, and of the health of those family members and the extreme vulnerability of the children, in particular, in view of their age”.

In this regard, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Your Excellency’s Government on 14 September 2005, namely, to protect and assist victims of trafficking with full respect for their human rights. It is also set out in full in the Principles and Guidelines for Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

Furthermore, we also note the strict obligation imposed on States parties to the Trafficking in Persons Protocol regarding repatriation as stated in article 8 (1): “The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.”

We also deem it appropriate to make reference to article 34 of the International Convention on the Rights of the Child (CRC), which your Excellency’s Government ratified in 1990, which provides that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. We remind Your Excellency’s Government the positive obligation to identify child victims or potential victims and ensure effective protection against trafficking or re-trafficking.

We also wish to recall articles 2.2, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), ratified on 10 December 1974 by Australia to guarantee the right of all people without discrimination to an adequate standard of living, including adequate food, clothing and housing, as well as to the highest attainable standard of physical and mental health. We also recall General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which indicates that obligation to *protect* the right to health include, *inter alia*, the duties of States to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents. (GC 14, Para.35). The former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted that “[t]he scale and magnitude of children’s suffering in detention and confinement call for a global commitment to the abolition of child prisons” and added that “the Standard Minimum Rules for the Treatment of Prisoners did not prescribe conditions and protection for child detainees, because they contained the principle that young persons should not be sentenced to imprisonment, which was repeated in the Mandela Rules” (A/HRC/38/36, paras. 53 and 54).

Finally, we would like to draw your Excellency’s Government attention to Articles 7, 9-11 and 20 of the Declaration on the Protection of All Persons from Enforced Disappearance, which stipulate that no circumstances, including a state of war, may be invoked to justify enforced disappearance; the right to a prompt and

effective judicial remedy as a means of ascertaining the whereabouts or state of health of persons deprived of their liberty; the right of competent authorities to have access to all places where persons deprived of their liberty are being held; the right to be detained in an officially recognized place of detention and to be brought before a judicial authority promptly after detention; the right to have accurate information about the detention of such persons, including their transfer, provided promptly to their family members, legal counsel, or other persons associated with them; the right to be released in a manner that allows for reliable verification; and finally, that States have an obligation to suppress and prevent the abduction of children and an obligation to search for, identify, and return such children to their families of origin.

Alarmed by the fact that 100 of children may fall victim to enforced disappearance, we also refer to the General Comment on Children and Enforced Disappearances (A/HRC/WGEID/98/1) of the Working Group on Enforced Disappearances, which states that States should develop a comprehensive strategy to prevent and respond to enforced disappearances and pay particular attention to the prompt resolution of cases in which children are victims of enforced disappearance.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

We are issuing this appeal in order to safeguard the rights of abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned assessment of the detention of the three Australian children [REDACTED], [REDACTED], and [REDACTED] in North-east Syria.
2. Please provide information on the actions taken by Your Excellency's Government to protect the fundamental rights of these three boys, as well as all other individuals in similar situations held in the camps to prevent their transfer to prison settings.
3. Please provide any measure that Your Excellency's Government might have taken to repatriate these and other boys from the prisons and detention centres in North-east Syria and to ensure their enjoyment of an adequate standard of living, including adequate food, clothing and housing, as well as the highest attainable standard of physical and mental health.

4. Please provide any information on the steps Your Excellency's Government may have taken to determine the fate and whereabouts of the children detained or disappeared in detention facilities in North East Syria and to keep the families in Australia – and other concerned countries - informed about the situation of the individuals detained and to assist them in searching for, locating and obtaining the release of their loved ones and, in the event of death, in exhuming, identifying them and returning their remains

Further, we would like to inform Your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegation of enforced disappearance mentioned in this communication as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

We may publicly express our concerns in the near future in this case, as in our view, the information at hand concerning these children appears to be sufficiently reliable and indicates a matter warranting undivided attention. We also believe that the wider public should be alerted to the potential human rights implications of the allegations. Any expression of concern on our part will indicate that we have been in contact with Your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from Your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

A copy of this communication has been sent to the Syrian Arab Republic.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri
Special Rapporteur on the right to food

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Sorcha MacLeod
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Fernand de Varennes
Special Rapporteur on minority issues

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
GENEVA

1 December 2022

Ms Beatriz Balbin
Chief, Special Procedures Branch
United Nations Office of the High Commissioner for Human Rights (OHCHR)

Delivery via email ohchr-registry@un.org

Dear Ms Balbin

On behalf of the Australian Government, I would like to express appreciation for Communication UA AUS 4/2022 of 26 September 2022. I have the honour of responding in relation to the matters raised in this Communication.

In October 2022, the Australian Government repatriated four Australian women and their 13 Australian children from an Internally Displaced Persons (IDP) camp in Syria, consistent with our commitment to find effective, long-term solutions in the interests of all Australians. These families will be supported by a full range of services to assist them with returning to life in Australia.

Australia previously repatriated eight Australian children from an IDP camp in Syria in 2019. All Australian repatriations from Syria are voluntary and are undertaken with the informed consent of the individuals.

Australia will continue to take a managed approach to repatriations from Syria, considering national security advice together with diplomatic, community and welfare factors. We continue to monitor the situation in IDP camps in Syria, including through regular engagement between Australian officials, Kurdish authorities and humanitarian partners operating in North-East Syria.

As set out in our response to AL AUS 1/2022 and UA AUS 2/2022, the Australian Government takes all reports regarding the welfare of Australians and Australia-linked individuals very seriously and thanks organisations on the ground for their assistance in this challenging environment.


Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Gorely'.

Amanda Gorely
Ambassador and Permanent Representative
Australian Permanent Mission to the United Nations
Australian Delegation to the Conference on Disarmament

15/03/2023, 09:42

Syria: UN experts alarmed by reports of boys taken from Camp Roj by de facto authorities | OHCHR

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Syria: UN experts alarmed by reports of boys taken from Camp Roj by de facto authorities

16 February 2023

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GENEVA (16 February 2023) – UN human rights experts* today expressed grave concern about reports that at least 10 boys, some as young as 12 years old were allegedly taken away from Camp Roj during the night of 31 January 2023 by the de facto authorities in North-east Syria.

“The pattern of forcibly removing boys who reach the ages of 10 or 12 from the camps, separating them from their mothers and siblings and taking them to unknown locations is completely unlawful, said the experts.



extremists, that they must not be protected but punished, that they are not victims but threats,” the experts added.

“We are extremely concerned that serious harm may befall these boys and fear they may be forcibly disappeared and subject to sale, exploitation and abuse, torture, inhuman and degrading treatment or punishment,” they said.

Camp Roj is one of several camps that has been holding families of individuals with alleged links to ISIL for the past five years. It currently holds almost 3,000 individuals, 65 percent of whom are children. There are also over 850 boys deprived of liberty in prisons and other detention facilities, including so-called rehabilitation centres, throughout North-east Syria.

“Most of these boys have been detained since they were seven-years old. They are victims of terrorism and deserve the protection of international human rights and humanitarian law,” said the experts. “Adding to their plight the trauma resulting from violent separation from the care of their mother, often the only element of stability in their lives, can generate an irreparable harm,” they said.

“The indefinite, cradle-to-grave, camp-to-prison detention of boys, based on crimes allegedly committed by their family members, is a shocking example of the legal black hole that North-east Syria currently epitomises,” the experts said. “It is an egregious violation of the Convention on the Rights of the Child which prohibits the punishment of a child based on the “status, activities, expressed opinions, or beliefs” of their parents, a form of collective punishment which is a war crime, as well as a form of gender discrimination that has dramatic and lasting consequences.”

The human rights experts said the only hope for these children was repatriation to their home countries but expressed dismay that some



their immediate safety, prevent their separation from their mothers and other potential violations of their human rights, including enforced disappearance and torture. States shall indeed prioritise the boys' safe and secure return home consistent with the principle of non-refoulement," the experts said. "States must urgently repatriate them, together with their mothers, a solution that we now know is absolutely feasible," they said.

The experts called on all States and other actors engaged in northeast Syria to ensure the protection of these children and their best interest.

ENDS

The experts: Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Siobhán Mullally, Special Rapporteur on trafficking in persons, especially women and children, Mama Fatima Singhateh, Special Rapporteur on the sale and sexual exploitation of children, Dorothy Estrada-Tanck (Chair), Ivana Radačić (Vice-Chair), Elizabeth Broderick, Meskerem Geset Techane and Melissa Upreti, Working Group on discrimination against women and girls; Ravindran Daniel (Chair-Rapporteur), Jelena Aparac, Sorcha MacLeod, Chris Kwaja, Carlos Salazar Couto, Working Group on the use of mercenaries; Ashwini K.P. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Aua Baldé (Chair-Rapporteur), Gabriella Citroni (Vice-Chair), Angkhana Neelapajit, Grażyna Baranowska, Luciano Hazan, Working Group on Enforced or Involuntary Disappearances; Fernand de Varennes, Special Rapporteur on Minority issues; Special Rapporteur on the right to food, Michael Fakhri and, Miriam Estrada-Castillo (Chair-Rapporteur), Mumba Malila (Vice-chairperson), Ganna Yudkivska, Priya Gopalan, and Matthew Gillett, Working Group on arbitrary detention.

The Special Rapporteurs are part of what is known as the **Special Procedures** of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the



work. They are independent from any government or organization and serve in their individual capacity.

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Repatriating Alleged ISIS-Linked Men from Northeast Syria: The Start of Judicial Responses to the Political Stalemate

by [Fionnuala Ní Aoláin](#) and [Anne Charbord](#)

February 16, 2023

The plight of women and children detained in camps in northeast Syria since the collapse of the self-styled Islamic State’s “caliphate” has received significant [attention](#), and some are finally being brought back to their home countries after unconscionable years-long delays by multiple countries, including Western States. By contrast, the fate of more than 10,000 boys and men deemed “associated” with the group (also known as ISIL/ISIS/Daesh), including approximately 2,150 third-country nationals, has been mostly ignored by governments and international organizations, with the exception of [independent United Nations human rights experts’ offices](#). But recent judicial decisions are beginning to break a logjam in which countries that claim to abide by the rule of law must reckon with the consequences of not returning men, including the denial of due process to the accused and justice to their victims.

The recent earthquake that devastated parts of southern Turkey and northwest Syria thankfully caused few casualties and only limited infrastructure damage in northeast Syria, so this should not hinder Western efforts to address the human rights crisis of the detainees. But the disaster has increased the humanitarian needs of populations and the challenges of humanitarian access across northern Syria. So it is especially crucial for the States of the detainees’ origins to assist the de facto authorities in northeastern Syria by removing the burden of detention to allow them to focus on providing the needed humanitarian relief.

Thousands of men and [boys](#) captured between 2017 and 2019 have been held indefinitely by the Syrian Democratic Forces, backed by what is now known as the [Global Coalition Against Daesh](#). The detainees are confined in more than 15 makeshift detention centers, mostly converted schools and hospitals, throughout northeast Syria. The men and boys are held in overcrowded cells (in some cases more than 30 in cells built for six individuals), and they lack food, drinkable water, and medical care. They are most often portrayed as dangerous “terrorist fighters” and “jihadis” who

deserve to be treated as “sub-humans,” certainly not considered as worthy of repatriation to their countries of citizenship, notably because of an alleged risk they would pose there.

But none of these men have ever been brought before a judge to determine whether they are rightfully and lawfully detained, and there is no law that would legally underpin their detention. Some were children at the time of their detention. Most have never been charged with any specific offense, and there is no prospect of a trial in the region (more on that later). Furthermore, access to them – which had always been extremely limited – has ground to a halt since a January 2022 attack on an established [prison in Al-Hasakeh](#) allegedly by ISIL in an apparent attempt to free some of the detainees. The prison held 5,000 individuals at the time, including 700 children. Reports suggested that 300 people were thought to have been killed in the several days of fighting that ensued, and 100 boys are presumed dead or injured from this attack.

Instead of finding legally sound solutions to their entrenched and protracted arbitrary deprivation of liberty in inhumane conditions, including repatriations to their countries of origin for those who should receive a fair trial for offenses committed, the practice of arbitrary detention is becoming entrenched. Though the SDF has appealed to other countries to repatriate their citizens, the Global Coalition Against Daesh, (made up of the United States, multiple European States such as the United Kingdom individually, the European Union, and a number of African and Arab States) has been supporting these indefinite detentions through [direct security assistance](#), including the building of a new high-security prisons in the region, a clear sign that their repatriation is not likely to happen anytime soon. Few policymakers in the countries of origin openly acknowledge that many men have already returned to their home countries, having left the conflict zones before the fall of [Baghuz](#) in 2018, which marked the end of ISIS control over territories in Syria. It is also worth noting that, while many States have stressed the dangers posed by repatriation of these individuals, [studies](#) consistently show that the recidivism rate for terrorist offenders is very [low](#).

Judicial Decisions Begin to Move the Ball

Against this backdrop, however, judicial decisions are beginning to shift the scenario. Canada's Federal Court decision of Jan. 20, for example, requires Canadian authorities to assist in the repatriation of four Canadian men held by the Syrian Defense Forces as de facto authority in northeast Syria. It is a landmark decision, with its focus on the legal obligations of States to their male detainees. By tackling the situation of the men from a rights-based perspective and reinstating them as rights-holders under the Canadian Constitution, the court clearly departs from seeing them solely as security risks.

In that highly significant case, led by a campaign known as "Bring Our Loved Ones Home" (BOLOH), the lawyers for four men languishing in prisons in Al-Hasakeh province had repeatedly made requests for repatriation to the Canadian authorities since February 2021. In every instance, the government failed to respond. Based on article 6(1) of the Canadian Charter of Rights and Freedoms, enshrining the right of all Canadians to enter, remain in, and leave Canada, the judge concretely decided that, given the willingness of the Kurdish authorities to repatriate foreign nationals to their countries of origin if certain formal requirements are met, the Canadian authorities must, as soon as reasonably possible, make formal requests to the authorities in northeast Syria to allow the voluntary repatriation of the men. The court found that the Canadian government had an obligation to provide them with passports or emergency travel documents, and to appoint someone to accept their handover from the Kurdish authorities. The judge noted that the "foundational right" to enter Canada is a right that allows "few, if any, limitations." Implementing this right in his view required positive implementation measures. Not doing so would be to interpret the right "in an unreal world."

Notably, the decision contains a damning criticism of Canada's [policy](#) drawn up in February 2021 ("Government of Canada Policy Framework to Evaluate the Provision of Extraordinary Assistance") that set out "threshold criteria" that applicants for repatriation had to meet before Canadian authorities would advance repatriation efforts. The decision criticizes not only the secrecy surrounding the policy — even the applicants and the lawyers were not informed about it for nine months — but also its deliberate intention to exclude the possibility of repatriation for men, unless there is "credible information indicating that the individual's situation has significantly changed since the adoption of the Policy Framework." The court's decision suggests the policy is unacceptable from a rights perspective, an important assessment because it is likely that many other States have very similar policies used to stall repatriations.

In examining Canada's international obligations, the judge relied heavily on a [communication](#) sent to Canada by one of us (Fionnuala), the U.N. Special Rapporteur on the promotion and protection of human rights while countering terrorism, concerning the case of Jack Letts (one of the four men whose situation is addressed by the ruling). The mandate has also addressed the feasibility of trials in the course of proceedings. Quoting much of the Special Rapporteur's findings verbatim, the judge highlights the position that "the urgent voluntary repatriation of all citizens is the only international law compliant response to the complex and precarious human rights, humanitarian and security situation faced by those detained in inhumane conditions in overcrowded prisons or other detention centers in North-east Syria, with limited food and medical care, putting detainees lives at increased risk."

Progress on Women and Children Detained in Camps

This ruling comes at a time of other long-awaited practical and judicial movement as well regarding repatriation from the camps in northeast Syria, at least regarding the women and children. From a judicial perspective, a number of decisions have condemned States for their failure to assist their nationals in the camps. These include an important decision rendered by the [European Court of Human Rights against France](#) in September 2022 that reintroduced human rights protection, rule of law, and procedural fairness in the decision-making processes regarding the repatriation of women and children. Another significant decision came from the [U.N. Committee Against Torture](#); it found France in violation of the Convention Against Torture for failing to take effective measures to protect its nationals in the camps. Two other decisions, from the Committee on the Rights of the Child in 2022, found [France](#) and [Finland](#) in violation of the Convention on the Rights of the Child.

In practical terms, and possibly as a result of these decisions, a number of countries have brought their nationals home. Just since October 2022, there have been 17 repatriations to Australia, 3 to Barbados, 102 to France, 12 to Germany, 40 to the Netherlands, 38 to Russia, 2 to the U.K., 13 to Spain, and just over 2,000 to Iraq. These figures show the determination of the Kurdish authorities to support and enable repatriations, as well as the sheer practical feasibility of such movements, contrary to national arguments pertaining to lack of access and risks posed by these operations. Even Canada, initially very reluctant to repatriate anyone other than a [5-year old orphan](#), repatriated four individuals at the end of 2022, including two [women](#). Canada,

pressed by litigation, just agreed to repatriate a further 21 women and children, as acknowledged in the ruling.

The Canadian court decision is particularly significant because it is an important step towards closing the immense accountability and rights vacuum that currently defines the camps and detention centers in northeast Syria. If implemented, it will be an immense opportunity for Canada to lead in addressing not just terrorist offences, but the extremely serious core crimes that have been committed in the region and finally bring true justice to the victims. Implementation of this decision would ensure that the men have access to fair trials that comply with international human rights law. None of this can be meaningfully undertaken in the region; it must occur in the home countries of these citizens.

The individuals subject to these potential judicial proceedings are being detained by the SDF, a non-State actor that is not a legally recognized entity that could conduct such trials for serious violations of international law consistent with required due process standards. Absent a highly improbable fundamental change in international law, States will not be designating non-state armed groups as suitable legal or political entities to undertake legally binding proceedings for their nationals.

Thus far, courts in northeast Syria have tried only Syrian nationals, and those trials have not complied with fair-trial standards under international human rights treaties or under Common Article 3 of the Four Geneva Conventions. There is a severe lack of resources including judicial, technical, and legal capacity, as well as infrastructure to support the processing of foreign nationals for trials in the northern Syrian Arab Republic.

The geopolitical instability of the region also is a factor, including attacks by non-State armed groups also designated as terrorist organizations (such as the above-referenced attack against the prison in Al-Hasakeh in January 2022, which led to the death or [disappearance of 100 boys](#)). That and the resulting numerous counterterrorism operations by the SDF and its security partners make any augmentation and amelioration of trial proceedings highly unlikely in any foreseeable future. Similarly, the possibility of a form of “international,” “hybrid,” or “regional” court, can at best be described as political rhetoric or wishful thinking.

Credible, fair trials are imperative, of course, not only to provide justice for the accused, but also for the victims of terrorism. In the States of origin, when evidence is available, governments must meet their obligations by going beyond trials for returnees on terrorist offenses such as membership in proscribed groups or travel to join them. Some may need to be tried for core international offenses, including for acts of [genocide](#) and [crimes against humanity](#) or perpetration of killings, torture, serious deprivation of liberty, rape, sexual assault, and hostage-taking. Certainly in an ideal world, justice would be delivered close to where the offenses and crimes were committed, but for the reasons outlined above, there is no effective possibility of this, and so the failure to repatriate and apply the criminal justice system to the full sells short the victims of terrorism and abrogates the responsibility of the States whose nationals have committed these violations.

Failure to properly pursue these terrorism cases also abrogates a fundamental tenet of the Coalition to Defeat Daesh — the promise of “never again” — by failing to hold those who committed grievous crimes responsible for them. A failure to repatriate maintains the entirely unacceptable status quo that no justice is delivered – not to the victims of serious core crimes, not to victims of terrorism, and not to the men who will continue to languish in abhorrent conditions. The solution clearly lies in the hands of States of origin of these alleged perpetrators. The question is whether these States will live up to their obligations to deliver and support justice all their citizens.

IMAGE: A member of the Syrian Democratic Forces (SDF) stands guard in a prison where men suspected to be affiliated with the Islamic State (IS) group are jailed in northeast Syria in the city of Hasakeh on October 26, 2019. Kurdish sources said at the time that around 12,000 IS fighters including Syrians, Iraqis as well as foreigners from 54 countries were being held in Kurdish-run prisons in northern Syria. (Photo by FADEL SENNA/AFP via Getty Images)

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Security fears won't stop return of jihadi families, 2022 WLNR 31528218

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October 4, 2022

Section: TheNation

Security fears won't stop return of jihadi families

ELLEN WHINNETT ASSOCIATE EDITOR EXCLUSIVE

Cabinet's national security committee will meet on Tuesday to discuss final details of the planned repatriation of Islamic State-linked families from Syria, as the government and opposition lock in for a political fight over their future.

The Albanese government is believed to be committed to repatriating up to 16 women and 42 children following risk assessments from ASIO agents who visited the camps in northeastern Syria where the families have been held for more than 3½ years. While the security committee will talk about how the mission will be conducted, operational matters, including timing, will be left to the Department of Home Affairs, ASIO and the Defence Department.

Home Affairs Minister Clare O'Neil did not comment on Monday but Environment Minister Tanya Plibersek all but confirmed the rescue mission of the families, referring to "when they come back to Australia".

Opposition home affairs spokeswoman Karen Andrews said she saw no benefit in returning the families.

"If I was still the minister for home affairs, these people would not be returning to Australia," Ms Andrews said.

Her comments were far stronger than those made by her frontbench Liberal colleagues Angus Taylor and Dan Tehan, who both expressed reservations but did not outright declare that the families should not return home, and set the tone for a bitter dispute between the parties over the issue.

Opposition Leader Peter Dutton, who was opposed to the families returning when he was in government, did not comment on Monday.

The Australian revealed on Monday that a secret ASIO mission to Syria had cleared the way for the women and children to return in about three groups, with the most vulnerable to be prioritised. This will likely include families with very young children, and women who were trafficked or coerced into Syria by their parents or husbands.

Ms O'Neil's office offered Ms Andrews a briefing on the plans late on Monday. The news that Australia had reversed its three-year opposition to bringing the woman and families home was welcomed in Syria, where the de facto government, known as the Autonomous Administration of North and East Syria (AANES) has been lobbying for years for western nations to take their citizens home.

Security fears won't stop return of jihadi families, 2022 WLNR 31528218

The AANES-aligned Rojava Information Centre tweeted that Australia and The Netherlands had both "announced that they are working on repatriating their citizens held in camps in NES (northeast Syria)." "Such repatriation missions are welcomed by AANES who have pressed the international community to take responsibility for their nationals," the centre said.

As well as the 58 women and children held in al-Roj camp near the Iraqi border, a handful of Australian women and children still live in the dangerous al-Hol camp, close to the restive city of Hasakah. They are not being considered for repatriation at this time.

At least 11 Australian men linked to Islamic State are also known to have been held in the squalid prisons around Hasakah. The government is not considering repatriating them at this time. The only child who was being held in the youth annex of the prisons, Yusuf Zahab, 17, is believed to have died there this year.

Ms Plibersek said some of the women in the camps had been tricked into entering Syria, and were married off to Islamic State fighters when they were very young.

"When they come back to Australia, I think it's going to be very important that the children in particular receive counselling," Ms Plibersek told the Seven Network.

"But I think for everybody involved, there will be an ongoing expectation that our security and intelligence agencies will stay in contact with them and monitor them." Ms Andrews, who was home affairs minister until the Coalition lost government in May, said she believed the return of the women, along with the 21 convicted terrorists due for release from jail in the next five years, would place an enormous strain on the Australian Federal Police, state police and intelligence agencies, which would be required to monitor them.

"They will have to up their funding to the Australian Federal Police," Ms Andrews said.

She said terrorism control orders – to which all the women have volunteered to submit – were expensive and labour-intensive to monitor and would have an impact on the resources of state and federal police.

Ms Andrews said she was concerned about the ongoing risk the families could pose to Australians, and the risk faced by the officials who would travel to Syrian to bring the women and children home.

Independent senator Jacqui Lambie gave cautious support to the repatriation plan but warned intensive surveillance would be needed when the families returned.

Mr Taylor, the Liberal Treasury spokesman, warned the government "we can't put Australian lives at risk" while Mr Tehan, the immigration spokesman, said more details were required on whether the women posed a risk.

A group of Australia's leading aid agencies – Save the Children Australia, the Australian Council for International Development, UNICEF Australia, CARE Australia, Plan International, Amnesty International, Islamic Relief Australia and the Human Rights Law Centre – issued a rare joint statement welcoming news of the impending repatriation of the families, which includes up to four children who were born in the camps.

The groups said the news could pave the way forward for these Australian citizens, who have suffered immensely over the past three years, to return to their families and begin their recovery.

"The reported death of Australian teenager Yusuf Zahab earlier this year provided heartbreaking proof of the critical need for Australia to uphold its obligations under international law to repatriate the women and children stuck in Syrian camps," the groups said.

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"The first Australian children to be brought home, back in 2019, are reported to be now living normal lives in the community, attending school, and playing sport. A decision to repatriate the remaining children would provide them with the same opportunities." The Australian understands about nine of the 16 women in al-Roj could face charges of entering a proscribed area – a charge that existed for a few years under the period of Islamic State to stop people entering the terror group's strongholds of Mosul in Iraq, and al-Raqqa in Syria.

The charge carries a 10-year maximum jail term, but authorities expect any women charged would not receive lengthy jail terms, and would have to be monitored in the community.

A terrorism control order would require them to be fitted with ankle bracelets, and have their communications, internet usage and movements monitored.

Authorities are also working to keep the children with their mothers, or within the care of their extended families. All of the children have missed years of schooling or never attended school, and most are sick, malnourished, traumatised, and some are carrying war wounds including shrapnel injuries.

Muslim community leader Jamal Rifi told Sky News the repatriation was the best way to ensure the safety of Australian citizens. "If there is any one of them now, in the past or in the future that poses a risk, then we can put them through the court," Dr Rifi said.

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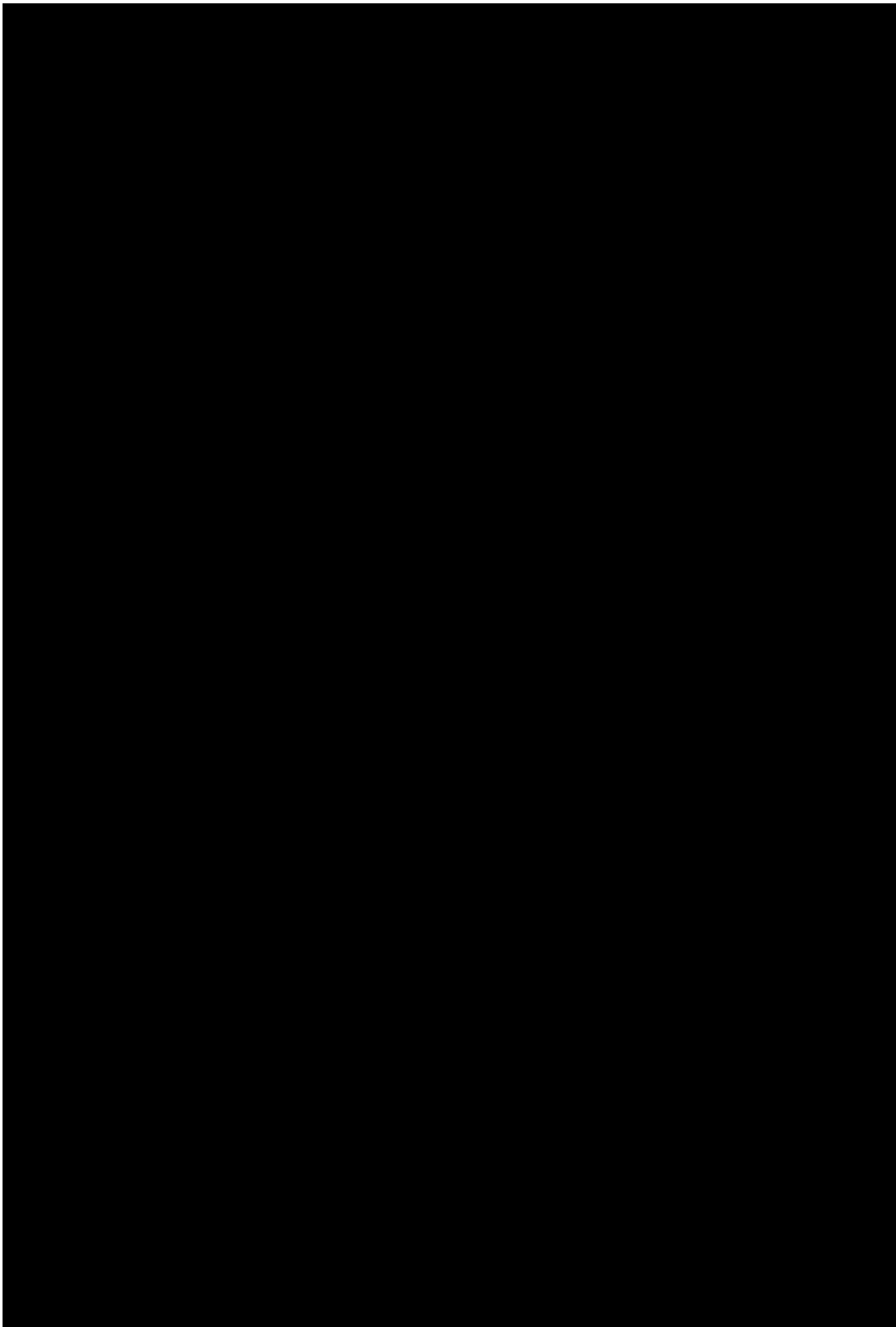
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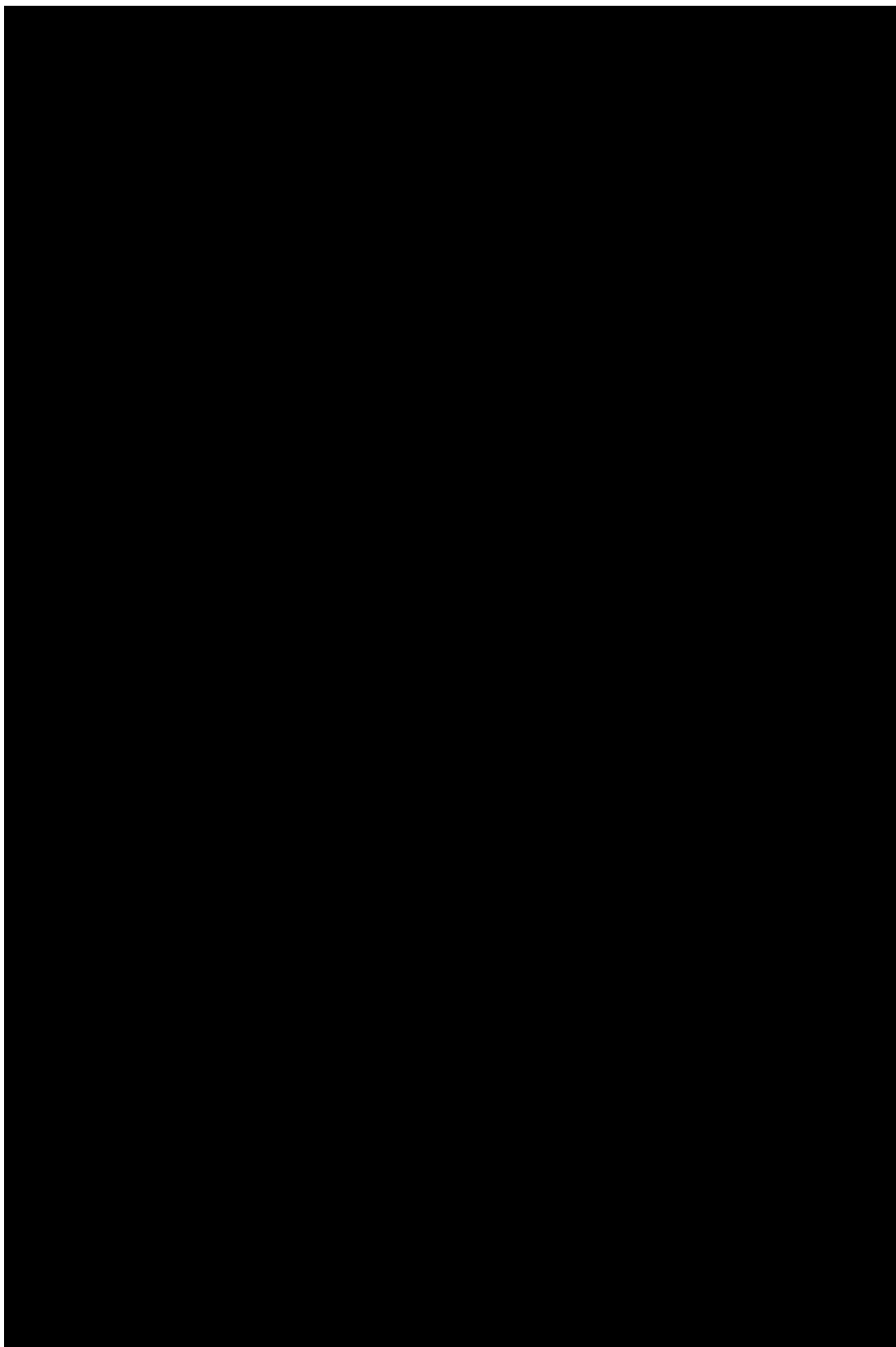
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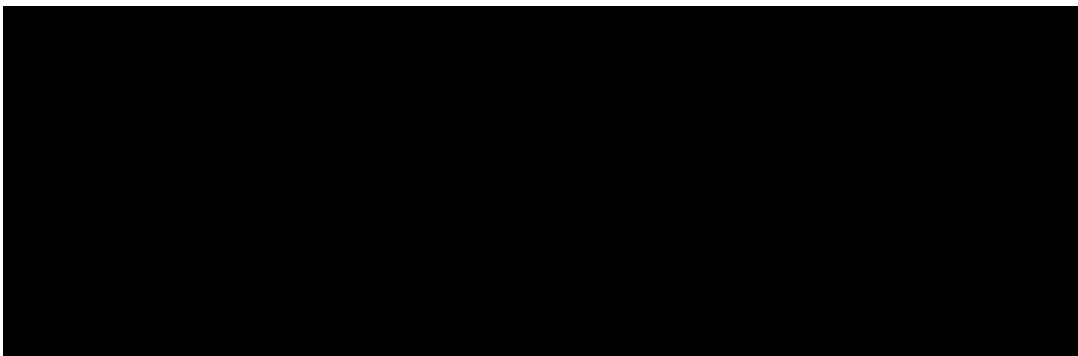
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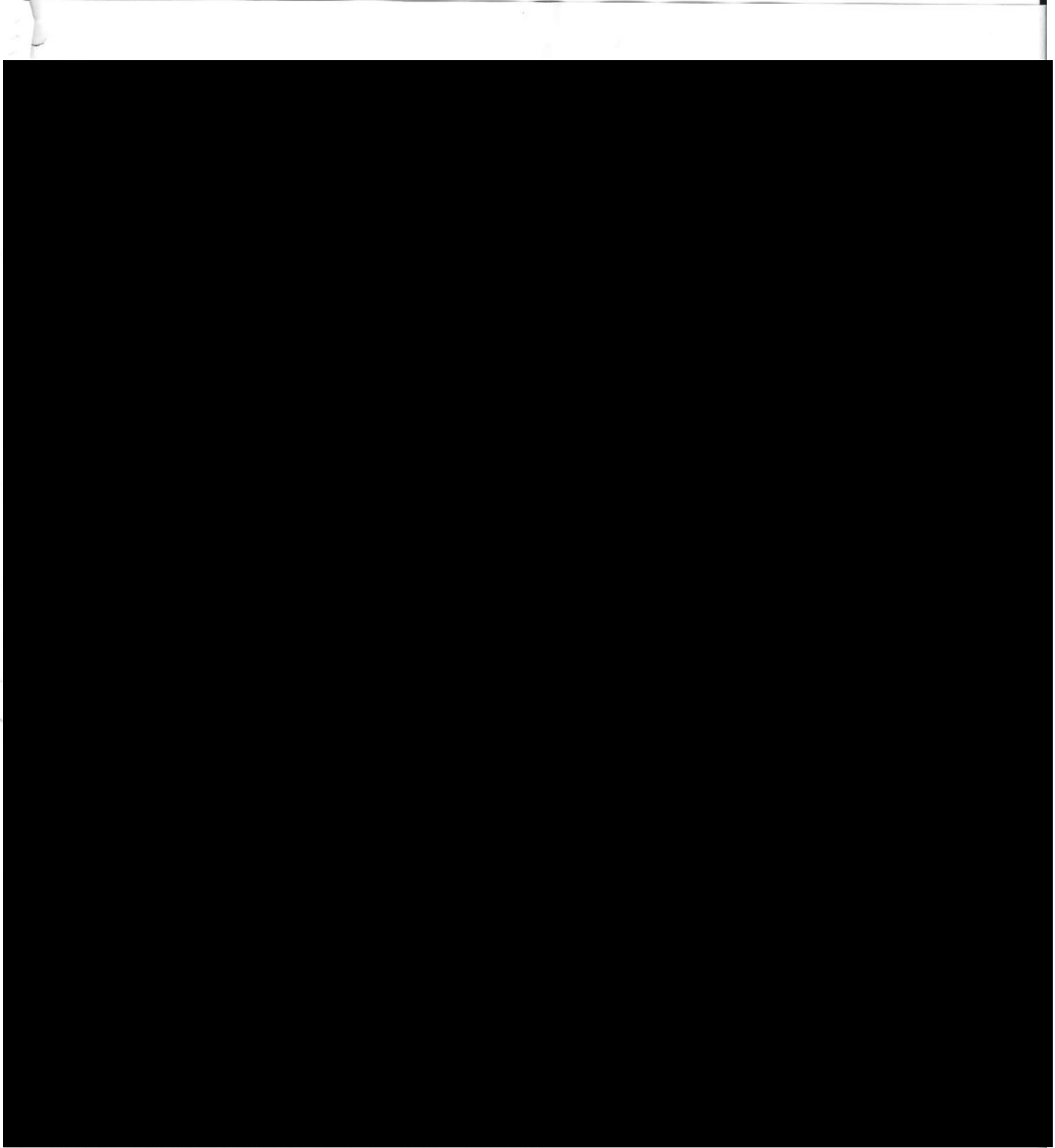
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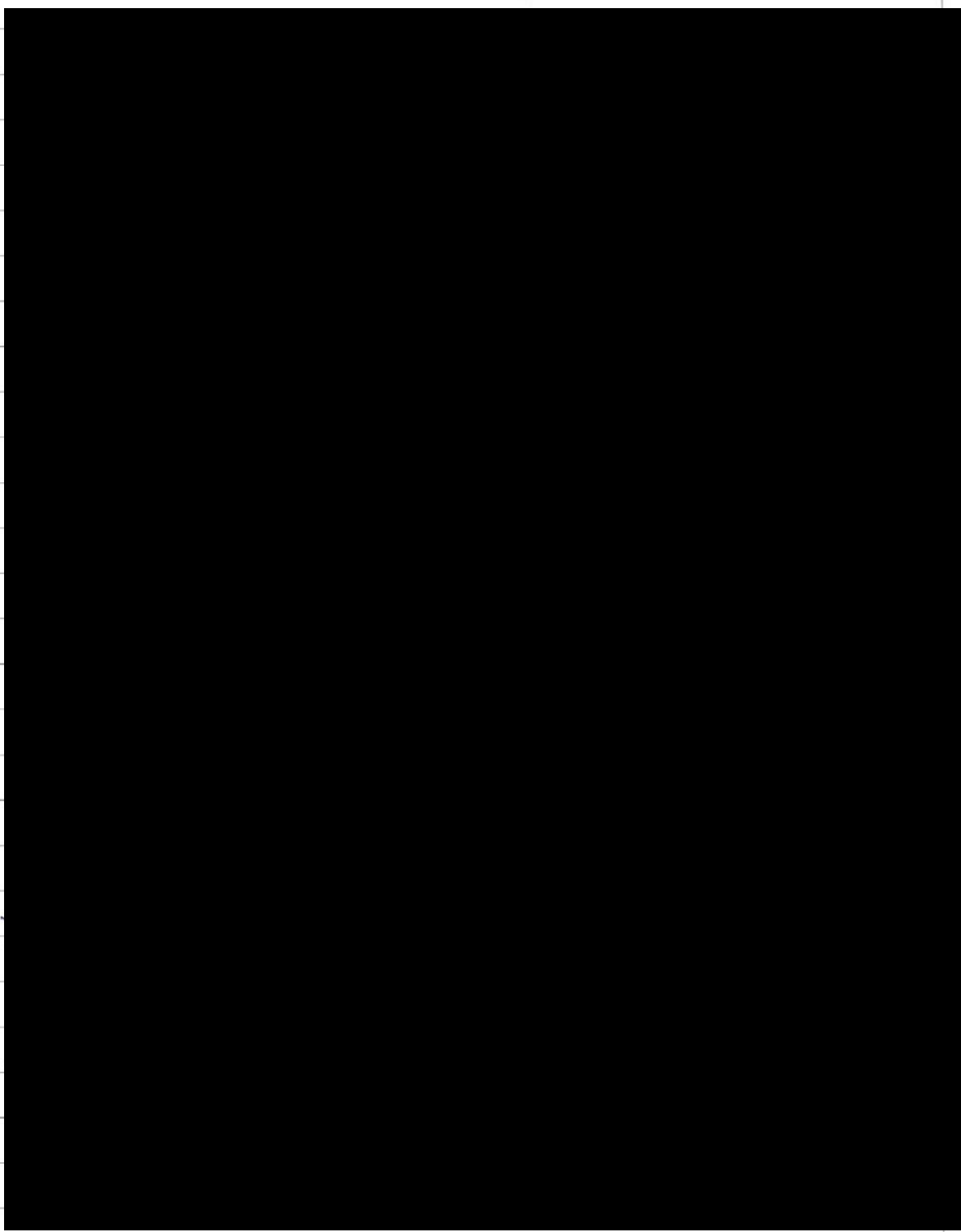


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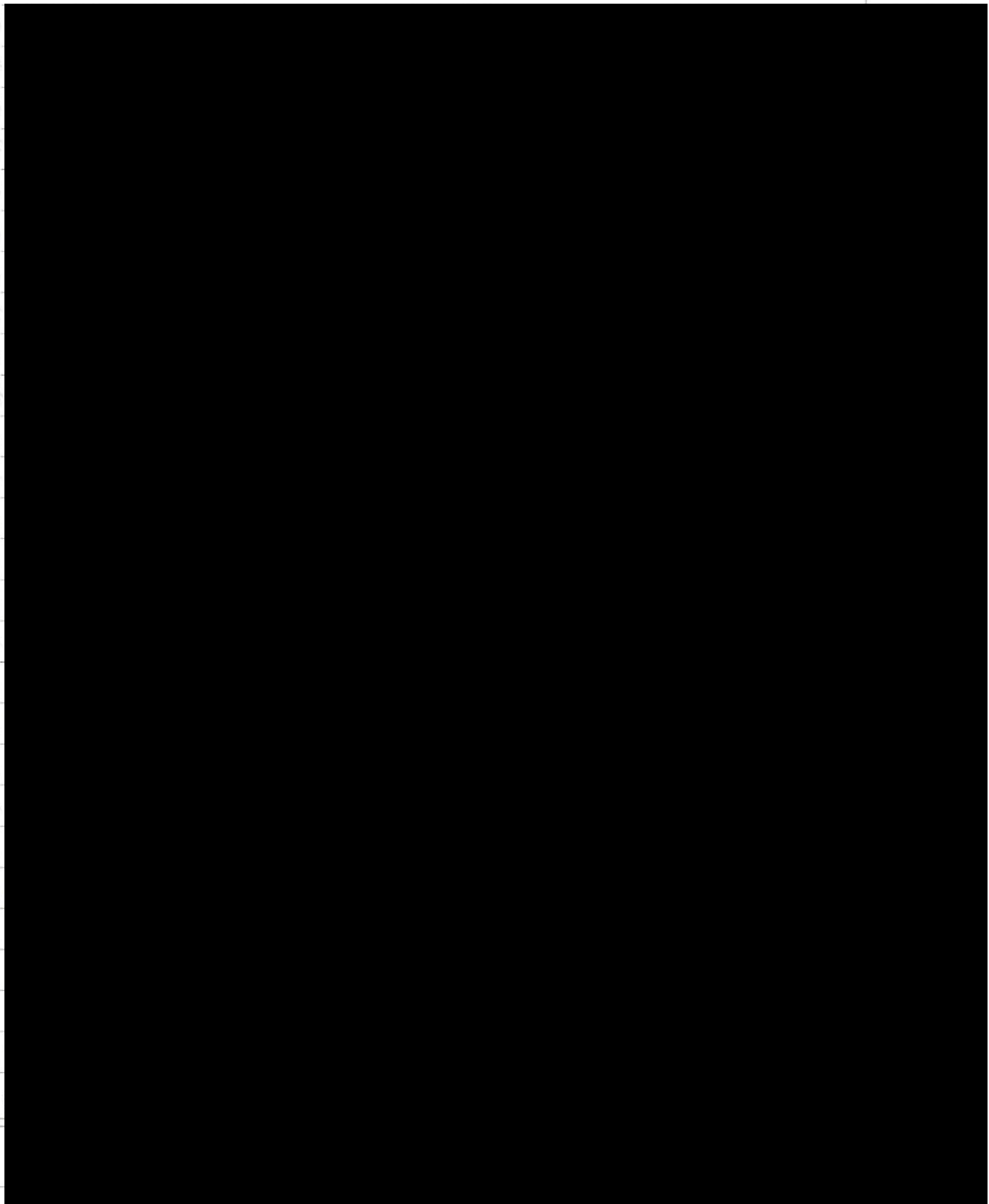
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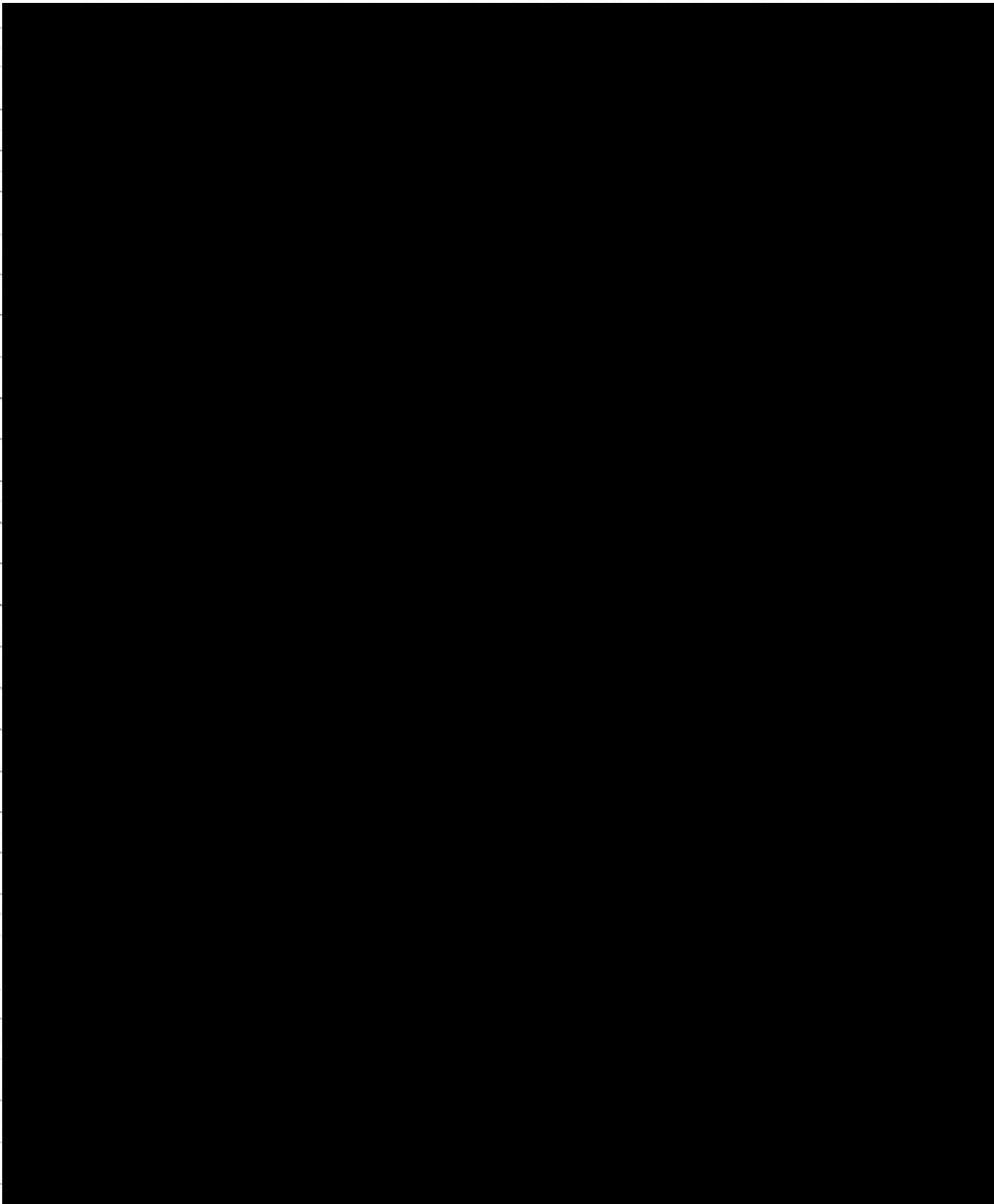


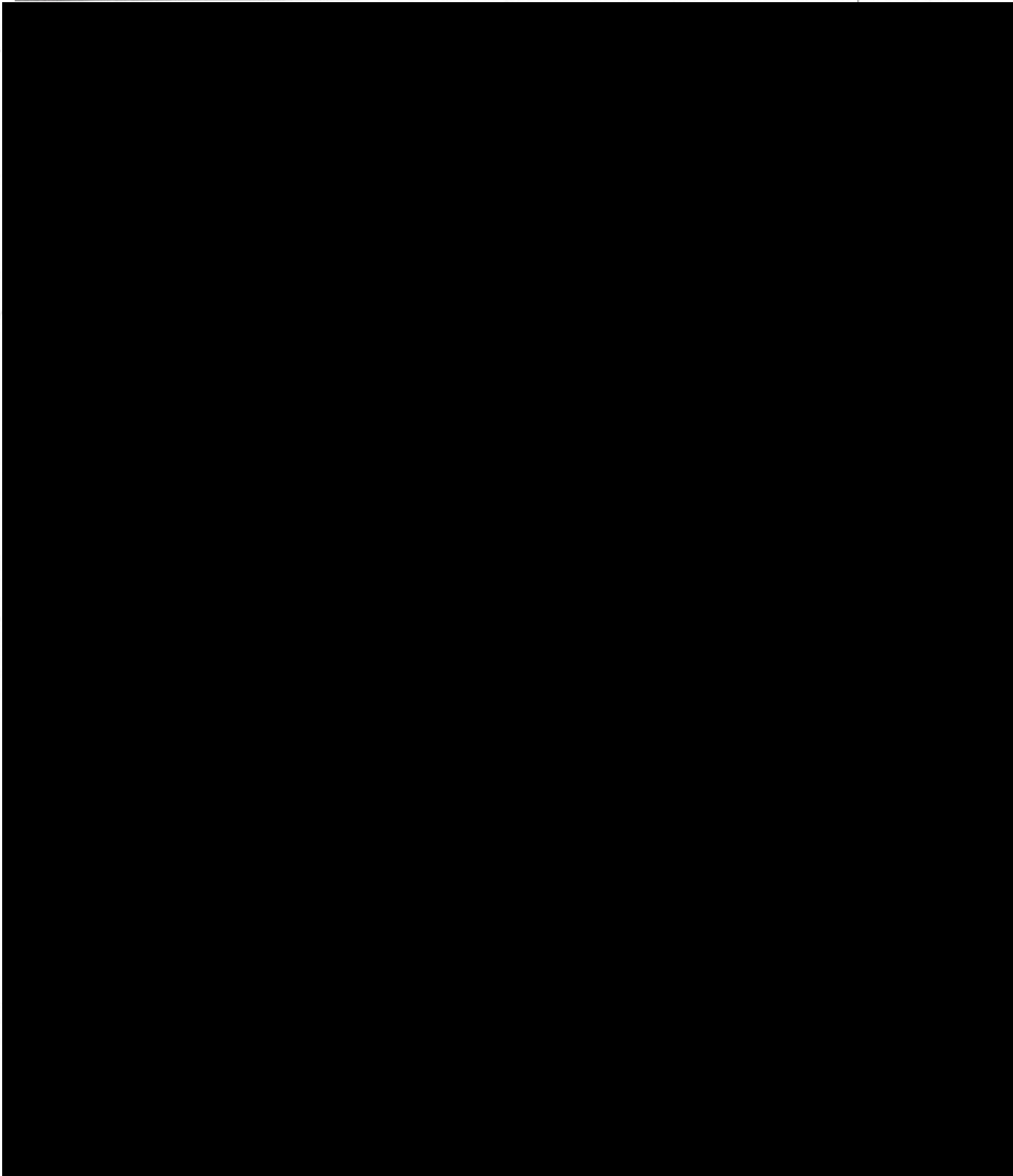
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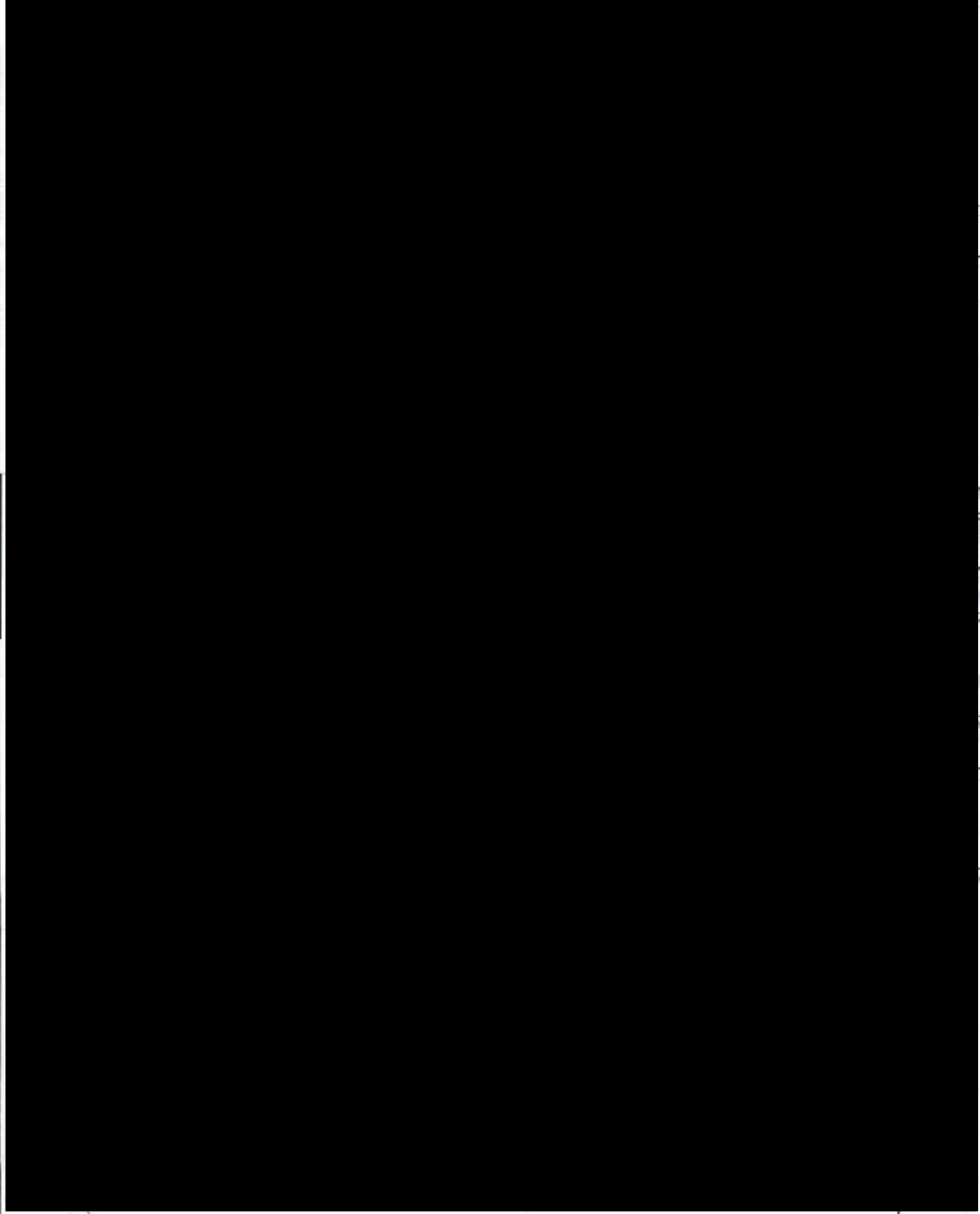
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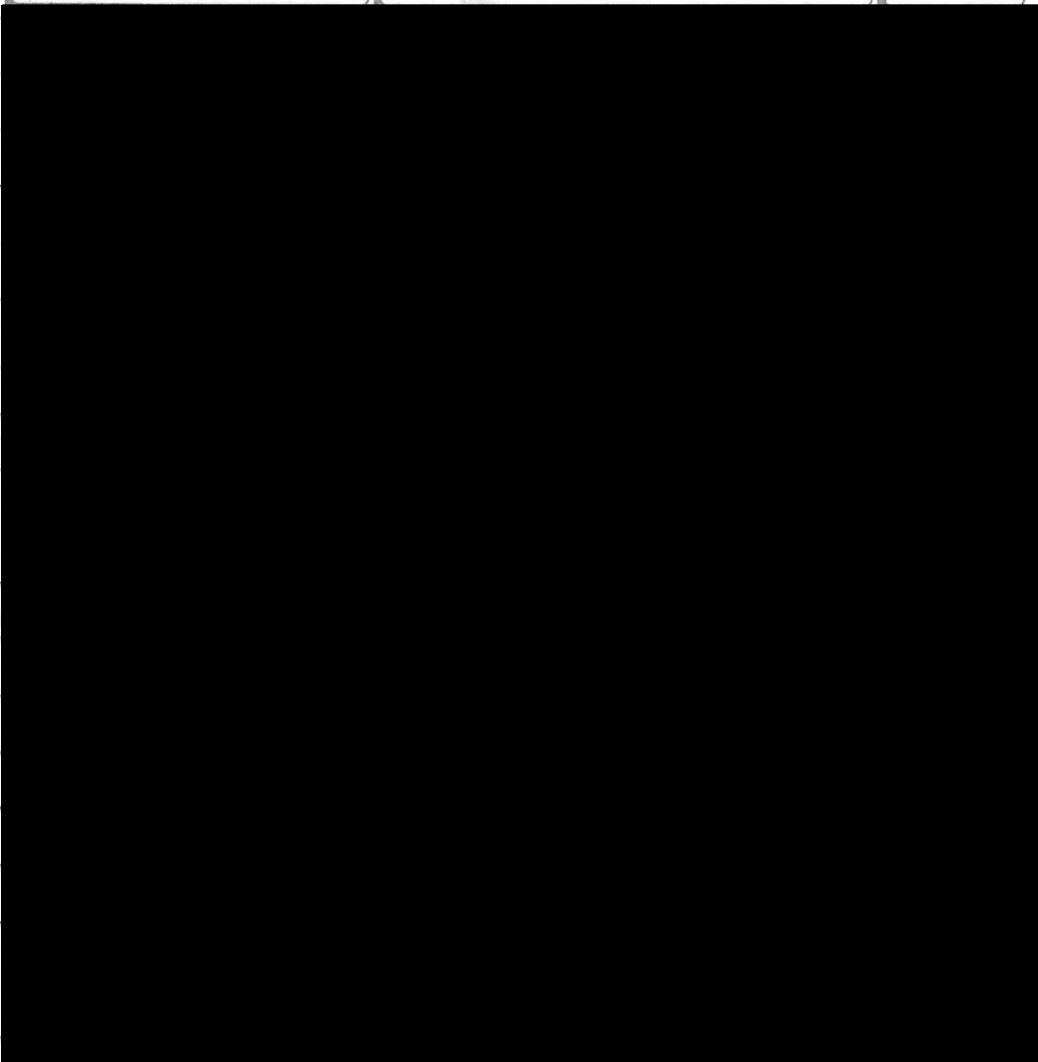




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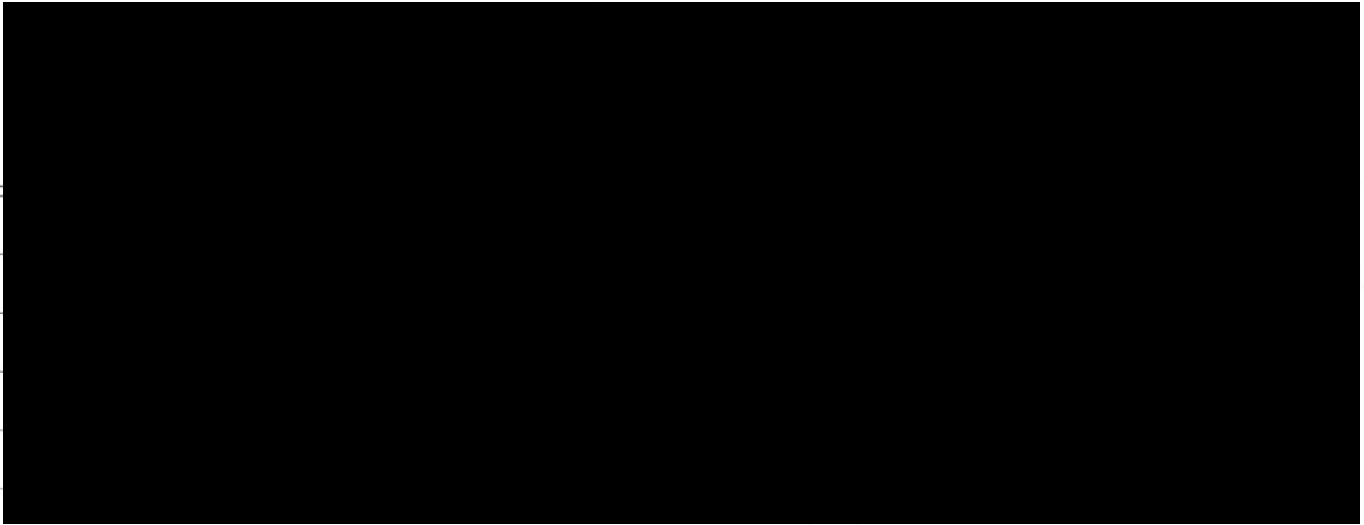
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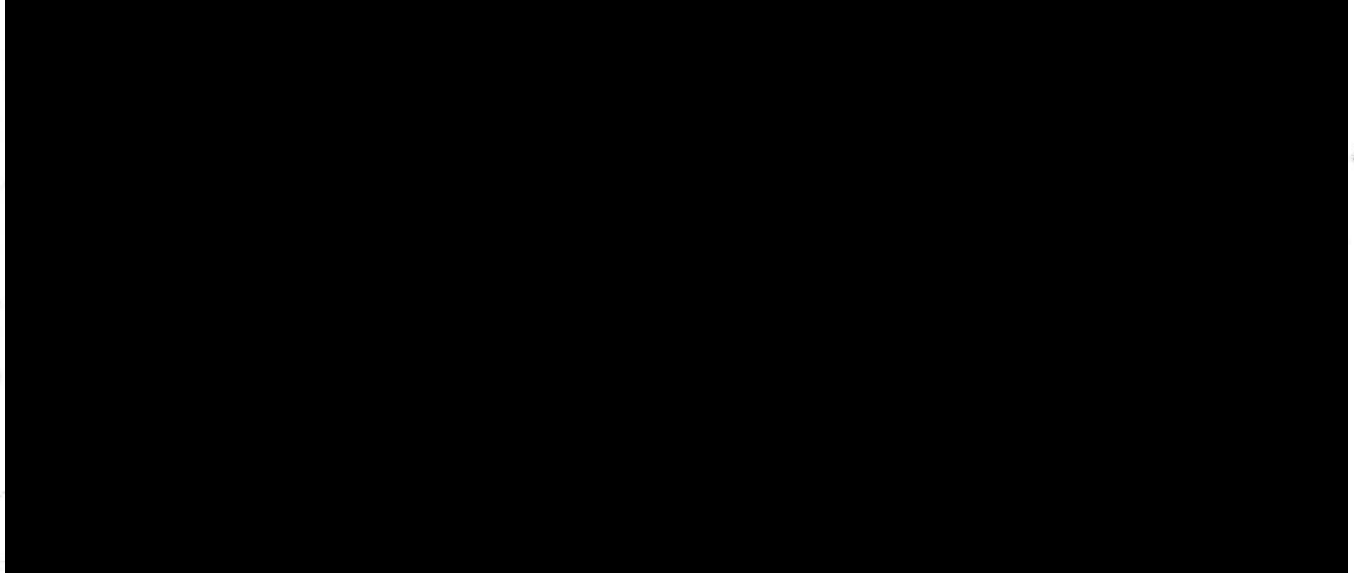
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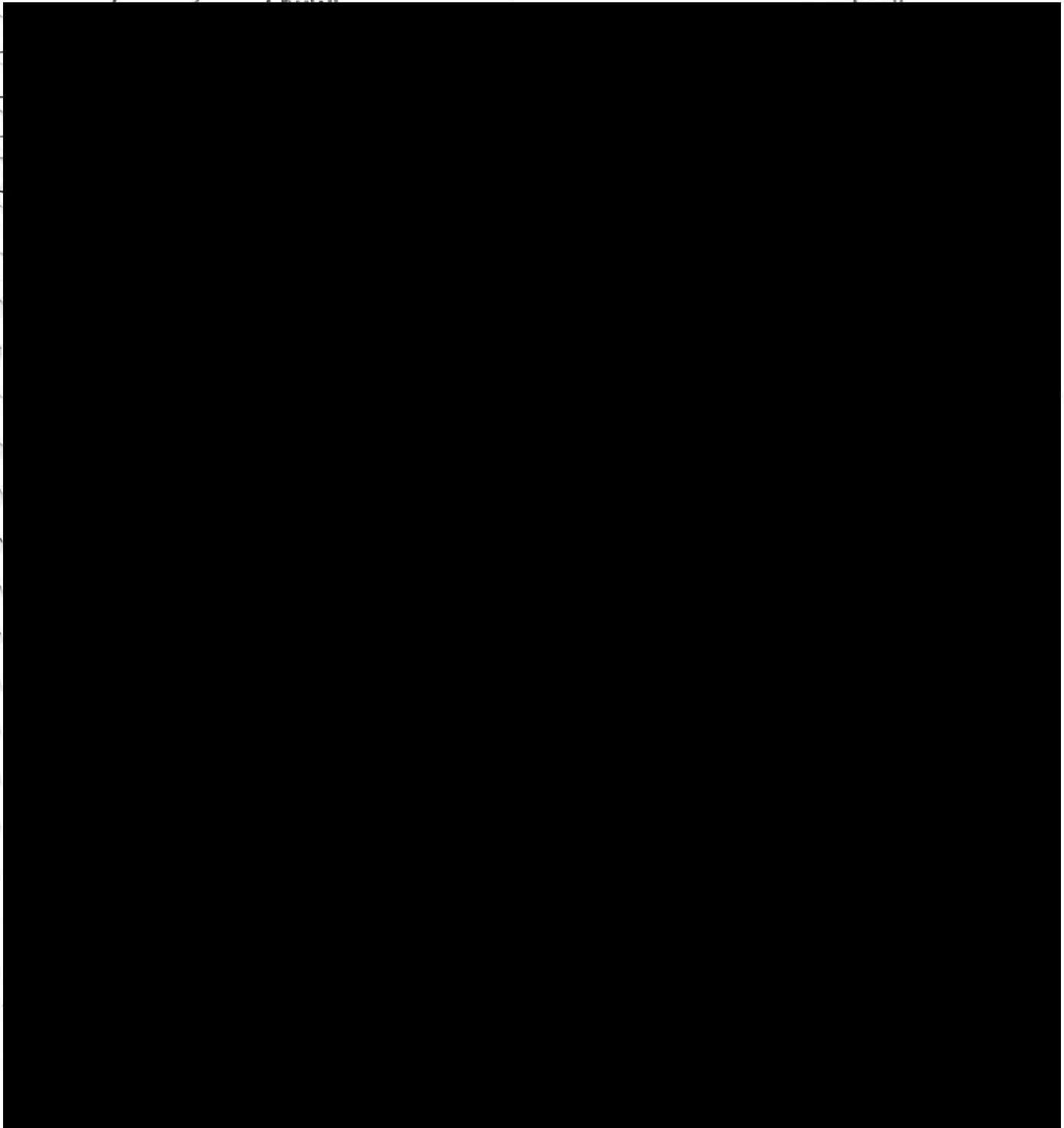


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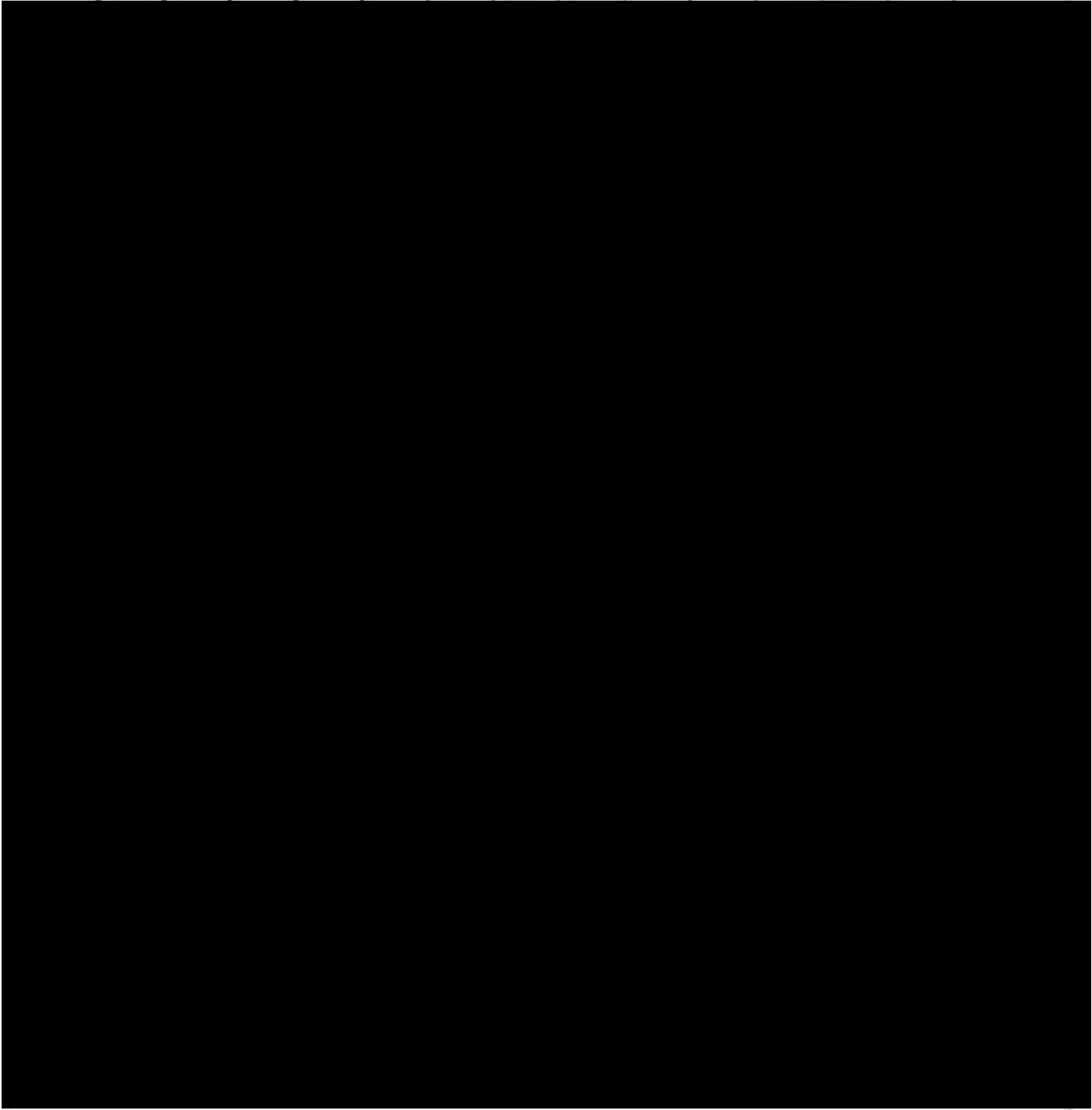


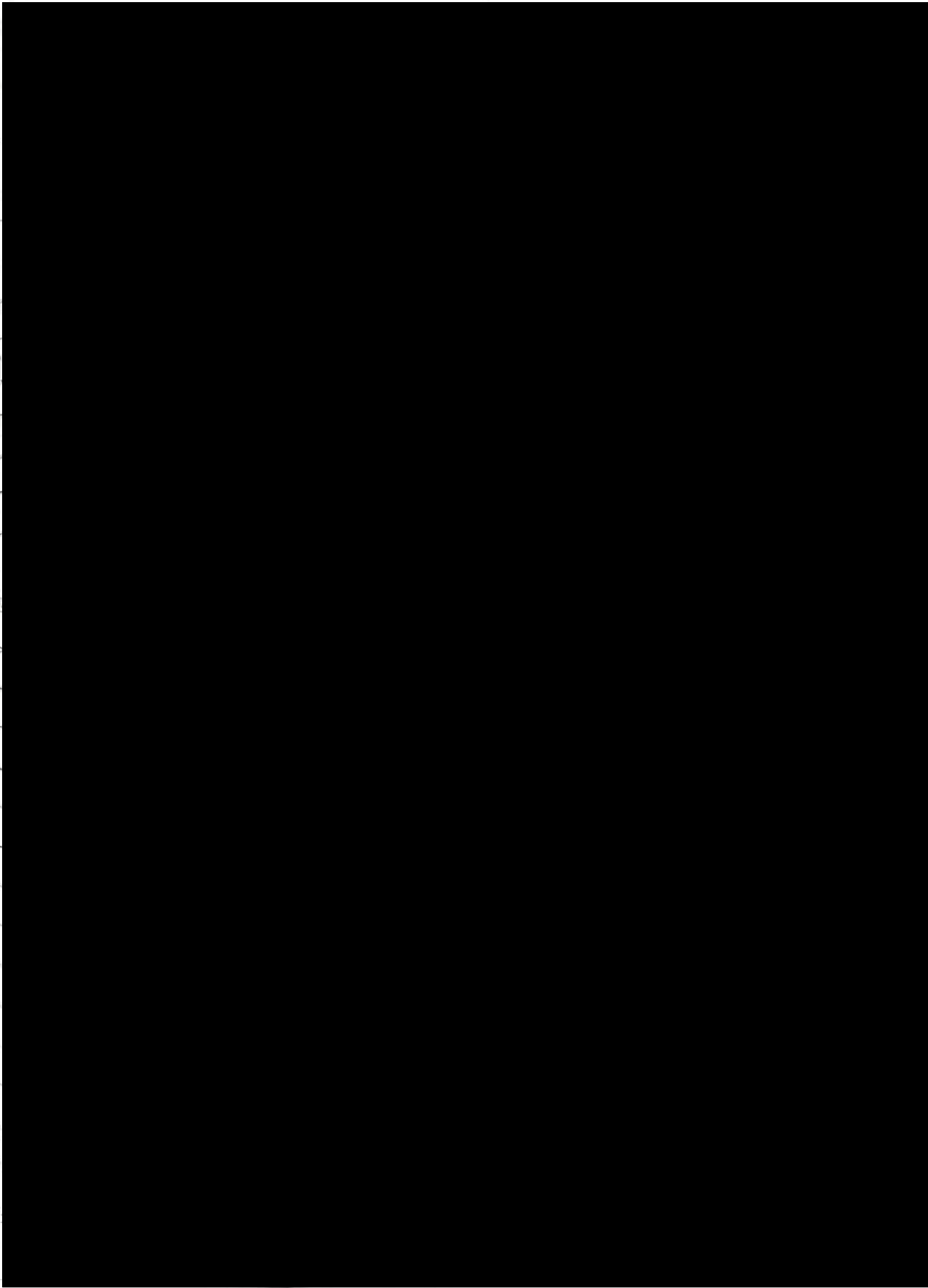
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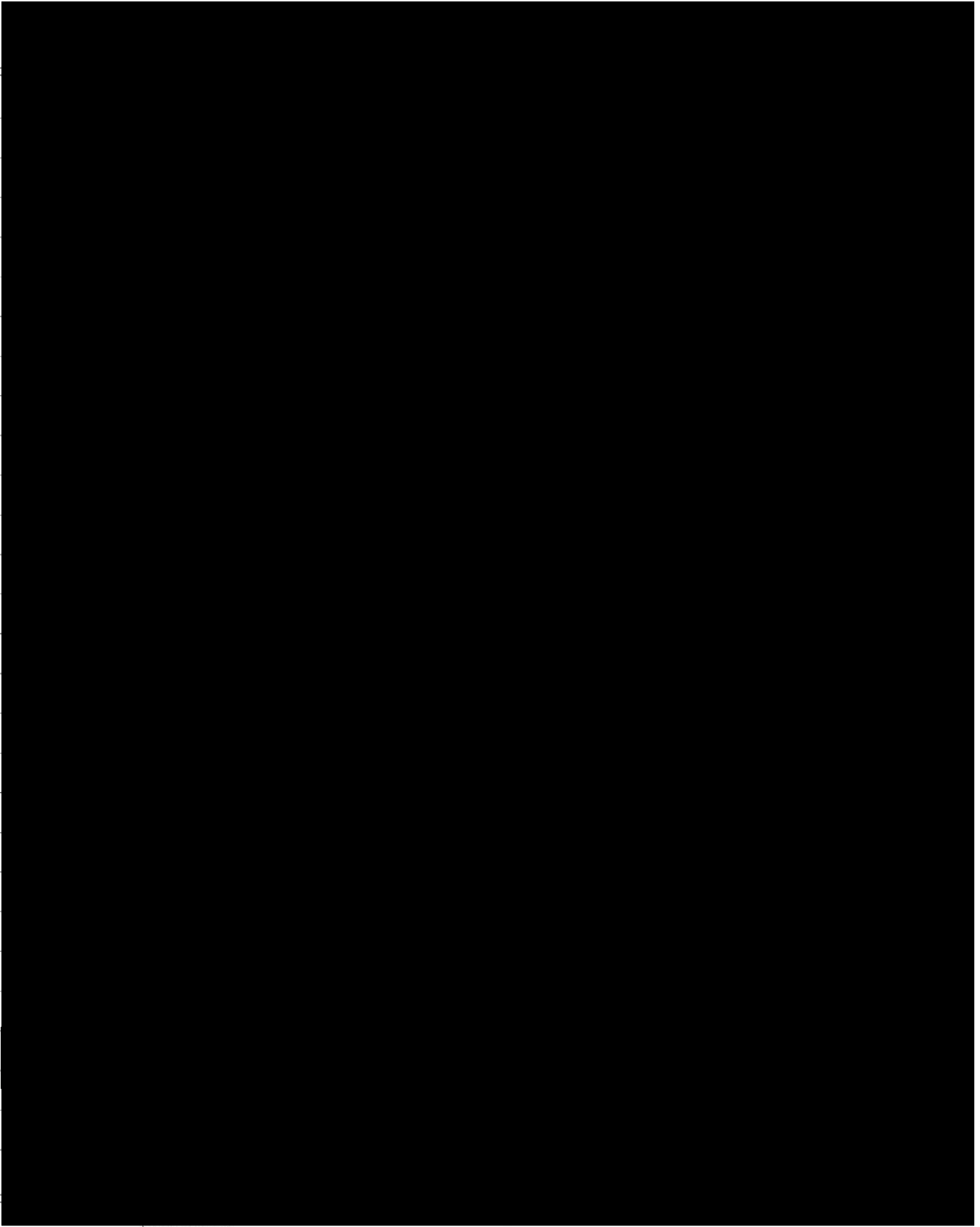


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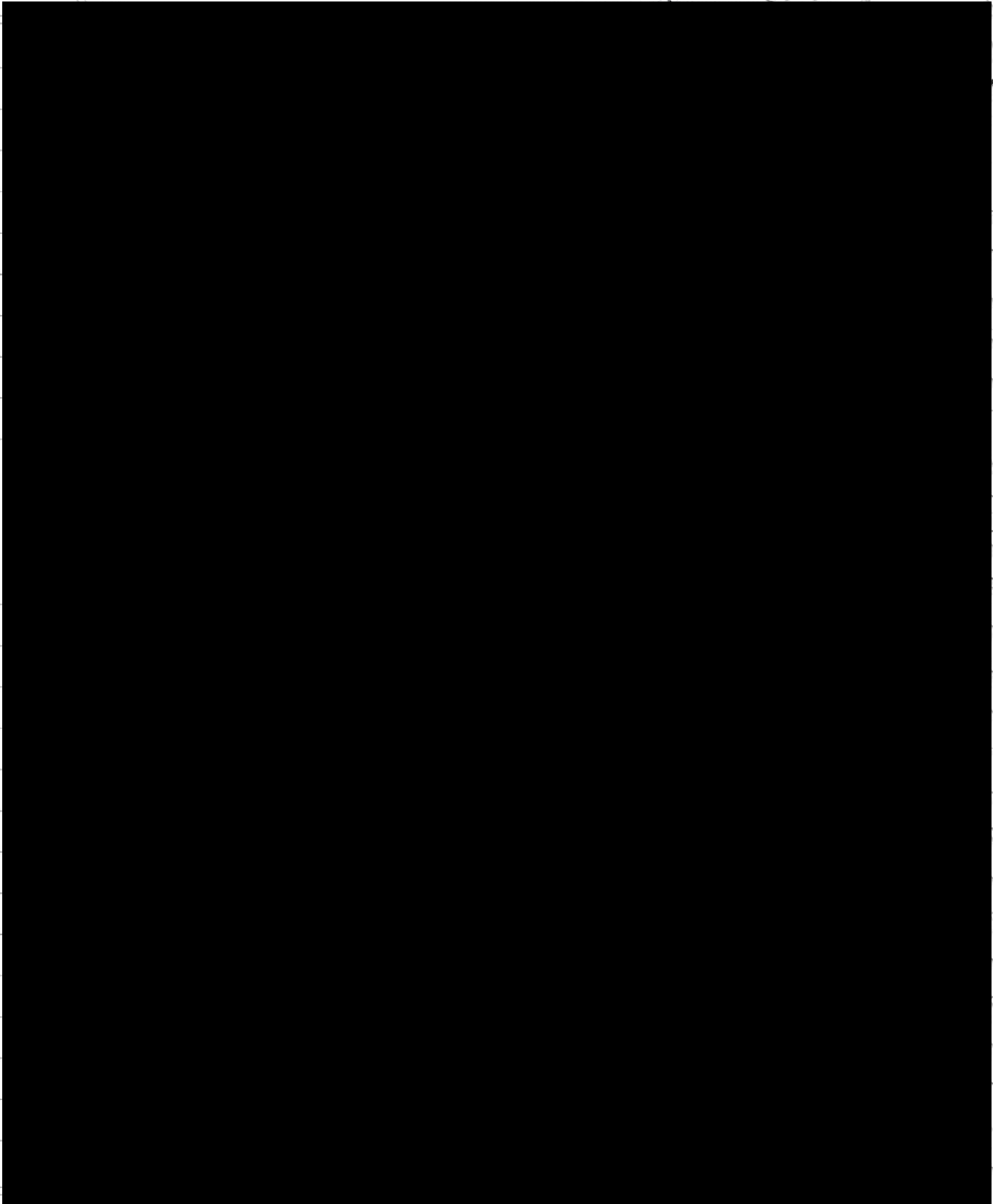
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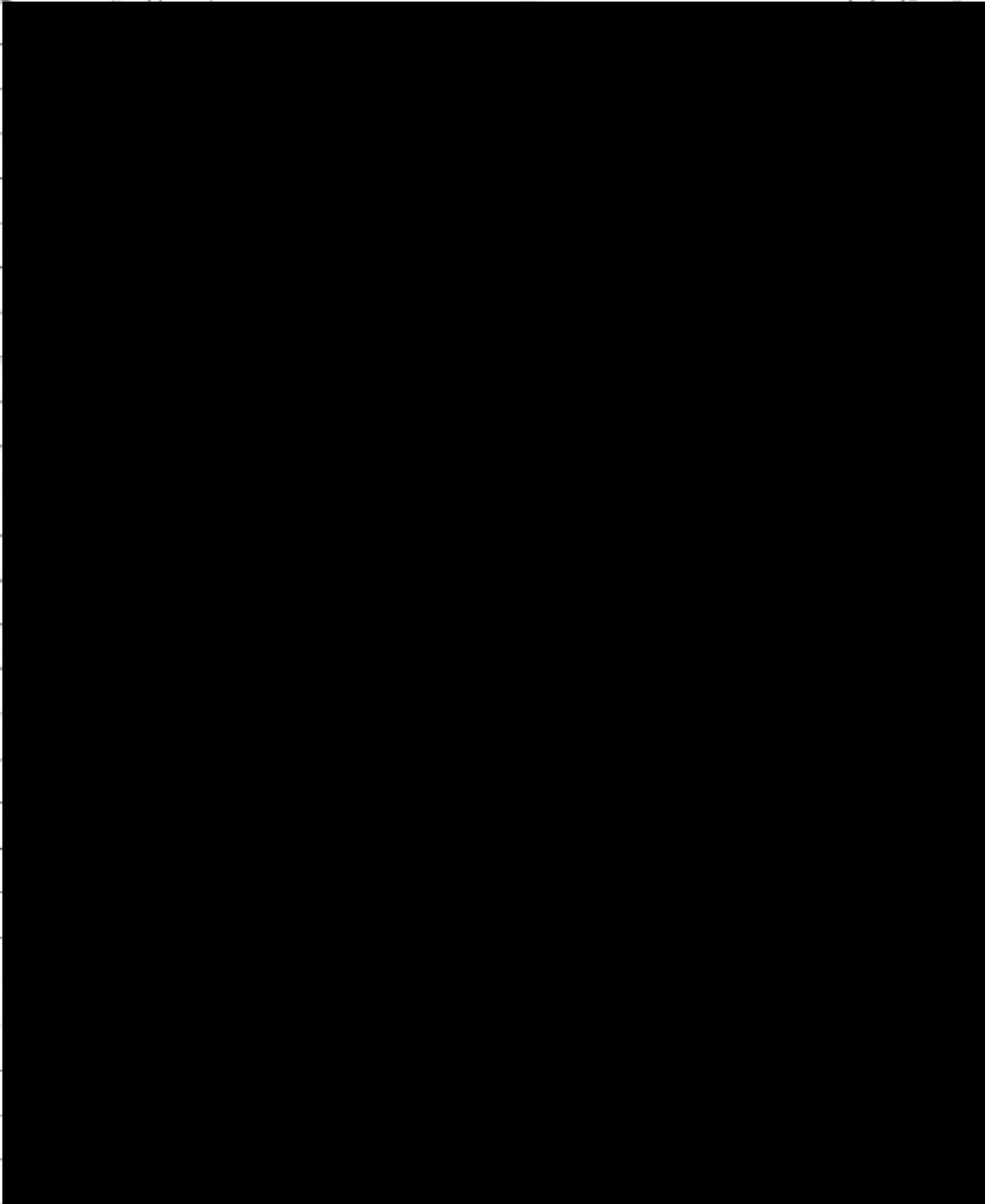
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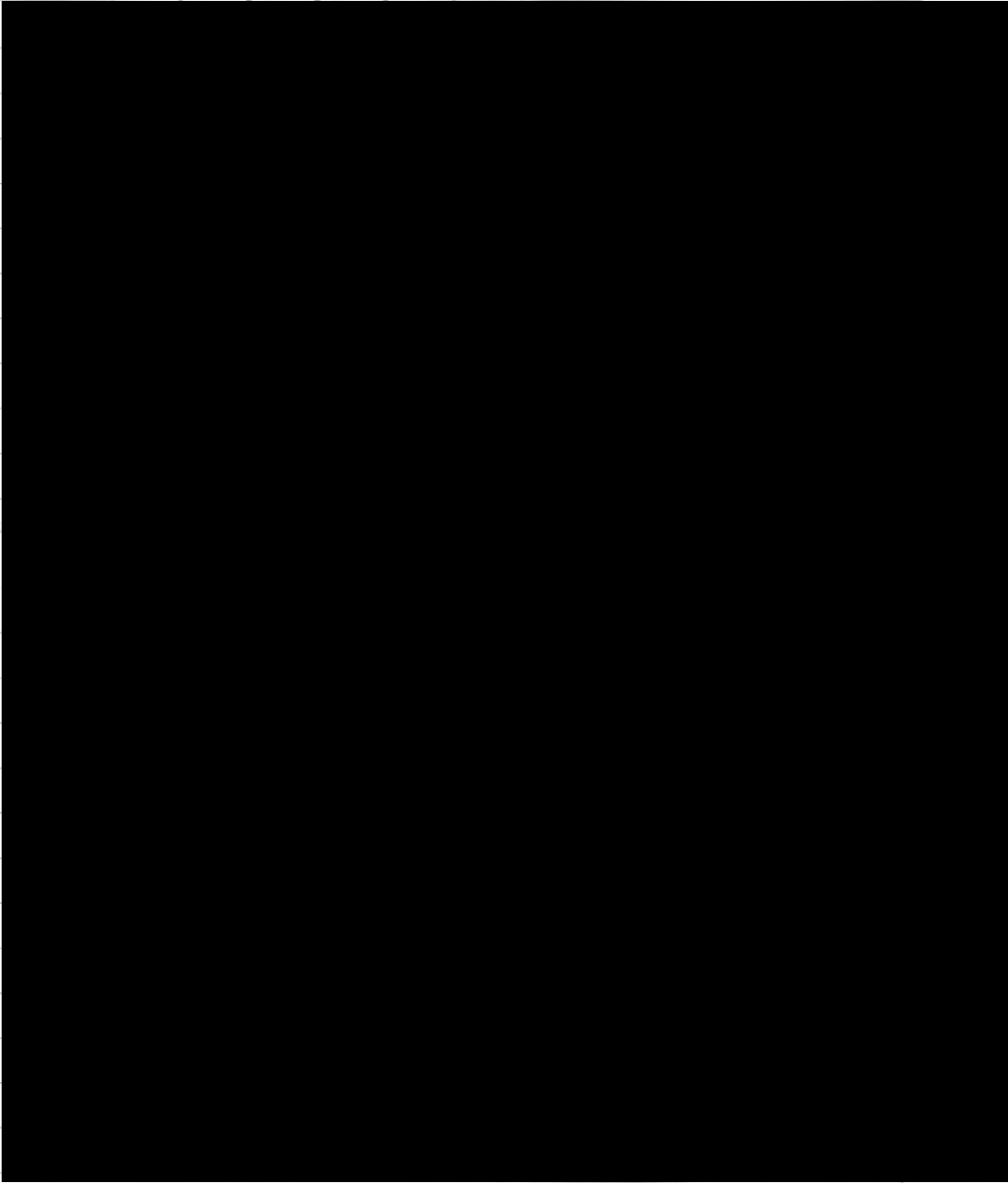
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**Australia news**

Fears Australian boys in Syrian detention could soon be forcibly removed from families

While no Australian children have been recently taken from their families, several 12-year-old boys at the Roj camp face ‘the prospect of sale, exploitation and abuse, torture, inhuman and degrading treatment or punishment’

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Ben Doherty

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Sat 18 Feb 2023 06.00 AEDT

Several Australian boys being held in Syrian detention camps have been told they could be forcibly removed from their families because they have turned 12 years old.

UN human rights experts said at least 10 boys, as young as 12, were forcibly removed from Roj camp overnight on 31 January, and that more removals were planned.

“The pattern of forcibly removing boys who reach the ages of 10 or 12 from the camps, separating them from their mothers and siblings and taking them to unknown locations is completely unlawful,” the [expert panel said in a statement](#).

21/03/2023, 17:09

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The Guardian understands no Australian children were removed in the latest forced removal, but several families have been told their boys face imminent removal.

“The indefinite, cradle-to-grave, camp-to-prison detention of boys, based on crimes allegedly committed by their family members, is a shocking example of the legal black hole that North-east Syria currently epitomises,” the UN experts, led by special rapporteur [Fionnuala Ní Aoláin](#), said.

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“We are extremely concerned that serious harm may befall these boys and fear they may be forcibly disappeared, and subject to sale, exploitation and abuse, torture, inhuman and degrading treatment or punishment.”

The UN group said most of the boys in Roj camp have been detained since they were seven years old and were “victims of terrorism”, deserving of the protection of international human rights law.

Camp Roj, in north-east Syria, currently holds about 3000 people - the widows, sons and daughters of slain or jailed [Islamic State](#) combatants.

Boys are removed from Roj ostensibly for security concerns around their potential radicalisation. They are typically taken to prisons - where they are jailed alongside adults - or other detention facilities, including so-called rehabilitation centres.

In the first half of 2022, [Australian teenager Yusuf Zahab](#) reportedly died from unknown causes. He had been taken into Syria at the age of 11 and was separated as a teenager from his family.

His death was not reported until July 2022 (when he would have been 18): the last time he was heard from was in January when he sent desperate pleas for help during an IS siege of Al-Sina'a prison where he was being held.

The Guardian has approached the office of the home affairs minister regarding the forcible removal of boys from Roj camp and the potential risk to Australian nationals.

About 60 Australians - 20 women and 40 children - had been held in detention camps across north-east Syria, most in Roj camp. Many of the women say they were coerced, tricked or forced into travelling to Syria by husbands who have since died.

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In October 2022, the government repatriated four women and 13 children from Roj to Australia. One of those women, [Mariam Raad](#), [has since been charged with entering, or remaining in, a “declared area”](#) - in this case Syria’s al-Raqa province, which was under the control of Islamic state - in breach of federal law.

It was the second repatriation mission undertaken by Australian authorities: in 2019, eight orphaned children from one family were returned to Australia.

Other Australian families - with relatives still held in Roj and other camps - are growing increasingly anxious about the delay in launching further government repatriation missions. Sources say those are still planned but that subsequent operations will be “more complex”.

Save the Children Australia chief executive, Mat Tinkler, said the Australian government had shown, through recent repatriations, that bringing children and families home to Australia was possible.

“Failing to act now would be unconscionable ... there is no excuse not to bring home these vulnerable children without delay.”

“They are all Australian citizens who deserve full access to the education, healthcare and support systems available here, that will allow them to reintegrate and recover.”

Tinkler said if the boys were removed from their families to detention centres, “they are left vulnerable by the lack of communication with their mothers, without any clear pathway for release”.

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Aussie teen in Syrian prison feared killed after...

By ELLEN WHINNETT

The Australian

Monday 18th July 2022

1139 words

Page 1,6 | Section: THE SYRIA QUESTION

2966cm on the page



Aussie teen in Syrian prison feared killed after IS attack

ELLEN WHINNETT

EXCLUSIVE

A 17-year-old Australian boy detained for three years without charge in a men's prison in Syria is believed to have been killed after Islamic State attacked the jail trying to break their fighters out.

The Australian family of Sydney schoolboy Yusuf Zahab have spoken of their devastation at the loss of the boy who was taken to Syria by his radicalised brothers when he was 11, and locked up indefinitely when he was 14.

Yusuf was one of about 12 Australians jailed by the Kurdish Syrian Democratic Forces following the fall of Islamic State in the village of Baghouz in March 2019. Another 60 women and children are held in secure camps.

He has been missing since Islamic State attacked the al-Sina'a prison in the city of Hasakah in January.

Yusuf, who was detained with Sydney man Hamza Elbaf, recorded several panicked audio clips as 300 militants attacked the prison, and had not been heard from since.

Elbaf's whereabouts are unknown. The Australian understands Kurdish and Australian authorities believe Yusuf is dead.

His father, Hicham Zahab, also died in jail at Hasakah from illness, likely tuberculosis. He was wanted in Australia on allegations of financially supporting Islamic State.

Another of Hicham's sons, Muhammad Zahab, was a notorious Islamic State recruiter who lured more than a dozen of his family members to Syria before he was killed in an airstrike.

Yusuf was never accused of any crime.

In a statement, the Sydney-based Zahab family said they were "heartbroken and angry because Yusuf didn't need to die".

"Yusuf grew up like any other

Australian kid in southwest Sydney – going to school, playing with his cousins and enjoying

sport on the weekends," the family said. "He was a happy child who showed care and compassion to those around him.

"Even in the final messages we received from Yusuf, he asked us to tell his mum that he loved and missed her."

The news of Yusuf's apparent death comes less than a month after The Australian interviewed his mother, Aminah, in the al-Roj camp in northeast Syria, where she is being held as part of a group of 16 Australian women and 42 children.

Ms Zahab, who has numerous relatives including 11 grandchildren detained in al-Roj, wept as she pleaded for news of her son.

She last heard Yusuf's voice in January on audio clips he smuggled out of the jail as IS militants attacked the al-Sina'a prison in Hasakah's Guweiran district.

Continued on Page 6



Yusuf Zahab, the Australian teenager who is believed to have been killed after Islamic State forces attacked the men's prison where he was being held without charge in Syria



THE SYRIA QUESTION

- › Saddest little girls P6
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Listen to audio of Yusuf's story online at

www.theaustralian.com.au



Aussie teen in Syrian prison feared killed after IS attack

Continued from Page 1

The militants attacked the jail with a truck bomb and weapons in an 11-day assault that killed about 500 people.

"I'm Australian ... I'm scared I might die at any time," Yusuf was heard saying.

"My name is Yusuf Hicham Zahab ... I need help ... It's very hard here, I'm very scared.

"I saw a lot of bodies of kids, eight years, 10 years, 12 years. My friends got killed here.

"I'm very scared, I'm by myself, there's a lot of people dead, a lot of people injured, people are screaming next to me."

He also said he had been shot, and had a head injury.

His family and humanitarian groups were then unable to locate him.

The UN Special Rapporteur considered him among about 100 "lost boys" who had vanished in the vast prison system that holds more than 5000 men linked to Islamic State.

In their statement on Sunday, his family said the "terror in his voice was palpable".

"He had suffered severe injuries and he knew he could die at any moment," the family said.

"The previous Australian government knew about Yusuf's predicament for more than three years. We are unaware of any efforts to support, care or inquire

about him. Other Australian children will also die unless immediate action is taken."

The Zahab family said other Australian boys in the camp were nearing the age of 12, when they would be separated from their mothers, as Yusuf was. They pleaded with the Albanese government to repatriate the group of women and children from Syria "before another life is lost".

"I'm really worried that he might be tortured," Ms Zahab said. "I heard that he had TB (tuberculosis) and was really sick. He was taken away from me (at) Baghouz; he was taken away, separated with adults.

"I've never seen him since."

Hicham Zahab had claimed he took his family to Syria to rescue his brainwashed sons who had joined the caliphate. He claimed he also tried to rescue his many grandchildren, and had worked only as a mechanic.

The Australian Federal Police used proceeds of crime legislation against him over the sale of the family home in western Sydney's Condell Park in 2015, fearing the money was being used to support terrorism. About \$500,000 in sale proceeds was never recovered and police alleged it was destined for Islamic State.

Prosecutors in Kuwait also filed charges against him in 2016 alleging he was supporting and financ-

ing terrorism, money-laundering and illegally transferring cash from Australia to Kuwait.

"The last we heard from him was January," Ms Zahab said of her youngest son, Yusuf.

"So many organisations have been sent to see him (but) they refused to let anybody in. I've been worried sick."

Yusuf's sister, who is also in al-Roj with her mother, said the family heard Yusuf's pleas for help when they were broadcast on news channels in Syria.

"I heard him, he was pleading to go back home," she said.

"The last thing we heard about him was he was injured.

"We don't know anything since then ... no one has been able to locate him at all.

"Yusuf told family back home that ASIO had met with him a few months after he got there, and he told them he wanted to go back home. And they told him they're coming back for him. And they never did.

"He's even told family he's been tortured. He told ASIO he'd been in solitary confinement and he wasn't doing well and the conditions of the prison were horrific.

"He's in a men's prison and they did nothing about it."

His sister, who asked not to be named, said she just wanted to see him one more time.

"Just once. That hug. He is a victim."



Yusuf Zahab as a 'typical Australian child growing up in southwest Sydney'

22/07/2022, 09:31

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Yusuf Zahab: Australian teen feared killed in Syrian jail

By Tiffanie Turnbull
BBC News, Sydney

🕒 3 days ago

Syrian civil war



HUMAN RIGHTS WATCH

| Yusuf Zahab pictured before he left Australia at age 11

An Australian teenager taken to Syria as a child is feared dead after languishing in an adult prison for three years.

Yusuf Zahab was 11 years old when he was taken to Syria in 2015 by relatives who had been radicalised. He was imprisoned without charge in 2019.

His Sydney-based family say they are "heartbroken and angry" because the 17-year-old had begged for help for years.

It is unclear exactly when or how Yusuf is suspected to have died. Rights groups say he was injured in January when the Islamic State group attacked a prison in Syria's Kurdish-controlled north-east in a bid to free its fighters.

Kurdish-led forces, with US support, battled the militants for a week, leaving more than 180 people dead.

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At the time, Yusuf told family in voice recordings he was scared he "might die at any time" as fighting intensified.

"I lost a lot of blood... There's no doctors here, there's no one who can help me," he said.

Yusuf was among around 850 children who had been detained at the prison after the fall of IS in 2019 in case they posed a risk, the UN children's charity Unicef said.

His family described him as a happy and compassionate child who loved sport, school and playing with his cousins.

"Even in the final messages we received from Yusuf, he asked us to tell his mum that he loved and missed her," they said in a statement.

"Yusuf didn't need to die."

They said Australia's previous government "knew about Yusuf's predicament for more than three years" before being leaving office in May, adding: "We are unaware of any efforts to support, care or inquire about him."

The family and advocacy groups Human Rights Watch and Save the Children have pleaded for Australia to repatriate women and children who remain in Syria.

Australia evacuated eight orphans in 2019, but at least 63 Australians remain stuck in Syria. Of them, up to 40 are children, the groups say.

"We have to remember these children were brought there against their will or were born over there," Human Rights Watch's Sophie McNeill told the ABC.

Australia's Department of Foreign Affairs and Trade said it is working to confirm that Yusuf has been killed, but his family has been offered consular assistance.

The government remains "deeply concerned" about Australians in northeast Syria but its assistance is "extremely limited" due to security dangers, the department said in a statement.

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Australia news

Sydney teen Yusuf Zahab believed to have died in IS attack on Syrian jail after begging help

Family say they are 'heartbroken and angry' and claim the previous government knew about their son's detention for more than three years

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Caitlin Cassidy

Mon 18 Jul 2022 11.32 AEST

A south-west Sydney teenager is believed to have died in a Syrian jail months after begging the Australian government for assistance

Yusuf Zahab, 17, had been detained in Guweiran prison in Hasaka city alongside suspected members of the [Islamic State](#) for three years by IS in January in an attempt to free its fighters.

His family said they were “heartbroken and angry” to learn of the death of their child, describing him as a caring and compassionate upbringing.

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 “Yusuf didn’t need to die,” they said. “The previous Australian government knew about Yusuf’s predicament for more than three years and made any efforts to support, care or inquire about him.”

A spokesperson for the Department of Foreign Affairs said its ability to provide consular assistance to Australians in Syria was “deeply limited by the dangerous security situation.”

“The Australian government remains deeply concerned about the situation of Australians in northeast Syria, including the welfare of those in prisons and other detention centres,” the spokesperson said.

“We are seeking to confirm reports an Australian has been killed in Syria. The Australian government has offered consular assistance to any Australian citizens in Syria. Yusuf was 11 when he travelled to the newly declared Islamic State caliphate in north-east Syria with his parents and siblings, and 14 when he was imprisoned from his mother and sister after the fall of IS and imprisoned.

Because he was over 12, he was sent to the children’s section of the adult prison without charge.

During fighting between IS militants and Kurdish-led forces at Guweiran prison in January, Yusuf’s audio recording begging for help and was widely publicised.

At the time, the Syrian Democratic Forces said they wouldn’t take responsibility for the 700 boys detained in the prison as the fighting reports of fatalities and children being used as **human shields**.

The violence broke on 20 January after a car bomb was detonated in an attempted jailbreak.

“I’m Australian,” Yusuf repeated in **phone-recorded audio clips** amid the fighting. “I’m scared I might die any time ... people are scared. People are scared. I really need help. I really want to come back home.”

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His family said the “terror in his voice” was palpable and, while the cause and exact time of his death was unknown, he had suffered injuries at the time, including head wounds.

“In the final messages we received from Yusuf, he asked us to tell his mum that he loved and missed her,” they said.

At the time the then foreign affairs minister, Marise Payne, said Australia didn’t have diplomatic representation in Syria and the government was “not clear” about the challenges citizens, whether children or adults, who had travelled there faced.

At least 63 Australians, including more than 40 children, remain in Syrian camps, according to Save the Children Australia estimates.

The reported death has led to renewed calls for the remaining women and children stuck in makeshift detention camps in north-east Syria to be released by the Australian government as a “matter of urgency”.

Save the Children Australia’s chief executive, Mat Tinkler, said Yusuf’s death was a “shocking and terrible tragedy.”
 “We repeatedly warned the previous government of the risks to Australian children who have been trapped in Syria for more than three years.”
 “Our worst fears are now a devastating reality for this young Australian. This deeply troubling news should serve as a wake-up call for the government.”

“It has never been clearer that time is running out.”

Tinkler said there had been reports that some of the boys in the Roj camp, now approaching their early teens, may also soon face transfer to an adult prison.

Yusuf’s family said they had received reports that the camp was unable to look after the numbers of occupants. “There are children who are malnourished, some with shrapnel wounds that need surgery, and others with severe illnesses,” they said.

The family remained detained in Syria and were waiting to be repatriated. They said Kurdish authorities had asked for help from the Australian government and the US had also offered its assistance.

“Other Australian children will also die unless immediate action is taken,” they said. “We are pleading with the Albanese government to free the remaining Australian women and children ... before another life is lost.”

The Islamic Council of Victoria said the circumstances leading to the teen’s death weren’t “altogether clear” because Australian authorities had not intervened.

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"Other countries have successfully repatriated their citizens including our allies," it said.

"The UN and human rights organisations have reported the cruel, inhumane and dangerous conditions and have repeatedly called u repatriate its citizens. To no avail.

"Australia has the legal system to deal with returnees ... the families and the community are ready to throw their arms around the w that is missing is the will to make it happen."

Payne, the department of foreign affairs and the foreign affairs minister, Penny Wong, have been contacted for comment.

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7.30 Report

Sydney teenager feared to have been killed in Syrian jail

Posted Mon 18 Jul 2022, 8:16pm

Updated Mon 18 Jul 2022, 10:39pm

Expires: Tuesday 14 June 4760 8:16pm

Since the fall of the Islamic State in 2019, governments around the world have faced a conundrum: what to do with the children of foreign fighters. Many countries have repatriated their citizens but Australia has only taken eight out leaving dozens of women and children in detention camps in north east Syria.

Today, news emerged that one of those children, 17-year-old Yusuf Zahab died. Efforts to help him failed, despite warnings to the Australian Government that he was at risk. Kathleen Calderwood reports.

Transcript

plusminus

YUSUF ZAHAD: My name's Yusuf Zahab. I'm Australian, I'm 17 years old. I just got shot. My head's bleeding, I've injured my head and my hand. There's no doctors here that can help me.

KATHLEEN CALDERWOOD: A teenage boy from suburban Sydney pleads for help from inside a Syrian prison as IS militants attack.

YUSUF ZAHAD: I've seen a lot of bodies of kids, eight years, 10 years, 12 years. My friends got killed here. I'm very scared. I'm by myself. There's a lot of people dead, a lot of people injured, people are screaming next to me. People are scared. I really need help, I really need to come back home, please help me.

KATHLEEN CALDERWOOD: Yusuf Zahab's parents took him to Syria when he was 11. They were going to join his brothers, one of whom became a senior Islamic State figure.

Yusuf was imprisoned for three years despite never being accused of a crime and his family now believes he is dead.

KAMALLE DABBOUSSEY: This was preventable. This was avoidable. This was predictable.

KATHLEEN CALDERWOOD: In north-eastern Syria, Yusuf was detained at Gweiran prison in the city of Hasakah among hundreds of boys detained after the Islamic State fell.

LETTA TAYLER, HUMAN RIGHTS WATCH: There were almost certainly many, many hardened ISIS members among the detainees there but they're also 700 boys, many of them like Yusuf, who were way too young to have ever had any choice in the matter of whether they lived under ISIS or fought under ISIS.

KATHLEEN CALDERWOOD: Like Yusuf, many boys were taken to adult jails when they turned 12 instead of the makeshift detention camps where their mothers and siblings were sent.

10/08/2022, 14:07

Sydney teenager feared to have been killed in Syrian jail - 7.30

PETER GALBRAITH, FMR US DIPLOMAT: In the case of adolescent boys, and Yusuf was 14, they understandably were concerned that these boys had been what were called 'Cubs of the Caliphate', young fighters for the Islamic State, so they couldn't just bring them so they ended up putting them in a detention centre and in this case, it was simply a wing of the prison in Hasakah.

KATHLEEN CALDERWOOD: His family in Australia issued a statement saying they are devastated. They hadn't heard from him since January and had grave fears for his wellbeing ever since.

LETTA TAYLER: This was a boy who spent his time on his bicycle playing, living a very normal life in Sydney.

Suddenly he's in the middle of a war zone with one of the world's most notorious terrorist groups.

KAMALLE DABBOUSSEY: He was a very caring child. He would look after the babies in the family, he would play with them. He was a happy child and that's the way the family remember him.

KATHLEEN CALDERWOOD: Kamalle Dabbousy's daughter and three grandchildren are also stuck in a northeast Syrian detention camp.

He visited them in 2019.

He's since been advocating for many Australian women and children and is speaking on behalf of Yusuf's family.

KAMALLE DABBOUSSEY: The family received the news with great sadness, heartache and anger.

Yusef didn't need to die. We're in this ridiculous situation where we knew where he was, we knew he was under age. There would have been a very easy request to make to get him to safety.

KATHLEEN CALDERWOOD: Human Rights Watch Crisis and Conflict lead Letta Tayler requested to meet with Yusuf in May, but she says northeast Syrian authorities denied her access.

LETTA TAYLER: I was never given an explanation, but it certainly raises a lot of questions and I think this family, the family of Yusuf needs to know what were the circumstances around his death? What did he die of?

KATHLEEN CALDERWOOD: A month later, former US diplomat Peter Galbraith was in Syria and asked the Kurds about Yusuf's welfare.

PETER GALBRAITH: When I was there in June, I was told that they didn't have any information and that led me to believe that he very likely was dead.

KAMALLE DABBOUSSEY: Why do we have to wait for a death to actually take place? It appears that the government has decided to kick the can down the road.

KATHLEEN CALDERWOOD: There are around 60 women and children left behind by their IS fighter husbands and fathers living in squalid detention camps.

The Morrison government repatriated eight children in 2019 but dozens of women and children remain.

LETTA TAYLER: To the family's knowledge, the family of Yusuf, no intervention was made on behalf of this boy, much less on behalf of the dozens of other Australians who have been held unlawfully for more than three years in northeast Syria in absolutely horrific conditions.

It should be a wakeup call to the new Australian Government.

PETER GALBRAITH: It's been a decision not to take the citizens back. It's something that is relatively easy to do and if requested to do, the Syrian Kurds will turn over the women and children and the

<https://www.abc.net.au/7.30/sydney-teenager-feared-to-have-been-killed-in/13978234?jwsourc=em>

2/3

10/08/2022, 14:07

Sydney teenager feared to have been killed in Syrian jail - 7.30

United States will actually fly them out.

KATHLEEN CALDERWOOD: The Department of Foreign Affairs told 7.30 it's seeking to confirm Yusuf's death and has offered the family consular assistance.

It added that repatriations require a whole-of-government approach and balancing risks.

The families are hoping for action now a new government is in place.

KAMALLE DABBOUSSEY: I think the women and children, particularly the older children as well, do feel abandoned.

They know there's a new government in place, and this new government act soon then there will be a degree of trust and cooperation that the government can build and work with and the longer they wait, the more that'll disappear.

7.30

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Statement in response to reported death of Australian teenager in Syria

Save the Children Australia CEO Mat Tinkler responds to reports that a 17-year-old Australian boy has died in Syria.

18 JULY 2022

Save the Children Australia CEO Mat Tinkler said:

“The reported death of an Australian teenager in Syria is a shocking and terrible tragedy.

“For any family, the loss of a child is unspeakably painful.

“We repeatedly warned the previous government of the risks to Australian children who have been trapped in Syria for more than three years.

“Our worst fears are now a devastating reality for this young Australian. This deeply troubling news should serve as a wake-up call for the current government.

“The Albanese Government must act quickly to protect the remaining Australian children in Syria. It has never been clearer that time is running out.”

Save the Children has been calling for the repatriation of

22/07/2022, 11:11

Statement in response to reported death of Australian teenager in Syria - Save the Children

Australian children and their mothers from camps in Syria since 2019.

Reports that some of the boys in Roj camp who are now approaching their early teens may also soon face removal from their mothers to an adult prison raise serious concerns for their safety.

At least 63 Australians, including more than 40 children, are languishing in the camps in North East Syria. Australia has a moral and legal responsibility for them. There are no practical or legal barriers to their repatriation.

ENDS

MEDIA CONTACT: Holly Robertson on [0414 546 656](tel:0414546656) or media.team@savethechildren.org.au

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2/3

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5.1% Retail

*Save the Children Australia's total expenditure for year ended 31 December 2021 expressed as a percentage.
See 2021 Annual Report for full details.

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3 February 2023

Hon Clare O'Neil MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister,

RE: Urgent need to repatriate as Australians face new threats in North East Syria

I am writing to provide an update and request your urgent action on the situation for Australian women and children still detained in North East Syria. Overnight we have been made aware that there is an Australian child who is directly at risk of being imminently separated from his mother, and we have growing concerns for the health and life of a further two women and nine children.

As you know, Save the Children has continued to advocate for the safe return of all Australian women and children from North East Syria, and we highly commend your action to repatriate four women and 13 Australian children in October last year. Given the changing circumstances outlined below, we believe that the only way the Australian Government can ensure the safety and wellbeing of the remaining Australian women and children is to immediately repatriate them.

Forced separation of two Australian boys could be imminent:

Last night we received reports that the camp authorities intend to separate an Australian child, [REDACTED]. The extreme risk to [REDACTED] arises from an announcement made by the Autonomous Administration of North East Syria (AANES) camp authorities that boys born in 2011 would be removed within 48 hours. While it is unusual for the AANES administration to give forewarning, it is not unusual for them to forcibly take boys this age from their families. According to the United Nations¹, boys in Roj and Al Hol between 10 and 12 years of age are at risk of being forcibly removed from their families, and on Monday evening we received reports that camp authorities separated 10 boys from their mothers and siblings and removed them from the camp. The boys were all similar in age (around 12 years old) and are thought to have been transferred to so-called "rehabilitation centres."

As you know, Australian Yusuf Zahab was separated from the Australian families in a similar fashion prior to being held in one of these centres where he was killed in 2022. Yusuf had caught

¹ UN Human Rights Council, "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic," <https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/report-coi-syria-september2022>, para. 98.

tuberculosis in overcrowded space prior to his death and had sustained serious injuries in an ISIS attack on the Al Sina prison. Understandably therefore, news of the imminent forced separation has sent waves of panic amongst the Australian families. We share their fear and are particularly concerned that [REDACTED] could be taken imminently. We are also extremely concerned for [REDACTED] [REDACTED] [REDACTED] If separated from their mothers and siblings and transferred to a “rehabilitation centre”, the boys will be forced to live in abhorrent conditions. Boys living within these facilities often go without food and water and face very real threats to their lives.

Children and their mothers in the camp are experiencing serious health problems

Many of the Australians in North East Syria are suffering from untreated wounds and health conditions. There is only one healthcare facility in Roj to treat about 2,500 camp residents – the facility is woefully undersupplied and is only able to provide very basic care. There are several Australians in the camps who have very urgent health conditions, these details are outlined below based on information passed on to Save the Children by Australian family members:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Urgent action is needed to protect the life and health of Australian women and children in Roj
In light of the imminent forced separation of Australian child [REDACTED] from his mother, and the new threats he will face if alone, I urge you to ask the authorities to suspend their plans while

you make necessary arrangements to repatriate his family and set in place plans to repatriate the remaining Australians. As evidenced by the list of untreated health conditions, the lives of Australians in the camp are increasingly at risk and urgent action is required to protect them. Save the Children Australia is prepared to support the Australian government in any way we can to assist the safe return and resettlement of Australian women and their families from the camps.

I would welcome the opportunity to discuss this with you directly.

Yours sincerely,



Mat Tinkler
Chief Executive Officer



Australian Government
Department of Home Affairs

Ref: MC23-004405

Mr Mat Tinkler
Chief Executive Officer
Save The Children Australia

mat.tinkler@savethechildren.org.au

Dear Mr Tinkler *Mat*

Thank you for your correspondence dated 3 February 2023, concerning Australia-linked women and children in camps northeast Syria. The Minister is aware of the issues you have raised and appreciates the time you have taken to bring this matter to her attention. The Minister has asked that I reply on her behalf.

The Australian Government acknowledges the real humanitarian and welfare issues affecting those remaining in the camps. The Australian Government continues to work with humanitarian partners to monitor, as best we can, the welfare of the women and children. Due to privacy considerations, we are not able comment on the reports you have raised. However, as you know humanitarian partners who have access to the camps, deliver nutrition, health and other assistance, including to the Australian women and children.

As we've discussed, repatriations from Syria require a whole-of-government approach and consideration of effective long-term solutions in the best interests of the women and children as well as the Australian community.

Thank you for raising this matter with the Minister.

Yours sincerely

A handwritten signature in black ink that reads 'R Feakes'.

Richard Feakes
First Assistant Secretary
Counter-Terrorism Coordination Centre
Department of Home Affairs
17 February 2023



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9 March 2023

Hon Clare O'Neil MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

RE: Urgent need to repatriate Australian children and women from North East Syria

Further to my letter to you dated 3 February 2023, and those preceding it, I am writing again to implore you to repatriate the Australian children and women currently held in Roj camp in North East Syria as a matter of urgency.

Once again, I acknowledge the tremendous effort made by the Australian Government to repatriate four Australian women and thirteen children in October 2022. It was very welcome following years of inaction by the previous Government after their repatriation of unaccompanied minors in 2019. I was pleased to be able to publicly welcome your Government's actions and to work, along with others, to help shape a positive public discourse around the October repatriations.

Since then, I understand that NSW government agencies have been working closely with the families of the women and children who were repatriated, as well as with non-government organisations, to ensure that their resettlement is as smooth and happy as possible. I am advised that children are now in school and beginning to enjoy their new lives in Australia. The women are engaging in training opportunities and looking forward to joining the workforce. This is a real testament to the measures taken by you and your Government, despite the political complexities.

However, as highlighted in my 3 February letter to you, Save the Children is most concerned to ensure the urgent repatriation of those Australian women and children who remain in Roj camp. I know that you appreciate the ongoing suffering that they are experiencing and that you are aware that the perilous situation they face has been worsened by winter and by the recent terrible earthquakes which have severely strained already limited resources.

In addition, as detailed in my most recent letter to you, we have credible reports that the AANES authorities will remove boys born in 2012 or earlier from their mothers and detain them with adult men in prison. We believe such transfers, which would be catastrophic, to be imminent. As previously highlighted, we have reason to believe that at least one of those children may die if removed from his mother due to his complicated and untreated health issues which include a heart condition, severe asthma and a history of seizures. He has only recently turned 11 and his mother has told us how she spends each night anxiously monitoring his pulse, terrified that camp authorities will arrive to take him from her at gunpoint. We have not received a written response to our letter of 3 February 2023 in which we specifically raised grave concerns at the imminent risk of removal of the Australian boys. We would be grateful for urgent confirmation of their safety and protection.

You will recall my letter of 4 July 2022, in which I advised you that Save the Children is acting as the litigation guardian for the Australian women and children detained in Roj camp and in which I set out the background to a *habeas corpus* claim which is ready to file. Given the demonstration of intent by the Australian Government through the repatriations undertaken in October 2022, we urged those remaining there not to proceed with litigation. We have continued to encourage the women and their families to be patient as we understand that you must proceed carefully, and we recognise you cannot account to us for all of your processes.

However, as I am sure you will understand, pressure is mounting on us to act. As each day passes, the women and their families become more despairing and fearful that the October repatriations were a “once off” and that litigation may be their only path forward.

I am advised that the strength of the *habeas* claim has substantially strengthened since last year, in particular given the control your government is able to exercise has been confirmed by the return of some detainees. The actions of other governments globally have likewise improved the factual case.

I again entreat you to repatriate the remaining Australian women and children quickly, and to provide us some information about your plans for doing so in order to manage their expectations and anxieties. The removal of Australian boys detained in the Roj camp would place their lives at imminent risk.

While litigation remains a last resort, I reiterate that we are in a position to file as soon as we receive instructions to do so. At this stage, I anticipate this will be very soon, possibly even within the next month. I am also aware that some of the women are panicked to the extent that they are making enquiries about alternative legal representation so that they can file immediately.

Again, I would greatly value the opportunity to meet with you to discuss this matter and can be contacted at any time on 0438 595 049.

Yours sincerely



Mat Tinkler
Chief Executive Officer



Australian Government
Department of Home Affairs

Ref No: MC23-008634

Mr Mat Tinkler
33 Lincoln Square
SOUTH CARLTON VIC 3053

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Dear Mr Tinkler

Thank you for your correspondence of 9 March 2023 to the Minister for Home Affairs and Minister for Cyber Security, the Hon. Clare O'Neil MP, concerning Australia-linked women and children in internally displaced person (IDP) camps in northeast Syria. The Minister is aware of the issues you have raised and appreciates the time you have taken to bring this matter to her attention. The Minister has asked that I reply on her behalf.

The Counter-Terrorism Coordination Centre is in close touch with NSW Government agencies on the progress and welfare of the women and children repatriated to Australia in October last year. We understand these families are receiving support and are progressing well.

As you know, the Australian Government is concerned about the remaining Australia-linked women and children located in IDP camps in northeast Syria. Considering effective long-term solutions that are in the best interests of the women and children, as well as the Australian community, is critical and sensitive work. Through the Department of Foreign Affairs and Trade, the Government continues to partner with humanitarian agencies who have mandate and expertise to deliver assistance to those in need.

As I mentioned in my letter of 17 February 2023, Australia continues to monitor the situation in the al Roj camp, including the welfare of all Australians to the extent possible. Due to privacy considerations, we are not able comment on the reports you have raised, however, we are aware of the reports regarding the separation of boys from their mothers and understand that no Australian boys have been removed.

Thank you for raising this matter with the Minister. I look forward to seeing you on 27 March in Canberra.

Yours sincerely

Richard Feakes
First Assistant Secretary
Counter-Terrorism Coordination Centre
03 April 2023

EXPERT OPINION REPORT

31 March 2022

Michael A. Newton
Professor of the Practice of Law
Professor of the Practice of Political Science
Vanderbilt University Law School

131 21st Avenue, South
Room 298
Nashville, TN 37203, US

Acknowledgements

I herewith submit this report in my personal capacity based on my expertise, experience, and personal interactions with members of the Coalition military forces. I have read the Harmonized Expert Witness Code of Conduct (“Code”), the Federal Court Rules, and the Federal Court of Australia Expert Evidence Practice Note (GPN-EXPT). I have no reservations in accepting the requirements described in those documents.

I have made at least a dozen differing trips to Iraq, both in a military and civilian capacity. My support to Iraqi officials as well as senior leaders in the Kurdistan Regional Government has been focused on providing expert advice regarding the relevant details of international law. In that role, I have advised government officials, judges, and counsel in particular cases. At the time of this writing, I am enroute to Baghdad to assist in ongoing legal planning for repatriation of Iraqi citizens and non-Iraqi nationals whose conduct merits investigation and trial and whom are currently held in custody in Northern Syria. I am accordingly familiar with the processes and practicalities of repatriations from Northern Syria, as well as the welter of legal issues that ensue from repatriations. This opinion is based upon my specialized and interdisciplinary knowledge. It draws upon more than thirty years of practice, practical experience in the field, and specific insights drawn from the overlapping fields of counterterrorism and human rights.

This opinion is provided without compensation in any form, direct or indirect, nor any external inducement. My motivation to write is based upon my larger professional obligations to human rights and dignity which in this instance accord with my opinions regarding the correct articulation of the *lex lata* applicable to the facts of this case as they have been explained to me.

Qualifications

My knowledge of counterinsurgency derives from my professional military experience as both a legal advisor and former combat arms officer, as supplemented by subsequent academic research and pedagogy. My knowledge of terrorism derives from real world operational experience, extensive research, and sustained teaching and publication in the field. For example, I served as the Expert Advisor to the ABA Proxy War project as well as advising the State Comptroller of Israel on terrorism related legal matters. I was also asked to provide an expert report for

inclusion in the Gambia Memorial at the International Court of Justice in *Gambia v. Myanmar*. My knowledge of Coalition operations in Northern Syria is based on close monitoring of public sources and discussions with former students and professional colleagues who have deployed in support of those operations. I have also interacted with special operations personnel deployed to support US objectives in Northern Syria, to include discussions in January 2022 with the Special Forces detachment that had just redeployed from the support mission in Syria. My service as a military lawyer was in direct operational and legal support of such units, and I am deeply familiar with their doctrines, roles, and relationships within the Coalition.

I served in the United States Army from 1984 until my retirement in 2005. At present, I am Professor of the Practice of Law at Vanderbilt University Law School, Nashville, Tennessee, as well as Professor of the Practice of Political Science. At Vanderbilt, I teach courses on terrorism, international criminal law, human rights, law of armed conflict, and diplomacy. I graduated from the United States Military Academy at West Point, New York in 1984 with a Bachelor of Science degree and a designated International Relations area of concentration. Prior to my current service at Vanderbilt, I taught International Law in the Law Department of the United States Military Academy at West Point and the US Army Legal Center and School, Charlottesville, Virginia, from which I earned my first advanced L.L.M. degree in 1996. I obtained my law degree from University of Virginia Law School in 1990, as well as a second L.L.M. degree in 2001. For more than 25 years my academic focus has been on international humanitarian law, international human rights law, the legal regime related to terrorism, transitional justice mechanisms, and the larger field of atrocity law. I have specialized, in particular, on the application of international law, including international criminal law, to armed conflict, both international and domestic.

During my active duty military service, I deployed on multiple multinational operations and supported numerous combined training exercises. I have provided legal advice to commanders and policymakers at all levels of operations, to include senior political officials. I also provided expert advice to the Afghanistan Rule of Law Field Force under NATO authority, and have lectured in NATO courses. From 1999 to 2002, I served in the U.S. Department of State as the Senior Advisor to the United States Ambassador-at-Large for War Crimes, advising on transitional justice policy in numerous contexts. In that capacity, I helped negotiate the Elements of Crimes for the International Criminal Court. In particular, I helped gain consensus agreement on the text of the constituent details for proving the range of genocide offenses, crimes against humanity, and war crimes specified in the Rome Statute. I also served on the U.N. Planning Mission that established the Special Court for Sierra Leone.

My experience in Iraq and with the Kurdish Regional Government began thirty years ago when I was the most forward deployed legal advisor during Operation Provide Comfort. With respect to the situation in Syria, I was the first westerner called by the Kurdish Minister of Martyrs and Anfal Affairs as the Da'esh invasion began in August 2014, and I remain active in meeting with judges and lawyers working Da'esh cases. In that capacity, I have gleaned granular insights into the situation across the border. Since 2014, I have helped Kurdish and Iraqi officials develop procedures for collection and collation of evidence related to Da'esh atrocity crimes. I have advised judges around the world and provided expert advice upon request from governments and non-governmental organizations on counter-terrorism, the application of international criminal

law, and other pertinent queries arising from the general field of international law. In the Iraqi context, I was the International Advisor to the Judges of the Iraqi High Tribunal and provided extensive advice on the Anfal genocide case among others.

My litigation experience began as a military prosecutor handling more than 500 cases. I have appeared at the Appeals Chamber of the International Criminal Court in the Bemba, Bashir, and Ntaganda cases, and I am on the Counsel List for the Court. I was the co-leader for Working Group I [Investigation and Prosecution of Terrorist Acts] convened by the Government of the Netherlands during which approximately twenty leading international experts reached consensus on the Leiden Policy Recommendations on Counter-terrorism and International Law. In 2017, I was selected for the expert roster of Justice Rapid Response. I also served as one of the expert advisors to the Genocide Prevention Task Force under the auspices of the United States Holocaust Memorial Museum, American Academy of Diplomacy, and United States Institute of Peace. I have assisted local counsel in domestic human rights litigation around the world. I am an elected member of the International Institute for Humanitarian Law, San Remo Italy, and coordinated the annual competition between military academies for a number of years.

I was the Senior Editor of the *Terrorism International Case Law Reporter* published by Oxford University Press throughout the life of that series. In all, I have published more than 90 articles, books, and case comments. My most recent book is an edited volume entitled *The United States Department of Defense Law of War Manual: Commentary and Critique* (Cambridge University Press, 2019). I conceived and co-authored *Proportionality in International Law* (Oxford University Press, 2014). I have also authored, *inter alia*, 'The Interoperability of the Laws of Armed Conflict,' in *The Legal Pluriverse Surrounding Multinational Military Operations* (Robin Geiß and Heike Krieger, eds.; Oxford University Press, 2020) and 'Charging War Crimes: Policy & Prognosis,' in *The Law and Practice of the International Criminal Court* (Carsten Stahn ed., Oxford University Press, 2015; Terrorist Crimes and the Aut Dedere Aut Judicare Obligation, in *Counter-Terrorism Strategies in a Fragmented World Order* 68 (Larissa van den Herik & Nico Schrijver, eds., Cambridge University Press 2013); and *Exceptional Engagement: Protocol I and a World United Against Terror*, 42 *Texas International Law Journal* 323 (2009).

Key Questions Addressed by this Expert Report

The Letter of Engagement that I received coincided with my independent analysis of two key issues forming the fulcrum for resolving this complaint. Counsel for the plaintiffs requested my informed perspectives on the following two key questions related to this ongoing litigation:

- a. To what extent does the Australian government, at the time of your report, have a capacity consistent with and indicative of a practical ability to bring the detention of the Australian women and children in Northern Syria to an end; or the means of securing the release of the Australian women and children?
- b. What are the characteristics of that capacity?

The first stated issue conflates two distinct strands of legal and practical authority/ability in my view. In essence, the first question relates to properly understanding the concept of *de facto* control under international law as a necessary predicate for a practical ability to affect the conditions of custody for Australian women and children currently detained in Northern Syria. This litigation hinges on a particularized focus on the ability of Australian political and military authorities that would indicate a practical ability to end the detention of Australian nationals along with their offspring. As a corollary, this litigation must assess in granular terms whether the Australian government has the means of securing the return of the Australian women and children currently confined to camps, or indeed to direct their transfer to another nation or entity deemed acceptable to Australian authorities. The second stated inquiry merely requires the Court to assess the indicia of such *de facto* control with an eye towards generating an informed consideration of the capabilities and limitations of Australian authorities against the backdrop of international human rights law, Australian human rights obligations, and the larger fabric of international humanitarian law.

In my expert opinion, Australian officials enjoy an untapped practical ability to secure the release or transfer of Australian citizens and their offspring. Officials in the region have told me that Australia led the Joint Special Operations Advisory Group (which focuses on counterterrorism operations and strategy in the region) as recently as 2019. If Iraq can leverage the role of the Coalition military forces and the Syrian Defense Forces (SDF) who exercise day to day control of the camps, I see no clear legal rationale for Australia and other Coalition members to enjoy a presumption against such transfers.

The overarching objective of litigants is to secure the release of civilians held in camps, while simultaneously securing the application of human rights norms, in particular due process protections and some form of habeas corpus review regarding the conditions and justifications for continuing their involuntary custody. Repatriation of civilians from the camps directly enhances human rights compliance and the larger quest for human dignity, while alleviating some of the logistical and practical problems that are an embedded feature of camp administration. I believe that Australian officials have a significant, and as-yet untapped, capacity to influence the incarcerations of Australian women and their offspring. This opinion discusses my perspectives on these issues.

The Australian Government's capacity and practical ability to end the detention or secure the release of Australian women and children in Northern Syria.

In my expert opinion, Australian forces enjoy *de facto* control over camps in which Australians are held as part of the larger Coalition operating in Northern Syria. I served as the military expert who helped write the Appeals Brief and present oral arguments to the International Criminal Court Appeals Chamber in *Prosecutor v. Jean-Pierre Bemba*. This case famously led to a full acquittal because the Trial Chamber erred in its assessments of the requisite degrees of control exercised by military forces. To be sure, the Bemba case involved criminal charges and the accompanying analysis drawn from the international law of command responsibility. However, this civil litigation presents analogous issues related to the distinctions between *de jure* control, *de facto* control, full command prerogatives, and the authority that is inherent in operational command. Special operations forces deployed into Northern Syria provide an essential support

function with relation to the camps. They are omnipresent in providing camp security and advising the Syrian forces who provide the day to day administration. In US doctrine, the Coalition provides a robust force that is engaged in fulfilling a foreign internal defense mission, known in the doctrine as FID. The Coalition has access to the camps as needed, along with a significant degree of influence in meeting humanitarian needs of detainees. From my information and practice in the region, I believe that Australian officials could have easy access to any detainees in which they are interested. I have heard anecdotal accounts of Australian officials exercising precisely that role. By extension, Australian officials, along with the broader Coalition enjoys the practical ability, by virtue of exercising de facto authority, to make arrangements for ending the extended detention of Australian women and children in Northeastern Syria. As a logical corollary, Australian officials have the means, in my expert opinion, of securing the release and subsequent return, of the Australian women and children in Northeastern Syria.

The following discussion presents the facts and reasoning upon which the expert's opinion is based.

A. The Syrian Democratic Forces (SDF).

i. *Factual Overview*

Many nations and organizations accept the reality that the SDF represents the legitimate governing authority in the Northeastern region of Syria. In that capacity, the SDF manages the detention of alleged Islamic State in Iraq and the Levant (“ISIL”) fighters and the women and children living in camps separate from the detention facilities. The Global Coalition against Daesh (the Coalition) was formed pursuant to urgent military imperatives and the legal authority of UN Security Council Resolutions. Its present role has morphed from active conflict to defeat ISIL, or Da’esh in the local vernacular, to a support role that gives it significant authority over the ongoing detention operations.

The SDF was formed in 2015 and is an armed, non-state group, comprised of, *inter alia*, a Kurdish militia, the People’s Protection Units (YPG) and various armed Arab groups sometimes referred to as the Syrian Arab Coalition (SAC).¹ In addition to the SDF, member-states of the Coalition, including the U.S. and U.K., have provided support to the Provincial/Regional Internal Security Forces (PRISF) and the Asayish Internal Security Forces (InSF, or Asayish); both groups are aligned with the SDF and aid the SDF in security and detention facility operations.²

The SDF are responsible for the operation, administration, and management of both the detention facilities and camps in Northeastern Syria. Currently, there are approximately six to seven active

¹ See Rep. of the Indep. Int’l Comm. of Inquiry on the Syrian Arab Republic, ¶ 17, U.N. DOC. A/HRC/46/54 (Jan. 21, 2021), <https://undocs.org/A/HRC/46/54>; see also CARLA E. HUMUD AND CHRISTOPHER M. BLANCHARD, CONG. RSCH. SERV., RL33487, ARMED CONFLICT IN SYRIA: OVERVIEW AND U.S. RESPONSE (July 27, 2020), 7, <https://fas.org/sgp/crs/mideast/RL33487.pdf> (U.S. has partnered with the YPG since 2014).

² See Lead Inspector General for Operation Inherent Resolve, *Quarterly Report to the United States Congress, April 1, 2019-June 30, 2019*, U.S. DEP’T OF DEF., 29-30, https://www.stateoig.gov/system/files/q3fy2019_leadig_oir_report.pdf.

detention facilities in the region operated by the SDF,³ where more than 10,000 suspected ISIL fighters are imprisoned.⁴ Approximately 8,000 detainees are Iraqi and Syrian nationals, 2,000 are from a multitude of other countries, and almost 500 are women.⁵ All but one of the detention facilities are makeshift (as opposed to a purpose-built detention facility), and the majority of detainees in SDF custody are held in two facilities in Hasakah, one of which is the single purpose-built detention facility in operation by the SDF.⁶

The detention facilities are distinct from the camps located throughout the region that house the family members of suspected ISIL fighters detained by the SDF.⁷ Reports of overcrowding, riots, and prison breaks inside the detention facilities have highlighted infrastructural weaknesses and prompted greater Coalition support to improve security and ensure SDF control.⁸ In such instances, the SDF routinely requests assistance from the armed forces of states deployed under the command authority of the Coalition. The SDF is a non-state actor, with limited resources and an array of operational and military challenges administering the population within its zone of control. The Coalition provides an essential backstop for limited SDF capacity, which in turn permits the logical corollary that the Coalition has a great deal of influence over SDF operations.

An attempted prison-break staged by ISIL sleeper cells in January 2022 was successfully thwarted by the SDF with the support of Coalition forces.⁹ The days-long battle that ensued before the SDF regained control of the facility ignited renewed international attention to the situation in Northeast Syria.¹⁰ Coalition, SDF, and international commentators note that the event highlights the urgent need for the global community to take shared responsibility in alleviating the underlying conditions causing further destabilization, with the repatriation and return of citizens to their states of origin seen as the only solution.¹¹

³ See Rep. of the Indep. Int'l Comm. of Inquiry on the Syrian Arab Republic, 32, Map No. 4622.3, U.N. DOC. A/HRC/46/55 (March 11, 2021), <https://undocs.org/A/HRC/46/55>.

⁴ See Rep. of the Indep. Int'l Comm. of Inquiry on the Syrian Arab Republic, ¶ 17, U.N. DOC. A/HRC/46/54 (Jan. 21, 2021), <https://undocs.org/A/HRC/46/54>; see also U.N. Secretary-General, *Twelfth Rep. on the Threat Posed by ISIL (Da'esh) to International Peace and Security and the Range of U.N. Efforts in Support of Member States in Countering the Threat*, ¶ 14, U.N. DOC. S/2021/98 (Jan. 29, 2021), <https://undocs.org/S/2021/98>.

⁵ See Lead Inspector General for Operation Inherent Resolve, *Quarterly Report to the United States Congress, January 1, 2021 – March 31, 2021*, U.S. Dep't of Def., 66, https://www.stateoig.gov/system/files/lead_ig_operation_inherent_resolve_quarterly_report_to_congress_january_1_2021-march_31_2021.pdf.

⁶ *Id.*, at 66-67.

⁷ See Rep. of the Indep. Int'l Comm. of Inquiry on the Syrian Arab Republic, ¶ 48, U.N. DOC. A/HRC/46/54 (Jan. 21, 2021), <https://undocs.org/A/HRC/46/54>.

⁸ See Eva Kahan and Jonathan Tishman, *Syria Situation Report March 22 – April 19, 2021*, WASHINGTON: INSTITUTE FOR THE STUDY OF WAR (2021), <http://www.understandingwar.org/backgrounder/syria-situation-report-march-22-april-19-2021>; see, e.g., Jessie Yeung, Ryan Browne, and Ghazi Balkiz, *ISIS Members Riot and Break out of Syrian Prison*, CNN (March 30, 2020), <https://www.cnn.com/2020/03/30/middleeast/isis-prison-escape-syria-intl-hnk/index.html>; see also *Thousands of Foreigners Unlawfully Held in NE Syria*, HUMAN RIGHTS WATCH (March 23, 2021), <https://www.hrw.org/news/2021/03/23/thousands-foreigners-unlawfully-held-ne-syria>.

⁹ Louisa Loveluck, *The World Forgot this Syrian Prison, the Islamic State Did Not*, WASHINGTON POST (Feb. 5, 2022), <https://www.washingtonpost.com/world/2022/02/05/isis-syria-sdf-prison-attack/>.

¹⁰ Kareem Chehayeb, *Calls Grow to Repatriate ISIL Child Detainees after Jail Clashes*, AL JAZEERA (Jan. 27, 2022), <https://www.aljazeera.com/news/2022/1/27/hundreds-of-children-still-held-in-isis-prison-rights-groups-say>.

¹¹ Alice Speri, *ISIS Prison Battle Shows Dangers of Indefinite Detention*, THE INTERCEPT (Feb. 14, 2022), <https://theintercept.com/2022/02/14/syria-isis-prisoners-repatriation/>; *Statement on the Third Anniversary of*

A statement released by the SDF General Command on March 23, 2022, in the aftermath of the attack and in recognition of the third anniversary since the fall of the Caliphate, stated, “From the terrorism of ISIS is a global moral duty that falls on the shoulders of every free person who is proud of his humanity, and a responsibility towards our regions and our people.”¹² CENTCOM Commander General Frank McKenzie noted in March 2022 the great importance of repatriating foreign nationals held by the SDF in Northeastern Syria, stressing the need to “get them back into their communities in order to prevent vulnerable children from being indoctrinated into the [ISIL] ideology,” warning the potential to see a resurgence of “[ISIL] 2.0 down the road.”¹³

Since the attack in January, several states have successfully returned their citizens from the SDF-run-camps in Northeast Syria. In March 2022, two women and children were repatriated to Sweden; in February 2022, eleven children were returned to the Netherlands, and another four to Sweden (from the al Roj camp).¹⁴ In October 2021, both Denmark and Germany returned a number of women and their children.¹⁵

ii. *The Legal Significance of these Facts*

In military doctrinal terms, forces deployed under the authority of the Coalition have an implied task to ensure the viability of arrangements inside the camps. Because this is not a specified task, it is generally exercised by the SDF with the full support of Coalition assets. Hence, there is no ‘command’ per se, nor of course any formalized de jure control that might present the appearance of full command relationships. Nevertheless, the SDF and Coalition share the overarching goal of preserving order and preventing a resurgence of Da’esh influence in the area. As a necessary implication, the SDF and Coalition share common interests in alleviating pressure on the populations within the camps where feasible. Coalition members, to include the Australians, would in my view find that their recommendations and assistance for repatriating civilians from within the camps would be immediately received and implemented.

The Coalition enjoys no *de jure* authority over the non-state entities composing the SDF as noted above. Neither, except on rare and very brief occasions in the face of serious security threats, would Coalition forces be expected to exercise anything resembling the normal level of authority that military experts would term operational control. However, the degree of influence and the dependence of the SDF on support from the Coalition suffices, in my view, to convey the requisite degree of *de facto* control needed to make arrangements for release and repatriation of

Eliminating ISIS’ Last Strongholds, SDF PRESS CENTER (March 23, 2022), <https://sdf-press.com/en/2022/03/statement-on-the-third-anniversary-of-eliminating-isis-last-strongholds/>.

¹² *Statement on the Third Anniversary of Eliminating ISIS’ Last Strongholds*, SDF PRESS CENTER (March 23, 2022), <https://sdf-press.com/en/2022/03/statement-on-the-third-anniversary-of-eliminating-isis-last-strongholds/>.

¹³ Transcript, *CENTCOM Commander Gen. Frank McKenzie Holds a Press Briefing*, U.S. DEP’T. OF DEF., (March 18, 2022), <https://www.defense.gov/News/Transcripts/Transcript/Article/2971495/centcom-commander-gen-frank-mckenzie-holds-a-press-briefing-march-18-2022/>.

¹⁴ *Speed up Repatriations or Foreign Children could be Stuck in Northeast Syria Camps for up to 30 Years*, SAVE THE CHILDREN (March 23, 2022), <https://www.savethechildren.net/news/speed-repatriations-or-foreign-children-could-be-stuck-north-east-syria-camps-30-years-warns>; *Sweden Repatriates Women, Children, from Northeast Syria*, THE NEW ARAB (Jan. 28, 2022), <https://english.alaraby.co.uk/news/sweden-repatriates-women-children-northeast-syria>.

¹⁵ *Id.*

civilians from within the camps. In one widely disseminated article that became the foundation of some International Criminal Court holdings, I termed this role as the Critical Node. The concept of Critical Node is synonymous with de facto control in a setting where there is no formal command relationship between forces yet there is a great disparity of power between the parties in a relationship. The success of the SDF depends to a very large degree on maintaining and fostering the effectiveness of the Coalition. Hence, Australian officials could enter camps, request assistance as needed from SDF officials, and secure the release of the long-held Australians in the camps that necessitated this litigation. As noted above, decreasing the camp populations is an implied task of the Coalition in any event because it enhances accomplishment of the security mission and has the collateral benefits of increasing SDF efficiency while directly enhancing the human rights of the released and repatriated civilians.

B. Structure and Operations of the Global Coalition Against Daesh

The SDF is supported by the U.S.-led international coalition, the Global Coalition to Defeat ISIL (the Coalition); Australia is also a member.¹⁶ The U.S. announced the formation of the Coalition in September 2014; the original purpose of the group was to combat ISIL attacks against Iraq, at the request of the Iraqi Government.¹⁷ The Coalition currently has 83 members, and its mission is now more broadly described as “ensuring Daesh’s enduring defeat,” no longer geographically limited to combatting ISIL in Iraq.¹⁸ The Coalition website highlights military campaigns in Syria and “stabilizing liberated territories” as two of the Coalition’s priorities.¹⁹

These objectives were recently reiterated by U.S. Department of State Acting Assistant Secretary Joey Hood during a May 2021 visit to northeast Syria that included meetings with senior officials from the SDF.²⁰ The Acting Assistant Secretary emphasized how the U.S. and the Coalition were committed to supporting stability in northeast Syria, and delivering stabilization assistance.²¹ The U.K. has also provided support in the form of “technical advice” and financed the “refurbishment and expansion” of detention facilities, and, much like the U.S., has publicly branded such assistance as “part of the Global Coalition’s collective stabilization efforts in the region.”²²

¹⁶ See Rep. of the Indep. Int’l Comm. of Inquiry on the Syrian Arab Republic, ¶ 17, U.N. DOC. A/HRC/46/54 (Jan. 21, 2021), <https://undocs.org/A/HRC/46/54>; see also The Global Coalition Against Daesh, <https://theglobalcoalition.org/en/>.

¹⁷ See Permanent Rep. of the U.S. to the U.N., Letter dated Sept. 23, 2014 from the Permanent Rep. of the United States of America to the United Nations addressed to the Secretary-General, U.N. DOC. S/2014/695 (Sept. 23, 2014), https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_695.pdf, (the U.S. invoked Article 51 of the Charter of the U.N. in justifying military action in Syria to combat ISIL, noting that the Syrian Regime had failed to prevent ISIL’s use of Syrian territory as a safe haven); see also U.S. DEP’T OF STATE, *About Us – The Global Coalition to Defeat ISIS*, <https://www.state.gov/about-us-the-global-coalition-to-defeat-isis/>.

¹⁸ See THE GLOBAL COALITION AGAINST DAESH, *Mission*, <https://theglobalcoalition.org/en/mission/>.

¹⁹ *Id.*

²⁰ See Media Note, *Acting Assistant Secretary Joey Hood Travels to Northeast Syria*, U.S. DEP’T OF STATE (May 17, 2021), <https://www.state.gov/acting-assistant-secretary-joey-hood-travels-to-northeast-syria/>.

²¹ *Id.*

²² Katie Bo Williams, *Coalition Plans to Expand Giant ISIS Prison In Syria*, DEFENSE ONE (Feb. 24, 2021), <https://www.defenseone.com/policy/2021/02/coalition-plans-expand-giant-isis-prison-syria/172270/>.

C. Relationship Between the Coalition and SDF

The U.S. and U.K., along with other Coalition partners such as Canada, consistently produce mirrored policy and mission statements that describe the need to support Syria and stabilize the region.²³ Rather than identifying a specific member-state contributing funds, government statements tend to deflect credit for substantial and specific funding efforts for new construction by assigning responsibility to the whole Coalition,²⁴

Reports about the financing for improvements to and expansion of existing detention facilities, as well as for new detention and rehabilitation facilities, consistently credit the Coalition generally as the source of funds for such projects, omitting the identity of specific Coalition member(s) who contributed funds.²⁵ Reports note that the U.S. has provided funds to support reinforcements to detention facilities and branded the news under the umbrella of efforts to promote stability and prevent ISIL resurgence.

D. Military Support of SDF and SDF's Facilities

The detention facilities are not operated by U.S. Armed Forces, nor do U.S. Armed Forces operate directly within the facilities.²⁶ Instead, the U.S. and the Coalition have provided support in various forms to partner-armed forces running and operating the facilities, such as the SDF and PRISF.²⁷ The Counter-ISIS Train and Equip Fund (CTEF) is the only fund that the U.S. Congress has appropriated to provide support to non-U.S. armed forces in Syria.²⁸

i. CTEF: Funding Sources and Limitations

In 2014, the US. Department of Defense established the Combined-Joint Task Force, Operation Inherent Resolve (CJTF-OIR), an international task force lead by the U.S. Central Command

²³ See *Canada's Stabilization Projects in Iraq and Syria*, GLOBAL AFFAIRS CANADA (March 30, 2021), <https://www.canada.ca/en/global-affairs/news/2021/03/canadas-stabilization-projects-in-iraq-and-syria.html>.

²⁴ see, e.g., *Canada's Middle East Engagement Strategy*, GOVERNMENT OF CANADA (last modified Aug. 13, 2021), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/mena-moan/strategy-strategie.aspx?lang=eng (the Canadian Government website page dedicated to reporting on support for countering ISIL and support of Coalition efforts lacks specificity regarding Syria-specific efforts that are not humanitarian in nature); see also *Canada Pledges Nearly \$50M as U.N. Seeks Billions for Syrians' Soaring Humanitarian Needs*, CBC (March 30, 2021), <https://www.cbc.ca/news/world/syria-aid-un-eu-conference-1.5969566>.

²⁵ See Katie Bo Williams, *Coalition Plans to Expand Giant ISIS Prison In Syria*, DEFENSE ONE (Feb. 24, 2021), <https://www.defenseone.com/policy/2021/02/coalition-plans-expand-giant-isis-prison-syria/172270/>; see also Katie Bo Williams, *Syrian Decision Rekindles Fear of ISIS Prison Breaks*, DEFENSE ONE (Oct. 7, 2019), <https://www.defenseone.com/threats/2019/10/trumps-snap-decision-syria-kindles-new-fear-isis-prison-breaks/160434/>, (“The international coalition has over the years offered funding and support to harden [detention facilities'] security”).

²⁶ See OFF. OF THE SEC. OF DEF., U.S. DEP'T. OF DEF., *Justification for FY 2021 Overseas Contingency Operations (OCO) Counter-Islamic State of Iraq and Syria (ISIS) Train and Equip Fund (CTEF)*, (Feb. 2020), 26, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_CTEF_J-Book.pdf.

²⁷ *Id.*; see also CARLA E. HUMUD AND CHRISTOPHER M. BLANCHARD, CONG. RSCH. SERV., RL33487, ARMED CONFLICT IN SYRIA: OVERVIEW AND U.S. RESPONSE (July 27, 2020), 16, <https://fas.org/sgp/crs/mideast/RL33487.pdf> (U.S. has partnered with the YPG since 2014).

²⁸ See § 134, Stat. 1182, 1341-42; see Christopher D. Elder, *The Fight against ISIS Has Changed - So Should Its Funding Source*, 228 MIL. L. REV. 339, 340 (2020).

(CENTCOM) combatant command.²⁹ CJTF-OIR’s proscribed mission [*i.e.* its specified task] is to, “In conjunction with partner forces, [defeat] ISIS in designated areas of Iraq and Syria and [set] conditions for follow-on operations to increase regional stability.”³⁰ A CJTF-OIR “Fact Sheet,” states that CJTF-OIR intends to achieve its mission of defeating ISIL by partnering with local forces and it will “improve regional stability through those partners,” specifically naming the SDF and SDF-allied forces.³¹

Although CJTF-OIR is led by CENTCOM, which is typically funded through an Overseas Contingency Operation, Operation and Maintenance (OCO O&M) appropriation, OCO O&M funds are only available for use when U.S. Armed Forces are the beneficiary; the fund may not be used to support foreign forces.³² The detention facilities are operated by SDF, not U.S. Armed Forces, and as statements of the CJTF-OIR have highlighted, the Coalition intends to achieve its mission “through” partners like the SDF.³³ Therefore, Congress must specifically appropriate and authorize funds to assist foreign forces, like the SDF and PRISF.³⁴

The Congress accordingly appropriates CJTF-OIR efforts in both Iraq and Syria via the CTEF.³⁵ Of the total funds requested for the CTEF for fiscal year (FY) 2021 (\$845 million), the Department of Defense (DOD) specified that \$200 million would be dedicated specifically to efforts in Syria.³⁶ In total, the Congress appropriated \$710 million for the CTEF in FY 2021:

For the ‘Counter-Islamic State of Iraq and Syria Train and Equip Fund,’ \$710,000,000, to remain available until September 30, 2022: Provided, That such funds shall be available to the Secretary of Defense in coordination with the Secretary of State, to provide assistance, including training; equipment; logistics support, supplies, and services; stipends; infrastructure repair and renovation; construction for facility fortification and humane treatment; and sustainment, to foreign security forces, irregular forces, groups, or individuals participating, or

²⁹ See *Combined Joint Task Force (CJTF) Operation Inherent Resolve (OIR) Fact Sheet*, COMBINED JOINT TASK FORCE - OPERATION INHERENT RESOLVE, <https://www.inherentresolve.mil/Portals/14/Documents/Mission/20170717-%20Updated%20Mission%20Statement%20Fact%20Sheet.pdf?ver=2017-07-17-093803-770>.

³⁰ *Id.*

³¹ *Id.*

³² See, e.g., U.S. DEP’T OF ARMY, FINANCIAL MANAGEMENT OPERATIONS, FIELD MANUAL NO. 1-06 (April 15, 2014), Ch. 2, ¶ 13, https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/fm1_06.pdf (“Although [Operation and Maintenance, Army, ‘OMA’] will be the primary source of funding to support U.S. forces, financial managers should expect special appropriations to be enacted by Congress for specific purposes. Special funding appropriations are for support to non-U.S. military personnel and are generally for stability efforts.”).

³³ See *Combined Joint Task Force (CJTF) Operation Inherent Resolve (OIR) Fact Sheet*, COMBINED JOINT TASK FORCE - OPERATION INHERENT RESOLVE, <https://www.inherentresolve.mil/Portals/14/Documents/Mission/20170717-%20Updated%20Mission%20Statement%20Fact%20Sheet.pdf?ver=2017-07-17-093803-770>.

³⁴ See Christopher D. Elder, *The Fight against ISIS Has Changed - So Should Its Funding Source*, 228 MIL. L. REV. 339, 349 (2020).

³⁵ See Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, § 134, Stat. 1182, 1341-42 (2020).

³⁶ See OFF. OF THE SEC. OF DEF., U.S. DEP’T. OF DEF., *Justification for FY 2021 Overseas Contingency Operations (OCO) Counter-Islamic State of Iraq and Syria (ISIS) Train and Equip Fund (CTEF)*, (Feb. 2020), 3, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_CTEF_J-Book.pdf.

preparing to participate in activities to counter the Islamic State of Iraq and Syria, and their affiliated or associated groups...³⁷

ii. *Capacity Building in SDF Facilities*

While U.S. Armed Forces do not directly operate within detention facilities in Syria, the U.S. has provided training and equipment to the PRISF, via the CJTF-OIR and CTEF, to support PRISF security responsibilities inside the SDF-operated detention facilities.³⁸ U.S. Marine Corps General Kenneth F. McKenzie Jr., CENTCOM, testified before the Senate Armed Services Committee that “although U.S. forces do not directly supervise these detention activities, we mitigate risk using CTEF that helps enable the security of those facilities.”³⁹ The CJTF-OIR also established the Northeast Syria Coordination Group (NESCG) for the purpose of “[addressing] problems associated with the detention centers and displacement camps.”⁴⁰

The CJTF-OIR stated that it has “continued to provide training and equipment to help increase the SDF’s capacity to manage detention facilities.”⁴¹ Previously, CTEF appropriations used in Syria have funded efforts to expand the physical security and capacity of the SDF’s makeshift detention facilities.⁴² CTEF has been used to supply security equipment, including “closed-circuit television systems and detainee transport vehicles.”⁴³ Future plans for CTEF include delivery of “information technology equipment.”⁴⁴ DOD has estimated that \$15 million has been provided for Basic Life Support (BLS) services at detention facilities, including contracts for “subsistence, latrines, and power generation.”⁴⁵

The most recent Lead Inspector General Report on Operation Inherent Resolve (OIR) notes that in Syria, rather than “training and equipping local partners like the SDF and PRISF,

³⁷ See Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, § 134, Stat. 1182, 1341-42 (2020).

³⁸ See OFF. OF THE SEC. OF DEF., U.S. DEP’T. OF DEF., *Justification for FY 2021 Overseas Contingency Operations (OCO) Counter-Islamic State of Iraq and Syria (ISIS) Train and Equip Fund (CTEF)*, (Feb. 2020), 26, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_CTEF_J-Book.pdf; see also CARLA E. HUMUD AND CHRISTOPHER M. BLANCHARD, CONG. RSCH. SERV., RL33487, ARMED CONFLICT IN SYRIA: OVERVIEW AND U.S. RESPONSE (July 27, 2020), 16, <https://fas.org/sgp/crs/mideast/RL33487.pdf>; see also *Coalition Provides COVID-19 Equipment in NE Syria*, CENTCOM (April 4, 2020), <https://www.centcom.mil/DesktopModules/ArticleCS/Print.aspx?PortalId=6&ModuleId=1149&Article=2137484>.

³⁹ *U.S. Central Command and U.S. Africa Command in Review if the Defense Authorization Request for Fiscal Year 2022 and the Future Years Defense Program*, Hearing before the S. Armed Serv. Comm., 117th Cong. 13 (April 22, 2021) (witness statement of U.S. Marine Corps General Kenneth F. McKenzie Jr., CENTCOM), <https://www.armed-services.senate.gov/imo/media/doc/McKenzie%20Testimony%2004.22.21.pdf>.

⁴⁰ Lead Inspector General for Operation Inherent Resolve, *Quarterly Report to the United States Congress, January 1, 2020 – March 31, 2020*, U.S. DEP’T OF DEF., 8, https://www.stateoig.gov/system/files/lig_oir_q2_mar2020_gold_508_0513.pdf.

⁴¹ Lead Inspector General for Operation Inherent Resolve, *Quarterly Report to the United States Congress, January 1, 2021 – March 31, 2021*, U.S. DEP’T OF DEF., 5, https://www.stateoig.gov/system/files/lead_ig_operation_inherent_resolve_quarterly_report_to_congress_january_1_2021-march_31_2021.pdf.

⁴² *Id.* at 67.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See OFF. OF THE SEC. OF DEF., U.S. DEP’T. OF DEF., *Justification for FY 2021 Overseas Contingency Operations (OCO) Counter-Islamic State of Iraq and Syria (ISIS) Train and Equip Fund (CTEF)*, (Feb. 2020), 32, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_CTEF_J-Book.pdf.

CTEF funds are now primarily used for vetted partner forces; logistical support and sustainment; and construction and infrastructure repair to ensure the humane and secure detention of ISIS fighters.”⁴⁶

iii. *Military and Legal Treatment of the SDF: United States Department of Defense FY 2021 Budget Justification for CTEF*

The excerpts below are taken from DOD’s justification for the funding requested for CTEF in FY 2021, and specifically pertain to detention center operations in Syria. In justifying its FY 2021 request of \$845 million for the CTEF, DOD specified that it intended to allocate \$200 million of the requested amount to “Syria Train and Equip Requirements.”⁴⁷

| Category (\$ in Millions) | FY 2020 Enacted | FY 2021 Request |
|--|--------------------|--------------------|
| Training and Equipping | \$89.0 | \$94.3 |
| Logistical Support, Supplies, and Services | \$50.0 | \$53.7 |
| Stipends | \$48.0 | \$48.0 |
| Infrastructure Repair, and Renovation | \$2.0 | \$1.0 |
| Sustainment | \$11.0 | \$3.0 |
| TOTAL | \$200.00 | \$200.00 |

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Specific to “Infrastructure Repair and Renovations,” DOD stated that “Proposed projects include the repair and renovation of buildings for operations centers, living quarters, detention facilities, outposts, and headquarters,” and estimates that the total cost in FY 2021 for such projects to be \$1 million.⁴⁹

Under “Sustainment,” DOD noted that “Sustainment remains a key factor to the continuing management of previously transferred vehicles and equipment. The costs to maintain operations includes the sustainment of heavy equipment, vehicles, detention centers and weapons.”⁵⁰ The excerpt below is the accompanying table outlining unit cost, quantity, and total cost estimate.

| VSO Sustainment | | | |
|--|-----------|----------|---------------------|
| Requirements | Unit Cost | Quantity | Total Cost Estimate |
| Class IX (Vehicle Parts) | \$250,000 | 4 | \$1,000,000 |
| Class IX (Weapons Parts) | \$200,000 | 5 | \$1,000,000 |
| Detention Facility Sustainment Package | \$50,000 | 20 | \$1,000,000 |
| Total VSO Sustainment | | | \$3,000,000 |

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⁴⁶ Lead Inspector General for Operation Inherent Resolve, *Quarterly Report to the United States Congress, January 1, 2021 – March 31, 2021*, U.S. DEP’T OF DEF., 21, https://www.stateoig.gov/system/files/lead_ig_operation_inherent_resolve_quarterly_report_to_congress_january_1_2021-march_31_2021.pdf.

⁴⁷ OFF. OF THE SEC. OF DEF., U.S. DEP’T. OF DEF., *Justification for FY 2021 Overseas Contingency Operations (OCO) Counter-Islamic State of Iraq and Syria (ISIS) Train and Equip Fund (CTEF)*, (Feb. 2020), 3, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_CTEF_J-Book.pdf.

⁴⁸ *Id.* at 27.

⁴⁹ *Id.* at 33.

⁵⁰ *Id.* at 34.

⁵¹ *Id.* (the justification document does not elaborate on details pertaining to unit cost or quantity).

DOD describes several spending priorities specific to detention centers in Syria. Regarding the PRISF, the FY 2021 justification states:

The DOD will continue to train the PRISF to support wide area security and detention facility security for ISIS detainees. This force will be trained to provide fixed site, checkpoint, and perimeter security operations for many uninhabited areas that are critical to limiting freedom of movement and preventing targeted operations being conducted by ISIS sleeper cells throughout eastern Syria.

The PRISF will also be responsible for detention facility security and management at sites where ISIS fighters and leadership are held throughout eastern Syria. In the final days of the physical caliphate, many ISIS fighters surrendered to the SDF and coalition forces operating in eastern Syria. The detainee population represents the largest concentration of ISIS fighters in the world, and the security and management of these detainees is critical to prevent an ISIS resurgence. These ISIS fighters, if not effectively contained, could emerge as a committed and experienced fighting force to be utilized against coalition and partner forces.⁵²

Regarding “Logistics Support, Supplies and Services,” DOD estimates that “Life Support” provided at detention facilities is estimated to cost \$15 million in FY 2021, providing the following statement:

Partner force D-ISIS operations throughout Syria depend upon adequate logistical and sustainment support. As an example, throughout Syria, the [Vetted Syrian Opposition, “VSO”] operates in austere environments including An-Tanf Garrison and detention facility locations, and depend upon sustainment packages for continued operations. The CJTF-OIR also funds Basic Life Support (BLS) services at the VSO’s operating bases and detention facility sites. BLS contracts provide partner forces basic services including subsistence, latrines, and power generation. Additionally, transportation and staging is required to move equipment in and out of theater by airlift. In addition to air transportation, ground transportation is also utilized for supplies that are staged and delivered from locations within the USCENTCOM area of responsibility. Additional costs are incurred with emergency partner force personnel movements and detainee transportation from ATG to facilities in eastern Syria.⁵³

The FY 2021 justification further explains that to assist “continued demand for detention facility support,” the DOD request for FY 2021 requests stipends for increased staffing needs, estimating the total annual cost of monthly stipends to amount to \$48 million:

Stipend payments enable VSO forces to attract and retain forces committed to the D-ISIS mission. The FY 2021 request reflects an increase in stipend payments to support continued demand for detention facility support and protection of key

⁵² *Id.* at 26.

⁵³ *Id.* at 32.

infrastructure within eastern Syria, including oilfields. The budget request reflects payments of \$400 per individual VSO member per month. The Department is developing a partner force capability to provide stipends to 10,000 VSO personnel who have been approved to receive support funded with the CTEF. Stipends are contingent on VSO battlefield effectiveness, the proper use of training and equipment, prison population security, and compliance with the Law of Armed Conflict and respecting human rights.⁵⁴

E. Coalition Member States Generally Regard the SDF with Legitimacy of Authority

Although the U.K. government has confirmed its support for expansion and construction of detention facilities in Syria in third-party reporting and in limited statements, there appear to be comparatively fewer formal reports documenting allocation of funds to such projects. A February 24, 2021, article noted that “a British Ministry of Defense spokesperson confirmed that the U.K. is funding the Hasakah effort,” which will double the facility’s capacity from 5,000 to 10,000 detainees.⁵⁵ British Army Maj. Gen. Kevin Copey stated that the project will also bring the prison up to standard with Red Cross requirements.⁵⁶

At a June 28, 2021 Coalition meeting, U.K. Foreign Secretary Dominic Raab gave a speech during which he affirmed the U.K.’s commitment to funding detention centers as part of the greater “stabilization” effort in combatting ISIL:

In Syria, the deteriorating conditions in camps and detention centres in the north east represent a growing threat to security. With that in mind, I am pleased to announce that in addition to our existing stabilisation commitment to Iraq and north east Syria, we are contributing £2.6 million of new UK funding. This will help prevent violent extremism in [northeast] Syria, in support of the Coalition’s Stabilisation Pledge.⁵⁷

F. Examples and Effects of the Return and Repatriation of Women and Children.

Australian authorities should emulate the modalities used by other nations to secure the release of civilians from the camps in Syria. The Iraqi efforts to repatriate civilians and some survivors of atrocity crimes continue unabated at the time of this writing. Hundreds of persons have left the camps with the assistance of Iraqi authorities. However, the 2021 Analytical Brief published by the Counterterrorism Committee Executive Directorate observed that

There are discernible regional patterns: Western European States have been among those most reluctant to repatriate women; States in Eastern Europe and Central Asia have been more willing to repatriate women; several States in South-

⁵⁴ *Id.* at 33.

⁵⁵ Katie Bo Williams, *Coalition Plans to Expand Giant ISIS Prison In Syria*, DEFENSE ONE (Feb. 24, 2021), <https://www.defenseone.com/policy/2021/02/coalition-plans-expand-giant-isis-prison-syria/172270/>.

⁵⁶ *Id.*

⁵⁷ *See, e.g.*, U.K. Foreign Secretary, Dominic Raab, Speech at the Global Coalition Against Daesh ministerial Meeting in Rome (June 28, 2021), <https://www.gov.uk/government/speeches/counter-daesh-ministerial-meeting-28-june-2021-foreign-secretarys-remarks>.

East Asia have put in place policies that allow for repatriation but there are no verifiable reports of Government facilitated repatriations having taken place; and the Middle East and North Africa (MENA) region presents the largest data gap (especially given the considerable number of women from that region who are believed to have travelled to the conflict zones).

On the heels of previous repatriations in 2021, Dutch officials successfully repatriated five women and 11 children from northeastern Syria in the areas under SDF control during February 2022.⁵⁸ Moreover, the failure to repatriate civilians has caused multiple cases to be brought under the jurisdiction of the European Court of Human Rights. Two leading Special Rapporteurs argued in an amicus submission that

It is now well established that a state's responsibility may be engaged on account of acts which have sufficiently proximate repercussions on rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction. The Court has also recognized that there can be positive obligations under Article 1 of the ECHR to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure the rights guaranteed by the convention.⁵⁹

These failures contravene the language of Security Council Resolution 2396⁶⁰ from 2017 which recognizes the “many different roles, including as supporters, facilitators, or perpetrators of terrorist acts” that women play, which “require special focus when developing tailored prosecution, rehabilitation and reintegration strategies, and stresses the importance of assisting women and children associated with foreign terrorist fighters who may have been victims of terrorism, and to do so taking into account gender and age sensitivities.”⁶¹ Indeed, as of July 2019, the rate of repatriations for women and children appears to lag significantly behind those for males.⁶²

My observations in the region do not lead me to conclude that this imbalance has begun to be reversed. Indeed, I believe that Australian officials should do everything feasible to secure the release of women and children on humanitarian grounds.

Conclusions

⁵⁸ See <https://icct.nl/publication/repatriation-women-children-netherlands/>

⁵⁹ *Submission by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Special Rapporteur on arbitrary, summary and extra-judicial executions in the case of H.F. and M.F. v. France (Application no. 24384/19) before the European Court of Human Rights* available at https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/Final-Amicus_Brief_SRCT_SRSsummex.pdf .

⁶⁰ See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/460/25/PDF/N1746025.pdf?OpenElement>

⁶¹ *Id.*

⁶² Joana Cook and Gina Vale, *From Daesh to Diaspora II: The Challenges Posed by Women and Minors After the Fall of the Caliphate*, International Centre for the Study of Radicalisation (ICSR), July 2019, <https://icsr.info/wp-content/uploads/2019/07/ICSR-Feature-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-II-The-Challenges-Posed-by-Women-and-Minors-After-the-Fall-of-the-Caliphate.pdf> .

In my expert opinion, the status quo is wholly unsustainable on security grounds and wholly unsuitable on human rights grounds. Coalition representatives have a great deal of practical and political power that is at present underutilized. In legal terms, the exercise of SDF exercise of authority on a day to day basis in the camps of northeastern Syria depends to a very great degree on the sustained assistance and support of Coalition assets. Such support ranges from pay to food to facilities as noted above. In turn, the deployed members of the Coalition develop deep bonds of trust and abiding relationship with members of the SDF who depend upon their support. Each of the parties has a vital but complementary roles. The imbalance of resources, combat power, and political legitimacy derived from their respective host nations combine to give the Coalition members *de facto* control over SDF decision-making related to the release of civilians from the camps. Phrased another way, Australian officials enjoy undeniable ability to end the detention of women and children from the camps in Syria. Release and repatriation efforts raise a host of other practical difficulties, quite apart from the funding and larger immigration issues. However, in my expert opinion, the *de facto* control of the Australian government means that the associated difficulties are an inevitable offshoot of a foreign policy based on respect for human dignity and the rule of law as embedded in the modern human rights regime.

The whole submitted with respect:

A handwritten signature in cursive script that reads "Michael A. Newton". The signature is written in black ink on a white background and is underlined with a single horizontal stroke.

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Expert Report of Anan Alsheikh Haidar, Ph.D. 1 June 2022

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◆ Qualifications:

My name is Anan Alsheikh Haidar. I am a Research Fellow at the Institute for International Peace and Security Law (IIPSL), Cologne University. I have a LLM and a PhD in Law from Reading University, England. I also have LLM and LLB in Law from Damascus University, Syria. I have expertise in international criminal law, with particular reference to the Middle East, international humanitarian law and international human rights law. From 2001 to 2004 and from 2010 to 2014, I served as an Assistant Professor and then as an Associate Professor at the Faculty of Law, Damascus University, where I taught extradition and mutual legal assistance in criminal matters. I practiced law in Damascus for nearly two years between 2001 and 2003. I have worked at the IIPSL since 2016. I joined the editorial committee of the *Journal of International Criminal Justice* in 2020 and have been a member of the International Law Association since 2018.

◆ Subject Matter:

ADVICE – REPATRIATION OF WOMEN AND CHILDREN IN SYRIA

◆ On the instructions of: BIRCHGROVE LEGAL SOLICITORS

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A) Brief Instructions

- Further to your request, I have prepared a report providing answers to the questions in your letter Ref: MK:EA:19-1841 dated 2 November 2021.
- The questions numbered 1 to 8 in this report refer to questions 7 to 14 in your letter Ref: MK:EA:19-1841 dated 2 November 2021.
- The detainees in this report refer to Australian women and children linked to ISIS at the al Roj camp, the al Hol camp and other locations where detainees are held or may feasibly be taken to. (Your letter Ref: MK:RJM:19-1841 dated 10 May 2022)

B) Questions and Answers

1. How are the detainees regarded:

1) Under Syrian law (constitutional and criminal)?

Under Syrian Law, Australian women and children¹ linked to ISIS at the al Roj camp, the al Hol camp and other locations where detainees are held or may feasibly be taken are regarded as foreign nationals/aliens (*Ajanib*). A foreign national is any citizen of any country other than Syria.²

In addition, Australian women and children linked to ISIS are treated within the context of Syria's national immigration framework as illegal immigrants. I would say that Australian women, who are unlawfully in Syrian territories, could be at risk of being arrested and punished, for example, due to illegal entry or for overstaying their visa. Article 33(D) of Law No 2 of 2014 provides that individuals who enter Syrian territories illegally will be punished by a prison sentence of 1 to 5 years and/or a fine of 5 million to 10 million SYP.³ Australian women and children could also be at risk of deportation. Article 26(A) of Law 2 of 2014

¹ Children who are born in Syria to foreign parents are considered foreigners. Syrian nationality law is predominantly based on paternal *jus sanguinis*. According to Article 3(A) of Syrian Legislation Degree 276 of 1969 (Nationality Law), a person is Syrian if she/he is born to a Syrian father. In certain situations, Legislation Degree 276, Article 3(C)(D) provides the right of a child to acquire Syrian nationality if they are born in Syria "to unknown parents or to parents of unknown nationality or without one" or "were not, at the time of his birth, entitled to acquire foreign nationality by virtue of their parentage." However, the rules regulating statelessness at birth are not automatically applied and hardly implemented in Syria. See Stateless Journey, "Statelessness in Syria: Country Position Paper," August 2019, available online at <https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Syria-August-2019.pdf> (visited 28 May 2022); H. al-Omar, "Raqqa: IS Jihadists' Ex-wives Struggle to Enroll Non-registered Children in Official Civil Data," Enab Baladi, 28 February 2022, available online at <https://english.enabbaladi.net/archives/2022/02/raqqa-is-jihadists-ex-wives-struggle-to-enroll-non-registered-children-in-official-civil-data/> (visited 29 May 2022).

² However, according to Article 1 of Law No 2 of 2014 on Entry, Exit and Residence of Foreigners in Syria (hereinafter Law No 2 of 2014), "Foreign: Everyone who does not hold Syrian Arab nationality or the nationality of an Arab country." Moreover, Article 1(H) of Legislative Decree 276 provides that, "Foreigner: Any person not holding the nationality of the Syrian Arab Republic or that of any other Arab country." This distinction between foreign nationals and Arabs is made only for the purpose of granting certain privileges, facilities, or exemptions to Arabs from the general requirements regarding, for example, the acquisition of Syrian nationality by naturalization, or visa exemption, etc.

³ Law No 2 of 2014, Article 33(D).

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indicates that the Minister of the Interior has the right to deport any foreigner or Arab to their country of origin according to the requirement of security and public interest.⁴

In addition, under Syrian Counter-Terrorism Law No 19 of 2012 and Syrian Penal Code No. 149 of 1949,⁵ Australian women may be questioned on suspicion of having committed a crime because of their alleged affiliations with a terrorist organization, and thus may be deemed to pose a national security threat. Regarding children, they should mainly be considered as victims. Under Syrian law, childhood is divided into three stages. Children under ten years old bear no criminal responsibility whatsoever.⁶ Children between 10 and 15 years of age at the time of committing a criminal act cannot be subject to penalties, but can be subject to reformatory or therapeutic measures.⁷ Children between 15 and 18 years of age are subject to penalties provided in Syrian Law No. 18 of 1974, when committing felonies.⁸

If the detention of a family member is based on the claim that they pose a security threat due to their association with ISIS, this claim requires a determination on an individual basis and cannot be assessed collectively, based on affiliation with a terrorist group.

2) Under AANES rules/laws?

Detainees are regarded as foreigners and immigrants,⁹ who are unlawfully in Syrian territory. They are also regarded as vulnerable groups given that the Social Contract of 2016 provides women and children with specific safeguards.¹⁰ I am aware of the 2018 revision of the Social Contract, but this reformulation has not yet been released.

In addition, under the previous AANES Counter-Terrorism Law 20 of 2014 and the recent Counter-Terrorism Law No. 7 of 2021, Australian women could be questioned based on their alleged affiliation to a terrorist group. However, children should be considered as victims in line with the human rights of child protection as recognized in the Charter of the Social Contract of 2016.¹¹

⁴ Article 26 (A) of Law No 2 of 2014 states that “[t]o be determined by a decision of the Minister of the Interior, cases and procedures for deporting an Arab or foreigner outside the Syrian Arab Republic, the mechanism of implementation and objection to the decision of deportation, and the determination of places of detention for those whom it is decided to deport in accordance with the requirements of security and public interest.”

⁵ Syrian Penal Law No. 149 of 1949 lists a number of offenses as “Crimes against internal security of the State.” For example, felonies committed against the constitution in Articles (291–295) of the criminal law, which are: 1) Change the country’s constitution, 2) Cutting off part of Syrian territory, 3) Armed rebellion against the established authorities, 4) Preventing authorities from exercising jobs. There are also several offenses considered as “Crimes against external security of the State.” For example, Article 285 provides for crimes relating to weakening national sentiment and inciting racial and sectarian strife.

⁶ Syrian Law No. 18 of 1974 as amended by Legislative decree No. 52 of 2003, Article 2.

⁷ Ibid., Article 3(A)

⁸ Ibid., Article 3(B),

⁹ Since its inception in 2014, there have been two revisions to the AANES Social Contract: in 2016 and 2018. According to Article 88 of “The Charter of the Social Contract of Rojava Cantons in Syria” of 2014, Syrian criminal and civil laws applies as long as they are in accordance with the Charter, but the more recent 2016 version, the so-called “Social Contract of the Democratic Federalism of Northern Syria” omitted this article.

¹⁰ Articles 13, 14, 25 and 26 of the Charter of Social Contract of the Democratic Federalism of Northern Syria of 2016 provide specific protection afforded to women. Article 46 emphasises the rights of children.

¹¹ Social Contract of the Democratic Federalism of Northern Syria of 2016, Article 17.

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3) Under international law?

Under international humanitarian law (IHL), Australian women and children, who are family members of fighters, are regarded as civilians and based on their roles in ISIS can be considered as either non-participant in hostilities or indirect participants in hostilities.¹² In both cases, I am completely convinced that they must be protected, and that they are vulnerable groups with special protection under IHL.¹³

In addition, the situation of those Australian women and children deprived of their liberty in al Roj camp, al Hol camp and other locations detainees are held or may feasibly be taken to, is also addressed by international human rights law (IHRL). In this regard, I would like to highlight the non-derogable right to life, the right to be free from torture, inhuman and degrading treatment, the right to liberty and absolute prohibition of arbitrary deprivation of such liberty, the right of anyone deprived of liberty to bring proceedings before a court in order to challenge the legality of the detention, as guaranteed under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights.

Furthermore, children enjoy special protection under IHRL: the Convention on the Rights of the Child and its Optional Protocols. The four core principles of the convention are: (1) the principle of non-discrimination;¹⁴ (2) the principle of the best interest of the child;¹⁵ (3) the right to life, survival, and development;¹⁶ and (4) the right to be heard.¹⁷ The principle of the best interest of the child is without doubt a cornerstone of decision-making in any case involving children. According to Article 3, “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

It is true that Australian children are regarded as a vulnerable group due to their age, but they are also vulnerable due to the perception of their being associated with ISIS. Even if children join ISIS, I strongly believe that they must be treated as victims. The UN has emphasized that “[c]hildren who have been recruited and exploited by terrorist and violent extremist groups are victims of violence.”¹⁸

Australian women and children belonging to the civilian population and detained in camps or the like must be treated as vulnerable groups and shall not be deprived arbitrarily of their rights,

¹² For more details, see R. Goodman, “The Detention of Civilians in Armed Conflict,” 103 *The American Journal of International Law*, (2009) 48–74.

¹³ Common Article 3 of Geneva Conventions of 1949; and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977), Articles 4, 5 and 6.

¹⁴ Convention on the Rights of the Child of 1989, Article 2. I would like to emphasize Article 2(2): “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”

¹⁵ *Ibid.*, Article 3.

¹⁶ *Ibid.*, Article 6(2).

¹⁷ *Ibid.*, Article 12.

¹⁸ United Nations Office on Drugs and Crime, “Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System,” 2019, available online at https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf (visited 30 May 2022).

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in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law. Furthermore, children must be treated as victims.

2. Are the detainees lawfully detained in al Roj (and more generally, by the AANES)?

1) Under Syrian law?

Under Syrian law, Australian women and children linked to ISIS at the al Roj camp, the al Hol camp and other locations where detainees are held or may feasibly be taken to, are detained unlawfully. This is because their detention has been for prolonged periods, violating Syrian Legislative Decree No. 55 of 2011, which limits the time a person may be lawfully held in detention without judicial review to 60 days for certain crimes, including terrorism offenses.¹⁹ Moreover, their indefinite detention without charge or trial violates the Syrian constitution that prohibits arbitrary arrest or detention²⁰ and provides for the right to a fair trial.²¹

In addition, under Syrian Counter-Terrorism Law No 19 of 2012 and Syrian penal law, members of the AANES can be charged before Syrian courts for allegedly committing terrorist crimes and/or crimes against the state's security.²² The AANES is a de facto entity whose presence and control over a geographic Syrian territory is not authorized or officially recognized by the Syrian government. Even if we assume that the Syrian government granted the AANES legal authority to detain foreign women and children in camps in North East Syria, there are legal restrictions that would apply to that power. In other words, indefinite detention is unlawful and is not justified under Syrian law.

2) Under AANES rules/laws?

The detainees have been also detained unlawfully under AANES rules/laws. The deprivation of liberty for such excessive or unreasonable periods in the absence of basic guarantees violates an essential part of the Social Contract of 2016, which provides for the protection of fundamental human rights and reaffirms compliance with international human rights law.²³

3) Under international law?

Under international law, Australian women and children linked to ISIS are detained unlawfully at the al Roj camp, the al Hol camp and other locations where detainees are held or may feasibly be taken to. However, I should mention that IHL rules applicable to non-international armed conflict (NIAC) neither authorizes nor prohibits detention. Furthermore, there is a scholarly debate²⁴ on which legal basis administrative detention can be carried by non-state actors,

¹⁹ Article 17 of the Code of Criminal Procedure (Legislative Decree No. 112 of 1950), as amended by Legislative Decree No. 55 of 2011.

²⁰ Article 53(1)(2)(3), Syrian Constitution of 2012.

²¹ Article 51, Syrian Constitution of 2012.

²² "Crimes against internal security of the State" and "Crimes against external security of the State", *supra* note 5.

²³ Articles 17, 18, 19, 30, the Social Contract of the Democratic Federalism of Northern Syria of 2016. For example, according to Article 30 "[i]ndividual freedom shall not be restricted without a legal basis."

²⁴ See R. Goodman, "Authorization versus Regulation of Detention in Non-International Armed Conflicts," 91:155 *International Law Studies*, (2015) 155–170, available online at <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1137&context=ils> (visited 31 May 2022); L. Hill-Cawthorne and D. Akande, "Does IHL Provide a Legal Basis for Detention in Non-International Armed

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including AANES. I am aware that this dispute on legal authority is still not settled, but has limited practical value on regulating the conduct of AANES. Even where the initial detention of detainees in camps by AANES may have been justified, I maintain that the detention of Australian women and children at the al Roj camp, the al Hol camp and other locations where detainees are held or may feasibly be taken to, is unlawful. This is because AANES violates IHL safeguards from unlawful and arbitrary detention that are obliged to follow as a party to NIAC.²⁵ They are detained without reasonable grounds on the belief that the security of the AANES makes it absolutely necessary and where the minimum requirements of humane treatment contained in Common Article 3 of the four Geneva Conventions, and Additional Protocol II are not met, and where procedural guarantees in international human rights law are also massively violated.

3. Are the detainees facing any legal process (criminal charges, for example)

- 1) by the Syrian government?**
- 2) by the AANES?**
- 3) by any international body?**
- 4) by any body other than Australia?**

To the best of my knowledge, there have been no legal proceedings against the detainees. The Syrian government has called for countries to repatriate their nationals.²⁶ The AANES has long appealed for governments worldwide to bring their citizens back.²⁷ I feel strongly that the Syrian government and AANES seek to address the detainee situation by urging their states to repatriate their nationals and put an end to their suffering. This feeling is based on the fact that there have been no steps to bring detainees to justice or grant them legal documents that allow them to be in Syria lawfully.

4. If they had been so detained, what steps should have occurred at this time?

States should have taken steps to repatriate their nationals and put an end to their suffering.²⁸

Conflicts?," EJIL: Talk!, 7 May 2014, available online at <https://www.ejiltalk.org/does-ihl-provide-a-legal-basis-for-detention-in-non-international-armed-conflicts/> (visited 31 May 2022); and *Serdar Mohammed v. Ministry of Defence*, [2014] EWHC 1369 (QB), available online at <http://www.judiciary.gov.uk/wp-content/uploads/2014/05/mohammed-v-mod.pdf>.

²⁵ Common Article 3 (1) of the four Geneva Conventions, and Articles 4 and 5 Additional Protocol II, *supra* note 13.

²⁶ Syrian Arab News Agency (SANA), "Al-Jaafari: Syria calls on Security Council to adopt a draft resolution obliging certain countries to bring back their terrorists," 18 September 2020, available online at <http://www.sana.sy/en/?p=203571> (visited 30 May 2022); SANA, "Albania thanks Syria for repatriation of 19 Albanian nationals," 1 August 2021, available online at <http://www.sana.sy/en/?p=243911> (visited 30 May 2022).

²⁷ Syrian Arab News Agency (SANA), "Hasaka Governor: We Call all Countries to Repatriate their Nationals Held inside Camps," 28 November 2021, available online at <https://sana.sy/en/?p=256018> (visited 30 May 2022); North Press Agency, "Syria's AANES Appeals To US, EU For Security And Economic Support," 8 June 2021, available online at <https://npasyria.com/en/60586/> (visited 30 May 2022); Rovaja Information Center, "A statement by the AANES today called on the international community to continue the repatriation efforts for children & their mothers from al-Hol, which it deemed 'insufficient'," 18 March 2021, available online at <https://twitter.com/rojavaic/status/1372518844720353282> (visited 30 May 2022).

²⁸ United Nations General Assembly, GA Res. 2675 (XXV), 9 December 1970 (adopted by 109 votes in favour, none against and 8 abstentions), preamble and Article 1.

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The prolonged unlawful detention of detainees in camps where their rights are massively violated should invoke the duty of the state of origin to urgently repatriate their nationals to protect the fundamental and non-derogable rights of their nationals being detained, and in order to prevent irreversible harm to them.²⁹ Indeed, some states, for example, the United States, France, the United Kingdom, Sweden, Norway, Denmark and Germany, have started to implement part of their obligation under international law and have repatriated some women and children, although the steps they have taken so far are insufficient.

5. Is there any legal obstacle to the AANES releasing detainees into Australian custody?

- 1) Under Syrian law?
- 2) Under AANES rules/laws?
- 3) Under international law?

I cannot see any legal obstacle to the AANES releasing Australian detainees into Australian custody, because there is no reason to believe that the transfer of Australian women and children to Australia will expose them to the risk of serious human rights violations.³⁰ Security Council Resolution 2396 (2017)³¹ underlines the importance of cooperation between states in counter terrorism. The AANES has long appealed for governments to take their citizens back. On 1 October 2021, the co-chair of the Foreign Relations Department of the Autonomous Administration of North and East Syria, Abdul Kareem Umar, welcomed the UN initiative launched on the margins of 76th Session of the UN General Assembly (UNGA 76) by United Nations Secretary-General Antonio Guterres, who called on all countries to bring back their nationals detained in camps in North eastern Syria and Iraq.³² On 18 September 2020, the Syrian government also called on the Security Council to adopt a draft resolution obliging members states to bring back their citizens.³³ Against this background, I strongly believe that states of origin, including Australia, should assist in dealing with the global counter-terrorism strategy set out in Resolution 2396 and repatriate their nationals, because Syria and the AANES cannot deal with foreign terrorist fighters and their accompanying families on their own.

²⁹ See OHCHR – UN Office of the High Commissioner for Human Rights, “Position of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism on the Human Rights of Adolescents/Juveniles being Detained in North-East Syria,” Fionnuala Ní Aoláin, May 2021, available online at https://www.ecoi.net/en/file/local/2056266/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf (visited 31 May 2022).

³⁰ See Additional Protocol II, Article 5(4); and C. Droège, “Transfers of detainees: legal framework, non-refoulement and contemporary challenges,” 90:871 *International Review of the Red Cross*, (September 2008) 669–701.

³¹ United National Security Council, SC Res. 2396, 21 December 2017.

³² A. H. Suleiman, “The Autonomous Administration in Syria welcomes a UN initiative regarding ISIS families,” *The Independent Arabia*, 3 October 2021, available online at <https://www.independentarabia.com/node/264576/سياسة/تقارير/الإدارة-الذاتية-في-سوريا-ترحب-بمبادرة-أممية-بشأن-عائلات-داعش> (visited 31 May 2022) (in Arabic); ANHA, “Abdul Kareem Umar welcomes the UN initiative,” 1 October 2021, available online at

<https://hawarnews.com/en/haber/abdul-kareem-umar-welcomes-the-un-initiative-h26985.html> (visited 31 May 2022); and UN News, “UN launches initiative to support returnees trapped in Syria camps,” 29 September 2021, available online at <https://news.un.org/en/story/2021/09/1101652> (visited 31 May 2022).

³³ SANA, “Al-Jaafari: Syria calls on Security Council to adopt a draft resolution obliging certain countries to bring back their terrorists,” *supra* note 26.

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6. If the Australian government did agree to accept the detainees from the AANES (for example, at the Iraq/AANES border), how would the AANES conduct this process?

To the best of my knowledge, the AANES cooperates with respective states to conduct the repatriation process and has safely completed many repatriations so far.³⁴ In many cases, the repatriation process is conducted with the support of the United States. The United States has played an important role by advocating for the repatriation of foreign nationals held in north-east Syria and also assisting states, more recently Germany³⁵ and Denmark, with logistics to organize repatriation operations.

Australia has worked closely with the partners of the Global Coalition against Daesh, and played a multifaceted role, participating in airstrikes in Iraq and Syria, contributing troops to train Iraqis and donating significant humanitarian aid. I am sure it will not be difficult to get support from the United States to conduct its repatriation process.

I should mention that in certain cases states, Albania for example, have contacted the Syrian government, who has cooperated with them and coordinated with the AANES in order to conduct the repatriation process. All such repatriation has been carried out safely so far.³⁶

7. Is it lawful for either Syria or the AANES to refuse a request for repatriation by Australia?

Syria or the AANES could not lawfully refuse repatriation as the detainees have neither been prosecuted nor released. The AANES has deprived Australian women and children of their liberty for a lengthy period and detained them in camps where they have been subject to inhumane treatment while violating their basic rights as detainees: the right to be protected from cruel, inhumane treatment, torture, right to life, right to be informed of reasons for detention, right to trial within a reasonable time or to release etc.

The refusal of a request for repatriation is lawful when there are reasonable grounds to believe that the individual concerned would be subjected to persecution, torture, inhuman or degrading treatment or punishment, or the death penalty, but this does not apply to the case of Australian women and children if they are to be repatriated by their state of origin.

8. What is the legal framework within which other repatriations from AANES territory have occurred?

I cannot say exactly within which legal framework repatriations from AANES territory have occurred. However, Dr Abdul Karim Omar, co-chair of the Foreign Relations Commission in North Syria, points out that AANES does not have any conditions for handing over the families of ISIS. It will sign repatriation documents, encourage states to take a political decision to take back their nationals and will provide all protection measures with its territory.³⁷ The AANES conducted a press conference on the repatriation of a woman and three girls to the Netherland on 5 June 2021. On that day, an official delegation from the Netherland, headed by the Special

³⁴ Several Western countries, such as the United States, France, the United Kingdom, Sweden, Norway, Denmark and Germany, and countries from other parts of the world, including Russia, Kazakhstan, Trinidad and Tobago, Uzbekistan, Morocco and Sudan, have repatriated some of their citizens.

³⁵ Federal Foreign Office, "Foreign Minister Maas on the repatriation operation from north-east Syria," 7 October 2021, available online at <https://www.auswaertiges-amt.de/en/newsroom/news/maas-repatriation-north-east-syria/2487786> (visited 31 May 2022).

³⁶ "Albania thanks Syria for repatriation of 19 Albanian nationals," *supra* note 26.

³⁷ See Suleiman, *supra* note 32.

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Envoy for Syria and Afghanistan, Mr. Emiel de Bont, and Mr. Dirk Jan Nieuwenhuis, Director of the Ministry of Foreign Affairs for Consular Affairs, arrived at the headquarters of the Department of Foreign Relations in Qamishlo. They were received by Dr Omar and others who handed over a woman and three girls after signing official documents.³⁸ According to the AANES Foreign Affairs Department press conference, Mr. de Bont thanked the AANES for its cooperation and for facilitating all procedures of the handover process.³⁹ He said, “I am here today with a mission, which is to return some citizens to Holland who were in Roj camp, after the decision issued by our court in Holland and the government decided to carry out this operation. So we are doing our legal duty here.”⁴⁰

C) Concluding Remarks

I conclude that international law, Syrian law and AANES law are clear that “no one shall be subjected to arbitrary arrest or detention”. The detainees in the al Roj camp, the al Hol camp and other locations where they are held or may feasibly be taken have been deprived of their liberty for a very long period without being informed of the reasons for their detention, and without being entitled to take proceedings before a court, in order for the court to rule on the lawfulness of their detention and order their release if the detention is unlawful. In addition, they suffer inhumane and brutal conditions and their rights as vulnerable groups, as guaranteed under IHL and IHRL, have been grossly violated for prolonged periods of time, with no prospects of a fair trial or release.

I am convinced that there will be no legal obstacle on the part of the Syrian government or the AANES to any request for repatriation made by Australia, because neither the Syrian government nor AANES have shown any intention to prosecute or release the detainees, and in addition there is no fear that the detainees will be subjected to torture or inhuman or degrading treatment or punishment upon return. On the contrary, the Syrian government and the AANES have long appealed for governments to repatriate any nationals linked to ISIS. The AANES Foreign Affairs Department has cooperated with respective states to conduct the repatriation process and has safely completed many repatriations so far.

The unlawful and indefinite detention of detainees in the al Roj camp, the al Hol camp and other locations where they are held or may feasibly be taken, where their rights are massively violated, should invoke the duty of the state of origin to ensure that their nationals suspected of having committed crimes on the territory of another member state are treated in accordance with international law, and to urgently repatriate them and put an end to their suffering and prevent irreversible harm.

³⁸ AANES Foreign Affairs Department, “Press Conference to Hand over a Number of Citizens to Netherlands”, 5 June 2022, available online at <https://kar-derve.com/en/2021/06/06/press-conference-to-hand-over-a-number-of-citizens-to-netherlands/> (visited on 31 May 2022).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

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◆ **Declaration:**

I, Anan Alsheikh Haidar, declare that:

1. *(i) I have read the Harmonised Expert Witness Code of Conduct and agree to be bound by it;*
2. *(ii) I have made all the inquiries which I believe are desirable and appropriate, other than for any matters identified specifically in the report; and*
3. *(iii) no matters of significance which I regard as relevant have, to my knowledge, been withheld from the court.*

Signature:



(Place and date): Cologne, 1 June 2022

**Supplementary Report of Anan Alsheikh Haidar, Ph.D.
23 March 2023**

◆ **Address:**

Institute for International Peace and Security Law
University of Cologne
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◆ **Subject Matter:**

SUPPLEMENTARY REPORT – REPATRIATION OF WOMEN AND CHILDREN IN SYRIA

- ◆ **On the instructions of:** BIRCHGROVE LEGAL SOLICITORS
Level 5, 233 Castlereagh Street
Sydney NSW 2000

- Further to your request in letter Ref: MK:RJM:19-1841 dated 16 March 2023, I have prepared this supplementary report.

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I, Anan Alsheikh Haidar, confirm that the views in my 1 June 2022 report on Syrian/AANES laws remain unchanged.

◆ **Declaration:**

I, Anan Alsheikh Haidar, declare that:

1. *(i) I have read the Harmonised Expert Witness Code of Conduct and agree to be bound by it;*
2. *(ii) I have made all the inquiries which I believe are desirable and appropriate, other than for any matters identified specifically in the report; and*
3. *(iii) no matters of significance which I regard as relevant have, to my knowledge, been withheld from the court.*

Signature:



(Place and date): Cologne, 23 March 2023

EXPERT REPORT OF PETER WOODWARD GALBRAITH

21 June 2022

Preliminary Questions on expertise and experience

1. *What is your expertise in managing/facilitating repatriations and commenting on repatriations (including both your experience and your professional/academic qualifications)?*

I attach a biographical sketch that covers my experience in conflict zones for the US government, for the United Nations and as a private citizen. As the sketch notes, my involvement in Kurdistan goes back to 1984. I have been deeply involved in many of the major events in modern Kurdistan history: the 1988 anfal and use of chemical weapons, the 1991 uprising, the establishment of the modern Iraqi Kurdistan state beginning in 1991, the intra Kurdish civil war of the late 1990s, the build up to the 2003 Iraq War, the war's immediate aftermath in Baghdad and Kurdistan, the negotiation of Iraq's interim constitution (the TAL); the negotiation of the Kurdistan provisions of Iraq's permanent constitution; the drafting of the constitution of the Kurdistan Region of Iraq; the establishment of the Kurdistan oil and gas industry; the formation of the AANES; resolving intra-Kurdish conflicts in Syria and between the AANES and the KRG; the 2017 independence referendum in Iraqi Kurdistan; and the humanitarian and political aftermath of the defeat of the Islamic State.

I am the author of two books on the Iraq War that deal extensively with Kurdistan, the best seller *The End of Iraq: How American Incompetence Created A War Without End and Unintended Consequences: How War in Iraq Strengthened America's Enemies*. I have written on the Kurds for the *New York Review of Books*, the *New York Times*, the *Washington Post*, the *Los Angeles Times*, the *Boston Globe*, the *American Prospect*, among other publications.

I first visited NE Syria in 1991 and have made more than 20 trips since December 2014, including 7 in the last 18 months. With Jonathan Powell (the founder of the British charity Inter/Mediate and PM Blair's COS all 11 years he was in office), I served as a mediator between the various Kurdish factions in NE Syria. In 2015, President Hollande asked Bernard Kouchner (former French foreign minister and founder of *Medicins Sans Frontieres*) and me to mediate between the KRG and the Syrian Kurds. In late 2018, the Syrian Kurds asked Kouchner and me for advice and help in resolving the issue of an ever larger number of foreign fighters and family members surrendering to the SDF.

I have written about NE Syria for the *New York Times* and the *New York Review of Books*, including about the issue of foreign women and children in the Kurdish run prison camps.

<https://www.nytimes.com/2022/02/06/opinion/international-world/syria-isis-children-repatriation.html>

<https://www.nybooks.com/articles/2019/11/21/betrayal-of-the-kurds/>

1. *In particular, please detail your knowledge/experience of*

- 1.1. *The Kurdish authorities in Syria*

EXPERT REPORT OF PETER WOODWARD GALBRAITH

21 June 2022

I first met Syrian Kurdish leaders when I spoke at a two day conference on the Kurds organized by Danielle Mitterand (wife of the French President) on October 14-15, 1989 in Paris. I met them from time to time after that in the 1990s and 2000s. I was in Qamishli (the main city in NE Syria) twice in 1991 and twice in 2002, traveling to and from Iraqi Kurdistan. Beginning in 2012, I began the mediation efforts among the Syrian opposition (including the Kurds) and between the PYD (the dominant party in the Kurdish areas of Syria) and the KNC. Beginning in 2014, I began visiting Kurdish controlled NE Syria. I have made more than 20 trips and engaged in lengthy negotiations with the key leaders including General Mazloun Abdi, Dr Abdulkarim Omar, Ilham Ahmed, Saleh Muslim, Aldar Xalil, Asya Abdullah, Sinan Mohammed, among others. Under the auspices of the Carter Center, I have led multi day workshops for Syrian Kurdish leaders in Slemani, Iraqi Kurdistan and in NE Syria. I have also travelled extensively around NE Syria including to the front lines on the battle to take Raqqa and to Kobane shortly after the ISIS siege ended.

1.2. The camps at al Hol and al Roj

Starting in 2019, I began making visits to al Hol and Roj Camps. I have walked around the camps, spoken to inmates by their tents, and inspected the shops and (disgusting) sanitary facilities. In more recent visits, the camp administration has deemed it too dangerous to go around the camps—even with armed guards—and so I have been meeting inmates in the camp offices.

1.1.3. Previous repatriations by Australia and other nations

1.3. Provide any relevant further detail of repatriations in which you were involved.

See the following articles on extractions and repatriations which I have conducted.

<https://www.theguardian.com/world/2021/mar/12/cast-out-the-yazidi-women-reunited-with-their-children-born-in-isis-slavery>

<https://www.buzzfeednews.com/article/ellievhall/american-aminah-mohamad-ariel-bradley-isis-rescued>

<https://www.theglobeandmail.com/politics/article-how-a-former-us-ambassador-helped-a-canadian-woman-get-out-of/>

<https://www.cbc.ca/news/politics/isis-detention-camp-child-canada-1.5949996>

<https://www.nytimes.com/2021/03/12/world/middleeast/yazidi-isis-slaves-children.html>

1.4. Do you regard yourself as experienced in – and expert in – the field of negotiating and organizing the extraction and repatriation of persons held by the AANES?

Yes

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1.5. *Are you familiar with the experience, views, opinions, and practices of other persons and bodies involved in the extraction and repatriation process?*

Yes

1.6. *Are you familiar with relevant literature, including UN reports, governmental reports, government statements by relevant parties (in this case, the AANES, the US government and the Australian government), and media and internet reports relevant to the process of extraction and repatriation?*

Yes

1.7. *Where you report facts, do you do so by reference to your own experience and interactions, and/or by reference to the shared knowledge of your peers which you access?*

Yes

1.8. *Where you express an opinion, is this opinion based on your experience and expertise?*

Yes

1.9. *Where you point to a risk, possibility or likelihood of a future event, do you do so relying upon your experience and expertise?*

Yes

1.10. *Have you been provided with the Expert Evidence Practice Note (GPN-EXPT) of the Federal Court of Australia and the Harmonised Expert Witness Code of Conduct, and do you agree to be bound by the code relevant to the court hearing the application?*

Yes

Questions about the Detainees, the al Roj facility and the AANES

2. *Are the Australian women and children involuntarily detained in al Roj?*

Yes

2.1. *Is al Roj a detention facility?*

Yes

2.1.1. *Who operates the facility?*

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al Roj is a prison camp operated under the authority of the Autonomous Administration of North and East Syria (AANES).

2.1.2. How is it secured and guarded?

The Kurdish led Syrian Democratic Forces (SDF) guard the perimeter of al Roj. Within the camp, most security is provided by the all female YPJ (People's Protection Force), a component of the SDF.

2.1.3. Who has authority to restrict the movement and activity of Australian detainees?

As with any prison, the responsible authorities (in this case the SDF, YPJ and AANES) restrict the movement and activities of detainees, including Australian women and children.

3. Are the Australians detained?

Yes

3.1. Were the Australian women and children detained at al Hol?

Yes

3.2. Was their transfer to al Roj voluntary or involuntary?

Involuntary. The women and children have no say as to where they are detained.

3.3. Are Australian women and children permitted to leave the perimeter at will? At all?

Australian women are not permitted to leave the prison camps. Some children have been allowed to cross the perimeter to attend school classes that are available on a very limited basis. I don't know if any Australian children have been attending classes beyond the camp perimeter.

3.4. What restrictions apply to Australian women in the camps regarding freedom of movement within and outside the camp, communications with any person or group, access to phones and social media, access to legal representatives, and access to basic social and economic rights – food, shelter, medical care?

Australian women are subject to the same rules that apply to other foreign (Non Syrian or non Iraqi) women. They cannot leave the prison camp, they are not allowed to have cell phones (although there are many contraband phones in the camp); they are not allowed access to social media. They can receive and make phone calls from the camp office on a very limited basis. So far as I know, the women have no access to local lawyers. Some have connected with legal representation in Australia, mostly via contraband phones. (Women found with a contraband phone risk transfer to a more conventional prison and loss of the phone). Food seems to be

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adequate and there are shops in Roj Camp serviced by detainees and the local Kurdish storekeepers. Families can send money to the women—when not prohibited by their own countries—and some women cook or sew to make money. Sanitation is unspeakable and medical care limited. There is little or no schooling for most children, although the Kurdish authorities allow some children to go to classes outside the camp and some women have organized education for the children. The Kurdish authorities have taken a very humane approach to the women and children, especially given their limited their resources resources. In many cases, the women and children in Roj live better than the Kurdish women and children whose homes were destroyed by the ISIS terrorists whom the foreign nationals traveled to Syria to join.

Questions about the position of relevant parties to repatriation

4. What is the position of the AANES concerning the repatriation of the Australians in al Roj?

The AANES believes Australia has a legal and moral obligation to take back citizens in al Roj.

4.1. What has the AANES said about them:

4.1.1. To you personally?

The AANES and SDF leaders have repeatedly told me that they would like countries to repatriate their citizens. They tell me what is obvious to any visitor: the camps are a major burden for them. They expect governments to make a formal request for repatriation and for diplomats to come to Qamishli to meet with the AANES. However, they repatriated a German family where German diplomats came to the border, an American orphan whom they turned over to me (with the support of the US government), a Canadian child turned over to her aunt and me with no involvement of the Canadian government; and a Canadian women turned over to me with no involvement of the Canadian government.

4.1.2. To other groups and governments, to your knowledge?

The AANES has said the same thing to the United Nations, to other governments, and to NGOs operating in or visiting NE Syria.

4.1.3. in public statements?

The AANES makes these points in public statements and to journalists.

4.2. What has Syria said about repatriation of the Australian women and about analogous detainees?

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I have no first hand knowledge of Syrian Government and I have not discussed this with Syrian government officials.

4.3. What has the UN said?

Various UN officials—including those mandated to deal with this issue—have said countries have a legal and human rights obligation to repatriate their citizens in NE Syria.

4.3.1. Are you familiar with the UN letter to the Australian Government dated 16 February 2022, which can be found here [UA AUS \(2.2022\) \(ohchr.org\)](https://www.ohchr.org/en/press-releases/2022/02/ua-aus-2022)?

I have read the letter and am familiar with the facts and legal issues discussed in it.

4.3.2. Do you agree with its finding that ‘any argument relating to the lack or the difficulties of access or the limitations placed by the local authorities as a reason for not repatriating your nationals is questionable by the sustained contacts between a number of States and camp authorities which can and have led to interventions concerning third country national nationals in the camps, the close proximity to the camps of international military bases and forces...’? (page 9)

Yes

4.3.3. Do you agree with its finding that individuals ‘have been deprived of their liberty in conditions that we believe constitute a violation of a number of human rights, and meet the standard of torture or other cruel inhuman or degrading treatment or punishment’? (page 2).

The conditions clearly violate a number of human rights standards including a right of adults not to be imprisoned without a trial and the right of children not to be imprisoned at all. The children—most of whom were very young when their mothers entered the camps—never committed any crimes. It is a gross violation of human rights—and basic human decency—to force innocent children to grow up in the conditions existing in al Hol and Roj prison camps. However, these unlawful detentions are in no way the fault of the AANES or the SDF. It is impossible to release adults associated with ISIS into a population that was ISIS’ primary victim. The children could be removed from the prison camps, but this would require the AANES to take on the burden of finding appropriate care. I agree the conditions in the camps are inhuman, but I do not think they constitute torture, degrading treatment, or punishment. The Syrian Kurds have no intention to torture or punish anyone in the prison camps. In fact, they show many kindnesses including facilitating phone calls, and transfers of money from family members to detainees. On holidays, the camp authorities provide gifts to the children including toys and new clothing. As bad as conditions in the prison camps are (and they are horrific) many local people live in comparably bad conditions. ISIS drove tens of thousands of Kurds, Arabs, Christians, and Yazidis from their homes, killing breadwinners, and enslaving young women. I have visited

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camps where the survivors now live and they are no better than the prison camps where ISIS family members are now detained. The main difference is that the survivors of ISIS can leave their camps if they had anywhere to go, which most do not. If the conditions inside the prison camps constitute torture or degrading treatment, then so do the conditions for those who survived ISIS' attacks.

4.3.4. What has the US (and other Global Alliance members) said?

The US Government has repeatedly called on countries to repatriate their citizens. When asked to do so, the US government has assisted countries in repatriating their citizens.

Questions about repatriation

5. Is the Australian government in a position to request repatriation of the Australians in al Roj?

Yes, If requested, I am sure the AANES will agree to repatriate Australian citizens and the US government, if asked, will assist.

5.1. How can it be done?

An Australian official should address a request to the AANES for its citizens to be repatriated. An Australian diplomat might then be asked to travel to Qamishli to present the request officially and work out the details. If US assistance is requested, this would be done through normal diplomatic or military to military channels. Operationally, Australian citizens can be picked up by US or Australian military aircraft in SDF-controlled NE Syria. Alternatively, the SDF/AANES will bring the Australian citizens to the Semalka border crossing with the Kurdistan Region of Iraq (KRI). After making the appropriate arrangements, the Iraqi Kurdistan Regional Government (KRG), Australian diplomats and/or police can escort the citizens across the pontoon bridge that is the border and accompany them to Erbil. As some of the Australian citizens are suspected of involvement in a terrorist organization (ISIS), Australia and the KRG will have to make appropriate security arrangements. Further, security arrangements will have to be made for passengers on a flight to Australia.

5.2. Examples of previous successful repatriations by Australia

5.2.1. What was the agreement with AANES (or conditions upon which repatriation took place) when Australia repatriated orphans in 2019 / men facing charges?

I am not familiar with this case.

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5.3. Examples of previous successful repatriations by other countries (eg Belgium, Khazakhstan)

Many countries have successfully repatriated some or all of their citizens. This includes the United States, Germany, Belgium, Sweden, Finland, the Netherlands and Denmark, Albania, Kosovo, Bosnia-Herzegovina, Russia and Indonesia. I have personally cooperated with, advised, or assisted special envoys from Finland, Sweden, Denmark, and the Netherlands.

5.4. To which organ of the AANES is a request made? To which individuals?

To Dr. Abdul Karim Omar, the head of the Foreign Affairs Department of the AANES. Since Australia is an important member of the Global anti-ISIS Coalition, it could also address its request to the de facto leader of NE Syria, General Mazloum Abdi.

5.5. Does Australia have capacity to make such a request currently?

Yes

5.5.1. What is the significance of recent reports (based on our instructions – see also Galloway, Secret Operation to interview families of The Age 3 November 2021) that Australian officials entered al Roj in late September 2021, and interviewed Australian women)

It shows that Australian officials can safely enter NE Syria and al Roj prison camp.

5.6. What realistic hurdles may arise?

If Australia is willing to repatriate its citizens and is willing to engage with the SDF/AANES, I do not see any significant hurdles to repatriation, provided the security environment in NE Syria does not deteriorate significantly from what it is today. The biggest potential threat to the current administration in NE Syria is a Turkish invasion. The previous invasion in 2019 made it possible for detainees at al Ain prison camp to escape, some of whom rejoined ISIS. Ultimately, it could lead to a Syrian Government takeover of the camps—as was agreed in 2019 but not implemented—which could lead to mass execution of detainees.

6. If requested to repatriate by Australia, is the AANES likely to comply?

Yes

6.1. What has the AANES said to you? To others? Publicly?

The AANES has told me the same things that it has said publicly. It wants countries to take back their citizens. The presence of so many foreign nationals in prison camps is a huge burden on the AANES, which must feed, house, guard and provide services to the detainees. Privately,

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21 June 2022

AANES leaders express resentment that their fighters sustained virtually all the casualties in the war against the Islamic State (more than 10,000 SDF fighters vs 5 dead for the United States) while rich countries in the Global Coalition—like Australia—leave them with the burden of caring for citizens who came to Syria to kill them.

6.2. What is your assessment of the likelihood of a positive response?

Extremely likely

7. How can repatriation of the Australians from al Roj be managed?

7.1. Is extraction by US possible?

Yes. The US has extracted nationals of other countries when so requested.

7.2. How likely is the US to facilitate repatriation if asked by Australia?

It is certain that the United States would assist Australia, which is a key part of the Global Coalition against terrorism, and one of the US closest allies.

7.2.1. Examples of US assistance to other governments repatriating citizens

The US has assisted Albania, Kazakhstan, and Bosnia-Herzegovina in the repatriation of their citizens, among other countries.

7.2.2. The nature of any agreement between the US and other governments re same

The US has carried out extractions at the request of other governments

7.2.3. The nature of any agreement between the US and AANES re repatriation.

I believe this is mostly ad hoc. The AANES is very responsive to any request from the United States, which is its most important ally and which has a significant military and diplomatic presence in NE Syria.

7.3. Transfer at Iraq-AANES border.

I have witnessed transfers at the border between the Kurdistan Region of Iraq (KRI) and AANES-governed NE Syria by Germany and the United Kingdom. I have personally participated in a transfer involving three German children, their German mother, and an American orphan. With no government involvement, I personally brought out a Canadian child in March 2021 and her mother in June 2021.

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7.4. Any other relevant model of repatriation

The US extracts people by air from an air base in NE Syria. Most commonly, they are flown to a US run facility in Iraq and from there transported to other countries.

7.5. Examples of repatriations by other nations

Many countries have extracted citizens. Almost all countries are willing to take back child orphans and unaccompanied children. Canada sent in officials to take back one orphan child and I witnessed British diplomats at the Syria-Iraq border after they extracted three British children. A number of countries have extracted mothers and their children, including Finland, Denmark, Sweden, Netherlands, and Germany (I have advised all these governments on repatriations)

7.6. Examples of repatriations in which you were involved.

I personally arranged and brought out of NE Syria 29 children and two adult women. These include 24 children born as a result of ISIS rapes of young Yazidi women, three German children, one American orphan, and a Canadian child. In addition, I found and arranged the rescue of another American child. I also brought the German mother of the three German children (with her children) and the Canadian mother three months after I brought out her five year old daughter. In the case of the the children born to Yazidi mothers, the American orphan, the Canadian child and the Canadian mother, I signed documents taking custody of the persons. German diplomats at the border signed for the German mother and her children.

7.7. Examples of any agreement / conditions imposed between AANES and the governments which have repatriated their citizens.

I have no knowledge of any conditions being imposed.

8. Is there significant risk to any persons (including detainees and Australian officials) in the repatriation process:

8.1. Where repatriation proceeds by extraction by US?

No. Australian officials could take custody of its citizens after the US has extracted them.

8.2. Where repatriation proceeds by transfer at Iraq-AANES border?

Australian officials may have to cross the pontoon bridge at Faishkhabur/Semalka crossing and enter 100 meters into NE Syria. They would then meet their citizens at the border facility that the

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AANES built. It is completely secure.

8.3. Under any other model?

The AANES may require Australian officials to travel to Qamishli to arrange the repatriations with local officials. I have made this trip more than 20 times. The SDF/AANES provides armed security and an armored vehicle for their VIP guest.

9. Please describe the security situation for persons engaging in repatriations from al Roj:

9.1. the physical environs of the camp, the countryside and the border-crossing location.

Roj camp is located in open country side a one hour's drive from the border with the KRI in the most secure part of Kurdish held NE Syria. There is no significant city or town close to the camp. The border is the Tigris River and is crossed by two pontoon bridges. It is guarded on the KRI side by the peshmerga and on the Syrian side by the SDF. I judge the crossing to be very safe.

9.2. the security situation facing those traveling to and from the camp

It is a short trip from the border to the camp that avoids most significant urban areas. This is the most secure part of Syria. I think there is very little danger in traveling from the border to Roj Camp.

9.3. the mechanics of departure, transport and handover of repatriated persons.

It depends on whether the extraction is done by the US or takes place at the border with the KRI. If it takes place at the border, SDF will most likely bring the detainees to the border. Representatives from the country of origin would then cross the border from the KRI by driving over the pontoon bridge. They would be escorted to the VIP border building on the Syrian side. The AANES border officials will provide the representatives coffee, tea, and maybe lunch. The representatives would then meet their nationals and sign for each one. The SDF or KRI would provide vehicles to take the detainees over to the KRI side, where they would be processed. The country of origin would then need arrange transport to Erbil as well as accommodations and security for the detainees in Erbil as they await transport to their own country. The KRG probably would work with Australian officials to provide such security as the KRG deemed necessary to prevent any detainee from fleeing to rejoin ISIS. (There is no security threat to the detainees in the KRI; however the KRI will be concerned that any adults might rejoin ISIS).

10. Would you assist to repatriate the Australian women, if the Australian government requested?

EXPERT REPORT OF PETER WOODWARD GALBRAITH
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Yes. With authorization from the Australian government, I probably could negotiate the extraction of Australian women and children from the Kurdish run prison camps to the KRI.

The whole is submitted with respect.

A handwritten signature in black ink, appearing to read "Peter Woodward Galbraith". The signature is written in a cursive style with a horizontal dotted line underneath it.

Peter Woodard Galbraith
P. O Box 335
Townshend, Vermont 05353
USA
ambassadorgalbraith@gmail.com

Rule 29.02(8)

Annexure certificate

No. of 20

Federal Court of Australia

District Registry: VIC

Division: General

Save the Children Australia

Applicants

Minister for Home Affairs and another

Respondents

MT-2

This is the annexure marked **MT-2** referred to in the affidavit of Mathew Tinkler affirmed on 5 June 2023.

~~AR~~ MT

23 May 2023

Our Ref: MK:19-1841
Your Ref:

Hon Clare O'Neil MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

Request for decision whether or not to repatriate the remaining Australian children and women detained in North East Syria

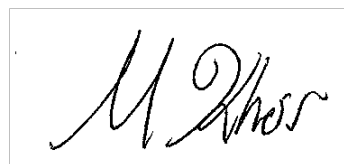
We act for Save the Children Australia (**STCA**) and write this letter on its behalf.

We refer to our previous correspondence of 19 May 2023, and paragraph 10 of Mat Tinkler's statement that identifies the **STCA-authorising remaining Australian women and children**.

STCA informs the Minister that, since that statement was finalised, STCA has now been authorised by the following additional remaining Australian women and their children:

- [REDACTED] and her children [REDACTED] and [REDACTED], and her grandchild for whom she is legal guardian, [REDACTED];
- [REDACTED] (the now adult daughter of [REDACTED]);
- [REDACTED] and her children [REDACTED];
and
- [REDACTED] and her daughter [REDACTED].

Yours faithfully



Moustafa Kheir
Principal Solicitor
Birchgrove Legal
mkheir@birchgrovelegal.com.au

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Rule 29.02(8)

Annexure certificate

No. of 20

Federal Court of Australia

District Registry: VIC

Division: General

Save the Children Australia

Applicants

Minister for Home Affairs and another

Respondents

MT-3

This is the annexure marked **MT-3** referred to in the affidavit of Mathew Tinkler affirmed on 5 June 2023. .



Australian Government
Department of Home Affairs

Ref No: MC23-016265

Mr Moustafa Kheir
148A Elizabeth Street
S.2, 148A Elizabeth Street
SYDNEY NSW 2000

OR
mkheir@birchgrovelegal.com.au

Dear Mr Kheir,

Thank you for your correspondence dated 19 and 23 May 2023 from Birchgrove Legal, on behalf of Save the Children Australia, concerning Australian women and their children in northeast Syria.

The Australian Government remains deeply concerned about the Australian women and their children located in internally displaced person camps in northeast Syria.

Repatriations are a complex undertaking and at all times the focus is on the safety and security of all Australians as well as the safety of those who would be involved in any operation.

While I am unable to respond to your request within the requested timeframe, I can assure you that your correspondence remains under careful consideration. Australian Government agencies are working jointly to keep the situation in the camps under review. We continue to monitor, as best we can, the welfare of Australians, with the assistance of humanitarian partners.

Thank you for bringing your concerns to the Government's attention. If I have any update to provide to you about your request, I will endeavour to do so promptly.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tim Roy'.

Tim Roy
Acting Deputy Counter-Terrorism Coordinator
Counter-Terrorism Coordination Centre
Department of Home Affairs
26 May 2023

Rule 29.02(8)

Annexure certificate

No. of 20

Federal Court of Australia

District Registry: VIC

Division: General

Save the Children Australia

Applicants

Minister for Home Affairs and another

Respondents

MT-4

This is the annexure marked **MT-4** referred to in the affidavit of Mathew Tinkler affirmed on 5 June 2023.


MT

1 June 2023



Our Ref: MK:19-1841
Your Ref:

Hon Clare O'Neil MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

By Email: clare.oneil.mp@aph.gov.au

Dear Minister,

RE: Notice of Intention to file proceeding

We act for Save the Children Australia (**STCA**) and write this letter on its behalf.

We refer to our letters dated 19 and 23 May 2023 requesting a repatriation decision be made in respect of the Australian women and children detained in Al-Roj camp in North East Syria and your Department's letter in response dated 26 May 2023.

As anticipated by our 19 May letter, our client infers from your letter that you have decided to not make a further repatriation decision.

Attached to this letter are a draft Concise Statement and confidential annexure. We are instructed to request that the confidentiality of the annexure be respected. The basis for our client's request is set out in our letter of 19 May.

We are instructed to commence proceedings in the Federal Court of Australia on Monday 5 June 2023, to seek the relief set out in the Concise Statement. Our client would also, at the outset, seek appropriate orders from the Court to maintain the confidentiality of the details in the annexure.

As conveyed in our letter of 19 May, STCA views the commencement of litigation as a measure of last resort to achieve the repatriation of the remaining Australian children and women and to protect them from further harm.

STCA remains available to discuss this matter with you or senior officers of your Department.

Yours faithfully

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Principal Solicitor
Birchgrove Legal
mkheir@birchgrovelegal.com.au

Concise Statement

No. of

Federal Court of Australia

District Registry: VIC

Division: General

Save the Children Australia

Applicant

Minister for Home Affairs and another

Respondents

The remaining Australian women and children

- 1 For the past few years, women, who are Australian citizens, and their children, who are either citizens or eligible to become citizens, have been detained in the north-east of the Syrian Arab Republic (**Syria**) by or under the authority of the Autonomous Administration of North East Syria (the **AANES**) and/or its military wing, the Syrian Democratic Forces (the **SDF**) in camps including Al-Roj (the **Australian women and children**).
- 2 In October 2022, the Commonwealth Executive requested that the AANES release and facilitate the repatriation of certain Australian women and children, and then facilitated the repatriation of those Australian women and children (the **repatriated Australian women and children**; the Executive's decision to repatriate them, the **Repatriation Decision**).
- 3 Other Australian women and children remain in detention, including in Al-Roj camp (the **remaining Australian women and children**), including those named in the Annexure to this concise statement, in respect of whom the Applicant is authorised to seek relief in the nature of *habeas corpus* (the **STCA-authorised remaining Australian women and children**).
- 4 Particulars of the STCA-authorised remaining Australian women and children, including names, dates of birth, and particulars of Australian citizenship where known, are as set out in the Annexure. Particulars of the other remaining Australian women and children are known, or able to be ascertained, by the Respondents.

The Non-repatriation Decision

- 5 On 19 May 2023, following much correspondence between the Applicant and the Respondents about the repatriation of the remaining Australian women and children, the Applicant wrote to the First Respondent to ask that the Executive make a decision about them equivalent to the Repatriation Decision (a **further repatriation decision**). The

request attached: (1) a statement by STCA's CEO Mat Tinkler (the **Tinkler Statement**), with Annexure; (2) an expert report prepared by Professor Michael A Newton (the **Newton Report**); (3) an expert report, and supplementary expert report, prepared by Dr Anan Alsheikh Haidar (the **Haidar Reports**); and (4) an expert report prepared by former Ambassador Peter Woodward Galbraith (the **Galbraith Report**). Noting the long period of time the Executive had to consider making a further repatriation decision, the Applicant requested that a decision be made by 26 May 2023. The Applicant stated that if the First Respondent failed by 26 May 2023 to make, or to decide to not make, a further repatriation decision, the Applicant would infer, having regard to the time the Executive had to make a further repatriation decision, that the Executive had decided to not make a further repatriation decision. The Applicant sent the First Respondent a supplementary letter on 23 May 2023.

- 6 On 26 May 2023, an officer of the Second Respondent wrote to the Applicant, informing it that he was unable to respond to the request. In all the circumstances set out in the Tinkler Statement, it may be inferred that the First Respondent, or another officer of the Second Respondent, has decided not to make a further repatriation decision for the remaining Australian women and children (the **Non-repatriation Decision**).
- 7 The only reasons provided in the 26 May 2023 letter for not having made a further repatriation decision were “[r]epatriations are a complex undertaking and at all times the focus is on the safety and security of all Australians as well as the safety of those who would be involved in any operation”.

Contextual facts

- 8 In about June 2014, the Islamic State in Iraq and the Levant (**ISIL**, also known as Islamic State and Islamic State in Iraq and Syria), then operating in parts of Syria, proclaimed itself a “caliphate”. In September 2014, the United States of America announced the formation of and established a global coalition to defeat ISIL (the **Coalition**). Australia was, and remains, a member.
- 9 In 2015, the SDF was formed. The SDF has had, and continues to have, an arrangement with the Coalition (the **Arrangement**). From its formation, and with support from the Coalition under the Arrangement, the SDF took control of areas of North East Syria, expanding its control over time, including capturing Raqqah city in 2017 and Baghuz, the last ISIL stronghold, in March 2019.
- 10 Thereafter, thousands of Syrian nationals, as well as Iraqi nationals, and nationals of many other foreign states, were interned in camps operated by, or under the authority of, the AANES and/or the SDF, pursuant to the Arrangement. These foreign nationals included Australian women and children.

The detention is unlawful and arbitrary

- 11 The detention of the remaining Australian women and children, including the STCA- authorised remaining Australian women and children, in Al-Roj camp, is unlawful and arbitrary: see the Haidar Reports.

The Respondents have *de facto* control

- 12 The AANES and/or the SDF are maintaining the detention of the remaining Australian women and children in Al-Roj pursuant to the Arrangement: see the Newton Report.
- 13 Pursuant to the Arrangement, the AANES and/or the SDF will, on request by the Executive, release the remaining Australian women and children from their detention, and facilitate their repatriation by the Executive: see the Galbraith Report; the Tinkler Statement. This is demonstrated by the effective implementation of the Repatriation Decision.
- 14 It follows that the Executive has control (at least *de facto* or practical control) over the detention of the remaining Australian women and children.

The rights of these citizens and the correlative functions of the Executive

- 15 The remaining Australian women and children, as citizens (or as persons eligible for citizenship as the children of citizen mothers), have a right to return to Australia as a safe haven in their need: *Potter v Minahan* (1908) 7 CLR 277 at 295 (Griffith CJ), 305 (O'Connor J); *Alexander v Minister for Home Affairs* [2022] HCA 19; 96 ALJR 560 at [31], [74] (Kiefel CJ, Keane and Gleeson JJ); *Universal Declaration of Human Rights*, art 13(2). The Executive also has a correlative function of taking steps to aid them and facilitate their return.
- 16 While and the longer the remaining Australian women and children are unlawfully and arbitrarily detained in Al-Roj camp, they face an increasing risk of serious harm or death, or cruel, inhuman or degrading treatment. As such, Australia has an obligation to ensure they have an effective remedy: *International Covenant on Civil and Political Rights*, arts 2(3), 6, 7, 9 and 12; *Convention on the Rights of the Child*, arts 4, 6 and 37.
- 17 In all of the circumstances, the Executive has a protective function in respect of the remaining Australian women and children, including a function to make a further repatriation decision.
- 18 By reason of the above matters, the Executive, by making the Non-repatriation Decision, or alternatively by failing to make a further repatriation decision, is arbitrarily causing the ongoing unlawful detention of the remaining Australian women and children, in a manner not authorised by the law of the Commonwealth.

Habeas corpus

- 19 The Court has a function and duty to review the lawfulness of the detention of Australian citizens, and where detention is unlawful, to grant appropriate remedies to secure their release. The most appropriate is the writ of *habeas corpus*.
- 20 The Court may issue the writ where: (1) a *prima facie* case of unlawful detention of a citizen is shown; (2) a *prima facie* case is shown that a person over whom the Court has jurisdiction has *de facto* control over the detention, in that they have the power to bring the citizen before the Court; and (3) there is no reason why the issue of the writ would be inapposite to the exercise of judicial power.

- 21 Alternatively, the Court may issue the writ where: (1) a *prima facie* case of unlawful detention of a citizen is shown; (2) a *prima facie* case is shown that a person over whom the Court has jurisdiction has *de facto* control over the detention, in that they have power under an arrangement, in which both the person and the detainer are participants, to bring the citizen before the Court; and (3) there is no reason why the issue of the writ would be inapposite to the exercise of judicial power.
- 22 By reason of the matters in [1]–[18], the evidence, in this case, establishes that the conditions in [20], alternatively [21], are met. The writ should issue.

Judicial review

- 23 Alternatively, in making the Non-repatriation Decision; or alternatively failing to make a further repatriation decision, the First Respondent or the Second Respondent took into account a prohibited consideration, acted for an ulterior purpose, or acted unreasonably.
- (1) The only reasons given in the 26 May 2023 letter for not having made a further repatriation decision were “[r]epatriations are a complex undertaking and at all times the focus is on the safety and security of all Australians as well as the safety of those who would be involved in any operation”.
 - (2) As to complexity, there is no legal or factual impediment to the early repatriation of the remaining Australian women and children: the Repatriation Decision effected the repatriation of the repatriated Australian women and children, and there is no reason a further repatriation decision would not be similarly effective for repatriation of the remaining Australian women and children.
 - (3) As to the safety and security of Australians or others who would be involved in the repatriation of the remaining Australian women and children, any such concerns did not prevent the Repatriation Decision, and nothing has changed such that any such concerns could rationally now prevent a further repatriation decision.
 - (4) As to the safety and security of Australians arising not from the repatriation operation but from the return of the remaining Australian women and children to Australia, neither the Constitution nor any law of the Commonwealth authorises the Executive to participate in maintaining the unlawful detention of Australian citizens by a foreign power outside Australia, for the purpose of protecting the safety and security of other Australian citizens. This would be a prohibited consideration or an improper purpose.
 - (5) It may be inferred from the 26 May 2023 letter, and all other relevant publications and communications of the Executive since the Repatriation Decision (as set out in the Tinkler Statement and contained in its annexure) that there is no other operative reason or purpose for the Non-repatriation Decision, or alternatively for failing to make a further repatriation decision.

Relief sought

- 24 By reason of the matters above, the Applicant seeks:

- (1) An order in the nature of a writ of habeas corpus directed to the Respondents in relation to the remaining Australian women and children.
- (2) A declaration that in making the Non-repatriation Decision the First Respondent or the Second Respondent took into account a prohibited consideration, acted for an ulterior purpose, or acted unreasonably.
- (3) Alternatively to (2), a declaration that in failing to make a further repatriation decision, the First Respondent or the Second Respondent took into account a prohibited consideration, acted for an ulterior purpose, or acted unreasonably.
- (4) Such further or other relief as this Honourable Court deems fit.
- (5) Costs.

This pleading was prepared by Moustafa Kheir, lawyer and settled by

Peter Morrissey SC

Emrys Nekvapil SC

Rachael Taylor

Nicholas Petrie

Katharine Brown

Certificate of lawyer

I, Moustafa Kheir, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

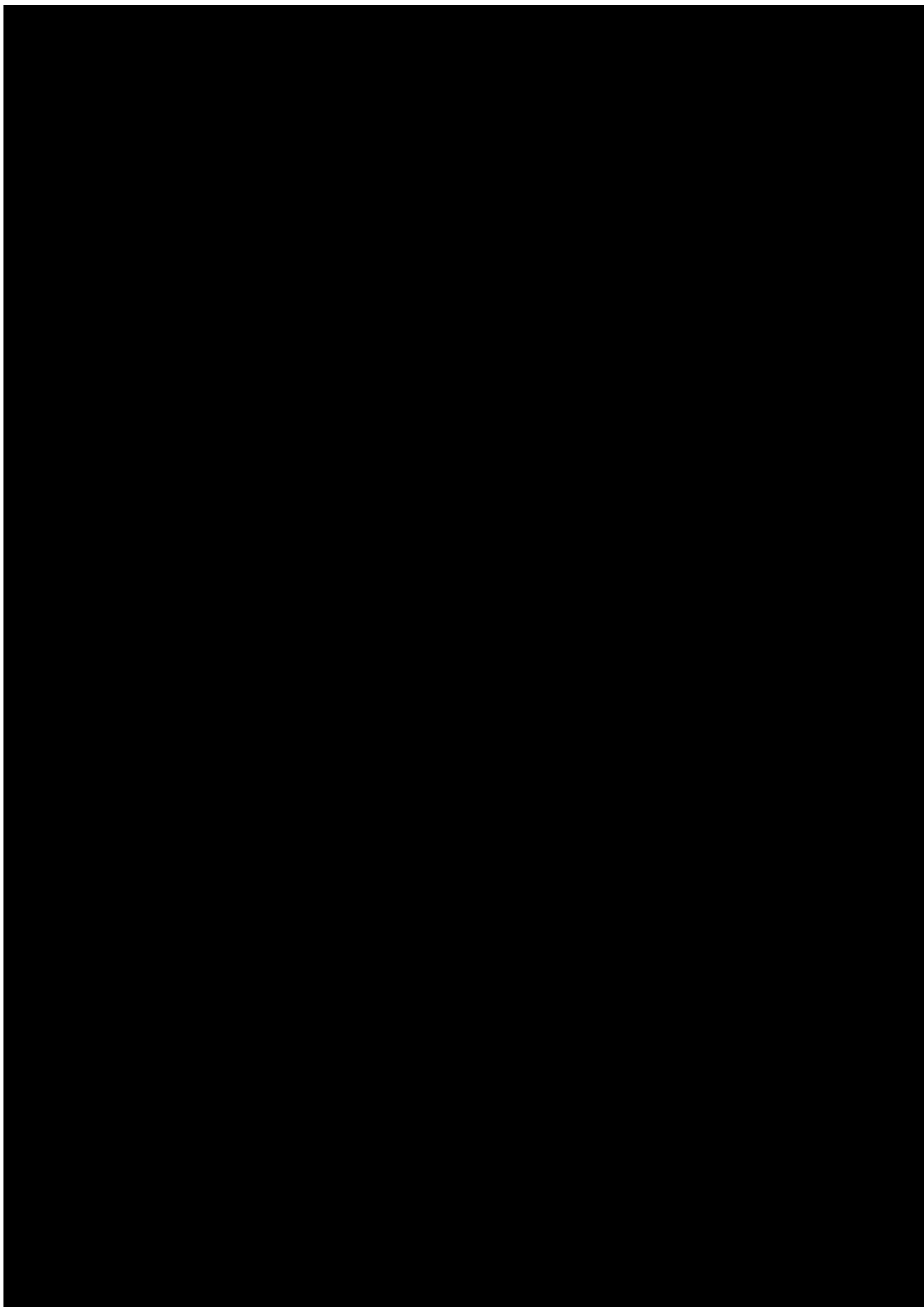
Date: 1 June 2023

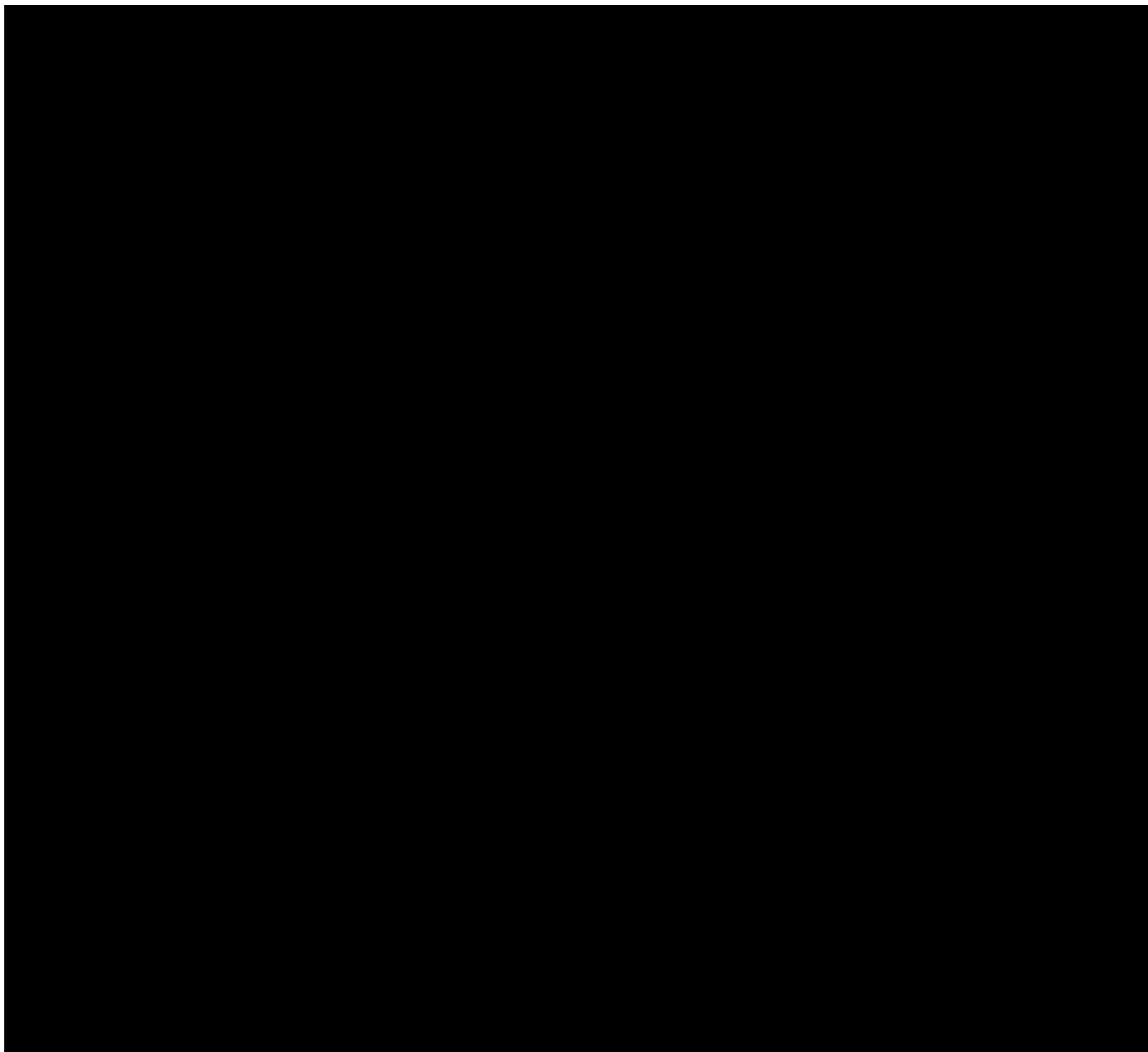


Signed by Moustafa Kheir

Lawyer for the Applicant

CONFIDENTIAL ANNEXURE





COI

Rule 29.02(8)

Annexure certificate

No. of 20

Federal Court of Australia

District Registry: VIC

Division: General

Save the Children Australia

Applicants

Minister for Home Affairs and another

Respondents

MT-5

This is the annexure marked **MT-5** referred to in the affidavit of Mathew Tinkler affirmed on 5 June 2023.

Moustafa Kheir

From: Dejean, Hervee <hervee.dejean@ags.gov.au>
Sent: Sunday, 4 June 2023 4:49 PM
To: Moustafa Kheir
Subject: Save the Children [SEC=OFFICIAL:Sensitive] [AGSDMS-DMS.FID4699226]
Attachments: Notice of Intention to file proceeding (1.6.23).pdf

Importance: High

Categories: LEAP

OFFICIAL: Sensitive

Dear Mr Kheir

Your attached correspondence has been provided to AGS for response.

I note that the concise statement names the Minister for Home Affairs 'and another'. Would you kindly inform me of the name of the second respondent as soon as possible so that AGS can urgently seek instructions from them?

Further, I respectfully request that you refrain from commencing the foreshadowed court proceedings until **13 June 2023**, being one week from now, and allowing for the public holiday. AGS requires this time to consider your correspondence and its attachments and seek instructions to explore whether litigation can be avoided. I appreciate from the correspondence that there has been correspondence in the past, but this is the first time I am aware that a concise statement has been furnished. AGS would be grateful for the time to consider it.

I look forward to hearing from you.

Kind regards

Hervee Dejean

Senior Executive Lawyer

Australian Government Solicitor

T 02 9581 7504 F 02 9581 7650 M 0435 192 338

hervee.dejean@ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

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If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

Rule 29.02(8)

Annexure certificate

No. of 20

Federal Court of Australia

District Registry: VIC

Division: General

Save the Children Australia

Applicants

Minister for Home Affairs and another

Respondents

MT-6

This is the annexure marked **MT-6** referred to in the affidavit of Mathew Tinkler affirmed on 5 June 2023.




4 June 2023



Our Ref: MK:19-1841
Your Ref: Mat Tinkler, CEO

Hervee Dejean
Senior Executive Lawyer
Australian Government Solicitor

By Email: hervee.dejean@ags.gov.au

Dear Ms Dejean

RE: SAVE THE CHILDREN LEGAL PROCEEDINGS

1. We act for Save the Children Australia.
2. We refer to your email received this afternoon at 4:48 pm.
3. We confirm that the second respondent is the Department of Home Affairs.
4. Concerning your request for a delay in filing, we are instructed:
 - 4.1. Since July 2022, our client has provided notice of its intention to bring such proceedings.
 - 4.2. Unless the Australian Government provides confirmation **before midnight tonight** that it will repatriate the remaining Australian women and children in a clear and expeditious timeframe, we are instructed to proceed with filing tomorrow morning.
5. Should you have any questions about the contents of this letter, please do not hesitate to contact the writer.

Yours faithfully

Moustafa Kheir
Solicitor
Birchgrove Legal
mkheir@birchgrovelegal.com.au

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88232*

4 June 2023



Our Ref: MK:19-1841
Your Ref: Mat Tinkler, CEO

Ms Hervee Dejean
Senior Executive Lawyer
Australian Government Solicitor

By Email: hervee.dejean@ags.gov.au

Dear Ms Dejean

RE: SAVE THE CHILDREN LEGAL PROCEEDINGS

1. We act for Save the Children Australia.
2. Further to our correspondence this evening, we wish to make a correction.
3. The second respondent is the Commonwealth Government of Australia.
4. Should you have any questions about the contents of this letter, please do not hesitate to contact the writer.

Yours faithfully

Moustafa Kheir
Solicitor
Birchgrove Legal
mkheir@birchgrovelegal.com.au

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