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THE CHALLENGE OF FOREIGN FIGHTERS REPATRIATING AND PROSECUTING ISIS DETAINEES



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Photo above: An Iraqi fighter with the Popular Mobilization Forces inspects the site of an ISIS attack, a day earlier, on a unit of the paramilitary force in Mukaishefah, north of the capital, on May 3, 2020. [Photo by AHMAD AL-RUBAYE/AFP via Getty Images.](#)



Not only are the policies that pushed people to start joining ISIS in 2013 continuing, but in many cases they have increased.



From the U.S. and the U.K. to Iraq and Syria, the way countries are handling the repatriation and prosecution of accused ISIS members echoes the policies that drove their citizens to seek a utopian Islamic State in the first place. Not only are the policies that pushed people to start joining the group in 2013 continuing, but in many cases they have increased in both scale and scope. While the current repatriation and prosecution policies are arguably counterproductive, they may also be fueling future terrorist activity and support for radical anti-government groups. To reduce the chances of such negative consequences, foreign governments must switch gears and adopt an entirely different approach before it is too late.

The European and American approach

Many Western European foreign fighters, particularly those with immigrant backgrounds, claimed to join ISIS because of

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discrimination they saw their governments do little to address. Now, these same countries are once again failing to address the problem.

France has refused to repatriate its citizens suspected of involvement with ISIS in Syria and Iraq, and instead has essentially outsourced the prosecution of ISIS members to Iraq, where they have been given death sentences.¹ Meanwhile, the U.K.,² the U.S.,³ Ireland,⁴ and Australia⁵ are stripping the accused of their citizenship, sending the message that those with immigrant backgrounds are second-class citizens. This approach will only exacerbate the situation, reducing the sense of patriotism among immigrants and making them question their place in society even more. In discussions on online forums about court decisions to strip ISIS members of their citizenship, many have pointed out the hypocrisy in Western societies whereby immigration is celebrated when foreign-born citizens win medals at the Olympics even as immigrants are also blamed for terrorism.

In some cases, Western governments have tried to dump citizens accused of fighting abroad on their supposed “countries of origin,” including in cases where they had never even visited those countries. So now Russia, Belarus, Bangladesh, India, Yemen, Turkey, Poland, Pakistan, and other developing countries are expected to solve the problems of developed countries, in addition to dealing with their own foreign fighters. Even if those countries agree to take in the defendants, they would be difficult to prosecute due to a lack of evidence, which is often not shared internationally. Moreover, the chances that fighters would successfully integrate into a society to which they have very little connection is limited at best.

When Indonesia sponsored a U.N. Security Council resolution earlier in 2020 on the repatriation of ISIS foreign fighters, France and the U.K. both used their veto power to oppose it, asking for the removal of language about “mandatory” repatriation and instead making it an individual decision for each country. In the end, the U.S. vetoed the resolution,⁶ so the U.N. Security Council did not oblige countries to repatriate their citizens either.

Although the notorious U.S. prison at Guantanamo remains open, which allows for open-ended detention of foreigners accused

of terrorism without the ability to legitimately challenge their detention, the Trump administration moved forward with efforts to prosecute British foreign fighters in the U.S.⁷ At the same time, several American women who have not been stripped of their citizenship have nevertheless still not been repatriated from camps in northern Syria. According to one of them, “We feel that the U.S. took home either those who were underage when they came to Syria, so they are [considered] victims, or those who have enough evidence to be prosecuted. We are adults, but there is not enough evidence of our active participation in the group to prosecute us, so they just left us here. It is either prosecution or nothing.”⁸

The U.S.’s obsession with prosecution and incarceration, and the existence of the Guantanamo Bay detention camp in particular, has been a major Islamist propaganda tool that has generated widespread anti-U.S. sentiment among Muslims around the world and helped drive recruitment for groups like ISIS. This new policy will likely yield more of the same.

Policies of non-Western states

Non-Western states have also given their citizens reasons for joining ISIS as well. Many Russian citizens, particularly those from the Muslim-majority Caucasus region, went to Syria to avoid arbitrary arrests,⁹ torture, and extortion. For them, joining ISIS was, in effect, the easiest way of immigrating. According to an ISIS-affiliated Russian woman in a Baghdad prison, “My ex-husband killed a high-level government official in Russia. When he did it, we were already divorced and I lived abroad. But when I returned home, I was afraid that they [police] would kill or imprison me just for being his ex-wife, as revenge. I never left home alone because there was always a suspicious car parked outside. I knew I had to leave, but I was too poor to immigrate anywhere like Europe. When ISIS declared the caliphate, I decided that it would be the safest place for me and my kids. So I took my kids and came to Syria.”¹⁰

These people are now terrified of being repatriated for the exact same reason they left: the torture and death they expect to face in Russian prisons. According to an ISIS-affiliated Russian woman in



Photo above: U.S. Attorney for the Eastern District of Virginia G. Zachary Terwilliger speaks to the media about the case against two British ISIS militants dubbed “The Beatles” on October 7, 2020. Photo by Tasos Katopodis/Getty Images.

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the al-Hol camp in northeastern Syria, “Many men, including my husband, chose to stay in Baghouz [fighting for ISIS] until the end simply because they understood that they had nothing to lose. They knew that if they surrendered and were taken to Russia for imprisonment, their life there would be a torture. It is better that they died in Syria and would not go through it.”¹¹ If it were not for such treatment of prisoners domestically, perhaps more Russia fighters would have voluntarily surrendered, which in turn would have reduced the casualties among civilians and the anti-ISIS coalition.

For citizens of some dictatorships, ISIS and Syria seemed to offer safe haven from their countries’ intelligence services. Seven years later, nothing has changed. The same dictators are still using the same methods against their domestic opposition. One example is the government of Tajikistan, which in 2018 kidnapped one of its own citizens from Ukraine while his refugee application was in the final stages of approval, due to his alleged ISIS membership. According to his lawyer, once in prison in Tajikistan, he was forced to call his fellow countrymen who were also accused of being ISIS members and were still abroad and persuade them to return home voluntarily.

Similar circumstances prevail in China, where hundreds of thousands of Muslim Uighurs have been rounded up in labor camps and prisons because of their religion. Many Uighurs do not feel safe even abroad, since China has signed extradition agreements¹² with many countries that are popular destinations for Uighur emigration. As a result, for many Uighurs, rebel-controlled Syria seemed like a safe option to live freely. Several ISIS-affiliated Uighurs I interviewed said that because they did not have passports, they had to travel by foot for over three months to reach Syria, illegally crossing several international borders.¹³

Even nearly two years after the fall of the last ISIS stronghold in Syria, and more than three years after the fall of the last ISIS territory in Iraq, many people from countries where ISIS members would be in danger if repatriated still support the group. According to their neighbors in the al-Hol camp who are not pro-ISIS anymore, “There is nothing surprising in that Turkistanis [Uighurs] and Tajiks are still

very pro-ISIS. They do not have any other country to expect help from. Their own countries are worse for them than being here.”¹⁴

Earlier in 2020, during the U.N. Security Council discussion of the resolution on foreign fighters, China opposed the use of language calling for “fair trials,” deeming it a form of interference by the U.N. and foreign actors in its justice system, according to a U.N. staffer familiar with the internal discussions.¹⁵

The issue of ISIS repatriation has also heightened domestic problems in some countries with a history of ethnic conflict. In Kyrgyzstan, for example, the majority of those who joined ISIS were ethnic Uzbeks living in the south of the country. Following bloody clashes in 2010, the Uzbeks there felt particularly unwelcome in the Kyrgyz-majority country. Now, Kyrgyzstan will not even repatriate children from a Baghdad prison, where conditions are so bad the children play with trash instead of toys.¹⁶ The overwhelming majority of the children Kyrgyzstan refuses to repatriate are ethnic Uzbeks.



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Similarly, in Serbia and Macedonia, those who joined ISIS are from Muslim communities that have historically been in conflict with the ruling ethnic majority (Muslims from Serbia's Sandžak region and Albanians in Macedonia).

Fomenting support for terrorism

The problems are admittedly complex, but doing nothing about them is not an option and the status quo is growing increasingly untenable. Female detainees who are not repatriated languish in camps, where life is not cheap. According to those interviewed, the women generally obtain funds from outside, either from relatives back home or from individual ISIS supporters, about \$300-500 a month — barely enough to survive for a mother with several children to feed.¹⁷

According to the foreign women interviewed in the camps, ISIS supporters get a substantial amount of money every month, often around \$1,000-2,000 per family, and live much more comfortably.¹⁸ They are able to afford good food, new clothes, and fans in the summer.

Sending money to ISIS affiliates in northeastern Syria is against the law in many countries, where relatives of women in camps have been charged and arrested for funding terrorism. As a result, the only way for these women to provide for themselves and their families is to claim they support ISIS.

By contrast, actual ISIS members and supporters tend to know how to evade anti-terrorism laws. In one known case, money sent from an ISIS supporter in Sweden went through four different countries before reaching a woman in a camp he had met online.

As a result, these laws disproportionately hurt relatives back home who are not affiliated with the group as well as women in camps who no longer support ISIS. The laws also benefit the group; because women in camps are afraid to incriminate their relatives by having them send money, they purport to support ISIS and might, for example, try to demonstrate this by spreading its propaganda on social media.

This is particularly evident in countries with a strong rule of law, such as the U.S., the U.K., Australia, and EU states; conversely, in several developing countries, law enforcement officials have

openly told relatives of ISIS members that they will turn a blind eye to the money sent to camps, despite laws against the practice.

ISIS's onetime territorial base: Iraq

In the countries that became the territorial base for ISIS — Iraq and Syria — the conditions that led to the group's emergence are only being exacerbated by the incarceration of its members, both local and foreign.

In Iraq, ISIS enjoyed support in Sunni-majority areas because of the oppression Sunnis experienced at the hands of the Shi'i-dominated central government and the absence of an independent judicial system through which to confront that discrimination. Now, more than three years after Iraq's liberation from ISIS, Shi'i militias are once again taking control of Sunni-populated areas using the same brutal methods as in 2012, often under the guise of fighting terrorism.

The use of counterterrorism laws in Iraq to repress Sunnis is one of several problems in the country related to the prosecution and incarceration of ISIS members; Sunni Iraqis who try to peacefully stand up against corruption or the Shi'i-dominated leadership are often accused of links to ISIS and arrested. It is also not uncommon for a Sunni to be accused of being an ISIS member by a relative who wants to inherit their property, a phenomenon that only undermines trust in the country's law enforcement.

When a person is charged with ISIS membership in Iraq, he eventually faces trial. In 2018, at a court in the town of Tal Kayf, I watched dozens of these cases and not one lasted more than 15 minutes. The court quickly convicted each defendant based on his own confession of guilt. But according to a former inmate interviewed, torture is so widespread that virtually everyone is coerced into confessing regardless of guilt.¹⁹ Furthermore, Iraq's Parliament has refused to ratify the optional protocol to the Convention Against Torture, which would allow an independent United Nations team to visit prisons and advise and assist Iraq on strengthening protections against torture.²⁰

In court, defendants facing charges related to ISIS are almost always defended by court-appointed lawyers who know nothing about their clients and have no interest in defending them. Those

Photo right: A discarded ISIS flag lying on the ground in the village of Baghouz in Syria's Deir ez-Zor Province near the Iraqi border, a day after the group's "caliphate" was declared defeated. [Photo by GIUSEPPE CACACE/AFP via Getty Images.](#)

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independent lawyers who do defend ISIS suspects are likely to be arrested themselves²¹ and charged with supporting the group.

Then come the harsh sentences. According to Iraq’s counterterrorism law, a male charged with participating in combat with ISIS receives the death penalty. Even non-combatants get 25-year prison sentences — the life-or-death stakes of the battlefield continue through the criminal process.

Another impediment to justice is the fact that running an Iraqi prison can be a very profitable enterprise for its leadership and employees, creating an added incentive to keep the prison population large. Not only does the government pay a fee to prison administrators for each inmate, inmates and their families are often also required to pay illegal or unofficial fees as well — for example, to make sure that they are not abused in prison or even to gain access to better food and accommodation.

In many cases, it is very difficult for relatives to even find their incarcerated family members because of the large number of secret prisons in Iraq.²² It could take several years and many thousands of dollars in bribes for a family to locate relatives detained on ISIS-affiliation charges.

The nature of Iraq’s justice system arguably contributed to the intensity of the conflict in 2016-17, because those affiliated with ISIS did not want to surrender knowing what was waiting for them and instead fought until the end. (A large number of foreign fighters who surrendered at Tal Afar in 2017 did so to Kurdish forces²³ even though it was Iraqi federal forces that ousted ISIS from the territory.) But Iraq’s current approach is also fueling an ongoing insurgency. According to a survey I conducted in 2018 with ISIS affiliates in refugee camps around Mosul, the overwhelming majority think that ISIS fighters would surrender if not for the prospects of facing a death sentence and torture in prison.²⁴

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Photo above: A woman displaced from Syria's eastern Deir ez-Zor Province carries a child as she walks in al-Hol camp in al-Hasakeh governorate in northeastern Syria on April 18, 2019. Photo by DELIL SOULEIMAN/AFP via Getty Images.



Not only is the international community doing little to pressure Iraq to institute due process, it is using the flawed system for its own benefit.



In prisons, abuse and torture only lead to more support for ISIS, even among those not affiliated with the group. According to a person who spent eight months incarcerated in in prison near Mosul, "No more than 30 percent of people were actually affiliated with ISIS, but everyone celebrated their insurgency victories. Although some even suffered from the group when it was in power, now they would support anyone who is fighting against the government and is effective in that."²⁵

Not only is the international community doing little to pressure Iraq to institute due process, it is using the flawed system for its own benefit. For example, according to several members of Iraqi intelligence, France used diplomatic pressure to compel the Iraqi government to take in and prosecute French ISIS members arrested in Syria. According to an Iraqi counterterrorism judge, "We did not want to take them because they have nothing to do with Iraq, but there was an agreement between Iraqi and French governments, so we did not have an option."²⁶

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During the trials that I attended, there was no evidence presented of the defendants' guilt and they were not represented by independent lawyers, but rather by court-appointed ones who were not familiar with their cases, nor were they provided professional translators. According to court employees, representatives of the French embassy were present, but they did not object to the trials despite the obvious problems, and they even tried to prevent filming of the trial that had been authorized by the Iraqi judge.

According to several members of Iraqi intelligence, there is an ongoing discussion about transferring other Westerners from Syria to Iraq, and although the Iraqi prime minister opposes such a move, Western countries could again use their diplomatic leverage to try to make it happen.

ISIS's other former stronghold: Syria

In Syria, the revolution and unrest that eventually led to the emergence of ISIS in the country began with opposition to Bashar al-Assad's crimes against the Syrian people. One major source of unrest was the Assad regime's widespread violations of human rights, an issue that could not be addressed by peaceful means due to the absence of independent courts and a transparent prison system.²⁷

Eight years later, not only is Assad still in power, but his policies toward the civilian population have become even more brutal. There is still widespread use of secret prisons that also house accused ISIS members, and locals, foreigners, and international human rights organizations do not have access to them.

At the same time the Autonomous Administration of North and East Syria (AANES), also known as Rojava, where the majority of foreign ISIS members are detained, is not a recognized country and as a result could not have prosecuted ISIS members. On the one hand, it would be considered a step toward recognition that many countries would not agree on. On the other, because AANES is not a country it does not have a justice system, and even if one could be set up, prosecuting ISIS members would entail applying laws retroactively.

An alternative model

There is another way of dealing with the issue, however. Despite having a significantly larger number of ISIS members than EU states, countries like Bosnia, Kosovo, Kazakhstan, and Uzbekistan have realized that they are better off repatriating them as soon as possible. That way, they can control the issue and not further radicalize a population that is closely watching how their compatriots with links to ISIS are being treated.

Many countries with their own history of conflict are well aware of the dangers of not addressing this issue in a timely manner, and understand that the mishandling of the problem could lead to the emergence of a diaspora of foreign fighters who could eventually return home to harm the government and law enforcement. As a result, they have been repatriating their citizens and in many cases reintegrating them into society. Examples of such countries include Uzbekistan, which is fighting the Islamic Movement of Uzbekistan, a group that after being defeated locally moved first to Afghanistan and then to Syria.

In contrast, powerful countries such as the U.K. and France with a smaller number of foreign fighters in Syria and Iraq are aware that their actions in dealing with them will not significantly affect public opinion, largely because these ISIS affiliates tend to come from minority, immigrant backgrounds. At the same time, these countries have independent judiciaries that currently have repatriation cases in court. As a result, there is a strong chance that through the courts, these governments will be pressed to eventually repatriate their citizens.

The problem, however, is that this will take time, during which the women in the camps could be smuggled away, making them difficult, if not impossible, to trace. Even worse, their children are being deprived of an adequate education and quality of life every day they remain in Syria. It is already rare to meet an eight- or nine-year-old child in the al-Hol camp who can read and write. As a result, even if they are eventually repatriated, it is not clear if they will be integrated into society or will instead become radicalized or

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turn to crime and violence due to marginalization and lack of better options.

At the same time, in order to ensure that ISIS 2.0 will not retake territory in Iraq and Syria, the international community has to pay more attention to counterterrorism law, trials, and incarceration in these countries. And now, while Iraq is particularly weak and reliant on international aid to balance its budget, there is a window of opportunity. International actors should make aid contingent on Iraq carrying out the below reforms.

To stabilize the country and limit the chances of a radical Salafi group taking over territory again, Iraq should eliminate the death penalty and reduce sentences for members of terrorist groups, ensure fair trials, and invite international observers to prisons to ensure the absence of torture. Otherwise, as was the case in 2014, ISIS’s first priority will be to overrun the prisons. By doing so, they would free their brothers in arms and boost the motivation of group members. According to a foreign ISIS member I interviewed in 2016, “Where in the beginning of the war there were operations to liberate prisons, everyone tried to volunteer to participate in it. We all heard about terrible things happening there, so everyone wanted to take part in freeing people from that.”²⁸

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And now, while Iraq is reliant on international aid to balance its budget, there is a window of opportunity. International actors should make aid contingent on carrying out reforms.



Photo above: Men, suspected of being affiliated with ISIS, gather in a prison cell in the northeastern Syrian city of Hasakeh on October 26, 2019. Photo by FADEL SENNA/AFP via Getty Images.

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Since 2015 she has covered numerous conflicts in the Middle East for *Foreign Affairs* and *Foreign Policy*, and her op-eds have appeared in the *Washington Post* and *New York Times*. She also conducted research on the ground in other active conflict zones, including Yemen, Syria, Iraq, Ukraine, Georgia, Sudan, Congo, and Myanmar.

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