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Forgotten Children's Rights: Australian Trends Towards Statelessness of Children of Foreign Fighters

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Time to read 5 Minutes

Guest post by [Dr Romyana van Ark](#) (T.M.C. Asser Institute), [Dr Faith Gordon](#) (Monash University) and [Dr Devyani Prabhat](#) (Oxford University's Border Criminology Group member, University of Bristol). Romyana is a Post-Doctoral Researcher in Terrorism, Counter-Terrorism and International Law at the T.M.C. Asser Institute within the Research Strand 'Human Dignity and Human Security. She is also a Research Fellow and a Coordinator at the International Centre for Counter-Terrorism in the Hague. Faith is a socio-legal scholar and the Director of the Interdisciplinary International Youth Justice Network. She is also an Associate Research Fellow at the Information Law & Policy Centre, Institute of Advanced Legal Studies, London and a Senior Visiting Research Fellow at the Centre for the Study of Democracy, University of Westminster. Devyani is a Reader in Law at the University of Bristol Law School, UK, with legal practice experience in Constitutional law. She is an ESRC research grant holder on [British Citizenship and the Practice of Nationality laws](#). Devyani, Romyana and Faith have received a small-events grant from the Society of Legal Scholars for their project on: 'Citizen Children? An Analysis of Counter-Terrorism Measures' and are currently working on their monograph, to be published by

Edward Elgar Publishing (Law). This is the fifth installment of the Border Criminologies themed series on 'Crimmigration and Australian Border Control'.

Hidden Reality

On 15 April 2019 the Australian Broadcasting Corporation's 'Four Corners' aired an episode called 'Orphans of ISIS'. It documented one Australian family's experience over four years, as a grandmother tried to convince the authorities in Syria and Australia to release her grandchildren into her care and allow for their return to Australia. The documentary poignantly illustrated the acute challenges faced by an individual when attempting to secure a safe return for their (grand)children to Australia – a country in which they have citizenship rights. This is just one family amongst many others experiencing the highly punitive end of the counter-terrorism continuum due to a lack of political will to prioritise children's rights and well-being. Yet, while the alleged criminal behaviour of a parent or parents tends to take centre stage, the affected children's plight is often under-reported and under-examined in political and public discourses.

The legal, political and social realities impacting these children are grim. There are estimates that some 29,000 children of foreign fighters are languishing in camps across Syria and Iraq; children who have already experienced conflict, deprivation and may have witnessed family members being killed. Having been stigmatized by their communities and shunned by local governments, these children are now 'doubly rejected'. The lack of efforts to repatriate these children has left them in a "particularly precarious situation", with their rights, well-being and safety compromised. This precariousness is exacerbated in circumstances where a parent or both parents have been deprived of citizenship or the child has been orphaned. If the orphaned or unaccompanied child of an Australian parent or parents is to access the protections available to it through Australian citizenship, a DNA test may be required. For a child currently stranded in a camp in Syria or Iraq such a process is in essence almost impossible. In short, these children face considerable challenges, legally and logistically, when attempting to access basic services, legal protections or return to their countries of origin.





Photo: Obed John

Politicisation of Citizenship and Repatriation

As deprivation of citizenship becomes more commonly used within Australia's counter-terrorism toolkit, the concept of citizenship has very much become a political tool through which underserving individuals are banished to or immobilised while abroad. This politicisation of Australian citizenship is evident when one looks at how the policies impacting on citizenship are introduced and framed within political and tabloid media discourses; these policies tend to start as threats to exclude before developing into tools of exclusion. One illustrative example is suspected foreign terrorist fighters being deprived of their citizenship. What is particularly problematic is that the deprivation decision

aimed at the parents can and does impact on the **citizenship rights of the children**. This indirect deprivation of citizenship rights of the affected children is in contravention of **international legal obligations** protecting children and their special status. Yet, as stated by the Australian Home Affairs Minister, **Peter Dutton**, the culpability lies with the parents: “most people realise if you go into a warzone and take kids into a warzone ... you’ve made a decision to destroy the lives of your children”. This statement and the adoption of various counter-terrorism measures banishing and/or immobilising foreign terrorist fighters and their families can be firmly placed within the larger crimmigration approach towards security and counter-terrorism utilised by Australia.

‘Crimmigration’ and Denial of Children’s Rights in Australia

Crimmigration as an approach to national security has been previously illustrated by the use of a range of criminal law measures to target irregular migration with extensive coercive, carceral, and punitive powers. Crimmigration has also been linked to **border security** through the lenses of settler colonialism, race and feminist perspectives. In the context of **detention and deportation**, crimmigration has resulted in the targeting of ‘non-citizens’ not just on account of their alleged criminal behaviours but also their perceived or suspicious associations and ‘risky’ behaviours. Furthermore, **unaccompanied minors** have often been treated as part of irregular migration processes but subsequently, have been dealt with through criminal law procedures. Their conduct is assessed pre-emptively, with future behaviour and risk management taking precedence over physical and mental well-being. Australia’s intertwining of immigration and criminal justice to allow for broader and more onerous powers applicable to those who pose a risk to public safety or national security has been praised as “**world leading**”. This approach has now, perhaps unsurprisingly, been extended to the children of foreign fighters.

The **reports** of a three-year-old Australian child in the al-Hawl camp contracting severe frostbite on her hand, and yet unable to access medical treatment, has not resulted in any increase in repatriation efforts by the **Australian** authorities or led to at least some form of assistance. Nineteen Australian women and forty-seven children are still held in the al-Hawl camp in northeast Syria; a camp described as “**hell**”. Rather than treat these children – **some as young as several months** – as victims, concerns are focused on the children’s conduct and possible risks associated with their potential return to Australia. Having placed them in a pre-crime space based on presumptions about their future behaviour, they are then denied the possibility of repatriation from a conflict area on national security grounds. This denial of repatriation, the indirect deprivation of core citizenship rights and other barriers to return create *de facto*, if not strictly

de jure statelessness and falsely pit children’s rights (human security) against national security.

“Predominantly punitive” is a fitting **description** of Australia’s response. Yet, there is an alternative. **France** has actively repatriated a number of citizen children as well as two Dutch orphans since March 2019. Ten more French children were repatriated on 21 June 2020. **Norway** and **Belgium** have also repatriated some children. Also, as the fast developing **family law jurisprudence** in the United Kingdom demonstrates, criminal justice does not have to be only answer to the perceived challenges posed by the return children of foreign fighters. Rather than placing the affected children in the pre-crime space due to the alleged criminal behaviour of their parents, Australia should instead re-acknowledge their special status as per the international legal framework and offer them a safe route home.

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