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Gordon, F.; van Ark, R.; Prabhat, D.

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21 May 2020

POLITICS AND SOCIETY

Coronavirus crisis, and the urgent need to revisit repatriation of foreign fighters' children

The unprecedented challenges of the COVID-19 pandemic highlight the pressing needs to repatriate children of foreign fighters, who continue to languish in conflict-ridden regions of the world.

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Globally, everyone is affected by the COVID-19 pandemic. There are [grave concerns](#), however, that some very [vulnerable groups](#) are being forgotten or overlooked at this time. Such groups are enduring particularly uncertain circumstances in conflict-stricken countries.

Considerable challenges exist for the [many thousands](#) of children of foreign fighters who travelled with them to conflict areas, or were born there. They, and their families, are unable to access basic health services, including [COVID-19 testing](#), or to return to their countries of citizenship. Circumstances are especially harsh if an adult in the family has been deprived of citizenship, as this diminishes their chances of returning home.

With many states refusing or delaying efforts to repatriate, the affected children are in a [“particularly precarious situation”](#), which is further compounded in the context of the COVID-19 pandemic.



Many children of foreign fighters are living in appalling and dangerous conditions as they await repatriation decisions

[Australia](#) has not repatriated the 19 Australian women and 47 Australian children who are held in the al-Hawl camp in northeast Syria, with [reports](#) of a three-year-old Australian child in the camp contracting severe frostbite on her hand, and unable to access medical treatment. This is just one example of many aptly illustrating the dangerous conditions in which the affected children are living.

Other countries have adopted a similar approach despite the precarity faced by the children and their families.

[Indonesia](#) recently decided not to allow more than 600 citizens and their family members to return. Following a meeting with Indonesia’s President, Mahfud MD, the political, legal and security minister informed the [media](#) that they would “not take back

foreign terrorist fighters to Indonesia ... For children below aged 10, we may consider case by case ... [and] whether the minors are orphans”.

Such an approach is not novel. In June last year, 12 French and two Dutch orphans of Islamic State fighters were [repatriated](#) from Syria to France. This followed the [earlier repatriation](#) of five orphans from Syria to France.

Read more: [*The COVID lockdown threat to children's security in developing nations*](#)

A decision due soon in an ongoing legal case in the Netherlands promises to add more complexity to these issues. The Advocaat-Generaal of the Dutch Supreme Court has just advised the Supreme Court that the Netherlands does not have to repatriate [23 Dutch women and their 56 children](#) detained in northern Syria.

The children are described as living in “appalling” conditions, and the group is seeking repatriation as a whole, as children are not allowed to travel away from that region without adults.

In November 2019, the [Court of The Hague](#) initially ruled that the state should “make every effort” to allow repatriation of the children. The trial judge stated that the state would be acting in a careless manner if there were no active efforts to repatriate.

Every child is deserving of legal protection from the country of their citizenship, and the unprecedented challenges of the COVID-19 pandemic highlight their pressing needs as they continue to languish in conflict-ridden areas.

This decision was then reversed by the Appeals Court, which found that repatriation of this group was a political choice, and not a legally enforceable right. It's rare for the Dutch Supreme Court not to follow the advice of the Advocaat-Generaal. As he is of the view that the Appeals Court's decision is the one to be upheld, a repatriation of this group any time soon seems highly unlikely.

Similar to the proposal of the political, legal and security minister in Indonesia, the Dutch Advocaat-Generaal has suggested that an assessment of whether to repatriate should be on a case-by-case basis. He's stressed that the parents' wrong choices should not be held against the affected children, and suggested that a request to repatriate only the children might have had a higher likelihood of success. However, an assessment of the extent of culpability of each affected mother for alleged activities within another jurisdiction and [during a conflict](#) will come with significant complications and long delays.

A case-by case review based on these, or similar criteria, rather than a clear general guideline that covers all children, can result in lengthy legal proceedings, thereby prolonging the uncertainty and precarity of the affected children.

The key question in this context should be what is in the best interests of the affected children, rather than is a certain child or children worthy of repatriation.

Article 3, [UN Convention on the Rights of the Child](#) (UNCRC), clearly states that the best interests of the child should always be the primary consideration.

The [UN High Commissioner for Refugees](#) has similarly stressed that the "best interests of the child assessment" ([BIA](#)) is a simple, ongoing procedure that should be undertaken in every case, and should evaluate and balance all elements necessary to make a decision in a specific situation for a specific child or group of children.

Based on our understanding of international legal principles such as Article 3 of the UNCRC, we recommend that:

- Every home state has a special responsibility to guarantee safety of children and their wellbeing under the UNCRC.
- An individualised assessment is not a prerequisite for protecting the best interests of children, and when such assessment creates a delay that prolongs precarity, it must be avoided.
- If mothers have had active roles in allegedly criminal activities, individualised assessments of criminal conduct or security risks of a parent should not be a reason to delay the

repatriation of the affected children. There are [ample opportunities](#) to investigate the conduct of adults, and assess whether they pose a risk of reoffending, upon return of the families.

- It's paramount that children's repatriation is not assessed through a national security lens. Such an approach assumes that the children have been radicalised, and that they [may engage in criminal and/or terrorist activities](#) in an unspecified time in the future.

Every child is deserving of legal protection from the country of their citizenship. The unprecedented challenges of the COVID-19 pandemic highlight their pressing needs as they continue to languish in conflict-ridden areas.

In light of the well-accepted international legal obligations towards children, the safe repatriation of the children of foreign fighters requires urgent action. However, legal proceedings such as those in the Netherlands, the political decisions such as those made in Indonesia, and the inaction in Australia, deny children the international protections they should be urgently afforded.

This article was co-authored with [Dr Romyana van Ark](#), Institute and International Centre for Counter-Terrorism, The Hague; and [Dr Devyani Prabhat](#), University of Bristol Law School.

THE HAGUE

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Faith Gordon

Lecturer in Criminology, School of Social Sciences

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