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OPINION

OPINION ON THE FRENCH UNDER-AGE NATIONALS DETAINED IN SYRIAN CAMPS

24TH SEPTEMBER 2019



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EXECUTIVE SUMMARY

Since the end of the war against the so-called “Islamic State” (IS) organisation, tens of thousands of people who lived under this regime have been placed in camps located in North-East Syria, an area controlled by the Syrian Democratic Forces (SDF), a Kurdish-majority alliance. There are estimated to be three hundred French children, mostly under five years of age, among them. Some are orphans or unaccompanied, while others are accompanied by a parent. The living conditions in these camps are particularly poor, endangering the health and life of these children. In light of this alarming humanitarian situation, and in the name of republican values and respect for fundamental rights, the National Consultative Commission on Human Rights (CNCDH) urges the national authorities to urgently repatriate the French children, as well as their accompanying parent, in order to safeguard the best interests of the child.

In the wake of the military defeat of the so-called “Islamic State” (IS) organisation, many children having lived under this regime have been placed in camps located in Rojava, in North-East Syria, an area controlled by the Syrian Democratic Forces (SDF): the camps of Al-Hol, Roj and Ein Issa. Some are accompanied by their mother or father, some have been entrusted to the custody of third parties, others are orphans.

None of the humanitarian stakeholders on the ground had anticipated the sudden massive influx of citizens fleeing the IS-controlled area from the end of 2018¹. Last March, the President of the ICRC was already reporting a situation of grave concern². For it is clear that:

- the living conditions are particularly dire, owing to food and water shortages and inadequate medical care – such that dozens of children have already died;
- individuals suspected of belonging to the “Islamic State” organisation are separated from the rest of the population and have extremely limited access to humanitarian aid;
- the children are not schooled or placed under any special care, and sometimes find themselves abandoned within the camp;
- some women perpetrate threats and violence against other women they deem “non-believers”;
- tensions are running high with the wardens of camps, which the SDF have wanted to close.

Recent reports show precious little sign of any improvement in the conditions of these camps, pointing instead to their deterioration. Living conditions in the Al-Hol camp in particular have recently been described as “apocalyptic” by the ICRC³. In a July 2019 report, Human Rights Watch likened the camp to a “dustbowl inferno”. The NGO particularly found “overflowing latrines, sewage trickling into tattered tents, and residents drinking wash water from tanks containing worms”⁴.

Via two letters dated 27 May and 25 July 2019, the Chair of the CNCDH called on the Prime Minister to urgently repatriate the French under-age nationals detained in these camps and enduring such dire living conditions. In response to the first letter, the Prime Minister gave a reminder on 14 June that the French authorities adopted a case-by-case approach regarding these children. Thus, initially five, and then twelve children – unaccompanied or orphans – were able to be repatriated, on 15 March and 10 June 2019 respectively, on account “of humanitarian considerations in light of the situation of these very young and extremely vulnerable unaccompanied or orphaned children”. The Prime Minister’s second letter, dated

1. The population in the Al-Hol camp in particular ballooned from 10,000 to 73,000 people in a matter of months.

2. Statement available online: <https://www.icrc.org/en/document/statement-icrc-president-upon-ending-5-day-visit-syria>

3. International Committee of the Red Cross, “Syria: a camp is filled with children”, 26 July 2019: www.icrc.org/en/document/Syria-A-camp-is-filled-with-children

4. Human Rights Watch, “Syria: Dire Conditions for ISIS Suspects’ Families”, 23 July 2019: www.hrw.org/en/news/2019/07/23/syria-dire-conditions-isis-suspects-families.

19 September, although more detailed, is still not satisfactory in that it subjects the children's repatriation to a possible severance of parental ties and to a case-by-case approach.

The French authorities also remain deaf to the pleas of several international bodies, which have been urging States over recent months to repatriate their under-age nationals detained in these camps: firstly the Assistant Secretary-General for Humanitarian Affairs before the Security Council, on 24 April 2019⁵, then the UNICEF Executive Director on 21 May⁶, the Council of Europe Commissioner for Human Rights on 28 May⁷, as well as the United Nations High Commissioner for Human Rights on 24 June⁸.

At the end of a series of hearings conducted with legal, social and political stakeholders⁹, the CNCDH underscores the need to repatriate the children stranded in the Rojava camps as swiftly as possible. The return of these young French citizens to national soil is all the more urgent given that the living conditions in the camps are getting worse by the day and that the geopolitical situation in the region is still wholly unstable.

The repatriation of children: a humanitarian requirement

According to the hearings carried out, there are reportedly some three hundred children detained in the Rojava camps. The humanitarian considerations cited by the Ministry for Europe and Foreign Affairs to justify the repatriations of children in March and June should be valid for all of these children. Whether or not they are accompanied by a parent, these children are “extremely vulnerable”, not least because most of them are under five years of age, particularly exposed to substandard living conditions and present severe physical and mental health problems. In all cases, irrespective of how old they are and their family situation, the children are being held in these camps amid appalling circumstances, which are unacceptable in view of the fundamental principles of international humanitarian law (IHL), chief among them the principle of humanity. In this regard, the CNCDH draws attention to the fact that children benefit from the general protection bestowed by IHL upon civilians and special protection on account of their vulnerability and their special requirements. The

5. Ursula Mueller (OCHA) on the Situation in the Middle East (Syria) - Security Council, 8515th meeting, 24 April 2019: [http://webtv.un.org/watch/ursula-mueller-ocha-on-the-situation-in-the-middle-east-syria-security-council-8515th-meeting/6029581140001/\(5'23\)](http://webtv.un.org/watch/ursula-mueller-ocha-on-the-situation-in-the-middle-east-syria-security-council-8515th-meeting/6029581140001/(5'23)).

6. “Protect the rights of children of foreign fighters stranded in Syria and Iraq”, Statement by UNICEF Executive Director Henrietta Fore, 21 May 2019: www.unicef.org/press-releases/protect-rights-children-foreign-fighters-stranded-syria-and-iraq

7. “Council of Europe member states should urgently repatriate their under-age nationals stranded in Northern Syria”, Council of Europe Commissioner for Human Rights, 28 May 2019: www.coe.int/en/web/commissioner/-/council-of-europe-member-states-should-urgently-repatriate-their-under-age-nationals-stranded-in-northern-syria

8. “Statelessness for terrorists’ families, never an acceptable option, urges UN rights chief”, UN News, 24 June 2019: <https://news.un.org/en/story/2019/06/1041131>

9. List of experts interviewed appended.

State Parties to an armed conflict are required to ensure special respect for and protection of children who are affected by armed conflict¹⁰.

Child victims

These children should above all be considered victims of jihadists and of the ideological indoctrination that convinced their parents to move to the IS-controlled area. In cases where some may even have been recruited as “child soldiers”, the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, which France has ratified, also stipulates that they must be viewed as victims requiring protection and reintegration¹¹. In the present case, this can only be achieved by repatriating them. In any event, it shall be for the justice system to decide if there is cause for these children to be prosecuted, once back on French soil.

The reintegration of children and repatriation of their parents: for the sake of protection and security

If the repatriation of these children is imperative for humanitarian reasons, it is also justified by the requirement in terms of security. As maintained by the judiciary, this requirement will be guaranteed more effectively in practice by providing these children with the appropriate supervision through the French social service and justice departments. The return of these children to France is all the more pressing given that attempts to escape from camps are on the rise, sometimes orchestrated by IS sympathisers looking to bring into their fold people who lived under their yoke – children included.

Furthermore, both the children’s well-being and the concern to keep everyone safe argue in favour of enabling the children’s accompanying parents to return too. On the one hand, because children who have already had to endure the war and been exposed to inhuman conditions in the camps should not then be put through a traumatising separation. On the other, because in the same way as all French nationals detained in these camps, parents are

10. See Rule 135 of the Study on customary international humanitarian law conducted by the International Committee of the Red Cross (ICRC), applicable in both international and non-international armed conflicts.

11. Accordingly, Article 6.3 of this protocol provides that “States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration”. Moreover, Resolution 2427 of the Security Council stresses “the need to pay particular attention to the treatment of children associated or allegedly associated with all non-state armed groups, including those who commit acts of terrorism” (Para. 19) and “urges Member States to consider non-judicial measures as alternatives to prosecution and detention that focus on the rehabilitation and reintegration for children formerly associated with armed forces and armed groups” (Para. 21).

subject to arrest warrants and, upon their arrival on French soil, will be brought before the judges, who will assess the need for placing them in pre-trial custody in light of the charges against them. In this context, and under the system set up for monitoring returnee children from terrorist group operation zones¹², the possibility of maintaining the ties between the child and his/her parent(s), and any arrangements in this regard, are diligently considered by the competent authorities – both the judicial and social authorities – which may lead to the juvenile court judges either entrusting the child to members of his/her family or, where his/her welfare is not guaranteed in the latter's care, to a different care framework.

If the parent accompanying the child refuses to be separated from the latter, and wishes to stay where they are, the best interests of the child should be the only consideration.

Extraterritorial jurisdiction of the ECHR and UNCRC

In response to the CNCDH Chair, who had urged compliance with the *European Convention on Human Rights* (ECHR) and *United Nations Convention on the Rights of the Child* (UNCRC), the Prime Minister, in his aforementioned letter, contended that the French nationals detained in the camps did not come under France's "jurisdiction", in the meaning of Article 1 of the ECHR. By way of exception to the Convention's territoriality principle, the CNCDH gives a reminder that the "jurisdiction" of a State Party to the ECHR, in the meaning of Article 1 therein, may extend to the action of its bodies operating outside of its territory (extraterritorial effect of the ECHR) or owing to a State genuinely exercising effective control over a territory or persons outside its borders (extraterritorial application of the ECHR)¹³.

The refusal of repatriation must be decided by France, bearing in mind that the SDF have, moreover, repeatedly called for States to repatriate their nationals. That French nationals are prevented from returning to national soil is the consequence of a decision on the part of the French authorities and not of the SDF. On the other hand, when France has wished to do so, it has been able, in liaison with the SDF, to repatriate a certain number of children in light of the criteria that it itself adopted. The CNCDH thus considers that the French nationals detained in the camps come under France's jurisdiction in the meaning of Article 1 of the ECHR.

It should also be noted that in light of certain pieces of evidence – the close relations with the SDF stemming from a military and diplomatic partnership against IS, the specific

12. The two circulars, dated 23 February and 8 June 2018, were drawn up in view of returning families of jihadists to French soil for the purposes of meeting their children's needs. Some one hundred children have currently been taken into the care of child welfare services, mainly in Seine-Saint-Denis.

13. See not.: *European Court of Human Rights, Soering v. The United Kingdom*, 7 July 1989, app. no. 14038/88; *European Court of Human Rights, Drozd and Janousek v. France and Spain*, 26 June 1992, app. no. 12747/87; *European Court of Human Rights, Ilcu and others v. Moldova and Russia*, app. no. 48787/99.

prohibition as regards family members of French citizens detained in the camps to come into contact with the latter and the cited holding of a woman in a camp by order of the French authorities against the decision of the Kurdish authorities to release her and put her on house arrest within her family – the French authorities would appear to be genuinely exercising effective control over their nationals within the camps. It does not appear unrealistic to think that the European Court of Human Rights could recognise France’s jurisdiction in such a scenario.

Fundamental rights tested by the theory of government actions

The CNCDH regrets the denial of justice resulting from the application in the present case of case law concerning government actions. In April 2019, the administrative courts declared that they lacked jurisdiction, under traditional case law, to rule on the repatriation request concerning two French mothers detained in Syria and their children, given that this matter was “not severable from the performance of France’s international relations”¹⁴. For its part, the CNCDH believes that the jurisdictional immunity protecting these government actions should no longer apply where a fundamental right by virtue of the Constitution or a convention is under threat.

The constitutional standards in favour of repatriation

In any event, the CNCDH believes that the authorities should not hide behind this lack of jurisdictional scrutiny to shirk from their obligation to come to the aid of their nationals whose most fundamental rights, recognised by the international conventions, are under threat – especially when they coincide with requirements of a constitutional nature: the constitutional principle of safeguarding respect for human dignity, which particularly implies ensuring that no one is subjected to inhuman or degrading treatment; or, above all, the requirement to “protect the best interests of the child” recently enshrined by the Constitutional Council¹⁵. Pursuant to the preamble of the Constitution, the public authorities shall “*provide the individual and the family with the conditions necessary to their development*” and “*guarantee to all, notably to children, mothers [...] protection of their health, material security [...]*”. Consequently, every effort must be made to guarantee that these provisions are effective in favour of the French nationals detained in the Rojava camps.

14. Paris Administrative Court, Ord., 9 April 2019, No. 1906076-9; CE, Ord., 23 April 2019, nos 429668, 429669, 429674, 429701.

15. CC, Decision no. 2018-768, Priority Preliminary Ruling on the Issue of Constitutionality (QPC), dated 21 March 2019, Para. 6.

The lack of major obstacles to repatriation

The CNCDH is, of course, aware of the practical difficulties the public authorities may face in repatriating these individuals. But such difficulties should be weighed against the relevant constitutional requirements – primarily the best interests of the child. The CNCDH notes that it has already been possible to carry out repatriations under the auspices of the Ministry for Europe and Foreign Affairs, in conjunction with the Kurdish authorities. In other words, whether alone or with third party assistance, the French authorities have the operational capabilities to organise the return of children and their parent to national soil.

The CNCDH is not unaware of the problems posed by repatriating all of the children – not least for the départements responsible for receiving them, via the child welfare services. But for children whose lives are in immediate danger, such problems must be overcome without fail, where necessary by mobilising the social services of several départements, with constant concern for maintaining family ties as far as possible.

Ultimately, continuing to refuse to repatriate all of the French under-age nationals detained in the Rojava camps would amount to a manifest breach of fundamental rights and a serious violation of the values of the French Republic. The CNCDH therefore calls on the French Government to urgently return these children and the parent accompanying them to French soil.

Appendix

List of experts interviewed

G rard Tcholakian, Lawyer with the Paris Bar

Marie Dos , Lawyer with the Paris Bar

Claire Paucher, Juvenile Court Judge at Bobigny Regional Court (TGI)

David De Pas, Vice-President for review, counter-terrorism unit, Paris Regional Court (TGI)

Jean-Fran ois Ricard, Counter-terrorism Public Prosecutor attached to the Paris Regional Court (TGI)

Delphine Berg re Duc t , Head of the National “Intelligence and information” Mission (MNVI), Judicial Youth Protection Services (PJJ)

Jean-Pierre Margu naud, Professor at Limoges University

Nicolas Roche, Chief of Staff to Jean-Yves Le Drian, Minister for Europe and Foreign Affairs, supported by:

Camille Petit, Adviser on Asia, Legal and Consular Affairs to the Minister for Europe and Foreign Affairs

Fran ois Alabrune, Legal Affairs Director at the Ministry for Europe and Foreign Affairs (MEAE)

Florence Merloz, Deputy Director for Human Rights at the MEAE’s Legal Affairs Directorate

Sylvain Riquier, Head of the Service for French Nationals Abroad (MEAE)

Jean-Fran ois Guillaume, Crisis and Support Centre (MEAE)



Created in 1947 at the instigation of René Cassin, **the National Consultative Commission on Human Rights (CNC DH)** is the French national institution responsible for promoting and protecting human rights with level 'A' accreditation from the United Nations.

The CNC DH performs a three-pronged role that involves the following:

- enlightening the public decision-making process with regards to human rights;
- monitoring the effectiveness in France of rights protected by international human rights conventions;
- overseeing France's implementation of recommendations made by international committees.

The CNC DH is independent and operates based on the principle of the pluralism of ideas. This being the case, as the only institution that maintains continuous dialogue between civil society and French experts in the field of human rights, the Committee comprises 64 qualified individuals and representatives of non-governmental organisations with their roots in civil society.

The CNC DH has been an independent National Rapporteur on the fight against all forms of racism since 1990, on the fight against the trafficking and exploitation of human beings since 2014, on the fight against homophobia since 2018.

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