**ABOUT REPRIEVE**

Reprieve is a charitable organization registered in the United Kingdom (No. 1114900), and in special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to individuals who have been subjected to state-sponsored human rights abuses. Our clients belong to some of the most vulnerable populations in the world, as it is in their cases that human rights are most swiftly jettisoned and the rule of law is cast aside. In particular, we protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.

**SUMMARY**

Individuals and their family members detained without charge in Kurdish run camps and prisons in northeast Syria (“NES”) in the context of the fight against Daesh have been abandoned in a jurisdictional black hole and are exposed to a range of extreme human rights abuses. This is the cumulative effect of policies and legislative frameworks that are implemented in the name of counter-terrorism, leaving tens of thousands deprived of all fundamental human rights and thereby exceptionally vulnerable to abuse and mistreatment. Importantly, there has to date been little acknowledgement by Member States of the fact that individuals detained in NES may be victims of human trafficking. These victims are barred from accessing existing frameworks under international, European, and domestic laws designed specifically to identify and protect them from further harm and exploitation as a result of the right vacuum created in NES by the inaction of Member States.

Reprieve recommends:

1. **Member States must repatriate their nationals from NES where necessary to protect them from harm and serious human rights violations as a matter of urgency. Member States should manage any risk to national security posed by those returning to their protection using existing law enforcement tools and frameworks in compliance with their human rights obligations under domestic and international law.**
2. **Member States must assume responsibility for identifying and protecting victims of human trafficking (“VHT”). They must take steps to ensure that existing frameworks are made accessible to potential victims and, where necessary, adapt domestic policies, practices and mechanisms to ensure that they are capable of providing appropriate protections in this context. The burden of investigation and evidencing their status as VHT must not fall on the victims themselves where it is impossible for them to discharge this burden; rather the state must prioritise the protection of a potential VHT – if necessary by ensuring they are relocated to a place of safety from where a full investigation may be carried out to determine their status and ensure that an appropriate protection and support package is made available.**
3. **All policies which exacerbate the vulnerabilities of individuals detained in NES (extending from citizenship deprivation to draconian sanction regimes) should be modified or abandoned immediately to mitigate serious human rights concerns and ensure that protection of the most vulnerable is prioritised.**
4. **Member States must cease the support for transfer of their nationals from NES to jurisdictions where they are at a foreseeable risk of torture or the death penalty.**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**MEMBER STATES’ REFUSAL TO REPATRIATE**

It is infeasible for Kurdish officials to try the thousands of people they have detained in the context of the fight against Daesh, the vast majority of whom are children. Despite this situation, many Member States continue to refuse to repatriate their nationals from NES, effectively condemning their own nationals to continued and indefinite arbitrary detention in conditions amounting to CIDT.[[1]](#footnote-1)

Your mandate has already recognized that Security Council resolutions[[2]](#footnote-2) trigger a binding Chapter VII obligation to ensure appropriate prosecution, rehabilitation, and reintegration of “foreign terrorist fighters”.[[3]](#footnote-3)

**Since detention in NES is an untenable situation exacerbated by the US withdrawal,[[4]](#footnote-4) Turkish incursion,[[5]](#footnote-5) recent breakouts,[[6]](#footnote-6) resurgence of Daesh[[7]](#footnote-7) and Covid-19[[8]](#footnote-8), at a minimum, this legal obligation must extend to the repatriation of Member States’ nationals detained in NES.[[9]](#footnote-9)**

Instead of meeting their obligations, many Member States have refused to repatriate adults detained in the region and have taken a piecemeal approach to the repatriation of children.[[10]](#footnote-10)

There policies place vulnerable individuals in a legal black hole which triggers a cascade of human rights violations. As set out below, the total failure to recognize, identify and protect victims of human trafficking is clear evidence of the consequence of this approach.

**FAILURE TO IDENTIFY AND PROTECT VICTIMS OF HUMAN TRAFFICKING (“VHT”)**

There is a near universal failure to recognise and protect the many VHTs who find themselves detained without charge and at real risk of serious harm and further violations and exploitation in the camps. As the High Commissioner has recently acknowledged**,** many individuals inside the camps in NES “are themselves victims of serious violations of human rights” and may “have been trafficked or otherwise forced into marriage, sexual slavery and exploitation by UN-listed terrorist groups.” These victims should not be denied the legal protections afforded to VHT, including repatriation,[[11]](#footnote-11) based solely on their alleged association with Daesh.

Reprieve has, through its work on the ground and direct – although extremely limited and difficult – communications with those in the camps and their families, seen a range of ways in which highly vulnerable indivudals are targeted, exploited, groomed and deceived into travelling to Syria. The reasons for their vulnerability are varied and complex, but include situations of domestic violence and coercive control, isolation and manipulation and exploitation. Once there, they frequently find themselves effectively imprisoned and forced into domestic servitude or slavery, sexual abuse and forced marriage, rape and reproductive slavery. Their accounts detail repeated revictimisation and further exploitation. Those who have managed to escape and seek refuge in the camps, along with any surviving children, will inevitably be emotionally and often physically traumatised. These individuals should meet the criteria of VHTs, which rightly recognize that many traffickers rely on exploiting the vulnerable, disempowered and isolated, creating ever more unequal power dynamics until their victims are no longer in a position to resist.

In NES detention, many may themselves not even be aware that they are VHTs. Their existence is focused on physical survival and protection of their children. They will be unfamiliar with the legal frameworks designed to identify victims of trafficking and many may not yet be able to recognise their own exploitation by virtue of their own conditioning and traumatisation.

As their home countries are unwilling to assist them, there are no practical means by which a VHT can be identified and then afforded the protections their status as a VHT should attract. It is essential that Member States assume full responsibility for identifying and protecting those who were citizens or residents in their state at the time of entry into Syria as soon as they become aware that they may be a VHT. In line with the accepted position under international law, Member States cannot require that potential VHTs provide evidence which they cannot possibly access in order to support a referral or request for recognition and assistance.

As set out above, Reprieve has identified several case studies of individuals who likely meet the international definition of VHT, but whose home countries have decided to leave them in the NES camps at risk of revictimization in contravention of Article 9 of the Palermo Protocol on Trafficking in Persons.[[12]](#footnote-12) There may be hundreds of such cases as yet unidentified among those detained in NES. Anonymised details of three of the cases Reprieve has identified are presented in the chart at Annex 1.

**Given these circumstances, where an exceptionally vulnerable group of VHT are abandoned in a legal black hole, the burden for identification of VHTs and affording VHTs the protection their status entails must be assumed by Member States.**

**POLICIES WHICH EXACERBATE EXISTING VULNERABILITIES**

*Citizenship Deprivation*

Member States like the UK, Denmark and Australia are resorting to citizenship deprivation as a means of abdicating from responsibility to their nationals in NES. Citizenship stripping is an extreme measure that interferes with the enjoyment of a broad range of rights.[[13]](#footnote-13) Further, because it can only be applied to those with a right to a second nationality, the effect is to create a policy of discrimination against a category of citizens.[[14]](#footnote-14) Individuals who have been deprived of their UK citizenship are uniquely vulnerable as they only need to have a *potential right* to a second citizenship rather than being a dual national at the time of their deprivation. In these cases, individuals are often effectively rendered stateless.

In the Daesh context, many individuals have been stripped of their citizenship where their right to another citizenship is unclear or has not been established.[[15]](#footnote-15) Many will not be notified of the fact of their deprivation. For those who are informed, mounting a legal challenge is near impossible from a camp or prison where: they are not allowed private phone calls with legal counsel; there is a short statutory window of time to appeal.[[16]](#footnote-16) Indeed, the relevant tribunal in the UK has recognized that the appellant in a deprivation decision “*cannot play any meaningful part in her appeal [from NES], and…the appeal will not be fair and effective*.”[[17]](#footnote-17) Despite this finding, it was determined that the appeal could move forward undermining the due process guarantees that are designed to protect individuals from arbitrary deprivation of citizenship.[[18]](#footnote-18)

**The highest standards of procedural fairness must apply in any situation where a fundamental right, like deprivation of one's citizenship, is breached and the burden must be on the offending state to demonstrate that these standards are met. Citizenship must not be deprived when these standards are impossible to meet, as is the case in NES.**

*Restrictions on Assistance from Overseas*

Individuals in NES are made even more vulnerable to human rights abuses by the implementation of draconian sanction regimes which cut detainees off from all material, financial, and legal assistance. These include, but are not limited to:

* international sanctions regimes which criminalise any forms of assistance which fall outside specifically designated channels;
* domestic criminal law provisions which prohibit any form of financial assistance to those in NES;
* provisions restricting travel and criminalizing anyone who travels to certain geographic regions unless a specific permit is obtained.

In addition to limiting access for legal and human rights advocates, these regimes can have serious social and health ramifications for the detainees. Kurdish officials require payment for a number of essential services in the camps in NES. For example, Reprieve is aware of a woman with diabetes who is losing her eyesight and describes a “burning” sensation in her eyes. An optician who came to the camp said she needed regular injections to prevent blindness. As a result of the sanctions regime which blocks the ability of her family to support her, she cannot afford the treatment, meaning she is slowly going blind in the camp.

Since families cannot provide their loved ones with funds without risk of criminal prosecution, detainees are forced to rely on the goodwill of the camp officials and other residents for their survival, protection and basic needs. This situation is particularly problematic for VHT as they are at a heightened risk of being re-trafficked and exploited.

**To avoid the further erosion of fundamental rights, Member States must tailor sanction regimes so that human rights advocates, lawyers and family members can safely advocate for, travel to meet with, and provide support (including funds, where necessary) for detainees in NES without risk of criminal charges or fines.**

**COMPLICITY IN DEATH PENALTY AND TORTURE**

In creating a legal black hole in NES, Member States have increased the risk of transfer to Iraq or Assad-controlled Syria where torture and the death penalty are common.

Some Member States are taking this a step further by actively supporting the transfer of their nationals to jurisdictions which routinely violate human rights. For example, the Special Rapporteur on extrajudicial executions has expressed concern that French nationals were transferred from NES at the alleged request and with the support of the French government.[[19]](#footnote-19) In Iraq, these nationals faced torture-induced confessions, five minute trials without effective representation and death sentences.[[20]](#footnote-20)

Similarly, there is evidence that the UK is actually funding Iraqi courts to prepare for the transfer of UK nationals to the country for prosecution. The UK also shared evidence for a death penalty-eligible prosecution in the US in the case of Alexanda Amon Kotey and El Shafee Elsheikh, in a move that was later found to be unlawful by the UK Supreme Court.[[21]](#footnote-21) In this case, the UK decided not to request assurances from the US that the men would not face the death penalty before sharing this evidence, in contravention of decades of UK policy and practice. These examples demonstrate a sinister erosion of human rights and the rule of law in the name of ‘counter-terrorism’.

**Abolitionist states should maintain and robustly defend their stance against the death penalty and torture and reflect this in all actions and policies. Member States must immediately cease seeking to carve out exceptions to this by actively or tacitly supporting capital trials of their nationals overseas, irrespective of alleged counter-terrorism concerns.**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ANNEX 1**

|  |  |  |  |
| --- | --- | --- | --- |
| **Case Study** | **A** | **B** | **C** |
| **Evidence relating to the ‘Act’ element of VHT** | * At age 12, A was taken to Syria by an older male relative.
 | * B’s ex-partner (D) arranges for B and their infant daughter to travel to Syria.
 | * At 11 years old, C was taken to Syria by an older male relative.
 |
| **Evidence relating to the ‘means’ element of VHT** | * At age 12, A is unable to offer consent so this element is automatically met.
 | * B’s ex-partner (D) is abusive.
* He threatens to have B’s daughter kidnapped if she does not agree to travel to Syria.
* B is in a state of anxiety and trauma.
* B’s travel to Syria was a result of coercion and threat by D.
 | * At age 11, C is unable to offer consent so this element is automatically met.
 |
| **Evidence relating to the ‘purpose’ element of VHT** | * A was left by the family member in a Daesh guesthouse. She never saw them again.
* Aged 14, D was married to an adult male and was moved from the guesthouse to live with him.
* She gave birth to her first child at 15, still a child herself.
* Reprieve understands A was likely trafficked for the purpose of sexual exploitation.
 | * B is unable to leave Syria. She attempts to escape, but is caught and imprisoned.
* B is forced to marry and she has two further children.
* Reprieve understands B was likely trafficked for the purpose of sexual exploitation.
 | * As a young male, C was expected to train and fight with Daesh. C sought to avoid this by disguising himself in a niqab and hiding.
* Reprieve understands C was likely trafficked for the purposes of forced labour.
 |

1. *Shamima Begum (Preliminary Issue : Substantive)* [[2020] UKSIAC SC\_163\_2019](http://www.bailii.org/uk/cases/SIAC/2020/SC_163_2019.html); <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25899&LangID=E>. [↑](#footnote-ref-1)
2. UNSCR 1373, 2178, and 2396. [↑](#footnote-ref-2)
3. OHCHR, *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*, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24637> [accessed 30 June 2020];

 *see also*, UAFRA 8/2019. [↑](#footnote-ref-3)
4. Available at: <https://www.nytimes.com/2019/10/13/us/politics/mark-esper-syria-kurds-turkey.html>. [accessed 30 June 2020]. [↑](#footnote-ref-4)
5. Available at: <https://www.politico.eu/article/8-questions-about-turkeys-incursion-into-syria-answered/>. [accessed 30 June 2020] [↑](#footnote-ref-5)
6. Available at: <https://www.thedefensepost.com/2020/03/29/isis-syria-kurds-prison-escape/>; [accessed 30 June 2020]; see also,

<https://www.theguardian.com/world/2019/oct/13/kurds-say-785-isis-affiliates-have-escaped-camp-after-turkish-shelling> [accessed 30 June 2020] [↑](#footnote-ref-6)
7. Charles Lister, ISIS’s dramatic escalation in Syria and Iraq (May 4, 2020), [accessed 30 June 2020]; see also, <https://www.mei.edu/blog/isiss-dramatic-escalation-syria-and-iraq>. [accessed 30 June 2020] [↑](#footnote-ref-7)
8. Available at: <https://www.aa.com.tr/en/latest-on-coronavirus-outbreak/pandemic-out-of-control-in-kurdish-region-minister/1868442>. [accessed 30 June 2020] [↑](#footnote-ref-8)
9. This recommendation is premised on the home state recognizing international human rights standards in the rehabilitation, and where appropriate, prosecution, of their returned national. [↑](#footnote-ref-9)
10. See for example, the UK, France, Belgium, Australia, Denmark, and Sweden. These piecemeal repatriations often involve family separations which is contrary to the best interest of the child and international law. See for example, *You Will Never See Your Child Again*, Physicians for Human Rights, <https://phr.org/wp-content/uploads/2020/02/PHR-Report-2020-Family-Separation-Executive-Summary.pdf>. [accessed 7 April 2020]; *The Torture of Forcibly Separating Children from their Parents* (18 Oct. 2018), <https://www.justsecurity.org/61138/torture-forcibly-separating-children-parents/>. [accessed 30 June 2020]; CRC articles 7(1), (1), 9(1) and 9(3). [↑](#footnote-ref-10)
11. Articles 6 & 8, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: https://www.refworld.org/docid/4720706c0.html [accessed 30 June 2020]. [↑](#footnote-ref-11)
12. Article 9, Protocol to Prevent, Suppress and Punish Trafficking in Persons. [↑](#footnote-ref-12)
13. These rights include (but are not limited to) *the right to vote, work, family life, be free from CIDT, have an effective remedy, and freedom of movement.*  [↑](#footnote-ref-13)
14. [Amicus Brief](https://www.ohchr.org/Documents/Issues/Racism/SR/Amicus/DutchImmigration_Amicus.pdf) presented by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (23 October 2018) [39]. [↑](#footnote-ref-14)
15. See for example the cases of Shamima Begum in the UK and Neil Prakash in Australia. [↑](#footnote-ref-15)
16. Governments like the UK allow notification of a deprivation to be “served to file” where service otherwise is not possible. [↑](#footnote-ref-16)
17. *Shamima Begum (Preliminary Issue : Substantive)* [[2020] UKSIAC SC\_163\_2019](http://www.bailii.org/uk/cases/SIAC/2020/SC_163_2019.html) para 143. [↑](#footnote-ref-17)
18. [A/HRC/13/34](https://www.right-docs.org/doc/a-hrc-13-34/), paras. 43, 44; See also, [A/HRC/25/28,](https://undocs.org/en/A/HRC/25/28) para. 31. [↑](#footnote-ref-18)
19. OHCHR, UN expert urges efforts from France for the return of 7 nationals awaiting execution in Iraq (12 Aug 2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24887&LangID=E>. [accessed 30 June 2020] [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Beth Van Schaak and Julia Brooks, With a little help from our friends: Prosecuting the ISIL “Beatles” in U.S. Courts (Oct 22, 2019), <https://www.justsecurity.org/66653/with-a-little-help-from-our-friends-prosecuting-the-isil-beatles-in-u-s-courts/>. [accessed 30 June 2020] [↑](#footnote-ref-21)