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**The Limits of Equality and Gender Discourses in
Counter-Terrorism: The Case of Women and
Children in Syria and Iraq¹**

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Recent years have felt like an exercise in constant whiplash as lawyers and scholars valiantly seek to assess and comprehend the events taking place on the ground in Turkey, the Northern Syrian Arab Republic and Iraq. There is much that can be said about all of it, but these remarks are focused on the position for women and children in the Northern Syrian Arab Republic and Iraq being held (for now) in detention camps controlled by the Syrian Democratic Forces (“SDF”) or being held in Iraqi prisons pending trial for a variety of offences premised on or related to Islamic State (“IS”) proximity.²

The conditions in such camps are deeply distressing and reach the threshold of “torture, inhuman and degrading” treatment under international law. There is limited access to food and water, shelter is precarious and inadequate, conditions

1. This keynote draws in part on a position paper previously issued by the Special Rapporteur, available at <https://www.ohchr.org/EN/Issues/Terrorism/Pages/Statements.aspx>.

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2. A 2019 report “estimates that up to 4,761 (or 13 per cent) of those who travelled to Iraq and the Syrian Arab Republic were women.” United Nations Sec. Council, Counter-Terrorism Comm. Exec. Directorate, Gender Dimensions of the Response to Returning Foreign Terrorist Fighters: Research Perspectives CTED Trends Report February 2019, at 6 (2019). “There were, however, some notable regional differences. Eastern Asia contributed the highest proportion of women to its FTF population (35 per cent), followed by Eastern Europe (23 per cent), Western Europe (17 per cent) and the Americas, Australia and New Zealand (17 per cent); Central Asia (13 per cent) and South-Eastern Asia (13 per cent), Southern Asia (12 per cent), Middle East and North Africa (MENA) (6 per cent), and Sub-Saharan Africa (<1 per cent).” *Id.*

for children are poor leading to illness and premature death, medical provision is sparse, many detainees are subject to interrogation without minimum due process guarantees and potentially trial for terrorism related offences.³ In parallel, there is evidence of an ongoing informal presence of Islamic State in Iraq and the Northern Syrian Arab Republic (“ISIS”) authorities of various forms within the camps meaning that girls, women and their children continue to be subject to the coercive control of non-State groups even as they are held by state or quasi-state authorities. In Iraq, some children are held with their mothers who have been sentenced to death by Iraqi courts for their association with ISIS. Prison conditions in Iraq are overcrowded and structurally poor; concerns abound around ill-treatment in custody as well as inadequate conditions of confinement for women and children.⁴

First, a word about nomenclature. Feminist scholars have long paid attention to terminology recognizing the discursive and power attributes of language use and characterization.⁵ Various scholars, policy makers, and United Nations entities use different words to describe the groups discussed here. They include “ISIL associated women”, “women and children with links to United Nations Listed Terrorist Groups,” and “Foreign Fighters and their families” to name but a few. One of the challenges with all of these terms is that they inherently define and categorize women and children by virtue of their association with particular men or groups of men. It would seem to state the very obvious that in defining the legal rights and responsibilities of any group, we start from the premise of their individuality and individual status and not assume their legal rights and entitlements flow by virtue of the man with whom they are attached. The pitfall of associative status for women is a well-

3. In respect of Iraq, prosecutions of most foreign fighters fall under Iraq’s Anti-Terrorism Law. The death penalty is applicable to crimes contained in that law. The law’s definition of terrorism is overly broad and ambiguous. Anti-Terrorism Law of 2005 No. 13 of 2005 (Iraq); OFFICE OF THE UNITED NATIONS HIGH COMM’R FOR HUMAN RIGHTS, UNITED NATIONS ASSISTANCE MISSION FOR IRAQ, HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE IN IRAQ: TRIALS UNDER THE ANTI-TERRORISM LAWS AND IMPLICATIONS FOR JUSTICE, ACCOUNTABILITY AND SOCIAL COHESION IN THE AFTERMATH OF ISIL (Jan. 2020).

4. Agnès Callamard (Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions), *Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on Her Mission to Iraq*, U.N. Doc. A/HRC/38/44/Add.1, (June 5, 2018).

5. See in particular French post-structural feminism. See, e.g., Helene Cixous et. al., *The Laugh of the Medusa*, 1 SIGNS 875, 876 (1976).

trodden patriarchal road that has been broadly abandoned (at least rhetorically) in other international law areas, including, but not limited, to global regulation in health, environment, international criminal law, refugee law and more. However, it appears to have a curious persistence in the context of discussions concerning the women and children who are presently found in Iraq and the Northern Syrian Arab Republic and that have been identified as combatants, supporters, victims or some version of all of the above in relation to armed groups such as Islamic State, Jabhat Fatah al-Sham (formerly Jabhat al-Nusra), Ahar al-Sham and Hezbollah. The core point I emphasize in the necessary attention to naming, is the extent to which the ‘what’ and ‘how’ of naming these women and children defines almost all else that follows, and has become a convenient starting point from which States have defended their decisions to avoid return of their citizens to countries of birth, origin or citizenship.

The second broad comment is aptly made when this conference takes place in the week following the multiple celebrations of the Women, Peace and Security (“WPS”) agenda held in New York. This has become a yearly ritual in which States broadly congratulate themselves for the inclusion of women in the peace and security arena. The WPS agenda, which I have written about extensively,⁶ was birthed by United Nations Security Council Resolution 1325 and is shaped around three pillars of women’s inclusion in the peace and security space: prevention (of violence), protection (from violence) and participation (in peacemaking and post-conflict reconstruction). As I and other commentators have noted elsewhere,⁷ the WPS agenda has been marked by various fault-lines and hierarchies, including the conflicts to which the agenda is deemed to apply. But most obviously in this context, WPS shows its distinct limitations by demarking the women (and girls) who are included into the prevention and protection mantras offered and

6. FIONNUALA NÍ AOLÁIN ET AL., ON THE FRONTLINES: GENDER, WAR, AND THE POST-CONFLICT PROCESS 208 (2011); Fionnuala Ní Aoláin and Nahla Valji, *Critical Perspectives on the Women, Peace and Security Agenda* in *The Women Peace and Security Handbook* (eds) Sara Davis and Jackie True (Oxford University Press) (2019); Fionnuala Ní Aoláin, *The War on Terror and Extremism: Assessing the Relevance of the Women, Peace and Security Agenda*, 92 INT’L. AFF. 275, 275–91 (2016).

7. See *Part II: The Security Council’s WPS Agenda/Contemporary Survey*, in *THE OXFORD HANDBOOK OF GENDER AND CONFLICT* 103–96 (Fionnuala Ní Aoláin et al. eds., 2018).

those who are not. It has been patently clear that only certain privileged groups of women and girls in the Northern Syrian Arab Republic and Iraq are brought into the WPS 'tent' (whether by States or the activist groups advocating to expand and sustain WPS), and other distinctly languish outside it. The consequences of this selective application is to weaken the universality of WPS claim-making as a whole, to reveal obvious (and historically) aligned fissures in the determination of 'deserving' and 'undeserving' women in international legal discourses, and to further marginalize the women and children who are the subject of global counter-terrorism regulation.

These women and girls, men and boys who are detained in inhumane conditions in overcrowded camps, prisons, or elsewhere in the Northern Syrian Arab Republic and Iraq are rightly the subject of global concern. This population exists in highly fluid, complex and intersecting conflict zones, surviving precarious situations which impinge fundamentally on human rights and international humanitarian law. Despite the broadly agreed inhumane, degrading and increasingly dangerous situations of their detention, there has been a patchy response by States to ensuring return, reparation, rehabilitation, reintegration and, where appropriate, prosecution of women.⁸

A. SITUATING THE COMPLEXITY OF WOMEN'S EXPERIENCES AND CHOICES IN THE NORTHERN SYRIAN ARAB REPUBLIC AND IRAQ

Mobilization to join a non-State/terrorist group is a complex and multifaceted process. There is no singular or linear path to mobilization, but there are clearly pathways to mobilization and it is possible to identify a range of factors that enable and sustain

8. Positive return practice includes the example of Kosovo. The government started preparing to bring citizens home in 2017 when ISIS started losing territory, including "providing medical help, psychiatric treatment and counselling, housing, social services, special education, and reintegration." Valerie Plesch & Serbeze Haxhiaj, *Kosovo Is Trying to Reintegrate ISIL Returnees. Will It Work?*, ALJAZEERA (June 9, 2019), <https://www.aljazeera.com/indepth/features/kosovo-reintegrate-isil-returnees-work-190608200858002.html>. The effort is being directed by Fatos Makolli, the new National Coordinator of the Department for Countering Terrorism and Violent Extremism, a department under the Prime Minister's office. In April 2019, the government of Kosovo (with the help of the United States) repatriated 110 of its citizens (four men, 32 women, and 74 children). *Id.*

mobilization for men and women alike.⁹ Those pathways have gendered dimensions. Historically, there is far more evidence of women being recruited by ethno-national armed groups than by religious militants,¹⁰ a matter I have addressed in previous work.¹¹

Complex questions emerge when we consider whether women's engagement as combatants/terrorists and involvement in violent acts should be interpreted as "a sign of women's newfound empowerment" and simultaneously as "an indication of ongoing gender oppression."¹² Terrorist organizations, as well as non-State armed groups, have demonstrated remarkable sensitivity to deploying gender-specific appeals to women as a recruitment tactic.¹³ They include feminist appeals for equal participation, the offer of redemption to women who have violated the gender norms of their own societies, revenge, nationalism, and religious precept.¹⁴ Remarkably, specific mobilization efforts directed at the mothers of potential jihadists

9. United Nations Dev. Programme, *Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment*, at 4–5 (2017); Daniel Milton & Brian Dodwell, *Jihadi Brides? Examining a Female Guesthouse Registry from the Islamic State's Caliphate*, 11 CTC SENTINEL 16 (May 2018) (examining the log of an ISIS guesthouse which presents a varied picture of the reasons why women traveled and joined the Islamic State).

10. See, e.g., DAGMAR HELLMANN-RAJANAYAGAM, *THE TAMIL TIGERS: ARMED STRUGGLE FOR IDENTITY* 69–71 (1994); Nur Bilge Criss, *The Nature of PKK Terrorism in Turkey*, 18 STUD. CONFLICT & TERRORISM 17, 20 (1995) (listing recruitment methods for the Kurdistan Worker's Party (PKK), which included kidnapping young men and women).

11. See generally Fionnuala Ní Aoláin, *Situation Women in Counterterrorism Discourses: Undulating Masculinities and Luminal Femininities*, 93 B. U. L. Rev. 1085 (2013).

12. Anat Berko & Edna Erez, *Gender, Palestinian Women, and Terrorism: Women's Liberation or Oppression?*, 30 STUD. CONFLICT & TERRORISM 493, 503 (2007) ("The women's pathways to terrorism took various forms, were triggered by different motives, and reflected different personal circumstances."). Note that the study involved the semi-structured interviews of only fourteen women incarcerated in Israeli prisons. The authors observe that the women interviewed described themselves as both combatants and liberators and placed their actions in the context of Israeli occupation. The interview analysis is made more complex by the context of the study, in which Palestinian women detainees were interviewed by Israeli researchers.

13. See Lindsay A. O'Rourke, *What's Special About Female Suicide Terrorism?*, 18 SEC. STUD. 681, 701–02 (2009).

14. *Id.* at 701 (arguing that there are strong reasons for terrorist organizations to select and encourage women suicide bombers whose biographies depict the behavior of the target state in a negative light, including women who have been sexually violated or who have lost a family member at the hands of the state); *id.* at 702.

indicate that some organizations specifically hone in on the mothering dimensions of mobilization, at the very least to quell mothers' objections to their sons' involvement in jihadist movements.¹⁵ Indeed, there is a deep and "paradoxical relationship between women and contemporary religio-political movements that advocate the re-traditionalization of women's role as they actively mobilize women in public arenas."¹⁶

There are multiple variants of mobilization at play in the emergence of girls and women's presence in the Caliphate. They include girls and women who have travelled from European and other Western states with partners or spouses to join non-State armed groups; girls and women from the region who have followed or supported non-State armed groups by virtue of partners or by individual choice; girls and women who have been forcibly kidnapped or coerced into sexual or other slavery during the conquest of territory by non-State armed groups; girls traveling autonomously but subject thereafter to sexual exploitation and harm on joining or being associated with non-State armed groups and girls who have been groomed on-line and then recruited and enabled to travel thereafter marrying, and/or providing sexual or household services to their husbands, as well as providing labour for the larger non-State armed group/terrorist organization.¹⁷ In all of these categories, girls and women have given birth to children. Notably, across all of these categories, multiple forms of marriage have taken place.¹⁸

15. See Farhat Haq, *Militarism and Motherhood: The Women of the Lashkar-i-Tayyabia in Pakistan*, 32 SIGNS: J. WOMEN CULTURE & SOC'Y 1023 (2007) (quoting a speech by Hafiz Saeed, who recounted an elderly woman telling him, "I am a poor widow; I have done hard labor to bring these sons up. Now I have heard the call of jihad. I have no money to give, but I have this treasure, these sons. Take my second son and when he is martyred I will have the third one ready.").

16. *Id.* at 1024; see also MALATHI DE ALWIS, *Motherhood as a Space of Protest: Women's Political Participation in Contemporary Sri Lanka*, in APPROPRIATING GENDER: WOMEN'S ACTIVISM AND POLITICIZED RELIGION IN SOUTH ASIA 185, 186 (Patricia Jeffery & Amrita Basu eds., 1998) (characterizing the Mothers' Front movement in Sri Lanka as one that drew large female support using "essentialist views of women that reinforce the notion of biology as destiny and legitimize a sex-role system that . . . encourages masculinized violence and destruction").

17. An apt summary of the complexity is provided by Diakonia Lebanon International Humanitarian Law Resource Desk, *The Legal Status of ISIS: Affiliated Foreign Nationals Held in Detention in North-East Syria* (Aug. 2019), at 9 ("It must also be borne in mind that one female individual could 'bridge' different categories, potentially being a minor, an orphan, a wife or widow, a mother, a former combatant, and several or all of these at the same time.").

18. Rukmini Callimachi, *The ISIS Files*, N.Y. TIMES (Apr. 4, 2018),

Some of these marital unions only loosely map onto forms of legally recognized union in the states of nationality for the girls and women concerned. In all of these categories, girls and women have given birth to children, at times from multiple partners or spouses and generally quickly following the death of one partner or spouse women were (re)married. In the case of sexual slaves, girls and women were sold or passed on to other militants.

I have argued that States of citizenship with the responsibility for returning and reintegration must disaggregate the experience of women and girls and recognize the complexity of birthing, violence and gendered realities under the Caliphate.¹⁹ An analysis of mobilization, including roles and motivations, is necessary to understand the complexities of each individual situation. Particular attention must be paid to women and girls who have been forcibly kidnapped, coerced into sexual or other slavery, subjected to sexual exploitation and harm on joining or being associated with non-State armed groups as well as to girls who have been groomed on-line and recruited and enabled to travel marrying. States must also bear in mind that the distinction between victims and perpetrators can be complex, with returnees being victims of terrorism, trafficking, slavery or sexual violence as well as perpetrators of criminal offences. I have been particularly concerned about the view (and practice through prosecution by some States) whereby maternal responsibilities are taken as qualifying a woman as lending 'material support' to terrorism. I am equally struck by the lack of nuance and complexity in primarily Western States' positioning as regards women and children held in camps or prisons in Iraq and Syria.

<https://www.nytimes.com/interactive/2018/04/04/world/middleeast/isis-documents-mosul-iraq.html> (noting that various forms of marriage and marital union were sanctioned by ISIS had municipal offices issuing certificates for marriage and births).

19. On the responsibility of States to their nationals found overseas in the Syrian Arab Republic, see *Extra-territorial jurisdiction of States over children and their guardians in camps, prisons, or elsewhere in the northern Syrian Arab Republic*, UNITED NATIONS HUM. RTS. SPECIAL PROCEDURES, <https://www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf>.

B. CHILDREN: THE LEGAL AND MORAL OBLIGATIONS OF STATES

There are few words to adequately capture the conditions under which boys and girls are being birthed and living in detention in Syria and Iraq. In these appalling circumstances of daily life, not of their own making, returning children is a humanitarian and human rights imperative. The argument that children are not deserving of protection constitutes a moral failure by their home countries, particularly those who have ample resources.

State and non-State actors at all levels should affirm and respect the fundamental vulnerability of children caught up in armed conflict, through a range of circumstances almost always not of their own making, or from contexts which have no meaningful exit. Children enjoy special protection in accordance with the Convention on the Rights of the Child and its Optional Protocols as well as international humanitarian law. Children must always be treated primarily as victims, while the best interest of the child must always be a primary consideration. There is no doubt that states have obligations to undertake individualized assessments for each child, determining what integration needs may be based on comprehensive, multiagency, and multidisciplinary approaches for addressing their needs, while preventing discrimination based on nationality, birth status, immigration status, and statelessness. One sees a grave danger that we relegate these children by virtue of their birthing and family proximity to violence as non-children, impugning responsibility when none is possible and effectively ‘unchilding’ such children from the status of child itself.²⁰ The logic corollary to the moral hazard of ‘unchilding’ is that States should take all necessary measures to avoid the stigmatization or creation of further negative distinctions between children who were born of rape, children who were recruited because of their vulnerable birth status, or children who participated in hostilities enabled by their birth status.

20. This concept of ‘unchilding’ comes from NADERA SHALHOUB-KEVORKIAN, *INCARCERATED CHILDHOOD AND THE POLITICS OF UNCHILING*, (Cambridge University Press, 2019); “Unchilding . . . operates profoundly through the disruption of the intimate that is embodied in the bipolitical and visceral as well as through the global and local politics of silence, negligence, intervention and inaction: with wounding regulations and nonregulations inherent in a geography of power within settler-colonial contexts that is inherently and necessarily preoccupied with children.” at 17.

Let me turn in particular to a specific overlapping category of women and children which has received little substantive attention, namely children born of rape currently being held in detention with their mothers in camps maintained and securitized (for now) by SDF personnel or held in prisons in Iraq. To address the status of these children, some consideration of the context of their conception and birth is necessary. First, there is increasingly robust evidence that some (here it is difficult to accurately formulate precise numbers) girls and women willingly travelled to join the ISIS and other non-State actor groups.²¹ They did so for the variety of reasons outlined in the mobilization analysis (above). The extent to which consent to travel to join a particular group, and to partake of its ideology can be taken as consent to sexual encounters, marriage, and remarriage is deeply problematic, primarily from a criminal law perspective.²² Second, for specific groups sexually targeted by ISIS including Yazidi girls and women, there is a broad consensus that the attack, capture and slavery of this group constitutes a crime against humanity, and is in breach of both human rights and humanitarian norms.²³ Third, we have a sizeable category of girls (defined as children under the Convention of the Rights of the Child) who travelled without the consent of parents or family to join ISIS. The methods by which these young women were groomed to travel bears many of the hallmarks of grooming associated with sex-trafficking. Sexual acts with those young women who were minors when they travelled is broadly considered statutory rape under many of the

21. See Hamoon Khelghat-Doost, *Women of the Caliphate: The Mechanism for Women's Incorporation into the Islamic State (IS)*, 11 PERSP. ON TERRORISM 17, 17–25 (2017).

22. *ISIS's Persecution of Women*, COUNTER EXTREMISM PROJECT, <https://www.counterextremism.com/content/isiss-persecution-women> (last visited Mar. 7, 2020) (noting that while certain fatwahas were issued requiring female 'consent' to marriage, in practice there was sustained evidence of forced marriage, as well as authorizations for early marriage).

23. Noting also that it appears religious justifications were applied to the rape of certain women ISIS including a Quranic quote [Al-Mu'minūn: 5–6] to justify its policy of rape: "And [men] who guard their private parts, except from their wives or those their right hands possess, for indeed, they will not be blamed." As outlined in Dabiq, ISIS interpreted "those their right hands possess" as a modern reference to slaves); Press Release, U.N. Off. of the Special Rep. of the Sec. Gen. on Sexual Violence in Conflict, U.N. Representative for Sexual Violence in Conflict Urges Support for Tracing and Return of Yazidi Girls captured by ISIL (Sept. 17, 2015), <https://www.un.org/sexualviolence/inconflict/press-release/un-special-representative-on-sexual-violence-in-conflict-urges-support-for-tracing-and-return-of-yazidi-girls-captured-by-isis/>.

applicable domestic criminal laws of the countries they come from. To this end, an unwillingness to see women and girls as victims of terrorism presents another profound ethical abdication of responsibility by States.

Finally, given what is known about the practices of multiple and sequential marriages between the girls and women and the fighters, there are trying questions about the degree of consent in any of these arrangements. For example, if a girl or woman originally willingly travelled to Iraq or Syria with a partner or spouse, but then encountered unexpected social, economic, familial disruptions or trauma, how one calculates the totality of consent involves a testing and legally complex assessment. If the same girl or women, after the death of a spouse or partner was re-remarried without her consent or in highly coercive or exploitative circumstances,²⁴ such a relationship and the sexual aspects of it, including rape, would be considered in a different light overall both in terms of applicable criminal law but also in terms of addressing her continued citizenship status, and her ability to return to her country of citizenship/origin. Bearing in mind, that the capacity of any girl, woman, boy or man to question the social structures and moral imperatives of the Caliphate were extremely limited,²⁵ the outward expression of dispute on one's status or disposition cannot be taken at face-value.

Assessing the numbers of children conceived and born of rape and/or sexual coercion is almost impossible. For the purposes of this analysis, we can reasonably presume that an indeterminate number of these children may have been born as a result of rape. But it is also clear that there are deep political cleavages in having concrete human rights compliant policies and practice follow from widespread recognition that sexual violence occurred during this conflict. In short, while many governments may recognize that sexual violence took place on a wide scale, this does not translate into a meaningful repatriation policy, nor does it result in medical, social, economic or legal support to women, girls and children on the ground. Moreover, if support to and specifically tailored programs addressing the

24. United Nations Sec. Council, Counter-Terrorism Comm. Exec. Directorate, *The Challenge of Returning and Relocating Foreign Terrorist Fighters: Research Perspectives*, at 4 (2018) (noting that the death and casualty rate on the battlefield was high).

25. See Khelgaht-Doost, *supra* note 21, at 17. (mentioning the regulation of women's lives by ISIS created gender segregated parallel institutions).

needs of children born of rape in conflict are a scarce commodity correlated with structural gender discrimination particularly in patriarchal and patrilineal societies, the potential for transformative approaches are even more limited in Iraq and Syria.²⁶

For straightforwardly (in the terms used by Western counter-terrorism policy dictates) “innocent” victims of sexual violence by ISIS, the most compelling and visible are Yazidi girls and women, for whom there has been a rhetorical outpouring of global sympathy. In reality, this wide-spread empathy is not matched in practice by either accountability or restitution. There has been little dispute in naming the harms to these girls and women, such as systematic sexual violence, genocide, and crimes against humanity. Many Yazidi religious leaders and their community accept that their women and girls were abused against their will and have created pathways for them to reenter their families and society, although not always for the children they birthed.²⁷ The children birthed from such extreme violence have received no such treatment, as the religious leaders have issued no positive proclamations to accept these children, *de facto* rejecting them and their mothers should they choose to remain with their offspring.

Girls and women who travelled to North-East Syria and Iraq—whether on their own initiative, to join spouses or under family religious/social pressure, from on-line cyber grooming,²⁸

26. JOANNE NEENAN, CTR. FOR WOMEN, PEACE & SEC., LONDON SCHOOL OF ECON. & POLITICAL SCI., CLOSING THE PROTECTION GAP FOR CHILDREN BORN OF WAR: ADDRESSING STIGMATISATION AND THE INTERGENERATIONAL IMPACT OF SEXUAL VIOLENCE IN CONFLICT (2017); BRIGITTE ROHWERDER, REINTEGRATION OF CHILDREN BORN OF WARTIME RAPE 2 (2019) (“Their lack of inclusion in policy making has been attributed to the perceived issue of a ‘lack of data’, with children born of sexual violence generally being a hidden population; ethical concerns about ‘doing no harm’ and fears around breaking ‘protective silences’, which may have deterred action; and ‘the range of political and cultural taboos and sensitivities children born of sexual violence bring to the surface within conflict states and the international community.’”).

27. Brenda Stoter Boscolo, *Every Mother Loves Her Child: Yazidi Women Forced to Give up Children Born of Rape by Islamic State Fighters*, TELEGRAPH (July 21, 2018, 1:00 PM), <https://www.telegraph.co.uk/news/2018/07/21/every-mother-loves-child-yazidi-women-forced-give-children-born/>; see also Sahika Yüksel et al., *Genocidal Sexual Assault on Women and the Role of Culture in the Rehabilitation Process: Experiences from Working with Yazidi Women in Turkey* 28 TORTURE: J. ON REHABILITATION TORTURE VICTIMS & PREVENTION TORTURE 124, 126 (2018).

28. See generally Susan S. M. Edwards, *Cyber-Grooming Young Women for Terrorist Activity: Dominant and Subjugated Explanatory Narratives*, in CYBERCRIME, ORGANIZED CRIME, AND SOCIETAL RESPONSES 23 (Emilio C.

or recruitment—face a deep reservoir of distrust, rejection and are primarily viewed as security threats to their countries of residence and origin. The ambivalence of these responses to the girls and women who were members of or associated with ISIS in various ways is illustrated by their treatment at the fall of the Caliphate. Many of those not directly or indirectly killed in combat as collateral damage are being held apparently now in indefinite detention with little substantial movement on ameliorating their living conditions or their long-term prospects. To state the obvious, many of these women and girls are victims, and many have experienced sexual violence in conflict. This pointed reality appears to be ignored by their states of origin in totalizing and dehumanizing narratives that fail utterly to address the human rights and humanitarian norms that these States are obliged to take account of. To denote this as a moral failure is to state an obvious fact, to point out the long-term security implications of such short-term thinking is to hit another brick wall.

CONCLUSION

I take the view that the return of women and children to countries of origin or nationality is the only comprehensive response that amounts to a positive implementation of Security Council resolutions 2178 (2014) and 2396 (2017) and is considerate of States' long-term security interests. States have a positive obligation to take necessary and reasonable steps to intervene in favour of their nationals abroad, should there be reasonable grounds to believe that they face treatment in flagrant violation of international human rights law. This includes flagrant denial of justice, the imposition of the death penalty, torture or cruel, inhuman or degrading treatment, sexual violence, or deprivation of liberty in grave violation of human rights standards, including arbitrary detention, incommunicado detention, and detention that fails to comply with the most basic standards of humanity.

I have had the responsibility to meet with many returnees in my role as U.N. Special Rapporteur over the past three years. These include imprisoned Jihadis, women, boys and girls after their return from Syria and Iraq in countries, such as Belgium, France and Kazakhstan. I have taken the time to listen without

judgement to their stories, to hear what prompted them to travel, to absorb the details of their daily lives, and to be present to the ordinariness and exceptionality and brutality of the lives they have lived. I have heard compelling stories from young women about the way they were introduced to Islamic State online and come to know of the escape it appeared to offer from a range of both mundane and oppressive family and social circumstances; from young (now imprisoned) men who travelled to Syria at a time in Europe when European States were talking about the 'good fight' in Syria and the need to bring down Bashar al-Assad and their subsequent transition through various armed groups; I have heard intrepid stories from women to save their children from a myriad of harms most of us cannot even imagine; and crayon drawings hang in my office at the University of Minnesota from children who spent their formative years in the power of Islamic State and still drew the kinds of images all our children draw when they are learning the first powers of expression. All of this tells me that not only is return to countries of origin a categorical imperative, but also that we have an obligation to listen and fully comprehend the lives that they lived in North-East Syria and Iraq, including our own responsibilities to them. This is not to absolve individuals for responsibility for serious violations of international law including genocide, precisely the opposite, it is only by knowing fully what happened will justice ever be done. It is also to avoid the fundamental misstep of applying human rights norms in inconsistent and selective ways, and only to victims we find easy or sympathetic and whose lives are not compromised in any way. In choosing that route in Iraq and North-East Syria, not only are States betraying their obligations to particular individuals but also they are, in fact, undermining the very foundations of universal human rights norms and practice.