Justice for the Victims: How Canada Should Manage Returning “Foreign Fighters”

by Kyle Matthews
September 2018
POLICY PAPER

JUSTICE FOR THE VICTIMS:
HOW CANADA SHOULD MANAGE RETURNING “FOREIGN FIGHTERS”

by Kyle Matthews
CGAI Fellow
September 2018
Executive Summary

The U.S.-led international coalition has dislodged the Islamic State in Iraq and Syria (ISIS) from the cities it had occupied and controlled, namely Mosul and Raqqa. But while the group is weakened, it lives on and remains dangerous. Both the U.S. Department of Defense and the UN estimate that approximately 30,000 ISIS fighters remain in those countries.

At the same time, a significant number of “foreign fighters” have fled Iraq and Syria. Numerous countries are struggling to find policy solutions with regards to managing the return of their nationals who had joined the group. The Canadian government has stated publicly that it favors taking a comprehensive approach of reintegrating returnees back into society. Very few foreign fighters who have returned to Canada have been prosecuted.

Canada has both a moral and legal duty to seek justice and uphold the most basic human rights of vulnerable populations. ISIS and other jihadist groups engaged in systematic mass atrocities against minorities in Iraq and Syria, including Christians and Shiites. ISIS has demonstrated a particular disdain for the Yazidi minority in Iraq, and the Canadian government has recognized the group’s crimes against the Yazidis as genocide.

As a State Party to the Rome Statute of the International Criminal Court and a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, Canada has a responsibility to uphold these international legal conventions when formulating carefully crafted policy responses that deal with returning foreign fighters. Canada should attempt to prosecute its nationals in domestic courts using the Crimes Against Humanity and War Crimes Act.

Open trials can serve as means by which to lay bare ISIS’ narrative and to help counter violent extremism and future atrocities. They can also serve as a deterrent and warning to other Canadians who might try to join ISIS as it mutates and moves to other countries in the world, such as Libya, Afghanistan, Egypt, the Philippines, Pakistan, or heaven forbid, in Mali where Canadian peacekeepers have recently been deployed.

If Canada truly stands for multiculturalism, pluralism, the rule of law, global justice, human rights, and the liberal international order, then we must stand firm and take a principled stand to prosecute those who have fought under the ISIS banner. That includes our own citizens.
This past August marks the four-year anniversary since the Islamic State in Iraq and Syria (ISIS) attacked the Yazidi minority in the Sinjar region of northern Iraq. Then-U.S. president Barack Obama ordered airstrikes against ISIS to stop them from reaching thousands of Yazidis who were trapped on Mount Sinjar and faced slaughter and starvation. Thousands were saved and it marked the beginning of a major international military operation to degrade and destroy one of the deadliest non-state actors the world has ever seen.

Four years later, the U.S.-led international coalition has dislodged the group from the cities it had occupied and controlled, namely Mosul and Raqqah. Now countries are struggling to find policy solutions with regards to managing the return of their nationals who had joined the group and are frequently referred to as “foreign fighters”.

There is, however, little to no international consensus on what should be done regarding the return of ISIS fighters to their home countries. While the core leadership and fighters are comprised of Iraqi and Syrian nationals, with the UN estimating it still has upwards of 30,000 members in those two countries, the group has managed to recruit “41,490 international citizens from 80 countries” to join it in Iraq and Syria, according to a recent report titled “From Daesh to Diaspora: Tracing the Women and Minors of Islamic State”. In certain cases, coalition countries, including France, the United Kingdom and Australia, have said publicly that they would target their own citizens on the battlefield in Iraq and Syria. The logic among some of Canada’s allies appears to be that it is better to eliminate and destroy the “soldiers of the Caliphate” in Iraq and Syria than allow them to return home and wreak havoc, commit terrorist attacks and indoctrinate others to their ideology and cause. The Canadian government has announced that it is not pursuing this strategy; Public Safety Minister Ralph Goodale stated that “Canada does not engage in death squads.” Instead, Canada is focusing on disengagement and reintegration support, with the intention of ensuring returning foreign fighters do not become a threat in Canada.

Other countries, including the U.K. and Australia, have passed legislation and withdrawn the citizenship of dual nationals believed to have joined ISIS and other violent jihadist groups. At

---

1 The Islamic State in Iraq and Syria is often referred to as ISIS, but also ISIL, IS or Daesh.
3 Although ISIS has lost control of Mosul and Raqqah, the group is still dangerous and has conducted numerous attacks in both Syria and Iraq. Both the U.S. Department of Defense and the UN estimate that approximately 30,000 ISIS fighters remain in those countries. See Agence France Presse, “Counting Islamic State Members an Impossible Task,” Aug. 27, 2018 https://www.france24.com/en/20180822-counting-islamic-state-members-impossible-task.

Justice for the Victims: How Canada Should Manage Returning “Foreign Fighters”

by Kyle Matthews
September 2018
present, the government of Canada is against applying such a policy to any of its dual-national citizens.

**Canada’s Strategy: Ahead by a Century?**

Compared to countries such as Tunisia, France, the U.K. or Belgium, Canada does not have anywhere near the same high number of citizens who joined ISIS. The Canadian government estimates that no more than 180 Canadians joined ISIS and other jihadist groups globally, with approximately 60 having already returned. Some believe that most Canadians were killed and that the number of those who have returned home is much lower.  

In Canada, the issue of how to manage the return of foreign fighters has resulted in highly political debates, demonstrating strong partisan differences on policy choices and strategies to keep Canadians safe. The Liberal government has been accused of being soft on terrorism and national security, while the Conservative opposition has been charged with “fear mongering” and “Islamophobia” for wanting a tougher approach, namely prosecuting returnees.

The issue of how to deal with foreign fighters returning to Canada is of public concern. At a Hamilton town hall held in early 2018, Prime Minister Justin Trudeau was asked about his government’s approach and stated “despite concerns over returning ISIS fighters, Canadians were

---


safe in their country and could rely on the security and intelligence services to keep them that way.” Later, Goodale remarked the government is “focused on monitoring returning fighters and helping them to reintegrate, when possible, into Canadian society.”

While the Canadian public was generally quiet with regards to the government’s approach of managing returning foreign fighters to Canada, a podcast series produced by New York Times journalist Rukmini Callimachi soon had people asking questions. Callimachi interviewed a Canadian man and former ISIS fighter named Abu Huzaifa, also known on social media as Abu Huzaifa al-Kanadi (which translates as Abu Huzaifa the Canadian). During the interview, which was conducted after Huzaifa had already returned to Toronto, he admitted to killing two people execution-style while fighting for ISIS in Syria. The podcast fuelled further debate and once again brought attention to the Canadian government’s strategic approach, focused exclusively on rehabilitating and reintegrating Canadians who are suspected of having fought for ISIS and other extremist groups, rather than prosecuting them.

Herein lies the dilemma. Like many other countries, the Canadian government has stated publicly that it favours taking a comprehensive approach of reintegrating returnees back into society. However, very few foreign fighters who have returned to Canada have been prosecuted. Is this the correct approach, given there is little evidence rehabilitation programs actually work? Do the collective crimes of ISIS warrant a harder and more aggressive approach, namely prosecution? Does Canada’s commitment to international legal instruments and human rights require that we adopt another strategy?

Understanding ISIS and its Crimes: Reflection Points for Canadian Policy-Makers

ISIS has committed numerous atrocities, including abusing the human rights of children as set out in the Convention on the Rights of the Child. The Romeo Dallaire Child Soldiers Initiative has found ample evidence that the group recruited young children to become soldiers. It has indoctrinated children by forcing them to witness public executions, amputations, floggings, and watching videos of extreme violence, including beheadings. It has trained children in the use of light and heavy weapons, rocket-propelled grenades, explosives and other military tactics. It trained children as executioners and forced them to participate in acts of murder. Furthermore, it forced children to participate in suicide missions, either by wearing suicide belts or by riding as passengers in vehicles loaded with improvised exploding devices.

In addition, the group has kidnapped, forcibly detained, tortured and murdered journalists and humanitarian aid workers. ISIS held journalists and aid workers in special prisons allegedly run

---

by foreign fighter cells. During their captivity, victims were subjected to cruel and inhuman treatment. Captors made death threats to victims on camera in advance of execution. American photojournalist Matthew Schrier was kidnapped and held hostage by al-Qaeda in Aleppo, Syria in 2012 and claims three of his abductors were Canadian, with a connection to Montreal.¹⁴

ISIS and other jihadist groups also engaged in systematic mass atrocities against minorities in Iraq and Syria, including Christians and Shiites. ISIS has demonstrated a particular disdain for the Yazidi minority in Iraq. A June 2016 report titled “They Came to Destroy: ISIS Crimes Against the Yazidis” (mandated by the United Nations Human Rights Council)¹⁵ determined ISIS’ abuse of Yazidis amounts to crimes against humanity and war crimes. Following this report, various countries, including Canada, have recognized ISIS’ violence against the Yazidis as genocide.

Current UN Goodwill Ambassador Nadia Murad has been travelling the globe urging countries to help bring justice to the Yazidis by prosecuting ISIS members. Murad knows of what she speaks.

¹⁴ Stewart Bell, “Matthew Schrier was Kidnapped by al-Qaeda in Syria. He Believes Canadians were Involved,” Global News, March 29, 2018

¹⁵ “They Came to Destroy: ISIS Crimes Against the Yazidis,” Human Rights Council, Thirty-second session Agenda item 4, Human Rights Situations that Require the Council’s Attention, June 15, 2016
Four years ago, ISIS attacked her village. Six of her brothers were killed. She was kidnapped and sold into slavery where she was raped and tortured.

In a recent article detailing her experience, Murad credits her lawyer, Amal Clooney, and Yazda, a global Yazidi rights organization, for helping her highlight the cause internationally. “Last September, the UN Security Council passed Resolution 2379 which led to the establishment of an international team that will now investigate and help the prosecution of those responsible for the atrocities of Islamic State,” she writes. “This will include exhuming the dozens of mass graves containing Yazidi victims discovered so far in Iraq.”

“Yazidi women are the latest in a vast network of survivors of rape and misogyny. We, and the Yazidi community generally, need more than sympathy,” she pleads.

Canada has both a moral and legal duty to uphold the most basic human rights of vulnerable populations. As a state party to the Rome Statute of the International Criminal Court (ICC) and a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, Canada has a responsibility to uphold these international legal conventions when formulating carefully crafted policy responses that deal with returning foreign fighters.

The definition of genocide in the Rome Statute of the ICC, which is also outlined as article II of the genocide convention, is:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.

Article I of the genocide convention states “the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.” Article III states the following acts shall be punishable: a) Genocide, b) Conspiracy to commit genocide, c) Direct and public incitement to commit genocide, d) Attempt to commit genocide, and e) Complicity in genocide.

Finally, Article IV stipulates that “Persons committing genocide or any of the other acts in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.”

---

17 Ibid.
20 Ibid.
It would appear that Canada has a responsibility to prosecute its citizens who have fought overseas as ISIS fighters. Certainly, the legal grounds to do so exist. What is lacking is political will.

**Where is the Political Will for Prosecution?**

Western countries, Canada in particular, appear reluctant to prosecute nationals who joined ISIS and subsequently returned home. To boot, national governments and the international community appear to have no overarching strategies in place to do so. Around the world, civil society groups are working in parallel with Murad in trying to change this discussion, and building political will is key.

At the international level, the Montreal Institute for Genocide and Human Rights Studies, in partnership with the Stanley Foundation and Parliamentarians for Global Action in 2018, convened the Milan Forum for Parliamentary Action in Preventing Violent Extremism and Mass Atrocities. With a large number of parliamentarians from various countries in the Middle East and North Africa seeking support, knowledge and best practices in preventing ISIS’ brand of extremism, a group of over 140 elected officials and human rights and counter-terrorism experts agreed to a plan of action in dealing with this global scourge. Most notably, the plan of action recognizes “that impunity for perpetrators of mass atrocities serves to increase the likelihood of new crimes and we underline the importance of national and international jurisdiction. We recognize that all states have a duty to prosecute or extradite suspects and alleged perpetrators of international crimes in national or international jurisdictions.”

Following the forum, legislative tools were prepared and shared with Parliamentarians for Global Action’s network of over 1,400 elected officials with the objective that they would be a catalyst for global justice. A model parliamentary resolution was prepared that notes “alleged mass atrocities committed by ISIL members amount to genocide, crimes against humanity or war crimes when they fulfill the legal requirements of the definition of each crime under International Law, and that such crimes shall be punishable offenses under each national Criminal Law in accordance with the States’ obligations under the UN Convention on Prevention and Punishment of the Crime of Genocide (1948), the Geneva Conventions (1949) and other relevant treaties.” Individual parliamentarians are empowered across numerous democracies to show leadership in prosecuting returning fighters.

Another outcome of the Milan Forum was that one of Canada’s leading counter-extremism experts, former Canadian Security Intelligence Service official Phil Gurski, authored a handbook for parliamentarians that serves as a guide for preventing violent extremism and mass atrocities. Launched at the Parliament of Canada last May, one of the key messages is that parliamentarians

---


need to “pressure their governments to prosecute returning foreign fighters and ensure that evidence and documentation concerning the perpetration of crimes under International Law is collected and preserved in respect to all relevant situations in such a way so as to make such evidence and documentation available for trials and other accountability processes aimed at putting an end to impunity for crimes that threaten the peace, security and well-being of the world.”\(^{23}\)

Internationally, pressure to prosecute is building. A number of civil society groups have come together to pressure the ICC to prosecute ISIS for crimes committed against women and sexual minorities. The Human Rights and Gender Justice Clinic of the City University of New York School of Law, the Organization of Women’s Freedom in Iraq, and the NGO MADRE launched a petition that argues ISIS fighters should be prosecuted for crimes committed on the basis of gender, including discrimination based on sexual orientation and gender identity.\(^{24}\)

In Europe, the Parliamentary Assembly of the Council of Europe, which consists of parliamentarians from 47 European countries, adopted Resolution 2091 (2016), Foreign Fighters in Syria and Iraq, which recognized the atrocities committed by ISIS as “genocide and other serious crimes punishable under international law.”\(^{25}\)

**Pathways to Prosecution: International and Domestic**

How and where should ISIS be prosecuted? Numerous Canadians who fought for ISIS are in custody in Kurdish areas of northern Iraq, which is where Iraqi nationals and many foreign suspects captured on sovereign territory will most likely be tried. But what about those who escaped Iraq or have returned home?

The most logical place to prosecute ISIS foreign fighters would appear to be through the ICC. While this seems simple, because neither Syria nor Iraq are signatories of the Rome Statute, the ICC does not have the jurisdiction to investigate or prosecute. Only a UN Security Council resolution, with the support of all Permanent 5 members, could authorize the ICC to begin investigating.

Unfortunately, the UN Security Council has not given the ICC the green light. In 2015 the ICC’s chief prosecutor, Fatou Bensouda, issued a statement that the court would not be opening an investigation. “The information available to the Office also indicates that ISIS is a military and political organisation primarily led by nationals of Iraq and Syria. Thus, at this stage, the

---

https://issuu.com/migsinstitute/docs/380461454-preventing-violent-extrem

24 Lisa Davis, “Prosecuting ISIS Crimes Against Women and LGBTIQ People Would Set a Crucial Precedent,” *OpenDemocracy*, Feb. 1, 2018  
https://www.opendemocracy.net/5050/lisa-davis/activists-seek-prosecution-isis-crimes-women-lgbtiq-persons

prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIS, appear limited,”26 the statement announced.

It is important to clarify that under the Rome Statute, the primary responsibility for the investigation and prosecution of perpetrators of mass atrocity crimes rests, in the first instance, with the national authorities. The Iraqi government is taking the lead in prosecuting ISIS fighters whom it captured on its territory.

But when it comes to returning foreign fighters, it is worth noting the ICC gives state parties the first right of response in prosecuting individuals. In other words, if Canada begins prosecuting its nationals in domestic courts using the Crimes Against Humanity and War Crimes Act, 27 it will promote the treaty’s universality.

While the hammer of justice should come down against self-avowed recruits who joined voluntarily, such as the now infamous Huzaifa of Toronto, we must also not take our eyes off of the recruiters who indoctrinated and lured prospective Canadians to join ISIS.

Conclusion

In choosing not to prosecute returning ISIS fighters, Canada is effectively abandoning its responsibilities as a signatory of the Convention for the Punishment and Prevention of the Crime of Genocide as well as its commitment to uphold the Responsibility to Protect, the Convention on the Rights of the Child and the International Convention Against Torture. Canada is turning a blind eye to sexual slavery and the trafficking of women and children, ignoring our country’s responsibility as a state party to the Rome Statute and a founding member of the International Criminal Court. Worse, Canada is failing to bring justice to the victims of ISIS, some of whom are now living in Canada, including a sizeable Yazidi refugee population that was resettled to Canada quite recently.

Foreign fighters who are Canadian citizens should not only be considered as being a danger because they joined a terrorist group and may have committed or engaged in terrorism. It is far worse than that. There is evidence to suggest that ISIS fighters have committed the most heinous human rights violations, including crimes against humanity and genocide. Due to the severity of these well-documented atrocities, these Canadians should not be allowed to return home without being held accountable for what they have done or how their direct actions empowered ISIS and enabled it to commit such unspeakable horrors.

27 See Article VI for Offences Outside Canada that states: “Every person who, either before or after the coming into force of this section, commits outside Canada genocide, a crime against humanity, or a war crime, is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.” Crimes Against Humanity and War Crimes Act http://laws-lois.justice.gc.ca/eng/acts/C-45.9/page-2.html#h-5
ISIS is not dead. Canada should not fall into a complacent policy response to it. “IS has lost control of most of the territory it once held. But it is not defeated and is morphing into an international movement, inspiring more attacks,” warns scholar Shiraz Maher.

Open trials can serve as means by which to lay bare ISIS’ narrative and to help counter violent extremism. They can also serve as a deterrent and warning to other Canadians who might try to join ISIS as it mutates and moves to other countries, such as Libya, Afghanistan, Egypt, the Philippines, Pakistan, or heaven forbid, in Mali where Canadian peacekeepers have just been deployed.

There is much at stake and the world is watching. If Canada truly stands for multiculturalism, pluralism, the rule of law, global justice, human rights and the liberal international order, then we must remain firm and take a principled stand to prosecute those who have fought with ISIS. That includes our own citizens.

---

Kyle Matthews is the Executive Director of the Montreal Institute for Genocide and Human Rights Studies (MIGS) at Concordia University. He joined MIGS as Lead Researcher of the Will to Intervene Project in 2008 and was appointed Senior Deputy Director in 2011. At Concordia he founded the Raoul Wallenberg Legacy of Leadership project as well as the Digital Mass Atrocity Prevention Lab, which works to counter online extremism and study how social media platforms are being used as a weapon of war.

His work focuses on human rights, international security, the Responsibility to Protect, global threats, and social media and technology, and global cities. He works closely with the Canadian All-Party Parliamentary Group for the Prevention of Genocide and has advised Members of Parliament on issues related to international peace and security. He previously worked for the United Nations High Commissioner for Refugees, where he was posted to the Southern Caucasus (Tbilisi), the Democratic Republic of the Congo (Kinshasa) and Switzerland (Geneva). Prior to that he worked for CARE Canada in Albania and later at its headquarters in Ottawa, where he managed various humanitarian response initiatives and peace-building projects in Afghanistan, Sub-Saharan Africa and the Middle East.

In 2011 he joined the New Leaders program at the Carnegie Council for Ethics in International Affairs. He is a member of the Global Diplomacy Lab, a member of the BMW Foundation’s Global Responsible Leaders network, and recently joined the United States Holocaust Memorial Museum’s advisory board on transatlantic cooperation for atrocity prevention. He is active member of the University Club of Montreal, the Montreal Press Club, the Montreal Council on Foreign Relations, the Canadian International Council and the Federal Idea, a think tank devoted to federalism. He is currently a Research Fellow at the Canadian Research Institute on Humanitarian Crises and Aid, and fellow at the Canadian Global Affairs Institute.
The Canadian Global Affairs Institute focuses on the entire range of Canada’s international relations in all its forms including (in partnership with the University of Calgary’s School of Public Policy), trade investment and international capacity building. Successor to the Canadian Defence and Foreign Affairs Institute (CDFAI, which was established in 2001), the Institute works to inform Canadians about the importance of having a respected and influential voice in those parts of the globe where Canada has significant interests due to trade and investment, origins of Canada’s population, geographic security (and especially security of North America in conjunction with the United States), social development, or the peace and freedom of allied nations. The Institute aims to demonstrate to Canadians the importance of comprehensive foreign, defence and trade policies which both express our values and represent our interests.

The Institute was created to bridge the gap between what Canadians need to know about Canadian international activities and what they do know. Historically Canadians have tended to look abroad out of a search for markets because Canada depends heavily on foreign trade. In the modern post-Cold War world, however, global security and stability have become the bedrocks of global commerce and the free movement of people, goods and ideas across international boundaries. Canada has striven to open the world since the 1930s and was a driving factor behind the adoption of the main structures which underpin globalization such as the International Monetary Fund, the World Bank, the World Trade Organization and emerging free trade networks connecting dozens of international economies. The Canadian Global Affairs Institute recognizes Canada’s contribution to a globalized world and aims to inform Canadians about Canada’s role in that process and the connection between globalization and security.

In all its activities the Institute is a charitable, non-partisan, non-advocacy organization that provides a platform for a variety of viewpoints. It is supported financially by the contributions of individuals, foundations, and corporations. Conclusions or opinions expressed in Institute publications and programs are those of the author(s) and do not necessarily reflect the views of Institute staff, fellows, directors, advisors or any individuals or organizations that provide financial support to, or collaborate with, the Institute.