

Recommendations from the children's rights Ombudspersons of Belgium to deal with the children returning in Belgium from jihadist zones

Since the first departures, the children's rights Ombudspersons of Belgium, Mr. Bernard De Vos and Mr. Vanobbergen Bruno, have been concerned about children and young people implicated directly or not in radicalism issues. In 2012, Mr Bernard De Vos already addressed several recommendations to policy makers in order to provide protection to the children who joined ISIS. He asked for a real action to repatriate them. He supported grandparents living in Belgium who asked the government to stop their children from leaving the country with their grandchildren.

More than six years later, this question remains wide open. It is still difficult to underline what the Belgian State has done concretely in order to save those children from jihadist groups.

At present, the conflict is less intense. It is a good moment **to find a swift conclusion to allow these children, young people and families to come back safely to Belgium**. It is the responsibility of a democratic state, such as Belgium, that has ratified not only the International Convention on the Rights of the Child but also its three optional protocols which reinforce this responsibility **about the protection of children against their participation in armed conflicts and against all forms of exploitation**. Belgium has engaged itself to **consider first and foremost the protection of children**. Although security issues must be taken into account, they cannot in any way overrule the rights of the child and his or her best interests. Authorities have estimated that a number of 165 Belgian children could be somewhere in Iraq and Syria. Some of them are not located. For others we know that they're staying in refugee camps under the Kurdish militia authorities. Their mothers have already contacted the Belgian authorities to receive some help. Although the situation is complex because of its practical and diplomatic implications, it is important to remember that **the longer we wait, the higher the risk is for those children to reach a point of no-return by becoming stateless**, which means having no birth certificate, no passport, nor any other legal document. If this situation lasts, it will be absolutely unacceptable regarding the International Convention on the Rights of the Child and its **article 7** which set out the obligation of States Parties of registering immediately the child after birth who shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. States Parties shall ensure the implementation of these rights in particular where the child would otherwise be stateless. It is an **emergency!**

That is the reason why both the Ombudsperson of the rights of the child for the French-speaking community, and his counterpart, Mr. Bruno Vanobbergen, from the Flemish-speaking community, are asking promptly to the Belgian federal government **to get their children back from Syria and Iraq - without any discrimination according to their age or degree of involvement suspected in the conflict**.

It is important to remember that most of those children are born there, they are less than six years old. Being so young implies several issues which are important to keep in mind.

Firstly, the probability for those of being militarily trained or brain-washed is extremely small. Conversely the probability for those of fitting easily our values and our way of living is very high. And

for the others who are older now, they're are not that much. Our juvenile justice can take care of them and decide on appropriate measures of prosecution and protection.

Secondly, the conditions in which they grew up and lived there were clearly synonymous with a very small relationship with their mother. They spend all day in a tiny tent without any school to go to, no books to read, no toys to play with. The only person who could take care of their education is their mother. Those mothers are the only ones who still provide a deep bond of attachment and a protection against the dangers of living in a refugee camp. So, repatriation by separating them from their mothers could not be a right solution. It would be too prejudicial for those children. We have to recognize that those mothers who are asking for return are looking for a protection for their own children. They act now as mothers. And they know that the price to be paid is to be prosecuted and sentenced in Belgium. Because they did not take care of their children when they decided to join the Caliphate before.

Thirdly, doing nothing is likely to lead these children to develop a resentment towards Belgium within a few years that could constitute fertile ground for a new recruitment by one of the jihadist groups who are still active in those territories. We have to protect them from a « re-recruitment »! Because we already failed one time but also because what will happen later on with them. Until now, those children are still under the wing of the Kurdish militia. But for how long? The Kurdish authorities have said publicly that they want the European states to repatriate all their citizens.

Fourthly those children are Belgian citizens. We know their connection with Belgium. The authorities know that the chance for them to actually being born from a Belgian mother is very high because the mothers who accompanied them are known by the intelligence services. Furthermore their families living in Belgium, grandparents, aunts, uncles..., clearly said to the Belgian authorities that they are ready to welcome them. And we have to remember that those families gave some valuable information to the intelligence services. At least they showed that they are ready to collaborate with the authorities.

Finally Belgium could consider the experience with children and mothers who already returned. 22 children have come back, most of them with their parents. Most of those adults are not acting on their radical beliefs anymore. While they were doing their time in prison, some of those children have been taken care of by social services or by grandparents or uncles and aunts as foster families. Some are still supported by youth protection. The way to welcome them depends on a case-by-case approach which is the right way to do. The children we are talking about are estimated at 165 people. But a more real number is barely 20 children related to the 15 mothers who decided to ask for help from Belgium. They represent a very tiny minority of the population! Belgium can handle that!

In addition to these reasons which should be enough for the Belgian State to take specific actions to safeguard these Belgian children, it is very important to bear in mind the principles / obligations of Belgium concerning the rights of children and others.

Recommendations that may be useful for writing an observation on how to deal with the situation of the Belgian children in jihadist zones:

About the repatriation

According to:

- *Articles 19, 38 and 39 of the UN Convention on the Rights of the Child (UNCRC)* set out the obligation of States Parties not only to undertake to respect and enforce the rules of international humanitarian law in the event of armed conflict, **but also to take all possible steps in practice to ensure that children affected by armed conflict benefit from protection and care.**
- *The Additional Protocol to the UNCRC on the involvement of children in armed conflict* applies in this situation. It indicates the need to take possible measures to ensure that children involved in armed conflict **are demobilized from their military obligations.** This protocol, which has been in force since 2002 in Belgium, is reinforced by the 2007 Paris Agreements (UNICEF), which indicate the need, from a humanitarian point of view, **to ensure that children can leave the armed forces and armed groups without conditions.** States must therefore take all appropriate measures to facilitate the physical and psychological rehabilitation and social reintegration of any child who is the victim of neglect, abuse or exploitation in the context of armed conflict in particular. So, the Belgian State **has the obligation to demobilize those children, as victims of an armed conflict, and to provide them with assistance and protection.**

Therefore, in accordance with these principles, **Belgium must facilitate the repatriation procedure for all Belgian children, up to the age of 18, without discrimination according to their age or degree of involvement suspected in the conflict.** For those who may have voluntarily left Belgium to join the Islamic State, it is not necessary to decide on a case-by-case basis their repatriation. **They must all be repatriated and their situation will have to be dealt with by juvenile justice as for any minor suspected of having committed a crime.**

To facilitate the repatriation, it is necessary that Belgium:

- ✚ **Act** with the other **European States** in a way that could lead to a global solution at a practical and diplomatic level.
- ✚ **Create new diplomatic spots** and facilitate their access helping by a real dialogue between the different authorities who are concerned by this issue in a way that respects the best interests of the children.
- ✚ **Clarify the procedure and the steps** to be taken to repatriate.
- ✚ **Grant systematic passes for all children.** **The issue about the identification** of the Belgian nationality can not be a brake to repatriate the children. And **if a DNA test is necessary**, it can be supported by a cluster of clues, collected over there (and maybe in Belgium) such as photos, videos, exchange of letters, special physical signs and other administrative documents. And it cannot be a financial barrier.
- ✚ **Keep together mothers and children.** According to *articles 5 and 10 of the UNCRC*, the States Parties must take all appropriate measures to preserve the family unit.

- ✚ **Clearly inform families living in Belgium** about the procedures and steps to be taken to repatriate their descendants so that they can not only make known their willingness to host their descendants but also prepare the necessary information and documents to facilitate the identification of their descendants and their safe return to Belgium.
- ✚ **Inform any services** likely to provide assistance to families wishing to repatriate their offspring
- ✚ **Minimize the violence of the return** (with adults of confidence, no uniforms ...). These children and teenagers need immediate care and support.

It is fundamental to consider that they **all needs** appropriate assistance (to their age and gender). **All children, regardless of age, have been exposed to extremely high levels of violence, from the youngest to the oldest.** They had to deal **with multiple prolonged trauma** (interpersonal / interfamilial violence, sexual abuse, hunger, malnutrition, neglect...). They are therefore **particularly vulnerable** because of both the abuses they have faced and the violence they have witnessed. This exposure to repeated and multiple traumas represents **a significant risk for the child's development and overall functioning**. And that is the reason why it's important to be very careful about how to make the return itself because it could lead to further trauma caused by discrimination, social exclusion, instability, absence of parents and lack of peer networks and support.

About the reintegration

These children - whatever their age - must be considered above all **as the victims of a conflict in which they did not want to engage**.

The obligation of the Belgian State is reinforced by *the Optional Protocol, ratified in 2006, on the sale of children, child prostitution and child pornography*, which specifically states **that armed conflicts and trafficking children should be considered as contributing factors to the development of the phenomenon of the sale of children**, child prostitution and child pornography.

The *UN Security Council Resolution 2331* clearly states that there is a **close relationship between trafficking in human beings, the recruitment of children by armed groups and the exploitation of children by terrorist groups**. In this case, it is obvious that children who have participated in some way in activities for the purpose of terrorism must first and foremost be considered victims of exploitation for criminal purposes.

According to these principles, it should be considered that **any process of engaging a child in an armed conflict is not done on a truly voluntary basis, given its relative cognitive capacities in the face of different forms of coercion or influence**, associated with recruitment methods. We must offer these children the guarantees in terms of security, protection and reparation from which every victim must be able to benefit.

This acknowledgements of the **victim status** of some form of exploitation does not mean that it's not possible to consider **their possible responsibilities as alleged perpetrators**. It's up to our juvenile justice system to take care of them and to decide on measures and sanctions against them. It's also

important to avoid the **secondary victimization** that could be caused when they come into contact with the law and to protect them from **possible retaliation**¹.

To facilitate their reintegration, it is necessary to² :

- ✚ **Consider them as victims.** They must have victim status and therefore access to care, protection and reparation.
- ✚ **Focus on their needs** - before considering the risk they represent for themselves and for others. The only age distinction that must be made is that which is related to the needs of children in psychological, social terms, family, school, health... (see the expertise of the RAN)
- ✚ **Get a tailor-made approach**, short term and long term.
- ✚ **Promote a holistic approach:** a multidisciplinary approach, especially in terms of post-traumatic stress management.
- ✚ **Allow them a day-to-day live** – facilitate a **normal live** - as soon as possible (school, culture, social and sports activities) and consequently, **connect them with a** network of help and support.
- ✚ **Support professionals** (like teachers) by forming them of dealing with trauma reaction these children could have.
- ✚ **Not create** new specific services but **equip professionals** to deal with their specific needs.
- ✚ **Support families who will welcome them and connect them with a** network of multidisciplinary help and support.
- ✚ **Protect** them from retaliation and new recruitments.
- ✚ **Avoid secondary victimization** (related in particular to investigation and trial) specially for children in connection with adults alleged perpetrators
- ✚ **Protect** them from the media coverage they might face.
- ✚ **Create a professional network** around them which **focus more on the care these children needs to be included** than the risk they might represent for them or the others.

It is important to consider that reintegration and the measures of rehabilitation as a long process. It is the best way to help them to deconstruct the foundations of their identity based on the ideology of DAESH.

¹ For further information see, *the Handbook on Children recruited and exploited by terrorist and violent extremist groups : the role of the justice system* – 2017, United Nations Office on Drugs and Crime (UNODC)

² To some extent, those recommendations about reintegration come from the RAN Manual Radicalisation Awareness Network, Response to returnees : foreign terrorist fighters and their families, July 2017

Conclusion

Despite the international legal instruments and resolutions in which the Belgian State is committed – such as those mentioned above but also *the Convention against torture and other cruel, inhuman or degrading treatment or punishment* (which requires effective measures to prevent torture), the Belgian State **could not protect these children from being recruited in this armed conflict.**

Now, it is time to respect its engagement and do everything in its power to bring back those children, regardless of their age.

The children's rights Ombudspersons of Belgium wishes that the attention paid to these children returnees focus on their needs of care determined by the extremely high levels of violence they suffered. This means that we have to offer them protection and security up to their vulnerability. **And if the question of the security of the State has to be considered and pursues a legitimate aim, it's fundamental to take in due consideration the best interests of those children.**

Manage, promote their return and take care of them, it's the best way to prevent possible future violent acts of terrorism. This is the exact opposite of the exclusion elements on which DAESH relies to recruit. And it's the best symbol we could send to the Muslim community of our country.

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