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Virtual innocence and citizenship. The status of children of European departees in northeast Syria

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Introduction

On May 29th, 2018, the following short article appeared in the inside pages of several Belgian newspapers: “Two Belgian IS-Wives and Child Focus file a lawsuit against the Belgian State”.¹ In a couple of sentences, the articles reported that two Belgian born women, aged twenty-five, who had left the country five years ago to participate in the uprising and the establishment of the Islamic State in Syria, had filed a lawsuit against the Belgian State. The central claim behind their legal case concerned their children. In pressing these charges, the women – who lived at the time in one of the detention camps overlooked by Kurdish fighters in North-East Syria – wanted to put pressure on the Belgian state to have their children repatriated to Belgium. About 40000 children from several countries are currently surviving in the Kurdish camps in North-East Syria, and amongst them hundreds of European children.² They are often the offspring of European adults who travelled to Syria after the uprisings in 2012. The majority are under the age of twelve, and a considerable number were born in Syria or arrived there as young children with their parents. The lawsuit filed by the two Belgian plaintiffs in 2018 was the first in a series of court cases against the Belgian state for the repatriation of Belgian citizens by women in the camps in Al-Rosh and Al-Hol since (for a recent overview, see Van Poecke and Wauters 2021). These lawsuits were often filed either by Belgian residents of the camps or their families. While a few have resulted positively for the plaintiffs, most have remained inconclusive. These

¹ “Twee Belgische IS-vrouwen en Child Focus dagen Belgische staat voor rechter” in *De Morgen*, 29/05/18

² Gorevan, D. & Achilles, K. (2021) “When am I going to start to live. The urgent need to repatriate children trapped in Al Hol and Al Roj Camps”, Report by *Save the Children*, September 2021.

lawsuits, however, also shed a light on one of the political and legal conundrums of our times: the controversial status of those who are generally dubbed as “*returnees*”.

Of the estimated five thousand European citizens who have joined the ranks of ISIS or other fighting forces in Syria after 2012, one third is believed to have returned to their home countries. While most are generally immediately incarcerated after their return, their right to do so remains a source of concern and controversy. One of the thorniest aspects in the discussion on returnees concerns the rights of children of these Europeans. While most states would agree on the immediate need to repatriate nationals, especially children, in war zones, the discussion becomes more complicated when it comes to *these* children. This paper takes off from those who have been dubbed “the Children of the Caliphate”, to inquire into how international law, childhood protection, radicalisation, counterterrorism, and national rights become redefined in the light of this case. More particularly, we seek to understand, through a specific focus on the Belgian debate around the repatriation of the children of ISIS militants in Syria, how the state of exception comes to work in this particular instance, and how one of the elementary rights of these children – i.e. the right to life – becomes suspended. We argue that these children reside in a condition of *virtual innocence*, that is characterized by a temporary suspension of their right to exist. Ultimately, this article seeks to inquire into the status of “the child of the enemy” within the political body, and how the new regimes of exception - which are at the heart of the war on terror - condition and regulate what counts as a valuable life.

European departees in Syria: the rise of the “foreign fighter”

The departure of European citizens to Syria in the aftermaths of the uprisings in the Levant region has been the object of a growing body of studies in recent years, documenting the motivations behind the departure of hundreds of Europeans to the Syrian front from 2012 onwards, and thereby attending to the socioeconomic conditions as a push factor (Weggemans, Bakker and Grol 2014), the embeddedness in peer-dynamics (Lindekilde, Bertelsen and Stohl 2016, Rostami et al. 2020), the role of religion and ideological convictions (Benmelech and Esteban 2020, Dawson and Amarasingam 2017), or the development of new political subjectivation in this process (de Koning 2021). Other studies have also examined the challenges surrounding the potential reintegration of this group on the European soil.

Anticipating the return of European departees³ became particularly salient after the involvement of some in the attack of 2014 at the Jewish Museum in Brussels, or the 2015 attacks in Paris (on January 7th and November 13th). Research has however nuanced the potential threat of the returnees and sought to examine under what conditions they could be reintegrated into the European continent (Lindekilde, Bertelsen and Stohl 2016, Ragazzi and Walmsley 2018, Renard and Coolsaet 2018).⁴

Besides this first line of inquiry, a growing number of studies has, however, also attended to how the “foreign fighter question” has transformed and reshaped several institutional and legal arrangements around citizenship and security in the European continent (Bakker, Paulussen and Entenmann 2014, Bures 2020, de Guttry, Capone and Paulussen 2016, Ragazzi and Walmsley 2018, Scherrer 2018). Analysts have thereby noted growing convergences across the different European Member States in tackling this question, despite the initial differences in treating this question (Bures 2020, Paulussen and Entenmann 2016, Van Poecke and Wauters 2021). Ragazzi and Walmsley, for instance, documented how EU Member States, increasingly converged in their responses by installing new restrictive measures, ranging from the revocation of citizenship, the prosecution in absentia, to the prohibition or restriction of the return to one’s home country (Ragazzi and Walmsley 2018: 44-55, see also Scherrer 2018). In the judicial domain, scholars have also noted clear disparities in treating the question, but with an increasing convergence since 2014. Paulussen and Entemann, for instance, describe how the phenomenon of foreign fighters was initially not criminalised, but this changed after 2014 through the adoption of the UN Resolution 2178 and the subsequent *Additional Protocols in the Council of Europe Convention on the Prevention of Terrorism* that address the phenomenon of foreign fighters.⁵ Travelling abroad to join terrorist groups, thus, became a criminal offence, thereby leading to an overall repressive treatment of this question in the European courts (Paulussen and Entenmann 2016: 393).⁶ Discussing the case of the terrorism trials in the Netherlands, Beatrice de Graaf also observed a clear trend towards precautionary justice, whereby preparatory rather than actual acts become

³ We use the term ‘departees’ and ‘returnees’ rather than foreign fighters following the work of Ragazzi & Walmsley (2018), since the former terms represent a more generic term that more accurately applies to the heterogeneity of profiles (including women and children, as well as men who did not fight).

⁴ See also the report by the Radical Awareness Network on this question: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf

⁵ Link to the Additional Protocols: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/217>

⁶ Importantly, thus, it is the participation to groups considered as terrorist by the EU Member States that makes travelling abroad a criminal offense. Whereas this list of organisations extended to the various fractions of the Free Syrian Army, the Al-Nusra front and ISIS, in some countries, like Germany, this was restricted to ISIS (Paulussen and Entemann 2016: 405).

criminalised, thus turning terrorism law into what she describes as “a means of risk management” (de Graaf 2019: 97).

Whereas the departure to and participation in the Syrian war has produced its share of legal cases over the last two years, the question of the return and possible repatriation of Europeans, and of the women and their children, has become a growing source of litigation in various European courts. In a comparative review looking at court cases in Belgium, France, Germany and the Netherlands, Van Poecke and Wauters (2021) observed variations in the way European courts have treated this question. Echoing the distinct national traditions, they identify differences in the courts administering this question (criminal, administrative or civil courts), as well as differences in the mobilised legal frameworks (human rights, international humanitarian law, consular assistance, or the criminal code). The phenomenon of the European *deportees* seems to place the European courts in judicially uncharted terrains, thus enforcing what they describe as new and “esoteric” interpretations by the courts on the state’s reach and the legal status of these citizens (Van Poecke and Wauters 2021: 47).

A new condition of exception

This unsettled status of European *deportees*, as shown through the various recent institutional and legal decisions, demonstrates that these so-called “foreign fighters” represent a particular challenge for European states and International Law. Besides challenging the Westphalian contours of war-waging (Strazzari 2016), the category of “foreign fighters” equally comes to invoke and produce a new condition of *out-of-placeness*. Darryl Li has argued, in this respect, that the idea of the “foreign fighter” needs to be understood as a historical category which has gained currency after 9/11. In that same post 9/11 junction, “foreign fighters” became equated with Muslim transnational actors and criminalized. The category of “foreignness” thereby served to pathologize the physical and military presence of the non-state transnational Muslim actors, whilst at the same time universalising and legitimizing the operations of Western-led international coalitions (Li 2010: 378, see also 358-359). This exclusion, furthermore, goes together with various forms of suspension of the rule of the law and exclusions, ranging from extraordinary renditions, illegal detentions, targeted executions, torture etc. These Muslim fighters become, thus, encapsulated in a perpetual condition of “out-of-placeness”, which is reinforced through a new regime of surveillance, detention (e.g. Guantanamo or black sites) or deportation (see also Kapoor 2018, Khalili 2013, Shalhoub-Kevorkian 2015).

In addressing these new conditions of exceptionality, some scholars have stressed the importance of situating them within a broadening bureaucratic regime of governance and not

isolate them as exceptional facts. Didier Bigo, in particular, has challenged the Agambenian and Schmittian view that situates these measures of exceptionality as a singular moment, rather than as part and parcel of a new and global *regime* of security, which he coins *ban-opticon*, and which is enabled through the increased collaboration between state and non-state actors. This new governmentality of unease, thus, consists of “practices of exceptionalism, acts of profiling and containing foreigners and a normative imperative of mobility” (Bigo 2008:6), which are implemented through *routine* administrative, legal, biometric and political technologies in everyday life, whereby the border between the inside and the outside becomes increasingly blurred (Bigo 2006: 53, 56, see also Razack 2008: 176). This new regime of exceptionality is, then, exacerbated, through the emergence of the Muslim as a new abject figure. Race and Islamophobia, in particular, accompany these new regimes of surveillance and exclusion, both in the case of counter-terrorism policies (Kundnani 2014, Rana 2011, Razack 2008, Sayyid 2018, Stampnitzky 2014), as well as in their preventive variants such as the counter-radicalization policies (Choudhury 2017, Fadil, de Koning and Ragazzi 2019).

The Children of the enemy

The recent deployment of various legislative and administrative restrictive measures around the civic and juridical status of European departees needs, hence, to be situated within this broader racialized regime of surveillance and exceptionality or *ban-opticon*. In this particular contribution, our focus will, however, not be on actors who have been formally accused of ‘terrorist’ offences, i.e. the departees, but rather their *children*. Few studies have attended to the political and social status of these children yet taking them as a vantage point sheds a different light on how these regimes of exceptionality are constructed. In a recent paper on the matter, Fiona MacDonald and Debra Smith analysed the media discussion around the return of the children of Australian foreign fighters in Syria and argued that a new discourse of ‘otherness’ surrounds their potential presence, which is saturated by sentiments of fear. They noted how children were overwhelmingly constructed as a “particularly dangerous and insidious form of Other”, on the ground of which their possible repatriation became highly contested (MacDonald and Smith 2021: 235). Such a negative portrayal of the children is equally at stake in the Belgian context where these children are presented in the public debate as “Children from the Caliphate” or “ISIS-children”. Yet in what follows, we want to offer a more ambivalent picture. Based on our findings, we observe a more complex and unsettled reality, whereby these children continuously oscillate between a notion of being at risk or representing a danger, being a victim or a potential offender, and belonging or not-belonging.

It is precisely this ambivalence, we want to argue, that puts these children (and their parents) in a socio-political vacuum, with very severe judicial, political, and humanitarian consequences.

To capture the condition of these children, we want to introduce the notion of *virtual innocence*. We define virtual innocence, following Schinkel's notion of 'virtual citizenship', to refer to a potentiality that is never realised (Schinkel 2010: 271). Virtuality, furthermore, also refers to the assumed bonds of these children with the Belgian state through their parents, as has also been acknowledged by several courts. Yet, as we will show later, the fact that these bonds are *assumed* rather than accepted becomes one of the modalities of their exclusion. Finally, through the notion of virtual innocence, we are referring to the dominant representation of these children as *possibly* but not necessarily innocent in matters of security and counter-radicalization. We want to argue that this condition of 'virtual innocence' places the children in a condition of perpetual uncertainty and doubt as to their inclusion in the social and political body, which in part explains the undecided and ambivalent approach by the European states. This condition of virtual innocence is, then, maintained through representations of the child as well as through bureaucratic technologies and practices of exclusion. By exploring the case of the children of the Belgian departees, we, thus, aim to understand how notions of childhood and who counts as *a deserving and worthy child* becomes negotiated and how new regimes of exceptionality are sustained. After a brief note on methodology and an overview of the contextual contours of the Belgian case, we will analyse how the representation of these children continuously oscillates between the status of 'victims' and (potential *future*) 'perpetrators'. In a second part, we will attend to the technologies of governance and how the unsettled socio-political status of their parents as expelled "terrorists" places these children in a zone of indistinction.

Methodology: observant participation

This paper firstly draws on the analysis of parliamentary discussions, public debates, legal decisions, and public documents. Our first sources for this analysis are newspaper articles, Op-Eds and interviews with politicians published in some of the main Flemish and Francophone Belgian dailies and weekly magazines from the period 2017 until 2020.⁷ We have also examined parliamentary debates around the possible repatriation of the children and their families. Finally, we have looked at court decisions regarding the repatriation of the children

⁷ We have made use of the search instrument *Mediargus* which covers the Flemish and Francophone press.

and their families. Additionally, however, this study also draws upon the insights gathered during more than one year of observant participation among the Belgian collective ‘*Moeders voor Europa*’. The informal collective was established in 2018 with the support of the Belgian NGO Childfocus and Belgian academics who assist the families of Belgian departees in their attempts to repatriate their children and grandchildren.⁸ The authors of this piece participated in the various moments of mobilisation around the repatriation of the Belgian citizens in Syria, which consisted of demonstrations, preparatory meetings, gatherings, manifestations, also occasionally writing op-Eds and mobilising for this particular cause. We, therefore, prefer to speak of ‘observant participation’ rather than participant observation. This notion has been developed as a methodological instrument that prioritises the (pre-)established relationship with particular actors in a specific (familiar and unfamiliar) setting (Parkin 2017). The experience of observing is thus subsumed to the experience of participating in the dynamic of mobilisation. Such a perspective equally challenges the idea of the researcher as standing in separation from his/her research participants. Much critique has been formulated – especially within anthropology – on such a view that emphasizes observation over participation, not the least because it disregards the learning process of the researcher through the interaction with the research participants (Ingold 2014). This paper needs, therefore, primarily to be read as a reflection of the insights gained throughout this collaboration with the families, and which was primarily motivated by a desire to support their cause.

European departees and their children: the Belgian case

Of the estimated five thousand European departees who left to the Levant region since 2012, Belgians represent the highest rate of departees per capita in the European context: about 498 men and women. Among those who have left, there were forty-seven children. It is also believed that more than one hundred and twenty children were born in the region (Renard and Coolsaet 2018). While the question of the “returnees” was first raised shortly after 2012, when the first men and women started returning in 2013, most of the then-existing policy primarily targeted those who were leaving. Yet with the escalation of the conflict in the Middle East, the attacks since 2014, and the announcement of the military defeat of ISIS in 2019, the question of the “returnees” became an increasingly pressing issue.

⁸ One of the co-founders of the collective, VUB Professor Gerrit Loots, travelled twice to the camps Al-Hol and Al-Rosh in North-East Syria, with a team of medical doctors and psychologists, to assess the physical and mental health of the children and their mothers. The reports are published here.

Two broad periods can be distinguished in the treatment of the returnees. In a first period, from 2012 until 2013, returnees were largely allowed to return without any automatic arrest or incarceration. This, however, changed after 2014, after the adoption of the *Additional Protocols* at the EU level and the UN Resolution 2178 which urges member states to prosecute participants and supporters of terrorism, including foreign fighters.⁹ Regarding the children of the departees, the Belgian state declared in December 2017 that all children younger than 10 years old, and whose Belgian origin was proven, would be allowed to return.¹⁰ For the children born in the region, DNA tests were requested to demonstrate their affiliation to their parents. Furthermore, the Belgian state also drew a distinction between the children whose parents still resided in the camps, and those who died in the region and/or went missing.

Whereas unaccompanied children have been repatriated since 2019, the situation has been more complicated for the children with parents in the camps. European member-states, including Belgium, have until recently consistently opposed the repatriation of the adults. This has resulted in a paradoxical situation. Whereas Belgium was one of the first European country to consider it a moral duty to undertake all feasible measures to return the children from the camps, it showcased a rather non-active stance towards the effective implementation of this decision (Van Buggenhout, Fadil and Dumortier 2021). It was not until a Belgian humanitarian team left to Northeast Syria in June 2019 to provide medical and psychological support, that the government saw an opportunity to repatriate a total of five unaccompanied children, and one 18-year-old girl. The Belgian State was furthermore pressured to pay penalty fines per child per day for as long as it failed to repatriate the children. In February 2020, the Belgian government changed its strategy and stated that it would agree to the repatriation of children whose parents were alive, but without their mothers. In the spring of 2020, the Belgian state also made several (unofficial) attempts to separate the children from their mothers. Yet most Belgian mothers refused to give away their children, even though some mothers from other European countries were inclined to give in to the state's demands due to the deteriorating situation in the camps. This was the case for France which repatriated seven minors without their mothers in January 2021.¹¹

In early March of 2021, however, an important turning point was reached both in Belgium and at the level of the EU, as the Belgian prime-minister Alexander De Croo

⁹ Resolution 2178 (2014) Adopted by the Security Council at its 7272nd meeting, on 24 September 2014,

¹⁰ The distinction of the age of 10 is an arbitrary distinction, that has not been substantiated on scientific or other grounds. This was confirmed in a personal communication with a politician in October 2020.

¹¹ “La France rapatrie de Syrie sept enfants de Jihadistes français”, *France 24*, 13/01/21, AFP

announced that the country would move ahead with repatriating all identified 27 children in the camps overlooked by the Kurds in Al-Hol and Al-Rosh, and if needed together with their 13 mothers. The latter would, however, be conditioned by a favourable screening by the intelligence services of the mothers. This is how in June 2021; six women were returned from the camps of Al-Rosh with their ten children. This latest development represents an important turning point in the European debate on the repatriation of the children, as it makes Belgium the first country to principally agree to the repatriation of the children with the mothers. Childless women and men were, however, not included in this decision.

Pending innocence, oscillating sympathies: between victimization and criminalization

While the question of the returnees and their children had been a political preoccupation and received some media attention, it did not spark a large public debate until spring 2018. In March 2018, the Belgian public will be introduced to the figures of Bouchra Abouallal and Tatjana Wielandt, two Belgian women who had joined ISIS and were living in the detention camps in northeast Syria, in a news documentary.¹² Star reporter Rudi Vranckx of the Flemish Public Channel VRT had been given unprecedented access to the Kurdish camps, where he met and interviewed a few Belgian women with their children.¹³ The documentary shows the two women in a tent playing with their very young children (aged between a few months and a few years), and speaking to them in Dutch. At one point, the news reporter shares a video message from one of the grandmothers in Belgium, who addresses her grandchildren in Dutch. She shows the small backpacks she prepared in the hallway so they could go to school after their return to Belgium. The children listen carefully and in silence to the video message of their grandmother as their mothers break out in tears. They implore the Belgian state to allow them to return to their country and bring their children back to safety and acknowledge that they made mistakes and were ready to face the consequences of their deeds. While the sincerity of the women was questioned in the studio discussion with Rudi Vranckx, the mothers' tears and the image of impoverished Dutch speaking children would an important influence the public debate. In the weeks and months that followed the broadcasting of this documentary, a larger and unprecedented public debate and mobilisation of the civil society around this question would ensue. This was also supported by the first series of litigations initiated by the

¹² Merckx, V. (18/03/2018) "Rudi Vranckx sprak als eerste tv-journalist met Belgische IS-vrouwen in Syrische gevangenenkamp. "We hebben spijt"" in *VRT news*

¹³ This newsdocumentary was a preview of a longer three-episode documentary *Voor de zonden van de Vaders* (For the Sins of the Fathers) that was broadcasted in the fall of that year on the VRT.

concerned parties and their families against the Belgian state around the same period, including the women featured in the documentary. Children Right's organisations would also rally to this cause, positioning themselves in favour of the repatriation.¹⁴ Academics will follow suit around the same period. In the fall of 2018 and spring 2019, a team of psychologists and doctors of the *Vrije Universiteit Brussel* would travel to the camps and publish two reports on the medical and psychological well-being of the children and their mothers.¹⁵ Additionally, open letters would be published and signed by hundreds of academics in 2019 and 2020.¹⁶

Save the children

In discussing the case of the children in Syria, the Belgian (and international) Children Right's protection organisations, and other human rights organisations, unambiguously argue that children in war-zone must primarily be considered as 'victims' who need protection by the state and, for those reasons, be repatriated.¹⁷ Referring to the internationally recognised and signed UN Convention on the Rights of the Child (in particular art. 19 and 38/4), several Human Rights and Children's Rights organisations have consistently stated that given the dangerous circumstances the children in Syria were entitled to the protection by the State. For instance, one of the Belgian Children's Rights commissioner argued in a parliamentary hearing that "if the government refuses to understand that these children are in urgent need to be repatriated, it risks putting these children in a situation of statelessness [...] this is the worst situation a child can find itself in."¹⁸ This view has also been echoed by several political representatives, who have stressed the need to repatriate the children. In the same hearing, members of parliament emphasised that "children should not be punished for the unacceptable crimes their parents have committed; the children are victims, not perpetrators, and have rights that are currently

¹⁴ See "Child Focus appelle à récupérer les enfants belges qui se trouvent en Syrie" in *Le Soir*, 03/05/2018 (belga), and the Open letters published by the Flemish and Francophone Children's Rights in respectively June 2019 and October 2019.

¹⁵ Link to the website: <https://youthatsocialrisk.be/projects/syria/>

¹⁶ In May 2019, a call, initiated by the authors of this piece, was signed by 300 Belgian academics and actors of the civil society and published in the Flemish and Francophone dailies *De Morgen* and *Le Soir* (link *De Morgen* and "Il est urgent de rapatrier les enfants Belges de Syrie", 10 May 2019). In October 2020 an international call signed by 200 International academics was published in *The Middle East Eye* ("European families stranded in north-eastern Syria must be repatriated", 26 October 2020)

¹⁷ See in this respect the similar positions defended by the Dutch and Flemish agencies for the Rights of Children, "Nederlandse kinderen in kampen in Syrië: De overheid moet zijn verantwoordelijkheid nemen deze kinderen te beschermen, de Kinderombudsman" (*Position Paper de Kinderombudsman*, 19 April 2018) and "Belgische kinderen uit terroristische conflictzones moeten kunnen rekenen op onze hulp" (*Standpunt Kinderrechten Commissariaat*, 13 April 2018).

¹⁸ Bernard De Vos (Francophone Commissioner for het Children's Rights) during the parliamentary hearing "'Commissie voor buitenlandse betrekkingen over de Veiligheidssituatie in de kampen in Noors-Syrië en het lot van de Belgische Foreign Terrorist Fighters, gelet op het Turkse militaire offensief. Doc.55 0926/001 p.6 – Our translation.

not being granted by the Belgian state”. Further, “to end the inhuman and degrading treatment of which children suffer in these camps, they must be repatriated. There are enough humanitarian and security arguments to get them out of that vulnerable situation.”¹⁹ These calls for action have been, furthermore, supported at a European level by the Children’s Rights coordinator of the European Parliament, the Council of Europe Commissioner for Human Rights²⁰ and UNICEF. In its Concluding Observations on the fifth and sixth periodic report from Belgium, the Committee on the Rights of the Child recommended that Belgium should facilitate the repatriation of *all* children, no matter their age or degree of suspected involvement in the armed conflict. The Committee further stated the importance of repatriating their families where possible. It highlighted “that these children need to be treated as victims of trafficking in the context of armed conflict exploitation for criminal purposes and need to be protected, assisted, rehabilitated and reintegrated with psychosocial support and legal aid”.²¹ This would imply that European states should take a more proactive stand in bringing those children back to their country.

Yet whereas the argument that these children should be primarily viewed as *victims* seemed to be unanimously shared among all advocates, some parties have expressed their concern regarding these children, and their *innocence* in the long term. Redubbing them as ‘ISIS children’ or ‘Children of the Caliphate’, several commentators warned that these children were brainwashed and should, therefore, be considered a security hazard, claiming that “hate and terrorism is engrained in the childhood of these children”.²² The political discussions around the vulnerability and victimhood of the children have, therefore, consistently gone hand in hand with expressions of suspicion about the children’s exposure to extremist views. A member of parliament, for instance, sympathizes “with the children who are trapped in the

¹⁹Jessica Soors (Groen, Flemish Green party) en Goedele Liekens (Open-VLD, Flemish liberal party) during the parliamentary hearing “Commissie voor buitenlandse betrekkingen over de Veiligheidssituatie in de kampen in Noors-Syrië en het lot van de Belgische Foreign Terrorist Fighters, gelet op het Turkse militaire offensief”. Doc.55 0926/001 p.21 – Our translation.

²⁰ Commissioner for Human Rights, Statement; Council of Europe member states should urgently repatriate their under-age nationals stranded in Northern Syria, 28/05/2019

²¹ Concluding Observation of the UN Committee on the Rights of the Child. *On the combined fifth and Sixth periodic reports of Belgium*, CRC/C/BEL/CO/5-6, Published on the 28th February 2019.

²² An important figure defending this position is media-personality and Jihad expert Montasser AlDe’emeh “Groeien de kinderen van IS-strijders niet beter in Islamitische landen op in a national Belgian newspaper” in *De Standaard*, 19/06/19 and Bosschaerts, I. (2019) “Jihadexpert over IS-weduwen en hun kinderen: “Haat is hen met de paplepel ingegeven” in *De Morgen*, 28/12/18

camps in miserable circumstances” [...], but adds that “these children had to join their parents and were indoctrinated.”²³

Children as a risk

The idea that children might represent a potential risk, and are not simply innocent, is neither a new given nor restricted to the case of the children of foreign fighters (Korbin 2003). Sharon Stephens (1995) notes that the narrative of “children at risk” – which builds upon the 19th-century conceptualisation of childhood as a distinct life-stage of innocence (Aries 1962) – gained prominence in the second half of the 20th century. While the framework of vulnerability and innocence has generally been considered as the point of departure and is imbricated as such in the Universal Declaration of the Rights of Children, the latter has also consistently been challenged by another one, which views children not simply as vulnerable and innocent, but also as potential *offenders*. This duality is not unfamiliar in juvenile justice systems in Europe (Dumortier, 2018). The question on how to deal with the intersection of child care and the criminal justice system – an inherently paradoxical convergence – has always been present from the ‘invention’ of juvenile justice from the early nineteenth century onwards (Goldson 2000, Goldson 2013) (Goldson, 2018 and Christiaens, 1999). The sixties were particularly relevant in this respect, for it announced a period wherein the phenomenon of child-soldiers would gain international prominence, as children were increasingly seen to be actively involved in a series of escalating conflicts (Mann 1987). On this subject, the Paris principle of 2007 stresses the importance of viewing children involved in armed conflicts primary as victims.²⁴ This notion of innocence, however, was heavily debated as children in a context of war were no longer merely seen as victims but also considered to be serving an active role in war conflicts. This cultural shift opened a space of ‘suspicion’, whereby the idea that children were not only *at risk* but could be seen to represent *a risk*. In the current discussions on minors and children of foreign fighters, this idea of ‘children as risk’ emerges as an important trope, which stands in competition with the prevailing view of the children as ‘victims’ or ‘at risk’ as defended by the children’s rights protection agencies.

Yet an important difference with the previously cited cases of child-soldiers, is that in the case of the children of the European departees it is not so much the *perpetrated acts* that

²³ Michel de Maegd (MR, Francophone liberal party) during the parliamentary hearing “Commissie voor buitenlandse betrekkingen over de Veiligheidssituatie in de kampen in Noors-Syrië en het lot van de Belgische Foreign Terrorist Fighters, gelet op het Turkse militaire offensief. Doc.55 0926/00, p.23 – our translation.

²⁴ UNICEF (2007). The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups. The United Nations.

are at stake, but rather the *potential* of certain acts due to their exposure to extremist ideologies and views through their parents and their experiences in the camps. Hence, what seems to be at stake is not so much their actions but rather their *socialisation*. In this case, the exposure to “terrorist ideologies” is widely understood as not just any kind of abuse from which the children ought to be ‘saved’, but one that deserves a distinguished treatment and follow-up. This development echoes another important one, namely the installation and expansion of counter-radicalisation measures, which understand radicalization as a process that can result in the possible use of violence (Baker-Beall, Heath-Kelly and Jarvis 2015, Coolsaet 2008, Fadil, de Koning and Ragazzi 2019, Sedgwick 2010). Within this framework, the acceptance and endorsement of *extremist ideologies* are considered as the main “breeding ground” that could lead to terrorist violence. Extremist ideologies are, thereby, apprehended as “seeds of hate” that need to be carefully monitored.²⁵

A relevant document in this matter is a report published in April 2017 by the Dutch security agencies NCTV and AIVD on minors in Syria – which has also importantly influenced the Belgian approach in treating this question.²⁶ The document states quite explicitly and on repeated occasions that children are “mostly victims”. Yet it also highlights the central role given to children under the Caliphate: “ISIS view children as an essential ingredient to the survival of the ‘Caliphate’. Children are, from a young age, indoctrinated in various ways with the ideology of ISIS” (NCTV & AIVD 2017: 3 – our translation). The report documents the central role given to families and children in the state-building project, and how children are treated as one of the ‘pillars of the state. “Families and children are a crucial element in this totalitarian regime”, the report notes. “For the survival and future of the ‘caliphate’ is largely in the hands of the next generation” (NCTV & AIVD, 2017: 5). The report describes how these children, who are called ‘*cubs*’, are believed to become the next generation of great fighters (‘*lions*’) for the Islamic State due to their precocious exposure to its ideology and practices. The parents are also given a major role in the recruitment and indoctrination of their children. The report notes that this is a major point of difference with child-soldiers, who have often been kidnapped or taken away from their parents (NCTV & AIVD 2017: 14). For all these reasons, the Dutch security services warn that these children cannot simply be viewed as ‘innocent’. Due to their exposure to extremist propaganda (*denkbeelden*) as well as their experience with scenes of violence and death, and even possible participation in that, their

²⁵ See also the RAN Manual *Responses to returnees: Foreign terrorist fighters and their families*, July 2017.

²⁶ *Minderjarigen bij ISIS. Een publicatie van de NCTV en de AIVD*, Den Haag, April 2017

potential future integration remains an open-ended question: “One needs to keep in mind that minors are primarily victims of ISIS, without closing one’s eyes for the possible risk for society” (NCTV & AIVD 2017: 17).

This suspicion towards the children continues through the way their repatriation is considered. Children older than ten are only allowed to return on a case-per-case approach, after being subjected to a screening by the intelligence services. In the wake of the repatriation of six Belgian orphans in June 2019, four of whom were older than ten, the then seating vice-prime minister Alexander De Croo declared: “All children have been subjected to due screening by the military intelligence services and CUTA (*the Belgian Coordination Unit of Threat Assessment – author’s addition*). The CUTA says that it is acceptable to bring all children back. As Federal Government and Minister you must trust those services”.²⁷ While being exposed to a dangerous environment has traditionally been treated as a reason to consider children as ‘victims’, in this instance it becomes a ground for suspicion. These children are, thus, seen as ‘determined’ to, or socialized into committing crimes. Therefore, the notion of these children as being “innocent victims” becomes highly questioned. At the same time, notions of criminal irresponsibility for children (*doli incapax*) as enshrined in Belgian law and international human rights standards, become re-negotiated. Indeed, though according to the UN Committee on the Rights of the Child (General Comment n° 24, 2019) the minimum age of criminal responsibility should be established at 14 years old, numerous children of foreign fighters are well below this threshold age (many of them being babies or toddlers).

Unworthy mothers, unworthy children? The suspension of one’s right to life

“Do I send my sons without mother back to an unknown world? Or do I keep them with me without a perspective on the future? No mother can make this choice. These children are not like other children. They don’t understand what a dad is, don’t know what a grandmother or grandfather is. They don’t know what family means, or a house. They only know mom. Mom is everything to them.”

*Message from a mother in the camps in northeast Syria, 22 April 2020.*²⁸

The ambivalent status of the children of the Belgian departees in Syria does not only play out through their representation as a possible risk, but also through the undetermined socio-political status of their parents as well as their suspended socio-genetic affiliation. The

²⁷ BELGA (2019, June 13) “Repatriëring IS-Kinderen: Theo Francken betwijfelt of het om weeskinderen gaat” in *Knack*.

²⁸ Anonymous (2020, April 22) “Een verscheurende en onmogelijke keuze” (A devastating and impossible choice). Published on the website of *Youth at Social Risk*. (our translation)
<https://youthatsocialrisk.be/2020/04/22/een-verscheurende-en-onmogelijke-keuze/>

unsettled status of the parents, who are citizens yet have been politically excluded from their rights, has also resulted in a consequential exclusion and unequal treatment of the children.

One of the main reasons several politicians have opposed the return of the children has been because it would give a legal ground for the return of the parents.²⁹ However, and for a long time, most political parties consistently opposed the return of the adults, and only accepted the repatriation of children *without* their mothers. Families, mental health professionals, academics and the Francophone Children Rights' commissioner strongly opposed to this scenario, arguing that the children would suffer irreparable damage if they were separated from their mothers,³⁰ also referring to Article 8 and Article 9 from the UN Convention of the Right of the Child which stresses the right to family life and the principle that children should not be separated from their parents, except when in the best interest of the child. Nevertheless, the Belgian State has made several attempts to pressure the mothers in the camps to give away their children. In February 2020, the then seating Minister of Foreign Affairs Philippe Goffin called upon the mothers to show a sense of 'responsibility during a parliamentary hearing: "We ask them to give their agreement for the repatriation of the children. Think firstly about the well-being of your children and allow the government to overlook it".³¹ Additionally, the Belgian State also made several unofficial attempts in April and May 2020 to persuade the mothers in the camps to sign documents allowing the state to repatriate their children without them.³²

This trend of separating the children from their mothers has also been supported by some recent court decisions (see also Van Poecke and Wauters 2021). In the summary proceedings of 11 December 2019 of the Brussels Court of First Instance, the judge ordered the Belgian State to repatriate 10 Belgian children and imposed a penalty fine on the Belgian state.³³ Yet the judge also stated that this decision did not extend to the parents, arguing that they could not make use of article 9 of the Children Right's Declaration, for they showed "serious neglect of their children by bringing them to a life-threatening warzone. Thus, they

²⁹ Theo Francken here – see also other politicians.

³⁰ See Op-Ed signed by a collective of psychologists Carlens, M. et al (2019, November 12) "Il faut tout les enfants belges des camps syriens et irakiens" in *Le Vif* and an Open Letter "Pourquoi rapatrier les enfants belges des 'combattants djihadistes'" (2020, May) written and signed by academics, the collective *Moeders van Europa* and the Francophone Children's Rights Commissioner.

³¹ "Minister Goffin vraagt IS-moeders repatriëring kinderen toe te laten" in *De Morgen*, 18/02/20, BELGA

³² These official and unofficial attempts have also been documented in the following report: Loots, G., Jamai, H. & Fadil, N. (2020) *One Year Later. Belgian Children in Kurdish Camps in northeast Syria*, July 2020. Accessible online: <https://academicsforrepatriation.files.wordpress.com/2021/01/report--eng-juli-2020.pdf>

³³ 11 December 2019, Nederlandstalige Rechtbank van Eerste Aanleg Brussel, Beschikking, 10^e Kamer, Kortgeding, 2019/90/C.

cannot appeal on the interest of the children in order not to be separated from their parents and, thus, facilitate support for themselves”.³⁴ In a later decision, the same court even accused the parents of instrumentalizing their children: “This means that the concerned parents instrumentalize their children and try, through blackmailing attempts, to turn the efforts of the Belgian State for the improvement of their situation”.³⁵ The used terminology, which accuses the mothers of being irresponsible, of instrumentalizing their children and blackmailing the State, partakes in their incrimination, thereby justifying the separation from their children.³⁶ The recent decision by the Belgian state to agree to the repatriation of some mothers in the interest of the children, pending on positive screening by the security services, has not overturned this principled opposition to the return of the adults. The Belgian State’s opposition to the return of the mothers, and the recent court decisions, thus reflects an earlier described trend to condemn “foreign fighters” to a perpetual condition of out-of-placeness (Li 2010, Razack 2008), which, in turn, results in the consequential exclusion of the children and their unequal treatment.

Yet in addition to their parents’ unsettled socio-legal status, the children’s precarious position is also caused by their own suspended administrative and juridical position. In its acceptance to repatriate the children of Belgian departees in the camps who are younger than the age of ten, the Belgian state implicitly acknowledged the Belgianness of these children by arguing that the country has a certain degree of moral and political responsibility towards them. However, and as a condition for the repatriation of children younger than 10, the Belgian State has on repeated occasions, imposed proof of their socio-genetic affiliation. Whereas those born in Belgium have a demonstratable link to the country through their birth certificate, this is not the case for those born in the region.³⁷ Towards these children, the Belgian state has insisted on evidencing their affiliation through DNA samples. These administrative and biometric restrictions have mostly been impossible to obtain, since mothers are not authorized to leave the camps, and Belgian officials have, until recently, not been allowed to travel to the camps to collect such samples. As long as their ‘existence’ has not been evidenced through these DNA samples, their official existence in front of the law is pending.

³⁴ *Ibid*, pp. 21

³⁵ 25 February 2020, Nederlandstalige Rechtbank van Eerste Aanleg Brussel, Beschikking, 10^e Kamer, 2020/13/C, pp. 19

³⁶ The reports by the VUB team of their fieldtrip to the camps offer, on the other hand, a contrasting and very humanizing depiction of the mothers as extremely caring, loving and responsible with their children. See

³⁷ Of the estimated 163 Belgian children in the region, 135 (83%) were born in Syria. *Update Contextnota. Belgische minderjarigen bij de Islamitische Staat*, OCAD/OCAM, Doc 402520, Departement Analyse, 02/03/2020

An illustration can be found in the most recent court decisions, where judges have differed on their opinion regarding the official status, and existence, of these children. In a decision by the Court of First Instance, a judge declared that “the children find themselves in circumstances that create a strong bond with Belgium. A bond that is unmatched by any other country, which makes the Belgian state most appropriate to assume the obligations towards the children”.³⁸ He also argued that additional DNA samples for reliable identification of the parental link were unnecessary. In a subsequent decision by the Court of Appeal, it was, however, established that: “they (*the appellants*) did not provide evidence that they have the capacity of parent and fail to prove that they can assert an appearance of justice over these children”.³⁹ Because their biological affiliation was considered unproven, the Court no longer considered the children as worthy of engagement and relied its further judgment solely on the status of the parents. This co-dependency is furthermore evidenced through the status of the children whose mothers have been revoked from their Belgian citizenship, and who are thus not considered for repatriation.⁴⁰

Conclusion: virtual innocence and citizenship

On May 28th, 2021, the New York Times headlined: “*Europe’s Dilemma: Take in ISIS-families or leave them in Syria?*” The article focussed on the different approaches between the United States, which repatriate their departees, and Europe who remains hesitant to do so. Although a discourse on the need to repatriate European departees does exist, European governments have not been eager to practice what they preach. In recent months, however, there has been some movement in this question since countries like Belgium, Germany, Denmark, and Netherlands have proceeded with the repatriation of some women with their children. While in the case of Belgium, Denmark and Germany, this operation has been part of a broader governmental decision, in the case of the Netherlands the repatriation concerned only one woman and there are no immediate plans to repatriate the more than twenty other women and fifty children in the camps. The same holds for France, which has about a hundred women and more than two hundred children in the camps, with currently no plans to repatriate them. Additionally, there is also an increasing number of children who are no longer considered for repatriation: these

³⁸ 11 December 2019, Nederlandstalige Rechtbank van Eerste Aanleg Brussel, Beschikking, 10^e Kamer, Kortgeding, 2019/90/C, p. 23

³⁹ 21 October 2020, Hof van Beroep Brussel, Arrest, – 2020/KR/2 2020/KR/16, pp. 27

⁴⁰ There are currently two women in the camp Al-Rosh, with children, who are not considered for repatriation by the Belgian authorities because they have lost their Belgian citizenship. This is in addition to four Belgian women who are equally not considered because they do not have children or have lost their children.

are those whose mothers have been deprived of their European citizenship and are thus no longer viewed as a citizen by the European countries. Finally, even as these children return to their mother's home countries, the ambivalent relationship to the state remains. Many arrive as stateless, and their livelihood in the country remains subject to their parent's status whose citizenship could be revoked.

In this paper we have tried to account for the very particular status of the children of European deportees and have argued that the notion of 'virtual innocence' can help us to unfold the complexities of their status. The virtuality signals and ambivalence in the way they are perceived (as possibility, but not necessarily, dangerous), as well as to the instability of their parent's residency. Different from the mothers, whose existence in front of the law has been confirmed, the children reside in a condition of pending statelessness, or – as we have called it throughout this paper: *virtual innocence* – that is conditioned both by their yet to be determined socio-legal status and biological affiliation. The notion of "innocence" echoes here Hannah Arendt's use of the term, who invokes it to describe the condition of those who fall completely outside of the law. "The calamity of the rightless is not that they are deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion", she argues, "but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them" (Arendt 2004 (1951): 295-296). Underlying Arendt's argument is a condition what will be thematised by Agamben as "bare life", and which is rendered possible by the State's failure to recognize one's existence. In this context, the non-existence does not so much operate through an exclusion from the law (as is the case for the *homo sacer* who is expelled after being included), but rather through a refusal of being included in the first place. The children cannot be excluded from the Law, for their existence in front of the Law has yet to be established. This denial is also maintained through the imposition of various biometric and administrative hurdles, and the refusal to send representatives to the camps. They form part of the routinized technologies of surveillance and exclusion in these new regimes of exception, or, to use the formulation of Bigo, of the *banopticon* (Bigo 2008). Yet as the different examples in this paper have shown, this mechanism is not static but is continuously contested and un/made in the courtrooms and through the various mobilizing attempts on the part of the families and their supporters. Therefore, we describe this as a pending or *virtual* innocence, to highlight the unsettled status of this denial. Whereas the punitive logic, which represents one side of this practice of exception, is expressed in the case of the parents through the revocation of their citizenship and the refusal of re-entry into the national territory through a perpetual ban in the camps, in the

case of the children, it is through a logic of virtual innocence and pending citizenship that it becomes maintained.

As such, the discussion regarding the ambivalent status of children of foreign fighters raises many ethical, political, and legal inquiries, but it is also a productive site to inquire into how notions of childhood, innocence, and citizenship are far from settled, in particular when it concerns those whose parents are accused of terrorism. An important difference with their parents, however, is that their status as a child enables humanitarian moments of compassion and support. This discourse of compassion has formed the basis for their repatriation in the recent months from the camps in North-East Syria and has also enabled the countering of dominant stereotypes and representations that seek to ‘other’ them as children of ISIS fighters. However, and as has also been noted by other analysts (Fassin 2008), such a moral economy never forms a stable ground for legal rights, for it is, in this case, conditioned by their perceived innocence and helplessness. One of the outstanding questions will therefore be to understand what will become of these children, once they have outgrown their “innocence”.

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