

**“How should EU countries deal with the children of ISIS fighters currently living in refugee or prison camps?”**

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## 1 Introduction

During the rise of the Islamic State (ISIS), over 42,000 foreign terrorist fighters from 120 countries travelled to Syria and Iraq to fight for ISIS's caliphate, at least 5,000 of which were European nationals (RAN, 2017, p.6). Some of these foreign fighters had taken their children with them, while other children were born in the caliphate. The children are known as the children of ISIS. After succumbing to large defeats between 2017 and 2019, ISIS was driven from its last seized territories within Syria and Iraq in March 2019 (Farrall, 2019), however, the ideology of the caliphate is still present. The defeat of ISIS has left many European ISIS fighters stranded in refugee and war camps in Syria, their children among them. Over 1,800 European children of ISIS remain in overcrowded ISIS refugee camps under life-threatening conditions (ICSR, 2018, pp.16, 17), half are under the age of 5 and 80% are under 12 (Foreign Policy, 2019).

The conditions of the camps are dire; they are putting children at risk, and, as a result, the children's human rights are not being respected. As some of the children hold European nationalities, they fall under the responsibility of those EU States, making them responsible for respecting, protecting or fulfilling the human rights of the children. The European children are entitled to the rights outlined in the UN Convention on Rights of the Child (CRC) and the European Convention on Human Rights (ECHR), and thus, by not supporting these children, European states are violating their human rights. The CRC defines a child as every human being below the age of eighteen years (art.1 CRC). Therefore, all European minors aged 0-17 should be considered, as they are entitled to the rights in the CRC and the ECHR. However, most states have shown to be reluctant to assist the children and have not been taking equal steps towards aiding and repatriating them.

Across Europe there is a fear of bringing European ISIS supporters back from Syria. ISIS supporters include: ISIS fighters, their wives and children. The national security threat that the children could pose has been the most significant reason why governments have done so little to repatriate the children of ISIS (NCTV, 2017). The children have all been affected by living

within the warzones of the caliphate, causing many of them to suffer from negative psychological and physical effects. Furthermore, minors above the age of 10, within the caliphate, start to receive physical and militant training courses (Almohammad, 2018). This means that some children that were above the age of 10, before the caliphate was overthrown, could be affiliated with the terrorist acts of ISIS, as indicated in ISIS propaganda (NCTV, 2017, pp.10-11). However, by not aiding the children, a worse threat could be imminent; namely the creation of a new, more radical extremist group.

This research aims to assess the optimal solution for the children of ISIS and the national security of the states. By analyzing how the children's human rights are being violated and understanding the different methods taken by the European states to solve the problem, this thesis attempts to answer the following question: *How should EU countries deal with the children of ISIS fighters currently living in refugee or prison camps?*

In order to fully understand the concern of having the children remain in the camps, Chapter 2 will discuss the problems within the refugee or prison camps. Chapter 3 will examine the relevant human rights of the children by looking at the human rights legal framework, assessing to what extent they have been violated. In Chapter 4, diverse solutions that have been undertaken by certain EU States will be analysed. Finally, Chapter 5 will conclude with an assessment of what the optimal solution is for the EU States to deal with the children of ISIS fighters currently living in the refugee or prison camps.

## 1.1. Methodology

First, a legal analysis will be conducted, using the most significant legal sources on the rights of the child under international human rights law, specifically the ECHR, the CRC and its relevant UN General Comments and case law. Additionally, the political approaches of certain countries will be compared. As this precarious situation is still ongoing today, news articles in journals and newspapers will be used as they provide the most up to date and accurate information. Moreover, secondary sources such as scholarly articles, government publications and international and

non-governmental organizations reports will be applied to better understand the possible solutions of aiding the children of ISIS.

## 1.2. Limitations

In essence, this research will limit itself to examine the European children's right to return to their own country through the rights included in the CRC and ECHR. The complex issue of the children of ISIS held in Syria and Iraq raises many political and legal questions, which cannot all be answered in the scope of this thesis, as it merely focuses on the right to be repatriated. For example, this thesis will not address the principle of family unity, which is laid out in the CRC because it would raise further questions about the parents of the children, which is not the focus of this research. As this problem is ongoing, the data collected on the development of the repatriation of the children is mostly dated up to May 2020. Furthermore, due to the lack of precise data and confidential information, as a matter of national security, this research is limited to available public data and information. Numbers could be altered due to the ongoing collection of data, as this is an ongoing case. However, this research has attempted to carefully choose the most credible and available sources.

## 2 The problems with the camps that the children are currently situated in

### **2.1 Introduction**

ISIS was a powerful terrorist militant group that had seized control of large areas within Iraq and Syria from 2011 to 2015 (Wilson Center, 2019). The self-described caliphate poses a threat to the global community as it has claimed responsibility for hundreds of terrorist attacks around the world (UNSC, 2015). In 2016 ISIS started to lose its grip on the territory it had claimed, marking the decline of the caliphate (Oosterveld, 2017, p.15) and causing the wives and children of the caliphate to flee to refugee camps. This chapter will outline why the European children of ISIS are currently being held in refugee or prison camps, while highlighting the human rights of the children that are being violated due to the dangers they face within the camps.

### **2.2 Why the children are currently living in refugee or prison camps**

After the fall of the caliphate from the last of its territory in Syria and Iraq in March 2019 (The Guardian, 2019), ISIS families were forced to flee from the territory of the caliphate to reside in refugee camps in the Northeast of Syria. Three refugee camps have been established, the largest of which is Al Hol. Al Hol was built to hold a capacity of 10,000 people, however, over 70,000 individuals, the vast majority of whom are women and children, flocked to the camp after ISIS was defeated (UN News, 2019). An estimated 45,000 children are currently stuck in these camps, 8,000 of which are foreigners (Euronews, 2019b).

The foreign children are not being repatriated to their countries because they are rejected by their governments and shunned by their communities (UN News, 2020). This is due to the fact that ISIS has extensively used minors as combatants and attackers (NCTV, 2017). Therefore they could pose a potential security threat. ISIS has increasingly instructed minors to administer attacks (ICSR, 2018, p.56). This has led to cases of successful attacks conducted by minors. For example, a former 12 year old ISIS trained 'cub' successfully conducted a suicide attack killing at least 51 people attending a Kurdish wedding in southeast Turkey in 2016 (BBC, 2016b). This has caused foreign countries, especially EU States, to vocalise their concerns about the

possibility of terrorist attacks in their countries if they repatriated the children of ISIS. ‘We have to consider that these children could be living time bombs. There is a danger that these children come back brainwashed with a mission to carry out attacks’, Germany’s domestic intelligence chief, Hans-Georg Maassen, stated (Reuters, 2018a). This highlights that the children are viewed as a danger to society, which is why states are unwilling to repatriate them. However, “the children are victims; it's not their fault that they were born within families with association to ISIS”, Sherin Murad Ismael, a child protection officer at UNICEF, stated (Euronews, 2019b). The children have rights and need to be protected, underlining why states must consider repatriating the children, as they never intended to join the extremist group, but nevertheless have to suffer the consequences.

### **2.3 The Conditions in the refugee camps**

Due to the overcrowding of the camps in Syria, the conditions within the camps are appalling. NGOs (HRW, 2019a) have denounced the circumstances within the camps that are administered by Kurdish authorities (Mehra, 2019). This is because the conditions of the camps are catastrophic to the health of the children (UN News, 2019). As there are no proper health services available in the camps, thousands of people are not receiving the necessary amount of health care, increasing the risk of disease. This causes children to regularly die from preventable diseases, contradicting the rights laid out in the CRC, namely Article 6, which refers to the child’s right to life. The Human Rights Watch and other humanitarian organisations have reported that at least 390 children have already died in al-Hol since December 2018 due to the detrimental conditions in the camps (HRW, 2019a), indicating that states have violated their positive obligation to ensure the survival of the child (art. 6 (2) CRC). Furthermore, children in the camps are reported to be suffering from developmental disorders, seizures, rickets and asthma (The Guardian, 2020), affecting their development and possibly their survival.

The harsh circumstances under which the people within the camp have to live have grown worse over the summer and winter due to the extreme weather conditions. For example, food shortages have resulted in violence and murder within the camps (The Guardian, 2020). Moreover, the

extreme temperatures have caused health conditions to exacerbate, causing some children to lose their ligaments to frostbite due to the lack of healthcare and proper facilities in the camps (Bloom, 2020).

#### **2.4 Risks Faced Within the Camps**

The children are also at risk of abuse, exploitation, harassment, child marriage and labour within the camps (Euronews, 2019b). Part of the reason for this is that they have a lack of access to education and some children have been separated from their families, causing them to take on adult responsibilities as they have to care for their siblings (Cebrián, 2019). These issues threaten the rights of all children to be protected from all forms of sexual abuse and exploitation (art. 34 CRC), putting an obligation on states to protect the children from these risks. Preventing and responding to all forms of violence is essential to ensure children's right to survival, development and participation. The children must therefore be protected from such exploitation, by removing them from these camps and repatriating them to their countries of origin (ICSR, 2018, p.17).

Experience of violence, neglect or long-term distress due to the exploitation or the separation from one's parents, can have a striking and lifelong impact on the healthy development of a child (Save the Children, 2016). This can cause children to become violent, or cause health issues, such as psychosocial distress (Kizilhan, 2018), emphasizing the need to repatriate the children.

#### **2.5 The Ongoing Ideology**

Additionally, probably one of the most concerning matters is that the rules of ISIS's caliphate are still present in the camps. ISIS fighters have been taking control in parts of the camps and imposing cruel punishments on children within the camps (The Washington Post, 2019). Those who do not comply to the radical rules of Islam are punished, for example by having their tents set alight (Euronews, 2020, 6:22). This highlights that 'ISIS may have been defeated militarily, but their ideology lives on,' Mohamed Bachir, the Manager of Al Hawl camp stated (Euronews, 2020, 6:35). The life threatening conditions that people in the camp are put in when they go



against the extremist ideologies set by ISIS, makes it nearly impossible for families to escape the radicalisation of ISIS. Families must comply with the laws set out by ISIS to avoid punishment. Furthermore, living under enforced coercion leads to adherence to the ISIS ideology. This is because a high cost for dissent is invoked, causing conditions for obedience to increase (Borum, 2011, p.21).

Because of how radical some of the ISIS families currently residing in the camp remain, governments are reluctant to take back their citizens as they pose a great security risk (HRW, 2019b). However, would leaving them in these conditions not pose a greater security risk? Due to the preexistence of the ideology, the refugee camp acts as an incubator for extremism as many ISIS extremists have been placed together, which risks strengthening the radicalisation of those residing in the camps, including the children. Therefore, if the children are not supported by being repatriated, the camps could become a potential revival site for ISIS, making the task of reintegrating them into their own societies much more challenging (ECFR, 2019).

## **2.6 The Conditions in the Prison Camps**

In Northeastern Syria, boys aged 9-18, who have been suspected of taking part in ISIS activities (Nyamutata, 2020, p.11) have been detained by the Syrian Democratic Forces (SDF) (HRW, 2019a) in Kurdish run prisons. One 16 year old stated, “One American twice put me in a line to go to jail. But another American cursed him and said, ‘Why are you putting him back? The boy is small’” (HRW, 2019a). This implies that the SDF and US forces had randomly decided which boys were to be imprisoned and which would be sent to the refugee camps. Moreover, there is no proof that the children that are currently being held have participated in combat training. Furthermore, none of the European children are awaiting trial as Syrian Kurdish authorities do not try foreigners (NYT, 2019b), meaning that European children have to remain in prison for a crime that they might not have committed, violating their right to liberty and their right to a fair trial.

Additionally, the detention centre faces harrowing conditions and severe overcrowding. ‘Jammed into two cells with little sunlight, are more than 150 children, ages roughly 9 to 14, from a range

of countries' (NYT, 2019b). Even if a child is a suspected criminal, their well-being must be prioritized; they require specialized physical and emotional care, and their detention must be considered as a last resort (UN General Assembly, res.40/33). Furthermore, the children are entitled to the right to be treated humanely (art. 37 (c), CRC), even if they are suspected of committing crimes. The Kurdish-led Autonomous Administration, controlling northern Syria, has stated that it lacks the resources to detain the prisoners properly (HRW, 2019a), highlighting that the conditions, under which the children are being held, do not meet international standards as this threatens their right to be protected against inhumane or degrading treatment (art.3 ECHR).

Furthermore, the children in the prisons have been separated from their parents as they have either been killed or detained, indicating that the children have no idea where their relatives are or what the future holds, putting them in a scary and very emotionally straining position, which in turn can have disastrous effects on their development and well-being. This violates their right to development (art. 6, CRC), which states have a positive obligation to fulfill.

## **2.7 Conclusion**

Recognizing the conditions under which the Children of ISIS are currently being held in refugee or prison camps is crucial for understanding the human rights that are being violated, emphasizing the need for action by their national states. By allowing the children to suffer under the conditions of the camp and leaving them to face the risks of exploitation and harassment; the states that the children belong to are not fulfilling their positive obligations to help secure the children's relevant fundamental rights enshrined in the ECHR and CRC. Furthermore, abandoning the children in an area where they are susceptible to radicalisation is counterproductive and can increase the security threat that they pose to states.

### 3 The legal obligations EU States have towards the Children of ISIS

#### 3.1 Introduction

The standards, procedures and institutions that establish fundamental human rights in the EU are enshrined in treaties, which are initiated by certain organizations such as the EU, the Council of Europe and the United Nations (UN). Obligations for EU States under EU law are pursuant with the EU Charter of Fundamental Rights and the obligations set under the ECHR. Article 51 of the EU Charter holds that member states have a duty to respect the rights, observe the principles and promote the application of the Charter. This indicates that the states must refrain from interfering with or diminishing the enjoyment of the fundamental human rights laid out in the Charter. Furthermore, according to Article 53 of the EU Charter, the level of protection provided by other human rights instruments to which the European Union or the Member states are party, should be maintained. Therefore, the article provides that equivalent rights in other human rights' instruments must be maintained. Additionally, the ECHR plays a crucial role as it is applicable at the national level as it has been incorporated into the legislation of the states Parties, indicating that the states have undertaken the responsibility to respect the rights defined in the ECHR. Moreover, the CRC is applicable as it contains rights that are specific for the children. The CRC has been ratified by all EU member states and therefore they must respect the rights laid out in the CRC (Bentzen, 2019). Furthermore article 3(3) of the Treaty on European Union establishes the objective for the EU to promote protection of the rights of the child (European Commission, 2020). The obligation to protect makes it necessary for states to protect individuals and groups against human rights abuses, in this case children. Furthermore, the EU member states carry the responsibility to take all feasible measures to ensure that children affected by armed conflict receive protection and care as provided for in the 2000 Optional Protocol to the CRC on the involvement of children in armed conflict, to which all the member states are party. This is because a civil war is taking place in Syria (Council of Europe, 2019).

The State that the children are a national of is responsible for them. This is because nationality links an individual and its State, as it regards particular benefits and obligations set under international law, such as the rights included in the CRC and ECHR. This is crucial, particularly in the spheres of jurisdiction and the international protection of the individual by the state (Shaw, 2008, p.258). As the children of ISIS are currently residing in Syria it is important to discuss the jurisdiction of the European states over the children of ISIS. As provided by Article 1 of the ECHR, the contracting states are restricted to “securing” the listed rights and freedoms to persons within their own “jurisdiction”. Jurisdiction is a sine qua non within the meaning of Article 1, as it is a necessary condition for a Contracting State to be able to be held accountable for violating the rights and freedoms set forth in the Convention (Catan v. the Republic of Moldova and Russia, 2012, § 103).

As mentioned in section 2.6, some of the older children are suspected of participating in ISIS terrorist activities, which is why they are currently being held in prison camps. However, it is important to take into account that they are children, meaning that in certain systems, including ICL, no criminal prosecution can be exercised against them if they are below the age of 18 (art.26 ICC). In other words, none of them would fall under the jurisdiction of the ICC even if the ICC had jurisdiction.

Article 2 of the CRC states that “states Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction....” As a general rule, jurisdiction is defined and limited by the sovereign territorial rights of the other relevant states. The same applied for the European Court of Human Rights (ECtHR) (art.1 ECHR). This means that EU States cannot exercise their jurisdiction in Syria under the CRC or ECHR. All they can do, if they are willing to, is ask for their national children to be repatriated.

Furthermore, both Syria and all members of the EU have signed and ratified the CRC (UNTC, na). This indicates that, as the children are under the territorial jurisdiction of Syria, Syria has an obligation to fulfill the rights set under the CRC. Furthermore, Article 4 of the CRC reflects the ‘progressive realization’ of the rights of the child, according to general comment No.5 of the Committee on the Rights of the Child. This means that signatory states should be able to

demonstrate that they have implemented “to the maximum extent of their available resources” to fulfill these rights. If they are unable to fulfill these rights, they must seek international cooperation. Additionally this article puts an obligation on all states that have ratified the treaty to exercise these rights within their own jurisdiction and to contribute, through international cooperation, putting an obligation on EU States to aid other states who are unable to meet the standards set in the CRC. Syria has been in an ongoing civil war for 10 years, making it challenging for the state to support the needs of the children (Save the Children, 2019). Furthermore, Kurdish authorities of the camps have stated that they do not have the resources to undertake the families of ISIS, which in turn has been causing the terrible conditions in the camps as outlined in section 2.3 and 2.6 (ECFR, 2019). Additionally, they have called for international assistance in handling the children (ECFR, 2020), indicating that they are willing to allow the European states to enforce their jurisdiction when it comes to the repatriation of the children.

Furthermore, the nationals of a Member State currently detained in Syria could, through their lawyer, bring a case to the ECtHR in Strasbourg in view of obtaining a judgment against their European national State, forcing it to repatriate them (H.F. and M.F. v. France, 2020). For this they would need to prove that their conditions of detention violate their human rights. When considering the European children of ISIS fighters currently residing in refugee or prison camps the main legal requirements that the EU States have towards the children are; the right to life and development (art.2 ECHR), the right to be free from torture and inhumane or degrading treatment (art.3 ECHR and art.37 (a) CRC), the right to be protected from discrimination (art.2 (2) CRC), the right of the best interest of the child (art.3 CRC), and finally the right to a nationality (art.7 CRC). These positive obligations highlight the obligation for European states to act in order to respect and protect the children’s fundamental human rights. If these rights are being violated, the children could, on the basis of these violations, be repatriated if the EU States act in accordance with their legislation and international and European applicable standards.

### **3.2 The Right to Life and Development**

The right to life is one of the most fundamental rights (art. 2 ECHR), Article 6 of the CRC

attributes this right specifically to children; ‘a child has an inherent right to life’ making this right legally binding to all the states that are party to the EU as they have ratified the convention. Article 6 consists of two parts, namely 6 (1), which relates to the prohibition of a state to kill the child, while 6 (2) refers to a positive obligation of the state to ensure the survival and development of the child.

The current situation in the camps and prisons is disastrous to the development of a child from a physical, emotional, and educational standpoint as described in section 2.3 and 2.6. The UN Committee on the Rights of the Child’s General Comment No. 5, helps understand the scope of the definition of the term development. “The term development should be interpreted in its broadest sense, encompassing the child’s physical, mental, spiritual, moral, psychological and social development”. This brings forth the urgency of the conditions that the children have been left in after living under the ISIS regime. ISIS regarded its minors as an essential component to the continued existence of ISIS. Therefore a large percentage of the children were comprehensively indoctrinated with the ISIS ideology through their education, training camps and by their family members (Bouzar, 2019). Moreover, some of the boys had actively participated in violent acts in the name of ISIS from a young age, and may have even committed atrocities themselves (NCTV, 2017). This is why the children need psychological help as they have lived in a conflict zone where they were frequently confronted with violence and death. The exposure to and possible involvement in violence can present risks to the physical and/or mental health development of the children (Kizilhan, 2018), indicating that these rights must be protected under article 6 of the CRC.

However, those who have committed crimes can be viewed as a danger to society and can therefore pose a security threat. Article 15 of the ECHR allows a derogation from its obligations under the convention in the time of an emergency, such as a national security threat. However, no derogation can be made from Article 2 under this provision (art.15 (2), ECHR), namely the right to life. The states are not directly killing the children, however, through their inaction and

failure to protect the children, the states are not fulfilling their positive obligation to protect the children.

Nevertheless, states could still protect the rights of the children in a manner that also protects the security of the state. In other words, the children could still be imprisoned as a measure of last resort and for the shortest appropriate period of time (art.37 (b), CRC) if they are identified as a security threat. However, the boys who are suspected of taking part in ISIS attacks are currently already residing in prison camps, where, as mentioned in section 2.6, the conditions are even worse than in the refugee camps. Therefore, in accordance with the right to life and development, leaving the children of ISIS in refugee or prison camps would unquestionably violate this obligation. The children could instead be confined in a safe environment. As the states have no jurisdiction in Syria, repatriation is the best way for European states to ensure that the children end up in a safer environment. In this manner, the EU state parties have the possibility to respect the children's right to life (art.2 ECHR), while protecting the national security of the state, as the children would be brought to a safer yet controlled environment. Furthermore, by doing so the states fulfill their positive obligation to ensure to the maximum extent possible, the survival and development of the child (art.6 (2) CRC).

### **3.3 The Right to be Free from Torture and Inhumane or Degrading Treatment**

The inhumane and degrading treatment the children face in the camps violates their human rights (art.3 ECHR) (art.37 (a) CRC). This places a responsibility on EU States towards the Children of ISIS to refrain from abusing the children's enjoyment of their right to be free from inhumane treatment. Currently no measures are being taken to provide them with effective protection, which in turn is a violation of Article 3 of the ECHR. The best way to ensure that their rights are protected, is repatriation. The crucial question is: do the children have a right to be repatriated under these circumstances?

Article 39 of the CRC states that 'all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or

punishment. Such recovery and reintegration should take place in an environment which fosters the health, self-respect and dignity of the child.’ This indicates that EU States have an obligation to protect the children against torture and degrading treatment, meaning that they would have the right to be repatriated if these rights are being violated.

### **3.4 In the Best Interest of the Child**

Article 3 of the CRC considers the best interest of the child. The circumstances within the detention camps mentioned in section 2.3 and 2.6, highlight that the best interests of the child are not being met. Furthermore, due to the absence of basic health care and education in the camps (Cebrián, 2019), other provisions of the CRC could also be invoked, such as the right to basic health care (Art.24), the right to adequate standard of living (Art.27), and the right to education (Art.28), all of which play a role in assuring the best interest of the child. The right to family life could also be invoked in accordance with Article 8 of the ECHR when the best interest of the child is being considered. Furthermore the UN Committee on the Rights of the Child’s General Comment No.14 on the best interests of the child, notes that states have an obligation to ensure that the child's best interests are properly integrated and consistently applied “in all actions directly or indirectly affecting the child”. This indicates that a reluctance or a failure to act is also an action, emphasizing that the state has a positive obligation to protect the best interests of the child. Therefore, a state would not uphold its obligation if it did not take action in protecting the children. However, if a state can prove that the child would pose a security threat, it would not be required to do so as ‘such restrictions are necessary to protect the national security’ (art.10 (2), CRC).

### **3.5 The non-discrimination principle**

The non-discrimination principle comes to question when continuing to consider the best interests of the child. According to Article 2(1) of the CRC, children should not be punished, treated differently, or discriminated against because of their parents beliefs. Furthermore Article 2(2) of the CRC states that state parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family



members. This implies that states should proactively take measures to protect the child of this right (Mehra, 2019).

As mentioned in section 2.6, ISIS had extensively trained and indoctrinated minors so that they could be used as combatants. Therefore the children of ISIS could pose a potential security threat to the EU States if they were repatriated. However, only children who were above the age of 9 when they lived under the caliphate, were admitted to ISIS combat training (NCTV, 2017, p.15). This indicates that ‘young children’ that were 0-9 years old when they fled the caliphate and took refuge in the refugee camps, should be considered primarily as victims, and not as a threat, as they have not reached the sufficient age to be indoctrinated and trained. Contrarily, for the children who were aged 10-17, ‘factors such as indoctrination, training and potential involvement in violent activities are more likely to play a role, demanding an approach that goes beyond the victim-perspective’ (Heide, 2017, p.13). This indicates that not all the children pose a national security threat if they were to be repatriated, and must therefore not be dealt with in the same manner as the older children who are more likely to have received training are more likely to pose a security threat.

Furthermore, it is important to note the different motivations and means of recruitment of the children. According to a research conducted by the International Center for the Study of radicalisation (ICSR) in 2018 (ICSR, 2018, p.13), most of the infants of 0 - 4 years old were born inside the territory of ISIS, and were thus unable to choose whether they wanted to be associated with ISIS. Therefore the majority of infants should be protected under article 2(2) of the CRC, and not be discriminated against. It is important to note that two years have passed since the research was conducted, meaning that the age group now includes the ages 0 - 6.

Correspondingly, the association of foreign children aged 5 - 14 (according to the 2018 study) who are currently aged 7 - 16 (in 2020) to ISIS is also linked to their parent’s motivations as they were brought in the caliphate and therefore do not attribute individual incentives or ambitions for their involvement in the terrorist organization. However, as mentioned above, those aged 10 and older, predominantly boys, underwent psychological indoctrination and physical training,

indicating that they may have taken part in acts of violence and abuse as part of their training and could pose a national security threat (ICSR, 2018, p.30 - 32). The matter of whether or not these children possessed an individual agency and made a conscious decision to support or conduct violence, is still very debatable. This shows that the children were most likely influenced by their parents decisions and should therefore not be discriminated against (art. 2(2), CRC), unless it can be proven that they were involved in acts perpetrated by ISIS, as they would then show a personal agency within the terrorist group.

Finally, the age group that is of most concern is that of the teenagers, namely those aged 15 - 17 (currently this only concerns those who are 17-19 years old). A large percentage of this age group has shown a personal agency to join the caliphate, for example Jake Bilardi a 17 Australian boy, was one of a number of teenagers who voluntarily travelled across the world to Syria to fight for ISIS, and stressed his determination to join the extremist group, which eventually lead to his suicide operation in Iraq in March 2015, where 17 people were killed and 38 wounded (ABC, 2015). Furthermore, some were groomed to join ISIS, causing them to travel to Syria without the consent of their parents. The three 'Bethnal Green girls' is an example of this, where Amira Abase (15), Shamima Begum (15) and Kadiza Sultana (16), who were three British schoolgirls, flew from London to join ISIS in April 2015, and become ISIS brides (The Times, 2019). This shows that although certain teenagers may have been convinced to join ISIS, they themselves chose to join ISIS. Therefore they possessed individual incentives or ambitions to become involved in the terrorist organization. Consequently, they would not be discriminated against if they were treated as ISIS fighters and can therefore not be protected under article 2(2) of the CRC as they made their own decision to join ISIS, rather than on the 'basis of the status, activities, expressed opinions, or beliefs of the child's parents'.

### **3.6 The Right to a Nationality**

The legal obligation set in Article 7 of the CRC; 'The child shall have the right to acquire a nationality...', indicates that the children of ISIS have a right to a nationality. The nationality of the children depends on the nationality of their parents and the applicable laws in the respective states of which the child is a national. Many detained children were born to parents from two

different countries, bringing up the issue of which nationality they could and should legally claim (HRW, 2019c). This is because certain EU countries accept dual nationality such as France and Germany, while countries such as the Netherlands, Slovakia and the United Kingdom (UK), a former EU state, do not. This indicates that children with a dual nationality from one EU state that does not accept dual nationality, could lose their European citizenship if their other nationality is not European.

Furthermore, distinguishing the states to which the children belong poses a fundamental problem. Most of the children of ISIS born in the camps lack birth certificates or other documents to confirm their nationalities, making it challenging to identify their nationality. This brings forth the problem of statelessness. Article 7 of the CRC states that it is important to grant children the right to a nationality ‘in particular where the child would otherwise be stateless’. If the children would have no documents to prove their nationality, no states would be responsible for those children as they would not fall under their jurisdiction. Without a nationality, the children would be deprived of the basic rights that citizens enjoy, such as socioeconomic rights and civil and political rights. The children would be placed in a situation of increased vulnerability to human rights violations if their nationality were to be revoked (HRC, 2012, p.2), highlighting the importance of having a nationality (Hoti v Croatia, 2018 § 105).

Article 7 of the CRC protects children from becoming stateless as they have a right to a nationality. If the child would hold a dual nationality, one of their nationalities could be revoked as it would not result in them becoming stateless. Certain EU States, such as the Netherlands have legally revoked the citizenship of nationals who fought for ISIS and held a dual nationality (IND, 2019), making these citizens ex nationals of the Netherlands. This is legal in 14 out of the 27 EU member states, where France and the Netherlands explicitly mention the ‘involvement in terrorist activities’ as a reason to withdraw a national’s citizenship (EPRS, 2018). It is important to note that it is the parent’s nationality that is being revoked, which in turn causes the child to not have a right to obtain that nationality, unless the revocation would make them stateless. ISIS associates are recognized as a potential threat, which has encouraged states to deprive duonationals of their citizenship because it is favourable towards the public good. In 2017 the

UK stripped 104 people of their UK citizenship, most were jihadis or violent criminals who had held dual nationality. Richard Barrett, a former head of global counterterrorism for M.I.6, stated: “If there is a way of getting rid of the problem to somewhere else, let’s get rid of the problem somewhere else” (The Newyorker, 2020). This indicates that children born to ex European nationals of those states, during the conflict in Syria, would no longer possess a European nationality if only one of his or her parents was a European national, causing the child to no longer fall under the responsibility of the EU member state. It is difficult to calculate the amount of children who have parents that hold a dual nationality, and could be affected by this.

According to the General Assembly resolution 50/152, the right to retain a nationality corresponds to the prohibition of arbitrary deprivation of nationality. If a state were to revoke the European nationality of a parent of one of the children, it would respectively revoke the child’s corresponding nationality if they held a dual nationality. The children had only been placed in this situation because of their parents’ motives, making it unjust to revoke the children’s European nationality on the basis of their parents’ crimes, as noted in the previous section. An arbitrary deprivation of a child’s European nationality effectively places them in a more disadvantaged situation as their human rights could be subjected to lawful limitations that would otherwise not apply. This is because the Council of Europe, of which all European states are a member, has developed one of the most advanced systems of Human Rights (Smith, 2018, p.98). Therefore, if the child would no longer hold an European nationality, they would be subject to a less developed human rights system.

### **3.7 Conclusion**

Overall, the ECHR and the CRC pose legal requirements on EU States towards the Children of ISIS to respect and protect certain fundamental rights due to the awful conditions that the children are currently living in. These rights apply to all the children aged 0 - 17. As the states hold no jurisdiction in the Syrian territory that the children are currently residing in, the only measure that can be taken by the states is repatriation.

Furthermore, the balancing of rights differs per age group, as all the rights must be respected but balanced with considerations such as national security. For example, it is important to recognize that the children aged 0-9 are less likely to pose a security threat, while children aged 10+ could. Furthermore, the obligation put on states to protect children from discrimination, if the discrimination was due to their parent's status or belief, does not apply to children who have acted for ISIS and minors aged 17 as they would have likely had a personal incentive to join ISIS. This indicates that EU States do not have the exact same obligations towards the children that can be proven to be an actual threat and those that are aged 17.

Finally, if the child was to lose their European nationality because their parent's European nationality was revoked, they would no longer fall under the responsibility of that European state. This would mean that the European state would no longer have any obligations towards that child, which infringes on their human rights.

## 4 Current solutions taken to tackle the problem of the Children of ISIS

### 4.1 Introduction

When it comes to the repatriation of the Children of ISIS, European countries have been reluctant to do so, as some have even refused to take back the children. Only a few orphans have been repatriated so far compared to the large number of children that are still being held in Syria, (Mehra, 2019) as orphans and unaccompanied children have been identified as the least controversial group to repatriate. This reluctance to bring back other European children of ISIS is due to the fact that EU States fear the security risk that the children could pose (Council of Europe, 2020). The last few months of 2019 showed that more European states have started to be challenged in court by family members of those children (Capone, 2019). This has led to EU States taking various steps to tackle the problem of European children of ISIS fighters that are currently residing in refugee or prison camps. The different measures that have been taken by the EU States include; repatriation on a case by case basis, only repatriating orphans or special cases, and finally, stripping the children of their nationality meaning that no repatriation would be necessary, as will be discussed in the following paragraphs. Additionally, the Kurdish authorities that are currently running the refugee and prison camps have stressed that they believe that it is essential that the mothers of the children are repatriated along with the children, placing a bigger dilemma on the states between the best interests of the child and the national security of the state.

### 4.2 Repatriating on a 'Case by case' basis

Having faced a string of terrorist attacks, such as the Paris Terror Attacks in November 2015 (The Guardian, 2015), France has experienced the harm and terror that ISIS members can bring to one's country, making the state more reluctant to take back its national children of ISIS. According to a poll conducted in February 2019, 2/3 of the French citizens did not want children of ISIS militants to be repatriated (Council of Europe, 2020), explaining why the French government had initially rejected the option of repatriating its children by fear of infuriating public opinion. "Authorities know that the children aren't a serious threat, but the public opinion might not be aware of that," Jean-Charles Brisard, the head of the Center for the Analysis of

Terrorism, stated (NYT, 2019a). However, several families in France have filed a suit against the Minister of Foreign Affairs for failing to protect its citizens in danger (L'Express fr., 2019). A case has even been brought before European Court of Human Rights (ECtHR) in Strasbourg due to France's refusal to repatriate the children of ISIS (H.F. and M.F. v. France, 2020). The rights under article 1 and 3 of the ECHR were invoked, on the basis of the jurisdiction and responsibility for repatriating nationals and due to the inhumane treatment caused by France's refusal to repatriate the national and her young children.

Currently 460 French children reside in the refugee or prison camps in North East Syria. (ICSR, 2018, p.17). Following months of hesitation amid hostile public opinion, 6 French children; five orphans and a three-year-old girl whose mother was sentenced to life imprisonment in Iraq, were repatriated in March 2019. Three months later 12 more orphaned children of French jihadists were flown home from Syria in June 2019 (France 24, 2019).

France has stated that it is studying the files of all the French Children of ISIS held in North Eastern Syria on a case-by-case basis. "Provided that we take the time to assess their level of trauma and the type of care they need, their return usually goes fine. But the older and the more damaged they come back, the harder it will be to reintegrate them", Thierry Baranger, a French judge explained about the child returnees (NYT, 2019a). This is why, regarding the age of the children, France has limited the age of the children being repatriated to younger than 6 years (Aawsat, 2020).

Similarly to France, Belgium has faced ISIS terror attacks (BBC, 2016a) and therefore recognizes the possible security risk of bringing back the Belgian children of ISIS. The Belgian state was forced by a court judgment in December 2018 to allow a number of Belgian children of ISIS to be repatriated (T.W. en B.A. v hof van beroep Antwerpen, 2018). However, the Belgian Government directly appealed this decision, which was eventually overturned on 27 February 2019 (SPFAE, 2018). Namely, the Court ruled that the Belgian state has no authority to act on its own initiative abroad, certainly not in the region where the Wielandt-Abouallal families are currently located in the refugee camp. This is because there is currently no normal political

administration there. Therefore the women and their children in the camps do not fall under the Belgian jurisdiction (T.W. en B.A. v hof van beroep Antwerpen, 2018).

Regardless thereof, Belgium eventually applied policies for repatriating the children, which are broken down into age brackets. Children under the age of 10 have the right of immediate return to Belgium, as long as the link with a Belgian parent is proven. While those between the ages of 10 and 17 would be reviewed on a case-by-case basis (Euronews, 2019a). From the 150 Belgian children identified in Syria (ICSR, 2018, p.17), Belgium has only repatriated 6 following a Court order (Reuters, 2018c).

By repatriating the children on a case by case basis, France and Belgium are balancing the need for protecting their national security and the rights of the children. National security is protected as the case of the individual children is analysed; if the children are not identified as a threat, they can be rehabilitated in a manner that suits the children's needs and respects their rights. Furthermore, the human rights of the children are protected because the children who are repatriated are brought to a safer environment compared to the harsh circumstances that they faced in the refugee and prison camps.

However, the time it takes to repatriate the children on a case by case basis brings to question whether this process works in the best interest of the child. As mentioned above, Thierry Baranger stated that 'the older and the more damaged they come back, the harder it will be to reintegrate them.' Indicating that the longer it takes to repatriate the children, the more challenging it will become to reintegrate them into society, highlighting the need of the children and the society to repatriate the children within an appropriate time frame, as to overcome the threats that the children would otherwise pose.

Additionally, by only repatriating children younger than 6 years old, France's solutions are discriminatory towards children aged 7-17, (art.2 CRC) as the children have an equal right to gain access to services that could aid them in being repatriated because they still fall under the



state's responsibility (UNICEF, 2007, principle 3.3). Therefore Belgium's solution to still allow those above the age of 10 to be repatriated on a case by case basis, is less discriminatory.

#### **4.3 Only repatriating Orphaned or Necessary cases**

Currently there are at least 175 children with Dutch affiliation in Syria (ICSR, 2018, p.17). Unlike France and Belgium, the Netherlands has not faced any ISIS terrorist attacks. However, due to the Jihadist attacks that were being carried out in the West in the years 2015 - 2017, the National Coordinator for Security and Counterterrorism (NCTV) of the Netherlands has determined the terrorism threat level to be 3 on a scale of 1 to 5 in 2019. This indicates that the possibility of a terrorist attack is still conceivable (NCTV, 2019), which explains the Netherlands' reluctance to repatriate the children as they are a perceived threat.

The Netherlands enacted a law in 2017 that allowed the state to revoke Dutch citizenship for people who joined ISIS. The Dutch Nationality Act, Article 14(4) gives the Minister of Justice discretionary power to revoke a Dutch citizen of their Dutch Nationality if they joined a terrorist organization. This indicates that when the Minister of justice decides to revoke the nationality of a Dutch national, that their children would also lose the right to that nationality (art.14 (6), Rijkswet op het Nederlanderschap). However, Dutch nationals would not lose their nationality if they would otherwise become stateless, as stated in Article 134a of the Dutch Criminal Act, which ensures that the deprivation of one's nationality cannot lead to statelessness. This indicates that Article 134a protects people with a single nationality and can only target dual nationals.

Furthermore the Netherlands has been challenged in the Supreme Court of the Netherlands to take a proactive approach to facilitating the return of children nationals. Dutch legal representatives filed a case against The Netherlands, to repatriate 23 Dutch Mothers of ISIS and their 56 children from Syrian camps. Similarly to the ruling made by the Belgian court, the District Court in The Hague ruled that an active effort must be made by the Dutch Government in the repatriation of the 56 children, aged 0 to 12 years old. However, there is no requirement of returning the mothers (Rb. Den Haag 11 november 2019, ECLI:NL:RBDHA:2019:11909). This indicates that the power to revoke the nationality of the mothers of these children has not been

used as their children are still seen as Dutch nationals. In order to assure that the children are Dutch nationals they can be submitted to DNA tests. (NCTV, 2017, p.6).

The issue divided the Dutch government (NL Times, 2019), which resulted in the Dutch Government appealing the Court's decision, where the Hague Court of Appeal overturned the first judgement, stating that the children's return was a political issue and not a judicial one (Rb. Den Haag 6 december 2019, ECLI:NL:GHDHA:2019:3208). Furthermore, "the area where the children are, is too dangerous to send Dutch representatives" Dutch Justice Minister, Ferdinand Grapperhaus, explained (NOS, 2019).

However, two Dutch orphaned children were repatriated on 10 June 2019, which had been facilitated through an ad hoc cooperation between France and the Netherlands (Rijksoverheid, 2019). It was made clear that this was a 'special' case because the rescue was conducted by a French operation, indicating that the cooperation between the French and the Dutch had made it possible to transfer the two orphans to the Netherlands.

The government of the UK has also refused to repatriate children. It has been reported that at least 60 children from the UK are held at Al Hol refugee camp, the majority of which are under 5 years old, many of whom are orphaned or unaccompanied (Save the Children, 2019). In August 2019 the UK Former Home Secretary, Sajid Javid, stated that the UK would not facilitate the return of its national children of ISIS, judging it to be too dangerous to send State agents to Syria (The Independent, 2019); similar to the Dutch reasoning for its reluctance to act.

However, in November 2019 a decision was made by the Foreign and Commonwealth Office to return UK citizens. This led to the repatriation of 3 British orphans (Save the children, 2019) Foreign Secretary, Dominic Raab, stated, 'innocent, orphaned, children should never have been subjected to the horrors of war' (Sabbagh, 2019). Currently the UK has only repatriated orphaned children.

Considering the solutions that the Netherlands and the UK have taken to tackle the problem of the children of ISIS, it is clear that the children are not viewed as victims but rather as threats to

national security, which has led to an insufficient amount of children being repatriated. The only positive aspect of this solution is that the children who are the most helpless, such as orphans, are being helped, or at least gain a certain amount of consideration to be repatriated. Additionally, the Netherlands is not using its power to revoke the nationality of the children, indicating that they still fall under the responsibility of the Netherlands.

However, similarly to the solutions taken in Belgium and France, the solution to only repatriate ‘special cases’ ensures that the children’s right to nondiscrimination and fair treatment is not being met. This is because the children are being judged upon their parents’ affiliation to ISIS (UNCCT, 2019, p.28). Furthermore, the children’s right to life (art. 2 ECHR), the right to be free from torture and inhumane or degrading treatment (art. 3 ECHR) and the right of acting in the best interest of the child (art. 3 CRC) are all being violated when not considering the repatriation of the children. However, both the CRC and the ECHR have been signed and ratified by the UK and the Netherlands indicating that the states are acting unlawfully by not carrying out an effective solution to help repatriate their national children of ISIS. Their governments should “start to comply with the established international law, rather than playing politics with the lives of its citizens” (CAGE, 2019).

#### **4.4 Stripping the Children of Their Nationality**

The Danish Minister for Immigration and Integration, Mattias Tesfaye, has presented a draft bill on how Denmark should manage the Danish children of ISIS. In late March 2019, a draft legislation was drawn up by the Danish Government, under which children born abroad to jihadists would not have Danish nationality. The reasoning of the draft bill was the children’s lack of affiliation with Denmark as they have not grown up in a situation whereby "a relationship is formed with Denmark and Danish values" (The Local, 2019b).

Furthermore an expedited bill was passed by parliament on 24th of October 2019, which gives the immigration minister the power to revoke the passports of Danes with a dual nationality that joined foreign militant groups. This indicates that the Minister for Immigration and Integration, Mattias Tesfaye, can revoke individuals termed ‘foreign fighters’ of their citizenship without

trial, including the children (The Local, 2019a). The Danish revocation of the children's nationality differs from the Netherlands as it is directed directly at the children of ISIS, while the Dutch Act is only in place as a consequence of an adult's decision, and has not willingly been put into action to deprive the Dutch children of their nationality (The Local, 2019b).

By stripping the children of their nationality, the child's right to nondiscrimination (art.2 (1) CRC), life and development (art.6 CRC) and their right to be free from inhumane or degrading treatment (art.3 ECHR) is being violated, and the child's right to a nationality, which is also being disregarded (art. 7 CRC). As the measure only applies to people with dual nationality, revoking the child's nationality could lead to feelings of discrimination amongst children who hold a dual nationality, who are most likely from minority groups. Research shows that this could play a role in further radicalisation of these minority groups (RAN, 2016, p.4), which in turn could catalyse a new national security risk.

Furthermore, revoking the citizenship of the children is ineffective as a manner to preserve national security (Paulussen, 2018, p.1) as the state loses its jurisdiction and control over the children. This 'makes the chances of prosecution, and therefore justice, much more unlikely' in the case of the older children (Paulussen, 2018, p.1). Finally, the action of stripping the children of their nationality aims at 'addressing' the problem by making it someone else's responsibility. States believe that this is a solution to the problem as it focuses on 'risk exportation' (Paulussen, 2016, p.19), and anchors on the 'pass the buck mentality' where states avoid their legal responsibilities towards the children and force it upon another state (Laine, 2017, p.1). However, international solidarity and cooperation are necessary to solve the problem of the Children of ISIS.

#### **4.5 Conclusion**

The different manners in which states are tackling the problem of the children of ISIS highlight two forms of solving the problem. Namely, there are states that have taken a child's rights approach in promoting their national children's returns and attempting at repatriating them, while reducing the security risks of bringing them back by creating individual recovery and

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rehabilitation programmes for the children. Secondly, there are also states that have used a thorough solution with strengthened counter-terrorism policies that aim at prohibiting the return of the children, due to the threat that they pose.

## 5 Conclusion - The solution that would result in the optimal outcome

It would be reasonable to assume that the best outcome for the children of ISIS would be one that respects and protects the right outlined in the 3rd chapter, most importantly the the right to life and development (art.2 ECHR), the right to be free from torture and inhumane or degrading treatment (art.3 ECHR and art.37 (a) CRC) and the best interest of the child (art.3 CRC), as these rights are relevant for all of the children. However, this solution must also focus on ensuring the national security of the state. Subsequently, this research has aimed at recognizing the obligations that the European states have towards the children of ISIS. Accordingly, this thesis intended to shed light on the rights of the children that are currently being violated while balancing these rights with the security threat that the children may pose, in order to highlight what is to be expected from the EU States. Through which, this research has found that the current response of EU States towards the children of ISIS includes a lack of a child's rights-based approach, as not all the children pose a security threat, as they have not all undergone training.

The current repatriation programme set up in Belgium ensures that all the Belgian children have been given an equal right of returning. Although, children above the age of 10 must be repatriated on a case by case basis, they are still given the possibility of returning as opposed to the solutions taken by France, the Netherlands, the UK and Denmark. However, while assessing the children on an individual case by case basis ascertains their rehabilitation and reintegration needs, it prolongs their time in the camp. Haste is needed in the repatriation of the children due to dire conditions of the camps.

Moreover, by leaving the children in the camps which are potential revival sites for ISIS, the children would risk being radicalized (ECFR, 2019), making them an adverse security threat. This indicates that the children can be viewed as 'ticking time bombs' (Reuters, 2018b), meaning that their repatriation would benefit the national security of the state as this would allow them to extinguish the threat.

Repatriation on a case by case basis strikes a great balance between the need to protect the child and to protect the security of the state. This is because repatriating the children on a case by case basis would allow the state to assess the children in order to ensure that the children who do not pose a threat are given the right to return. Although this prolongs the repatriation process, it would protect the state's national security and follow a child's rights approach, which is the optimal solution.

Furthermore, all the children who belong to EU States hold the same rights, and should therefore be treated equally. This indicates that a pan European effort should be employed to tackle the problem of the children of ISIS. By working together, states that have shown to be more reluctant to aid the children, would have less issues in repatriating them. For example, when France rehabilitated children from the Netherlands and Belgium along with other French children (Rijksoverheid, 2019), the Netherlands was willing to take back the two Dutch orphans.

Finally, this research argues that a child's rights approach, to the issue of returning the children of European ISIS fighters, should principally be supported. This entails that the EU countries should deal with the children of ISIS fighters currently living in refugee or prison camps by ensuring their right to return, while protecting the fundamental principles and relevant rights under the CRC and ECHR, in the repatriation of all the European children.

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