

Human Rights Council – UPR – 38th session Belgium & Counter-terrorism

A call for the repatriation of Belgian citizens detained in Syria

A few days before the 38th session of the Universal Periodic Review, during which Belgium's human rights record will be examined, the Counter-Terrorism Vigilance Committee (the *Comité T*¹) wishes to draw the attention of delegations to a highly problematic situation with regard to Belgium's failure to respect its fundamental rights obligations: that of **the Belgian citizens (among whom many children) currently held in camps in North-East Syria administered by the Kurdish authorities.**

Last October, the *Comité T* submitted a joint written contribution in which it outlined the points on which Belgium must make significant efforts to meet its human rights obligations in the context of the fight against terrorism. The *Comité T* refers to this written contribution² for a comprehensive overview of its demands.

The *Comité T* hereby wishes to draw attention to a situation that is of great concern to it and invites the Member States to take this into account in the recommendations they will have to make to Belgium. Since the Belgian State has the means (technical and operational), it is time that it complies with its international obligations (in particular, under the International Convention on the Rights of the Child, the Convention against Torture and the International Covenant on Civil and Political Rights) and puts an end to the flagrant violation of the fundamental rights of its citizens held in Syria and to the humanly inadmissible situation that results from it by proceeding with the repatriation of all these people, in particular to ensure that they are judged in accordance with European and international standards.

¹ Created in 2005, the *Comité T* brings together different actors from civil society concerned with the respect of human rights in the context of the fight against terrorism. It brings together lawyers, academics and NGOs such as the *Ligue des droits humains* (which coordinates it - <https://www.liguedh.be>), the *Liga voor Mensenrechten* (<https://mensenrechten.be/>), the *Coordination Nationale d'Action pour la Paix et la Démocratie* (CNAPD - <http://www.cnapd.be/a-propos/>), and the Belgian section of the International Prison Observatory (<https://www.oipbelgique.be/>).

While reaffirming the legitimacy of the fight against terrorism, the *Comité T*'s driving force is the preservation of the rule of law and the fundamental guarantees it implies. It has therefore set itself the task of recalling that, while most fundamental rights and freedoms are not absolute, any limitation of these rights must be necessary, justified, proportionate and must remain the exception.

The Committee's work is both observational and critical. It ensures the visibility of its analysis through the production of an annual report which aims to study in depth the anti-terrorist measures and their impact on human rights. The various reports are available on the *Comité T* website (<http://comitet.be/fr>). A summary of the 2020 report is available here: <http://comitet.be/analyses/> (long version) and here: <https://www.lalibre.be/debats/opinions/inflation-des-infractions-terroristes-degradation-des-droits-humains-5f7c99367b50a641f62cdc38>. (short version).

² Available on its website: <https://comitet.be/wp-content/uploads/2021/04/EPU-Belgique-Contribution-du-Comite-T-coordination-dassociations.pdf>

Indeed :

While the living conditions in the camps in which thousands of people are detained - among whom there are between 70 and 100 Belgian nationals³, including about 40 adults suspected of having joined the ranks of the Islamic State (EI) - are deteriorating by the day ;

While among these people there are about forty innocent Belgian children ;

While these people have been detained for more than two years without having been the subject of any judicial decision justifying their detention and have no means of challenging this detention ;

While many actors of the Belgian civil society (one will quote DEI-Belgique, the General Delegate for the right of the child, the *Ligue des droits humains*, Associations of support to the families, Academics, *Comité T*) plead for too long for an end to the flagrant violations of human rights that the persons concerned undergo and demand their immediate repatriation ;

While security actors, such as the Federal Prosecutor or the OCAM, have also spoken out in favour of repatriation, for reasons other than the strictly humanitarian and legal ones mentioned here⁴ ;

While the publication in November 2020 of a report with the sadly evocative title « Europe's Guantanamo : the indefinite detention of European women and children in North East Syria »⁵ no longer allows one to close one's eyes to the abominable situation in the camps ;

While many appeals demanding repatriation have been lodged before Belgian and international courts (United Nations Committee on the Rights of the Child⁶, European Court of Human Rights⁷, United Nations Committee against Torture⁸) ;

Whereas, on 8 February 2021, UN experts urged 57 countries⁹, including Belgium, to repatriate the women and children held in these camps ;

While the Kurdish authorities (who administrate these detention camps) call on the states concerned to repatriate their nationals and collaborate to facilitate this process ;

3 At the end of 2019, it was estimated that there were 27 Belgian mothers and 57 Belgian children left, divided between the camps of Al Hol, Al-Roj and Aïn Issa (A. WINKEL, « Les enfants belges du califat » available on www.cpcp.be, n.d., p.4). Figures differ according to sources and dates. For example, the NGO Diakonia spoke of 17 women and 32 children in March 2019 (Diakonia report on the legal status of foreign nationals affiliated with the Islamic State and detained in north-eastern Syria, August 2019, p. 40). As of 2020, Belgian women would be around 34 (G. VAN VLIERDEN, « Le retour des femmes de l'EI pose plus de problèmes que celui des hommes », 7sur7, 2 July 2020) and men between 10 and 15 (E. JOWA, « Qui sont ces djihadistes belges détenus en Syrie ? », Paris Match, updated 6 March 2020). A recent article mentions about 50 Belgian children: <https://www.lalibre.be/belgique/societe/les-enfants-belges-de-moins-de-12-ans-detenus-en-syrie-seront-rapatries-6040f7237b50a62acfb6429#:~:text=En%202017%2C%20la%20Belgique%20avait,a%20%C3%A9t%C3%A9%20que%20partiellement%20r%C3%A9alis%C3%A9.&text=Le%20Premier%20ministre%20a%20r%C3%A9pondu,%E2%80%9Cles%20terroristes%20de%20demain%E2%80%9D>.

4 Security actors are in favour of repatriation because they believe that the people detained in the camps are dangerous and should be monitored in Belgium. Moreover, the risk of « radicalisation » is high in the camps, which also militates, for these actors, in favour of repatriation.

5 Right and Security international, « Europe's Guantanamo : The indefinite detention of European women and children in North East Syria », 25 November 2020, report available online on the NGO website.

6 Who declared admissible the action brought against France for the same situation.

7 Who referred the case (also brought against France) to its Grand Chamber.

8 Who has ordered interim measures against Belgium that have not been complied with to date.

9 The content of this press release is available here : <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26730&LangID=E>

Whereas on 4 March 2021, the Belgian Prime Minister, Alexander de Croo, committed himself, in front of the Parliament, that this repatriation would be implemented for children under 12 years of age and, in the case of their mothers, after a case-by-case analysis evaluating, in particular, the danger they represent for national security and their removal from the EI¹⁰;

Whereas this commitment made by the Prime Minister, in that it distinguishes between minors according to whether they are over or under twelve years old¹¹ and does not provide for the automatic repatriation of their parents¹², violates the International Convention on the Rights of the Child.

We must note that the year 2020 and the beginning of 2021 have brought very little progress on this crucial issue...

The *Comité T* therefore urges your delegations to give due consideration to this appalling (from a humanitarian & security¹³ point of view) situation and to strongly recommend that Belgium complies with its human rights obligations and repatriates all its nationals detained in Syria.

¹⁰ <https://plus.lesoir.be/358835/article/2021-03-04/belges-en-syrie-la-belgique-se-prononce-pour-le-rapatriement-des-meres-au-cas>

¹¹ The NGO *DEI-Belgique* indicated in 2019 that « Public positions have been taken mentioning a distinction in the assistance of these children according to whether they are over or under 10 years old. These are both ethically unbearable, legally unjustifiable (Article 1 of the CRC is very clear, « (...) a child means every human being below the age of eighteen years unless his or her majority is attained earlier (...) ») and constitute discrimination contrary to the CRC. « See Analysis n°2019-01, *The repatriation of Belgian children affected by armed conflict*, p. 2, available here: <https://www.dei-belgique.be/index.php/component/jdownloads/send/18-droits-civils-et-politiques/479-analyse-la-rapatriement-des-enfants-belges-affectes-par-les-conflits-armes-2019.html> »

¹² In this respect, we would like to quote again the analysis of *DEI-Belgique*, which recalls that « [t]he preservation of the rights of these children implies that the Belgian State should ensure, as far as possible, that these children are repatriated with their parents. In accordance with Article 9 of the Convention, the child should not be separated from his or her parents unless the preservation of his or her best interests so requires. The assessment of the best interests of the child must be carried out in accordance with the requirements specified by the Committee on the Rights of the Child in General Comment No. 14 of 2013 on the right of the child to have his or her best interests as a primary consideration. In addition, it is essential to ensure that the separation from the parent is not rendered irretrievable (which would be the case if the parent is not repatriated). Furthermore, a child separated from one or both parents should be able to maintain « personal relations and direct contact with both parents, unless this is contrary to the child's best interests ». In this sense, the UN Committee on the Rights of the Child particularly recommends that Belgium « facilitate the prompt repatriation of all Belgian children and, where possible, their families » (emphasis added). «, See Analysis n°2019-01, *The repatriation of Belgian children affected by armed conflict*, pp. 2-3, available here: <https://www.dei-belgique.be/index.php/component/jdownloads/send/18-droits-civils-et-politiques/479-analyse-la-rapatriement-des-enfants-belges-affectes-par-les-conflits-armes-2019.html> ».

¹³ Recently, ISIS has again infiltrated some Kurdish camps. This poses a danger to the lives of European citizens and increases the risk of « radicalisation » or « indoctrination » of children as well as adults who have distanced themselves from terrorist groups, see: <https://www.lalibre.be/international/moyen-orient/conflit-en-syrie-125-membres-de-l-ei-arretes-dans-le-camp-d-al-hol-60671ac67b50a6051776bd6a>