

## **KNVIR Spring Meeting: The Children of the Caliphate and International Law**

On 13 June, the Royal Netherlands Society of International Law (KNVIR) organised its spring meeting on the topic of 'The Children of the Caliphate and International Law'. This event examined state responses regarding the children of parents who joined the Islamic State (IS) in Iraq and Syria from the perspectives of states' obligations under international law and child protection. Particular attention was paid to the policy in the Netherlands, which – like several other states – does not actively repatriate Dutch children back to the Netherlands.

The event invited **Dr. Bibi T. van Ginkel, LL.M.** (Senior Research Fellow, Netherlands Institute for International Relations 'Clingendael'; Research Fellow, International Centre for Counter-Terrorism, The Hague (ICCT)) and **Drs. Mattie van der Molen** (Behaviourist, Dutch Council for Child Protection) to discuss the factual circumstances, the legal position under national and international law, and potential risks of the current government policy. The event was opened by **Prof. Willem van Genugten** (President, KNVIR). **Dr. Christophe Paulussen** (Senior Researcher, T.M.C. Asser Instituut; Research Fellow, ICCT and member of the Executive Board of the KNVIR) delivered welcoming remarks and moderated the evening.

The Dutch intelligence service has currently identified 175 children who have at least one Dutch parent in Syria and Iraq, several of whom are living in camps controlled by different armed groups. Among these children, more than two-thirds of them were born in the region, and more than 90 percent are younger than nine years old, among whom half are younger than four years old. **Dr. van Ginkel** highlighted that the few children who are at or above nine years old might have been involved in military boot camps and thus have witnessed violence or experienced radicalisation, but the majority of the children have not been through such trauma. As a result, not all children would pose a security threat when they come back, while leaving them in Syria and Iraq would most likely pose long-term security concerns as they might become de facto stateless, get further radicalised, experience further traumatising, or feel abandoned by their home country, which could turn into a desire of revenge. For **Dr. van Ginkel**, it is thus short-sighted for the government to only look at short-term security concerns. In fact, other countries have taken more active approaches. Germany, Canada, Russia, and Indonesia, for example, are trying to repatriate the children and their mothers; France takes a more reluctant approach but is trying to bring back some of the mothers; Belgium allows children under the age of 10 to come back if a DNA test proves their Belgian origin and the United Kingdom is also trying to bring the children back, which involves the use of DNA tests in some cases as well.

In fact, international legal instruments have laid out obligations of states regarding the protection of children. Article 3 of the Convention on the Rights of the Child (CRC) stipulates that '[i]n all actions concerning children, [...] the best interests of the child shall be a primary consideration'. Article 19 requires states to take all appropriate measures to 'protect the child from all forms of [...] neglect or negligent treatment'. Moreover, Article 39 requires states to take all appropriate measures to 'promote physical and psychological recovery and social reintegration of a child victim of [...] armed conflicts'. Besides the CRC, the 2007 Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups also provide

guidance on states' policies. For **Dr. van Ginkel**, the key issue here is to weigh and balance different concerns, taking into account multiple facets such as public security, family situation, care and security provision, and a child's right to health and education. For a state to take a different approach, it is necessary to come up with a good motivation after such weighing and balancing is performed. There are, of course, a number of dilemmas and this is by no means an easy issue, recognised **Dr. van Ginkel**. However, states should be mindful of their legal obligations that apply under all times and all circumstances, without losing sight of their moral obligations as well.

**Drs. van der Molen** then discussed the current Dutch policy from the perspective of child protection. She reaffirmed the statistics provided by Dr. van Ginkel while highlighting the unique psychology of the majority of these children. Seventy percent of the Dutch children currently living in Iraq and Syria are under five years old. Children of this age are not yet radicalised and do not act upon their own ideology. Instead, they largely learn new behaviour by imitating people in their surrounding. This means that if we place children of this age in a different environment, they are capable of learning different behaviour by imitating people in their new environment. Their young age also means that they can still develop resilience provided that they are offered the opportunity to experience a sense of basic safety concerning their environment and themselves. **Drs. van der Molen** emphasised that the Dutch Council for Child Protection is working closely together with the families and municipalities of the parents to design return plans for every Dutch child that is currently living in Iraq or Syria. This includes designing the types of care, education, treatment and safety-measures that need to be prepared for a child before he or she is repatriated to the Netherlands. Judging from recent news reports in the media, **Drs van der Molen** foresees two risky scenarios that these children might possibly get exposed to, if they will not be repatriated in the short term. The first scenario is that women and children in the North-Syrian refugee camps are at risk of being exchanged against Kurdish fighters held captive by IS. This might mean that the children would be at risk of being re-captured by IS, being re-exposed to violence and indoctrination and receiving actual military training when they grow older. The second scenario is that the detention/refugee facilities that hold the mothers and children could be closed at the discretion of local armed forces, which could threaten the children's security and expose them to the control of new armed groups. On the contrary, if we bring the children back now, we can provide them with a controlled, well-prepared, and accompanied return; the children will have access to legal guardians, trauma and religious experts, professional trauma-care (Centrum '45), the best caregiving situations, family members who become foster parents under professional guidance, schools with support programmes, and follow-up for years to come. Instead of this safe and controlled process, currently, the mothers and children do not have access to such facilities. **Drs. van der Molen** regrets that these children are currently being deprived of such facilities, that might help them recover. She concluded her presentation with a call to the audience. 'Let's see these children for what they are, children and victims. Let us not dehumanise them by calling them "walking time bombs", or connect them to perpetrators by calling them for example "jihad-children" or "IS-children". They are children, Dutch children. Period.' she said.

After the presentations, the speakers and the audience engaged in a lively Q&A session. Many questions were raised regarding the best interests of the child as well as on states' extraterritorial obligations under international law. An audience member shed light on the

potential relevance of civil tort law on such matter. Another participant compared the current situation with the radicalisation of the children of mujahideen in Afghanistan, highlighting the need for the Dutch government to learn from the Afghan experience. The exchange was nothing short of fruitful and thought-provoking. Before closure, **Prof. van Genugten** delivered his concluding remarks. 'International law is not "à la carte" and we cannot pick and choose,' he cautioned. Instead, 'international law is made for hard times.'