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“Mirror, mirror on the wall, am I only a terrorist after all?”

The impact of social categorization of children associated with terrorist
groups on their legal treatment in the Lebanese judicial process.

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*-There can be no keener revelation of a society's soul
than the way in which it treats its children-*

Nelson Mandela

ABSTRACT

With the rise of terrorist organisation such as Daesh, the number of children involved in terrorist activities has increased. This phenomenon was particularly prominent in Lebanon following the outbreak of the Syrian conflict. Between 2012 and 2018, 139 children have been imprisoned for terrorism. A primary investigation on the subject demonstrated flagrant differences of treatment at different stages of the judicial procedure. The present research attempts to explain these contrasts since it has repercussion on the respect or violations of the rights of the child. Using interviews of various relevant actors of the Lebanese judicial system and complementary academic literature, the research draws on social categorization and intergroup relations theories as theoretical framework. Observations show that when the child is more categorized as a victim there is a greater respect for his rights, whereas there are more rights violations when he is perceived as criminal, delinquent or terrorist. In conclusion, social categorization might be considered as a factor explaining the differences of treatment along the judicial process.

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INTRODUCTION

“A Delinquent, a criminal, a killing machine, a victim, a terrorist, a child....”

Since 2012, with the rise of terrorist groups, hundreds of individuals have been convicted for terrorism by Lebanese Courts. Probably, while reading these terms, your mind pictured each time images of very different individuals. However, although very different, all these words refer to one reality: minors suspected, accused or convicted for terrorism in Lebanon. How can one situation reflect a multiplicity of different images?

There are sociological studies on the perception of juvenile offenders by the public opinion¹ and how personal characteristics of judges might influence their decision in juvenile trials.² As well as psychological and sociological research on the perception of terrorism or the terrorist risk and how it impacts the agreement of people on giving up some rights to protect national security.³ There is no study on the perception of children accused of terrorism related charges. However, this perception or categorization has an important impact when it comes to what and how a legal regime will be applied to the child (legal treatment) when he faces the judicial system, considering the vagueness of the concept of terrorism. There is no agreement on the definition of “terrorism” or “terrorist”, nor legally, nor politically. Everyone has its own definition and perception.

The terms labelling, perception or categorization are used interchangeably to describe the process by which an individual creates mental representation of an individual as part of a category and attributing certain characteristics to the category which apply to every member of that category.

In 1988, in a study conducted by Schmid and Jongman,⁴ at least 109 definitions of terrorism were highlighted. Later, Cooper came up with this very famous assumption that “*one terrorism*

¹ A. R. PIQUERO, L. STEINBERG , “Public preferences for rehabilitation versus incarceration of juvenile offenders” in *Journal of Criminal Justice*, n°38, 2010, pp. 1-6.

² J. M. D'ANGELO, “Juvenile Court Judges' Perceptions of What factors affects Juvenile Offenders' Likelihood of Rehabilitation” in *Juvenile and Family Court Journal*, Summer 2002, pp. 43-55.

³ E. RUBALTELLI, S. SCRIMIN, U. MOSCARDINO, G. PRIOLO, G. BUODO, “Media exposure to terrorism and people’s risk perception: the role of environmental sensitivyt and psychophysiological response to stress” in *British Journal of Psychology*, 2018, available at wiley online library, L. SJOBERG, “The perceived Risk of Terrorism” in *Risk Management: An International Journal*, 7(1), 2005, pp. 43-61.

⁴ A.P. SCHMID, A.J. JONGMAN, *Political terrorism*, Amsterdam: North Holland Publishing Company, 1988.

is another's freedom fighter".⁵ In addition, several studies highlighted that the conception of "terrorism" and "terrorist" will vary depending on numerous factors such as political affiliations, proximity with the actors, inclusion or not in a group of reference⁶, culture, medias exposure, etc.⁷ In addition, there is legally, no international definition of terrorism and many domestic definition have been criticized for being too broad, vague and subject diverse interpretations.

Hence, despite an existing legal definition in the Lebanese legislation, the categorization of the child as a terrorist or as child, victim, delinquent, will vary depending on which actor of the judicial process he is facing. It relates to the perception of what is a "terrorist" but also to the question of the child perceived as a danger or in danger. First, it impacts the triggering or not of the counter-terrorism legal regime. Second, it influences the protection and respect of rights.

In the light of the abovementioned elements, one might wonder how does the categorization of the child by different actors impact its legal treatment? Which in turn raises the questions of what is the impact of this categorization on the emotional and behavioural reactions of an individual towards another individual? When and how do these categorization and responses change over time?

To answer these questions, the present research build on the notion of social categorization and stereotyping to explain how individuals categorize other individuals into social groups and attribute them specific characteristics. The process typically leads to a situation where the individual is part of one group (us) and categorize the other as part of another (them). Categorization in the context of intergroup behaviour triggers emotional responses which in turn influence the behaviour of the individual. Analysing the emotional responses of groups, modification of emotions and behavioural impact helps to understand why a certain social categorization of the child might lead to specific behaviour which are more or less favourable to the realisation and respect of his rights.

Empirical data have been collected with interviews of various actors of the judicial system and complemented by academic literature. It was tried to collect the testimony of most of the

⁵ H. H. A. COOPER, "Terrorism: The problem of definition revisited » in *American Behavioral Scientist*, 44, 2001, pp. 881-893.

⁶ S.PASSINI, L. PALARETI, P. BATTISTELLI, "We vs. Them: Terrorism in an Intergroup perspective" in *Presses universitaires de Grenoble, rev. Internationale de psychologie sociale*, Tome 22, 2009 (3), pp. 35-64.

⁷ Barnaby, 2003; Chappe, Verliac, & Meyer, 2007; Furedi, 2002; Giroux, 2003; Greer & Jewkes, 2005; Huddy, Khatid, & Capelos, 2002; Jarymowicz & Bar-Tal, 2006; Mythen & Walklate, 2006; Skitka, Bauman, & Mullen, 2004), in S.PASSINI, L. PALARETI, P. BATTISTELLI, "We vs. Them: Terrorism in an Intergroup perspective" in *Presses universitaires de Grenoble, rev. Internationale de psychologie sociale*, Tome 22, 2009 (3), p. 37.

relevant actors namely, law enforcement authorities, lawyers, judges, government workers, social workers, NGOs and international organisation. Thirteen interviews have been conducted between April and June 2019 in Beirut, and took place in French (excluding one in English).

The present research does not intend to prove a direct association between social categorization and impact the rights of the child. It intends to give a potential explanation for blatant differences of treatment of the child suspected, accused or condemned for terrorism along the Lebanese judicial process. As well as social categorization of the child may impact the behavioural response of actors of the judicial system towards the child, it should be considered in correlation with other factors, such as cultural, structural, financial and political influences, which can all contribute to provide an explanation. However, considering time and technical constraints, these factors are left out of the scope of the research, even if, the analysis is made in the specific social, cultural, political and economic context of Lebanon.

Hence, it is first important to set the conceptual and contextual framework and to understand what is the legal definition of terrorism (chapter 1) and what is the current status of terrorism in Lebanon (chapter 2). Thirdly, the first part of the study presents the theory of social categorization and its emotional and behavioural implications. After setting the stage, the research retraces the path followed by children accused of terrorism in Lebanon and divide this process into three stages: the pretrial phase (chapter 1), the trial (chapter 2) and the detention (chapter 3). These chapters highlight the contrast between law and practice after presenting how the relevant actors categorize the child suspected, accused or convicted for terrorism related charges.

Finally, it should be noted that the use of the word terrorism does not especially represent the view of the author or refers to one given definition, but follows the use made in the various literature and by the different actors. As well, children associated with terrorist group, charge with terrorism related offences, involved in terrorist (related) activities, are terms used interchangeably by the author to describe children in relationship with terrorism.

LITERATURE REVIEW

Terrorism as global phenomenon appears in the beginning of the year 2000 with the growth of Al-Qaeda and the terrorist attacks in New-York City on the 11th of September 2001.⁸ Since, academics from different disciplines (like law, and psychology) have started to study the relationships between children and terrorism. The judicial treatment of children associated with terrorist groups is hardly addressed in academic literature in any of the aforementioned disciplines. Nevertheless, it does not mean that the topic is devoid of interest. Indeed, it is worth mentioning that the international community as well as national organisms closely study the topic and publish many reports, usually using the terminology children associated with “violent extremism” instead of terrorism. These documents produced at the international or national level fill in academic gap and provide information about State practices and the applicable legal standards, as well as statistics, information and definitions based on the knowledge of many experts. They represent a source of information non ignorable even more considering the lack of academic literature.

Numerous studies of neuropsychology, clinical psychology, psychiatry, pharmacology, have studies the psychological impact of terrorism on the development of the child (with Come and Pferfferbaum are leading figures). On one hand, studies focus on children victim or witness of terrorist attacks⁹, on another hand studies address the impact of growing into a work where terrorist threat is constantly put forward by the media and governments.¹⁰

With regard specifically to the perception of terrorism itself, there are psychological and sociological research on the perception of terrorism or the terrorist risk and how it impacts the

⁸ L. B. O'BRIEN, “The Evolution of Terrorism Since 9/11” in *FBI L. Enforcement Bull.*, vol. 80(3), 2011, pp. 3-10.

⁹ Cfr as example: B. PFEFFERBAUM, M. A. NOFFSINGER, L. H. WIND, J. R. ALLEN, “Children’s Coping in the Context of Disasters and Terrorism” in *Journal of Loss and Trauma*, vol. 19, Jan., 2014, pp. 78-97, M. B. AHMED, “Effects of Terrorism on Children: Psychological Biological Understanding” in *Journal of the Islamic Medical Association of North America*, vol. 39(2), 2007, pp. 65-72, B. PFEFFERBAUM, E. NEWMAN, S.D. NELSON, “Mental Health Interventions for children exposed to disasters and terrorism” in *Journal of Child and Adolescent Psychopharmacology*, vol. 24(1), 2014, pp. 24-31, etc.

¹⁰ Cfr as example: J. S. COMER, J. M. FURR, R. S. BEIDAS, C. L. WEINER, P.C. KENDALL, « Children and Terrorism-Related News: Training Parents in Coping and Media Literacy » in *Journal of Consulting and Clinical Psychology*, vol. 76(4), 2008, pp. 568-578, J. COMER, L. BRY, B. POZNANSKI, A. GOLIK, “Children’s Mental Health in the Context of Terrorist Attacks, Ongoing Threats, and Possibilities of Future Terrorism” in *Current Psychiatry Report*, vol. 18(9), 2016, pp. 1-8, B. PFEFFERBAUM, P. TUCKET, C.S. NORTH, H. JEON-SLAUGHTER, P. NITIÉMA, “Children of Terrorism Survivors, Physiological reactions seven years following a terrorist incident” in *comprehensive psychiatry*, vol. 55(4), 2014, pp. 749-754, etc.

agreement of people on giving up some rights to protect national security.¹¹ Labin and Bar-Tal have also studied the evolution of the terrorist stereotype in relation with major events.¹² In addition, there are sociological studies on the perception of juvenile offenders by the public opinion¹³ and on how personal characteristics of the judge might impact or not his decisions in juvenile trials.¹⁴ However no one has combined those research and studied how the perception of a juvenile offender accused of terrorism impact his legal treatment.

From a legal perspective, very few articles address the issue of children prosecuted for terrorism. Those who do, reflect on the status of the child accused of terrorism and the consequent applicable legal framework and guarantees. Even if the articles do not focus on the Lebanese context, the legal status of the child indirectly gives an indicator on how the child is perceived by some part of society in general, there is always this ambivalence between perpetrator and victim and how this potential dual status should be apprehended by law. Brett, Squiers and Markissen all provide different viewpoints on the topic.

Rachel Brett is the first to write a general article on children accused of terrorism in 2002.¹⁵ In the framework of her article, Brett defines children accused of terrorism mainly as children associated with internal armed groups considered as terrorist by the government they oppose. Specialised on the issue of child soldiering, Brett adopts a new perspective after the US declaration of “war on terror” in 2001. Other academics (Markissen and Squiers) writing about children accused of terrorism also draw a comparison with the situation of child soldiers. Indeed, the phenomenon of children associated to terrorist group can be considered at a crossroad between the evolution of terrorism and armed conflicts. Intituled “Juvenile justice, counter-terrorism and children”, the article points out the way juvenile justice is impacted by this new war on terror and the multiplication of measures and counter-terrorism legislation, not

¹¹ E. RUBALTELLI, S. SCRIMIN, U. MOSCARDINO, G. PRIOLO, G. BUODO, “Media exposure to terrorism and people’s risk perception: the role of environmental sensitivity and psychophysiological response to stress” in *British Journal of Psychology*, 2018, available at wiley online library, L. SJOBERG, “The perceived Risk of Terrorism” in *Risk Management: An International Journal*, 7(1), 2005, pp. 43-61, S.PASSINI, L. PALARETI, P. BATTISTELLI, “We vs. Them: Terrorism in an Intergroup perspective” in *Presses universitaires de Grenoble, rev. Internationale de psychologie sociale*, Tome 22, 2009 (3), pp. 35-64.

¹² D. BAR-TAL, D. LABIN, “The effects of a major event on stereotyping: terrorist attacks in Israel and Israeli adolescents’ perceptions of Palestinians, Jordanians and Arabs” in *Eur. J. Soc. Psychol.*, n°31, 2001, p. 265.

¹³ A. R. PIQUERO, L. STEINBERG, “Public preferences for rehabilitation versus incarceration of juvenile offenders” in *Journal of Criminal Justice*, n°38, 2010, pp. 1-6.

¹⁴ J. M. D’ANGELO, “Juvenile Court Judges’ Perceptions of What factors affects Juvenile Offenders’ Likelihood of Rehabilitation” in *Juvenile and Family Court Journal*, Summer 2002, pp. 43-55.

¹⁵ R. BRETT, *Juvenile justice, counter terrorism and children*, 2002, available at http://www.quno.org/sites/default/files/resources/Juvenile%20justice_counter-terrorism%20and%20children.pdf consulted on 10 October 2016.

taking into the that the potential “criminals” might be minors. Therefore, she divides children into four categories (children legally recruited by armed forces, children taking part in internal or international conflicts, children who surrender themselves and are demobilized or captured during an armed conflict and children involved in what is designated as terrorism). She argues that standards of juvenile justice as a whole have to be respected even in the case where children are in conflict with laws resulting from an exceptional legal regime. She concludes that little attention is paid to exceptional legal regimes triggered by counter-terrorism/national security legislations. If applied to children those should respect the relevant international standards. This conclusion is shared by other authors such as Squiers and Markisan. Indeed, the three of them stress the fact that little academic literature is dedicated to the topic. Brett preaches for the application of general international children’s rights standards to children suspected or accused of terrorism. However, Squiers and Markisen have different views regarding the approach that should be taking with regard to prosecution of those children.

Squiers position herself in favour of prosecution of children voluntarily joining terrorist organisations, even if “*specific safeguards should be granted*”.¹⁶ She also draws a comparison with child soldiers. In fact, her research aims at defining a child soldiers as well as the international and American legal regime applicable but does not define the notion of terrorism. She examines the dichotomy of the status of victim and perpetrator inherent to the situation of the child soldier. She uses the case of Omar Khadr, a young American who since the age of ten had close ties with Ben Laden, to support her argumentation. According to her, or the child is considered as an enemy and is considered a terrorist, or he is considered as a victim, a child soldier. The lawyers of Mr. Khadr argued that he should be seen as a child soldier and thus, tat international standards should apply which do not retain voluntary adhesion to Al-Qaeda as aggravating factor. Despite the fact that her argumentation relies on the fact that a child soldier in Sierra Leone which is different to the situation of Omar Khadr, she fails to explain in how.

Afterwards, she uses clinical studies on the child’s maturity in order to justify that a child aged of fifteen is capable of doing important rational choices. Therefore, children voluntarily joining terrorist organisations should be prosecuted. She also argues that the national level, let it be juvenile court or military courts, are more adapted to prosecute the child than international tribunal or the international criminal court. There is a tendency at the international and domestic

¹⁶ C. M. SQUIERS, “How the law should see voluntary child soldiers: does terrorism pose a different dilemma?” in *SMU Law Review*, vol.68, 2015, pp. 567-591.

level to not prosecute (former) child soldiers for the crimes they committed as minor.¹⁷ It is commonly admitted in international law that no distinction should be made between children who (un)voluntarily join an armed group.¹⁸

This opinion opposes the view of Markisen who calls the governments to choose to offer rehabilitation programmes to children instead of judicial proceedings and sentencing.¹⁹ In opposition to Squiers, Markisen dedicates a section to the definition of terrorism and highlights the conceptual challenges of the notion since there is no “terrorism” but there are “terrorisms”. He further examines the British and French counter-terrorism legislation in order to analyse their compliance with international standards on the protection of children.

Using psychological studies on the development of the child and the teenager as Squiers, Markisen argues that a teenager of fifteen years old is influenceable by his peers and is not in a position to take enlighten decisions. This reasoning is in line with authors of international law specialised on child soldiering such as Drumble²⁰ and Nielsen.²¹ he concludes, after analysing the UN and European standards that children accused of terrorism are not sufficiently protected by the British and French laws. He points out that from a political perspective, it is unpopular to take protective measures for individuals accused of terrorism, even if they are minors and identifies this factor as an obstacle to a better protection of those children.

As previously mentioned, the few academic articles dealing with children accused of terrorism draw a parallel with the situation of child soldier and apply this body of literature by analogy. However, it is appropriate to make a distinction between child soldiers and children involved with terrorist groups. From a legal perspective, the status of child soldier is not applicable to all children associated with terrorist organisation. The main reason is that the status of child soldier supposes the existence of an armed conflict between the terrorist groups and another entity as well as the participation of the child to hostilities. In some cases, those conditions are fulfilled and in others not. In the case where children associated with a terrorist groups fulfil the criteria

¹⁷ R. BRETT, *Juvenile justice, counter terrorism and children*, 2002, available at http://www.quno.org/sites/default/files/resources/Juvenile%20justice_counter-terrorism%20and%20children.pdf consulted on 10 October 2016, M. A. DRUMBLE, *Reimagining child soldiers in international law and policy*, Oxford University Press, Oxford, 2012, A -C. NILSSON, *Children and youth in armed conflict*, Martinus Nijhof, Leiden 2013.

¹⁸ Cfr. note 4.

¹⁹ E. M. MARKISEN, “Juvenile law and jihad: exploring anti-terror legislation and calling for mandatory juvenile treatment of radicalized teens joining ISIS in Syria” in *Wis. Int’l L.J.*, vol. 4, 2016, pp. 182-209.

²⁰ M. A. DRUMBLE, *Reimagining child soldiers in international law and policy*, Oxford University Press, Oxford, 2012.

²¹ A -C. NILSSON, *Children and youth in armed conflict*, Martinus Nijhof, Leiden 2013.

of a child soldier, the whole body of legislation, case law and relevant academic discussions are applicable. In the other case, it is not adequate to make a reference to this area of law and literature.

The phenomenon of children accused of terrorist can be considered as new or resulting from the evolution of international terrorism and armed conflict, this is why it is difficult to find relevant literature on the topic. However, it is at the crossroad between several areas of law: counter-terrorism legislation/criminal law, children's rights but also everything related to child soldiers (human rights, international humanitarian law and international criminal law).

In conclusion, there are no specific literature dedicated to children accused of terrorism and the impact of their categorization on their legal treatment in the judicial process but a vast body literature in other domains which gathered provide a basis.

METHODOLOGY

The aim of the research is to explain the differences of treatment of the child suspected, accused or condemned for terrorism, along the judicial process, and how it impacts the rights of the child. It started from primary field observations. Depending on which actor of the judicial system was interrogated, different language was used to describe the child. With further research it appeared that there were flagrant differences in the respect of the rights of the child depending on the stage of the judicial system which seems to coincide with the categorization of the child. In order to explore and further understand this relationship, it was decided to conduct qualitative research using interviews with various actors of the judicial system to collect primary data on the Lebanese reality. These interviews were complemented with relevant academic literature to build the contextual and theoretical framework.

The choice of interviews is justified by two considerations. The first and main consideration was the lack of access to information on the topic. There are no specific books or articles related to children and terrorism in Lebanon, at least not in French or English. It was difficult to find even basic information on how the process starts and unfolds. Meeting with the relevant actors enabled access to the relevant information. Second, terrorism is a sensitive topic to talk about, however interviews provide more room to understand in depth the respondent's perception of the topic.

The participants were selected for their particular knowledge on the issue and their position along the judicial process in order to have a sample of several actors (lawyers, judges, NGOs, government, international institutions). The first interviews started with government officials and one person led to another. The interviewees used their professional network to provide contact details of other relevant actors. Fourteen semi-structured interviews have been conducted in Beirut from April to June 2019, of which seven were recorded with the agreement of the participants. The interviews lasted between thirty minutes and an hour. The semi-structured format was preferred in order to provide freedom to the respondent in the way to explain the topic but still with a list of topics and questions that needed to be addressed in order to obtain most information as possible. Indeed, as terrorism is a sensitive topic, the first instinct is to speak with political correctness, semi-structured interviews leave room for the respondent to feel more comfortable and express his real perceptions. In addition to interviews, primary data were collected through judgments of the Juvenile Criminal Court and the Military Court in Beirut.

PART I. CONTEXTUAL AND THEORETICAL
FRAMEWORK

Chapter 1. Legal definition of terrorism

The legal notion of terrorism is central to the research, as this labelling of “terrorism” might influence the application of certain legal regime. It is important to examine counter-terrorism instrument at different level of decision making. Indeed, the international, regional and domestic legal order are interrelated and the border between the three is permeable. Whereas domestic orders can influence the regional or international level²², the opposite is also true, the systems operate in dynamic relationship.²³ Going beyond the process of examining what international counter-terrorism convention apply to Lebanon and the review of the applicable legislation, the aim of this section is to understand the concept of terrorism and its complexities at the relevant levels. It shows that the notion of “terrorism” remains highly controversial, vague and subjective notion, which has several consequences. First, the interpretation of the notion of terrorism will impact if the legal counter-terrorism regime is triggered or not. Second, it impacts the way law will be applied or not.

Section 1. Global dispositions

The first effective condemnations of terrorism occurred with the intermittent intervention of the UN Security Council on specific situations. These binding resolutions of UNSC further helps interpreting and construing the understanding of “terrorism” under international law.²⁴ However, before the eighties the UNSC condemned certain behaviours as terrorist acts although it did not consider terrorism as a threat to international peace and security.²⁵ Nowadays, sixteen international conventions are associated with the prevention and suppression of international terrorism. They have all been adopted in relation with specific issues and events and cover six areas (aviation, hostage taking, bomb attacks, nuclear weapons, maritime safety). In this approach, the offence triggers the application of counter terrorism laws regardless of the motives.²⁶ Although, the abovementioned documents do not give a generic definition of

²² B. SAUL, “Branding Enemies: Regional Legal Responses to Terrorism in Asia” in *Asia-Pacific Yearbook of International Humanitarian Law*, 2008, Sydney Law School Research Paper No. 08/127, available at <https://ssrn.com/abstract=1292164>, p. 4.

²³ B. SAUL, *Ibid*, p. 5.

²⁴ B. SAUL, “Definition of terrorism in the UN Security Council: 1985-2004”, *Chinese J. Int’l L.*, vol.4, 2005, p. 142.

²⁵ B. SAUL, *Ibid*, p. 143.

²⁶ A. CONTE, *Human Rights in the Prevention and Punishment of terrorism*, Springer-verlag Berlin Heidelberg, 2010, p. 28.

terrorism, it provides the beginning of a framework to understand why and what kind of behaviours are considered as terrorist by the international community.

In 2004, the United Nations Security Council adopted resolution 1566, landmark in the fight against terrorism at the international level.²⁷ This time, the resolution generally defines terrorism as “*criminal acts including against civilians, committed with the intent to cause death or serious bodily injury; or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international convention and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature*”.²⁸ It also calls upon the States to join the international conventions regardless of their membership to other regional conventions.²⁹ Finally, the Security Council provides guidance to States on the assessment of what constitutes a terrorist act, even if this definition remains broad and is subject to divergent interpretation by States. The generic approach requires, as the specific approach a trigger offence. The UNSC res. 1566 requires three cumulative characteristics and the last one will trigger the counter terrorism legal regime. It requires the commission of an offence “*within the scope of and as defined in international conventions and protocols relating to terrorism*”.³⁰

Considering the importance and global character of the threat imposed by terrorism, the United Nations General Assembly also dealt with the issue. In 1996, the General Assembly decided to establish an Ad Hoc committee to draft a comprehensive framework convention on international terrorism.³¹ The committee has been working since then to find a compromise on the definition of terrorism. The definition of terrorism is the only reason preventing States to adopt the treaty. The latest meeting of the Committee was held in 2013 and the report provides the most recent version of the definition of terrorism for the purpose of the draft convention³² :

²⁷ B. SAUL, *op cit.* (note 39), p. 163.

²⁸ UNSC, *Resolution 1566*, 5053rd meeting (S/RES/1566 (2004)), 8 October 2004, operative clause 3.

²⁹ UNSC, *Res. 1566*, operative clause 4.

³⁰ B. SAUL, *op cit.* (note 39), p. 29.

³¹ UNGA, *Resolution 51/210*, 88th Plenary meeting (A/RES/51/210), 17 December 1996.

³² UNGA, *Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (16th Session)*, 68th Session, Supp. N°37, A/68/37, New York 2013 (here after, Draft Convention).

1. Any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or

(c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.³³

The committee further specifies that serious threats³⁴ and attempts³⁵ to commit such offences are considered as an offence under the scope of the Convention. Participation³⁶, organisation³⁷ and contribution³⁸ to the commission of the offence are also included. This definition of “terrorism” is more precise and broader than the understanding of the Security Council. It includes damage on properties.

The definition provided by the draft convention is not mandatory but it gives guidance on the understanding of the international community. The approach adopted by the Ad Hoc Committee highlights that a terrorist offence and consequently terrorism, requires an objective and subjective element. The objective element consists in the commission of certain acts while the subjective element lies in the intention when committing those acts.

Finally, the Convention on the Suppression of the Financing of Terrorism (ratified by Lebanon) is the first international convention to give a generic definition of terrorism. Under the convention terrorist offences first list international treaties in annex³⁹ and then gives a general definition of other acts considered as terrorist.⁴⁰ It lists the behaviour triggering the legal

³³ Draft convention art. 2, p. 6.

³⁴ *Ibid*, art. 2.2.

³⁵ *Ibid*, art. 2.3.

³⁶ *Ibid*, art 2.4.a.

³⁷ *Ibid*, art. 2.4.b.

³⁸ *Ibid*, art. 2.4.c.

³⁹ *International Convention for the Suppression of the Financing of Terrorism*, signed in New York on 9 December 1999, entered into force on 10 April 2002, UNTS, vol. 2178, art. 2.1 (a) (here after, International Convention on the financing of terrorism).

⁴⁰ *Ibid*, art. 2.1 (b).

provisions and specifies the specific intent. The act should cause death or serious injuries to civilians or person not taking direct part in hostilities. These acts giving the nature and context aims to intimidate a population or compel a government or international organisation to do or refrain from doing any act.⁴¹

Section 2. Regional dispositions

Lebanon is a member of two regional organisations, the League of Arab States (LAS) and the Organisation of the Islamic Cooperation (OIC). Both organisations have adopted legal instruments with regard to the fight against terrorism (The Arab Convention for the Suppression of terrorism in 1999 and the Convention of the Organisation of the Islamic Conference on Combating International Terrorism in 1999). Both give their own definition of terrorism. These definitions are relevant as it shapes the perception of terrorism across the Arab States and are binding on Lebanon as member of both organisations.

Despite a different wording, the scope of both definitions is widely similar, and differs by two extra elements in the OIC definition. The common ground reads as follow (LAS definition): *“Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among, people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardise a national resources”*.⁴² The OIC definition adds threatening honour and rights and also damage to international facilities. But most important, add *“threatening the stability, territorial integrity, political unity or sovereignty of independent States”*.⁴³ There is a serious danger of the abusive use of terrorist prosecutions against political opponents, ordinary criminals, and persons threatening public order or national security.⁴⁴

⁴¹International Convention on the financing of terrorism, art. 2.1 (b).

⁴² *The Arab Convention for the suppression of terrorism*, signed in Cairo on 22 April 1998, entered into force on 7 May 1999, available at https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf, consulted on 04.07.2018, art. 1.2. (here after, LAS Convention).

⁴³ *Convention of the Organisation of the Islamic Conference on Combating International Terrorism*, signed in Ouagadougou on 1st of July 1999, entered into force on 7 November 2002, available at <https://www.refworld.org/docid/3de5e6646.html>, consulted on 04.07.2018, art.1.2. (here after, OIC Convention).

⁴⁴ B. SAUL, “Branding Enemies: Regional Legal Responses to Terrorism in Asia” in *Asia-Pacific Yearbook of International Humanitarian Law*, 2008, Sydney Law School Research Paper No. 08/127, available at <https://ssrn.com/abstract=1292164>, p. 8.

In addition to defining terrorism the LAS and OIC Conventions further define terrorist offence/crime as any offence or attempted offence committed with terrorist objectives⁴⁵ as well as crimes specified in the international conventions against terrorism.⁴⁶ In this regard the Conventions differ, whereas the LAS Convention encompasses only six⁴⁷ of the sixteen international Conventions (the three Conventions related to aircrafts, the Convention on internationally protected persons, the Convention against the taking of hostages and the Convention on the Laws of the Sea), the OIC Convention includes twelve (the Convention on nuclear material, the protocol to the convention on the suppression on unlawful acts of violence at airport, the Conventions on continental shelf, maritime navigation, terrorist bombings and plastic explosives). However, offences listed in treaties not ratified by one of the Member States should not be regarded as offences under the Arab League Convention, for this Member State.

By adopting this approach, the Conventions comply with the international standards but also cover a wider range of situations because of the broad definition. Consequently, the trigger offence can consist of any type of violent act and will be considered as terrorist crime depending on the aim and the target.

The LAS and the OIC Convention understand of terrorism were criticized, among others by Amnesty International⁴⁸, Human Rights Watch⁴⁹, the United Nations Office on Drugs and Crimes (UNODC)⁵⁰ and scholars on two main points: vagueness and the armed struggle exemption. Firstly, as mentioned the Conventions are criticized for their broad definition of terrorism and consequently terrorist offence, even more as there is no reference to any human rights obligation in the operative clauses. A broad definition of terrorism is most likely to be interpreted in a certain way depending of the context. As mentioned by the UN Special Rapporteur on terrorism and human rights, Kalliopi K. Koufa, the term terrorism has a high emotional and political meaning, will generally implies a negative value judgment and will be

⁴⁵ LAS Convention art. 1.3, OIC Convention art. 1.3.

⁴⁶ LAS Convention art. 1.3, OIC Convention art. 1.4.

⁴⁷ the three Conventions related to aircrafts, the Convention on internationally protected persons, the Convention against the taking of hostages and the Convention on the Laws of the Sea.

⁴⁸ AMNESTY INTERNATIONAL, “La Convention arabe sur la répression du terrorisme : une grave menace pour les droits humains », Amnesty International, March 2002, available at <https://www.amnesty.org/download/Documents/120000/ior510012002fr.pdf>, consulted on 15.04.2019.

⁴⁹ K. ROTH, “Organisation of the Islamic Conference: improve and strengthen the 1999 OIC Convention on combating international terrorism”, Human Rights Watch, 11 March 2008, available at <https://www.hrw.org/news/2008/03/11/organisation-islamic-conference-improve-and-strengthen-1999-oic-convention-combating>, consulted on 15.04.2019.

⁵⁰UNODC, “Counter terrorism”, UNODC, available at <https://www.unodc.org/e4j/en/terrorism/module-5/key-issues/middle-east-and-gulf-region.html> consulted on 15.04.2019.

used in a selective way.⁵¹ Saul also highlights this misuse of counter terrorism law in the aftermath of 9/11.⁵² This might lead to serious human rights abuses. Secondly, the armed struggle exemption also one of the specific features of the Convention in comparison with other regional instruments on terrorism is that it puts emphasis on the right to self-determination of people. Even if the right to self-determination of people is also present in the African Union Convention Against Terrorism, the Arab Convention has the specificity to specifically include armed struggle.⁵³ As in the 1998 Arab Convention, this exclusion exists despite the declaration in article 1(2) that the ‘motives or intentions’ behind an act are irrelevant to its terrorist character.⁵⁴

Section 3. Domestic dispositions

Lebanon does not have a specific counter terrorism law, instead several articles of the Criminal Code have been modified (article 314-316) to adapt to the terrorist threat. Chapter IV is now dealing with terrorism offences. Article 314 can be considered as giving the Lebanese definition of terrorism which includes “[...] *all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents*”. Conspiracy⁵⁵ to commit such acts and financing⁵⁶ by (in)direct means of terrorism, terrorist acts or terrorist organisations are also punished by the criminal code.

In practice, members of terrorist organisation will be charged with article 335 of the Criminal Code on criminal conspiracy and the law on weapons for illegal possession of weapons, as well on immigration law for foreigners like Syrians. The threshold to be considered as a member of a terrorist organisation is very thin. Indeed, as mentioned by a lawyer “*the secret services investigate everyone, even if there is the trace of a video on a phone related to terrorism and the person will be charged before the Military Court*”.⁵⁷ In addition, the involuntarily adhesion to terrorist groups is not taken into consideration when it comes to deciding whether or not the

⁵¹ ECOSOC, *Progress report prepared by Ms. Kalliopi K. Koufa, special rapporteur on terrorism and human rights*, 53th session, E/CN.4/Sub.2/2001/31, 27 June 2001, available at <https://www.refworld.org/docid/3d5a2cd30.html>, consulted on 15.04.2019, §25.

⁵² B. SAUL, *op cit.* (note 57) p. 1.

⁵³ LAS Convention, art. 2.a.

⁵⁴ B. SAUL, *op cit.* (note 57), p. 8.

⁵⁵ Lebanese Criminal Code, available at https://www.stl-tsl.org/sites/default/files/documents/legal-documents/relevant-lebanese-law/CHATC-150903-2_OAR_T_EN.pdf, consulted on 15.04.2019, art. 315 (here After, Criminal Code).

⁵⁶ Criminal Code art. 316 bis.

⁵⁷ Interview with a lawyer, Court of Justice (Beirut, Lebanon), 02.04.2019.

child should be indicted.⁵⁸ Finally, Lebanese Courts have also ruled that the Free Syrian Army was not a terrorist organisation.⁵⁹

In 1958 following internal disruption, Lebanon passed amendments of the Criminal Code to substitute texts from the criminal code including art. 315 related to terrorism. The law is still applicable and articles 6 and 7 are particularly relevant since it directly targets terrorism. It specifies the sentence for terrorism offences namely, forced labour for life and death penalty⁶⁰ in the case where someone is killed or for the destruction, even partial of a building with even one person inside, the destruction even partial of a public building, an industry, a ship, or any other installation or if it hinders intelligence, communication services and transportation.⁶¹ Any plot to commit the previously mention acts will also be punished from forced labour for life.⁶² It further states that the Military Court are the competent jurisdiction to know about these offences.⁶³

In order to fully understand the content of the offence of terrorism under Lebanese law, it is worth taking a look at the work of the Special Tribunal for Lebanon (STL). Indeed, the STL has the peculiarity to have a *ratione materiae*'s jurisdiction based on Lebanese law and not international standards.⁶⁴ Therefore, in the applicable law judgment, the Appeal Chamber Tribunal made an extensive interpretation of the crime of terrorism under the Lebanese laws and ruling but also make references to international standards.⁶⁵ In this decision, the STL not only clarifies elements of domestic law but redefines it and also construct a customary international law (CIL) of terrorism.

The definition given by the Criminal code does not give an exhaustive list of means to commit terrorist crimes. Whereas the English text creates confusion among scholars regarding this

⁵⁸ Military Court, Decision n°84/2017 of the Investigative judge.

⁵⁹ Interview with Ms. Jocelyne Karam, Lawyer at the Father Afif Osseiran Foundation, Office of the Association (Fonar, Lebanon), 23.05.2019.

⁶⁰ NB. The death penalty is still in the Criminal code but *de facto* abolished.

⁶¹ Law of 11th January 1958 amendment of certain articles of the Criminal Code, available at https://www.stl-tsl.org/sites/default/files/documents/legal-documents/relevant-lebanese-law/law_11_jan_1958_en.pdf, consulted on 15.04.2019, art. 6 (here after L. 11/01/1958).

⁶² L. 11/01/1958, art. 7.

⁶³ L. 11/01/1958, art. 8.

⁶⁴ NB. originally, the statute of the Tribunal was supposed to include the LAS Convention but it was deleted in the final document, N. N. JURDI, "The Crime of Terrorism in Lebanese and International Law" in A. ALAMUDDIN, N.N. JURDI, D. TOLBERT, *The Special Tribunal for Lebanon: Law and Practice*, Oxford University Press, 2014, p. 75

⁶⁵ Special Tribunal for Lebanon, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, Case No STL-11-01/I/AC/R176bis, Appeals Chamber, 16 February 2011.

requirement the original Arabic version makes clear that a terrorist crime can be committed only by means likely to create public danger by themselves *in abstracto*.⁶⁶ This interpretation is consistent with the jurisprudence of Lebanese Courts⁶⁷ and decisions from the Lebanese Council of Justice.⁶⁸ Consequently, means that cannot by themselves create public danger like guns are excluded.

The customary definition on another hand was received differently among scholars. Whereas Scharf⁶⁹ considers that the interpretation made by the Court summarises the current common understanding of terrorism, Jurdi, Saul, Gillet and Schuster find this construction artificial. Indeed, the definition of terrorism as an international crime under customary international law poses several legal issues but this discussion is beyond of the scope of this research.⁷⁰

It is however relevant to examine the content and construction of the definition in order to have an insight on how the STL understand terrorism under CIL and its relationship with the Lebanese domestic definition. Scharf⁷¹ and Jurdi⁷² learn from the ruling of the STL three constitutive elements of the crime of terrorism under CIL as defined by the Tribunal: (i) the perpetration of a criminal act (as described under the sixteen international conventions or in the regional conventions),(ii) the intent to spread fear among, intended to spread fear among the

⁶⁶ N. N. JURDI, *op cit.* (note 79), p. 76.

⁶⁷ Judgment, Case No 125/1964, Military Court of Cassation, 17 September 1964; Judgment, Case No 79/1959, Military Court of Cassation, 29 December 1959 [in Arabic] cited in Jibrán Mansour, *Majmoat Qararat Mahkamat Al-Tamyeez Al-Aaskariya* [The Decisions of the Military Court of Cassation] (Beirut: Lebanese Maronite Publishers, 1970) 55. See also Samir Aalia, *Al Wajiz fi Shareh Al-Jarayem alwaqiaa aala amen Aldawlah* [The Explanation of Crimes Against State Security in a Nutshell] (Al-Musaa'a Al-Jamiaaya lil Durassat wa al-Nasher wa al-Tawzeaa (University Corporation for Studies and Publishing and Distribution 1999) 147; Ali Jaafar, *Qannon al-Aaqubat wa al-Jarayem* [The Penal Law and Crimes] (Beirut: Halabi Publications) 87; M Zaki, 'Qannon Al-Aaoqubat' [Penal Code] in A Qahwaji, *Qannon Al-Aaoqubat: Alqum Al-Aa'm* [Penal Code: the Public Law section] (Beirut: Halabi Publications 2002) 312. (from N. N. JURDI, *op cit* note X, p. 76).

⁶⁸ Judgment, Case No 125/1964, Military Court of Cassation, 17 September 1964; Judgment, Case No 79/1959, Military Court of Cassation, 29 December 1959 [in Arabic] cited in Jibrán Mansour, *Majmoat Qararat Mahkamat Al-Tamyeez Al-Aaskariya* [The Decisions of the Military Court of Cassation] (Beirut: Lebanese Maronite Publishers, 1970) 55. See also Samir Aalia, *Al Wajiz fi Shareh Al-Jarayem alwaqiaa aala amen Aldawlah* [The Explanation of Crimes Against State Security in a Nutshell] (Al-Musaa'a Al-Jamiaaya lil Durassat wa al-Nasher wa al-Tawzeaa (University Corporation for Studies and Publishing and Distribution 1999) 147; Ali Jaafar, *Qannon al-Aaqubat wa al-Jarayem* [The Penal Law and Crimes] (Beirut: Halabi Publications) 87; M Zaki, 'Qannon Al-Aaoqubat' [Penal Code] in A Qahwaji, *Qannon Al-Aaoqubat: Alqum Al-Aa'm* [Penal Code: the Public Law section] (Beirut: Halabi Publications 2002) 312. (from N. N. JURDI, *op cit* note X, p. 76).

⁶⁹ P.M. SCHARF, "Special Tribunal for Lebanon Issues Landmark Ruling on Definition of Terrorism and Modes of Participation", *ASIL Insight*, Vol. 15, issue 6, 4 March 2011.

⁷⁰ For more information see: N. N. Jurdi, "The Crime of Terrorism in Lebanese and International Law" in A. Alamuddin, N.N. Jurdi, D. Tolbert, *The Special Tribunal For Lebanon: Law and Practice*, Oxford University Press, 2014, pp. 73-87.

⁷¹ P.M. SCHARF, *op cit.* (note 79).

⁷² N. N. JURDI, *op cit.* (note 79), p. 77.

population or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it, and (iii) when it involves a transnational element. This definition is on one hand broader and narrower than the Lebanese one. It is narrower as it requires the actions committed the terror to be from a criminal nature, which is not the case in the Lebanese law.⁷³ On another hand, the CIL definition includes means that are not in nature likely to create a state of danger but considering the way and the circumstances in which it is used it should be included as means of terrorism.⁷⁴ The Tribunal goes even further and includes *“attacking a prominent political or military leader, even if no other people are present because such attacks may result in other assassinations of leaders or violent reactions.”*⁷⁵

Finally, taking into consideration that the STL sets two different standards for the offence of terrorism but that technically Lebanese law is subordinate to the international custom, it should be considered how the Tribunal reconciles both standards. According to the STL, customary and international law serve as interpretative guidance for the Lebanese crime of terrorism.⁷⁶ According to Lebanese law, this is possible when the domestic law lack precision or is silent.⁷⁷ However, in the present case, the STL explained that the Criminal Code should be interpreted *“in a way that reflects the legal developments in the sixty- eight years since the Lebanese code was adopted”* and therefore the definition could be adapted. Jurdi does not accept this justification and this interpretation considering it violates the principle of legality and that instead the Lebanese law should be amended. In the present case, this attitude is to be attributed to the President of the STL, Antonio Cassese, famous international law scholar aiming at developing international law in this matter.

In conclusion, it illustrates how the definition of terrorism is complex and that it can be adapted and used differently depending on the situation. Indeed, even under domestic law *“all acts intended to create a state of terror”* remains very broad and vague. The following chapter is also dedicated to the study of terrorism but more specifically, the situation of terrorism and children associated with terrorist groups in Lebanon.

⁷³ N. N. JURDI, *op cit.* (note 79), p. 82.

⁷⁴ N. N. JURDI, *op cit.* (note 79), p. 83.

⁷⁵ N. N. JURDI, *op cit.* (note 79), p. 83 and Interlocutory Decision on Applicable Law (n4) para 127.

⁷⁶ N. N. JURDI, *op cit.* (note 79), p. 83.

⁷⁷ *Ibid*, p. 84.

Chapter 2. Terrorism in Lebanon: facts and figures

The present chapter aims at giving a better insight on terrorism in Lebanon. Indeed, it is important to understand the context in which legal prosecution take place in order to have a full picture. The first section explains how the Syrian conflict impacted the increase of terrorist attacks in past years in Lebanon before dedicating a section to the place of children in the context of terrorism. The Syrian conflict was selected since, according to statistics of various ministries, the number of children suspected, accused and condemned for terrorism in Lebanon followed the trend of the Syrian conflict.

Section 1. The spill over of the Syrian conflict

In 2011, the Syrian civil conflict started. Originally opposing protesters and the government the conflict evolved to include several armed groups fighting the government and each other, including the Al-Nusra Front and the Islamic State (IS/Daesh), both listed as terrorist organisations by the United Nations.⁷⁸ Considering that the scope of the present research is on terrorism, this section focuses on the terrorist armed groups although many others are involved in the Syrian conflict spilling over Lebanon.

Both organisations originate from Al Qaeda. The Al-Nusra Front was originally affiliated to Al-Qaeda but separated in 2016⁷⁹ and Daesh formed from remaining Al-Qaeda cells in Syria and Iraq. The two groups's ideologies share the same basis and want to establish an Islamic governance. Whereas Al-Nusra wants to establish Islamic law on the territory they control⁸⁰, Daesh goes further and wants to establish a Muslim world caliphate.⁸¹ Their ideology is based on the Salafi jihadist doctrine, dating back from the Middle Age, which is the most literal and strictest interpretation of Sunni Islam.⁸² Despite, various different streams within the Salafi ideology, they all share core elements. First, it accepts only the Quran and the Sunna as source of rules and a literal reading of the texts. Second, it researches the glory of the early centuries

⁷⁸ United Nations Security Council, *Resolution 2253 (2015) adopted by the Security Council at its 7587th meeting on 17 December 2015*, S/RES/2253 (2015), 17th December 2015.

⁷⁹ THE COUNTER EXTREMISM PROJECT, Nusra Front (Jabhat Fateh al-Sham), counter extremism project, available at <https://www.counterextremism.com/threat/nusra-front-jabhat-fateh-al-sham>, consulted on 03.07.2019.

⁸⁰ THE COUNTER EXTREMISM PROJECT, Nusra Front (Jabhat Fateh al-Sham), counter extremism project, available at <https://www.counterextremism.com/threat/nusra-front-jabhat-fateh-al-sham>, consulted on 03.07.2019.

⁸¹ THE COUNTER EXTREMISM PROJECT, ISIS, counter extremism project, available at <https://www.counterextremism.com/threat/isis>, consulted on 03.07.2019.

⁸² BELGIAN STATE SECURITY, "Le salafisme en Belgique : mécanismes et réalité", available at https://justice.belgium.be/sites/default/files/2018-01_brochure_salafisme_fr.pdf, consulted on 29.06.2019, p.5.

of Islam, refusing any political, cultural, social or scientific evolution. Finally, it rejects all non-Islamic influences.⁸³

The Syrian conflict has had an important impact on Lebanon, as described by Salloukh it has put “*new economic, social, political and security strains on an already stretched Lebanese system*”.⁸⁴ The conflict in Syria triggered several terrorist attacks and bombings on the Lebanese territory, which resulted in loss of civilians, including women and children but also targeted political figures and infrastructures.⁸⁵ Mainly, the Syrian civil war woke up community tensions and pressured the country with the massive influx of refugees.

The Lebanese civil war was ended by the Taef Accord which allocated governmental positions to the different religious sects in order to find a balance between the communities in the Lebanese governance. It aimed at easing the tensions between the different sects of the country. However, this remains a fragile balance. Syria and Lebanon have always been in a close relationship as Lebanon was under Syrian authority until 2005. Since then, there is a division between pro (March 8th Alliance; led by the Shia Hezbollah) and anti Syria movements (March 14th Alliance, led by the Sunni Future Movement).⁸⁶ This division was exacerbated by the Syrian conflict. It also had as effect to disturb the fragile balance between the different religious communities in Lebanon, which mirror the communities existing in Syria. Religious communities of Lebanon and Syria (mainly Sunni, Shia, Druze, Christian and Alawi) still have strong ties. There is such as strong relationship between the communities of both countries that an attack on one has an impact on the other.⁸⁷ Nusra and Daesh ideologies are based on a certain branch of the Muslim faith, trying to impose it on the other branches and religions. Faith conflict brings back painful memories from the Lebanese history. Since the conflict exacerbates differences between sects, it disturbed the fragile sectarian peace brought by the Taef Accord.⁸⁸

Both Daesh and Al-Nusra created further disturbances as they have exploited the economically underdeveloped and marginalised areas of Lebanon and use it as a field of recruitment.⁸⁹ Indeed,

⁸³ BELGIAN STATE SECURITY, *op cit.* (note 68), p.6.

⁸⁴ B. F. SALLOUKH, “The Syrian War: Spillover Effects on Lebanon”, in *Middle East Policy*, vol. 17, n°1, Spring, 2017 p. 62.

⁸⁵ COMMITTEE ON THE RIGHTS OF THE CHILD, *Consideration of reports submitted by States parties under article 44 of the Convention: fourth and fifth periodic report of States parties due in 2013 Lebanon*, CRC/C/LBN/4-5, 19 July 2016, p. 60.

⁸⁶ B. F. SALLOUKH, *op cit.* (note 99), p. 62.

⁸⁷ W. YOUNG, D. STEBBINS, B. A. FREDERICK, O. AL-SHAHERY, *Spillover from the Conflict in Syria: an assessment of the factors that aid and impede the spread of violence*, Brand Corporation, 2014, p.31.

⁸⁸ B. F. SALLOUKH, *op cit.* (note 99), p. 69.

⁸⁹ B. F. SALLOUKH, *op cit.* (note 99), p. 70.

as the ideology of the both groups is to establish an Islamic caliphate and to encourage individual and low-cost attacks, anyone, anywhere can start a terrorist attack with very little means. Encouraging this behaviour leads to an increase of tensions and attacks.

External involvement in the Syrian conflict also played a role and impacted the internal situation of Lebanon. The Hezbollah, as pro-Syrian interest, took part of the conflict and sent troops to Syria to support governmental forces which led to an open conflict with the Al-Nusra Front. As a consequence, the Al-Nusra, supporting the Free Syrian Army, launched an attack against the Hezbollah within the Lebanese borders. In addition, the involvement of Al-Nusra empowered some domestic Sunni jihadist groups which were not in a position to oppose the Lebanese Armed Forces or the Hezbollah before.⁹⁰ This situation created clashes in Tripoli (Bab al-Tabbaneh and Jobal Mohsen) in the North of Lebanon.

Taking advantage of the flux of weapons transiting to Syria, some Salafi groups seized the opportunity to consolidate their presence in the region and balance the presence of Hezbollah in some neighbourhoods of Beirut.⁹¹ Other Sunni Salafi groups flourished across Lebanon and engaged in conflict with the LAF arguing that the army was hindering the movements to Syria. In 2013, the conflict reached a peak in Saida with the attack of a military checkpoint. In 2014, a vast operation was launched in Tripoli by the Lebanese Armed Forces against the Salafi groups.⁹²

In addition to empowering local groups, the sectarian tensions awakened by the Syrian conflict allowed some transnational Salafi groups, such as the Abdullah Azzam Brigades (linked to Al-Qaeda, Al-Nusra and Jund al-Sham, a Palestinian organisation) to reach out to local members in Lebanon located in Palestinian refugee camps. The organisation launched a series of attacks against the LAF, the Iranian embassy and Hezbollah neighbourhood in Beirut and the Beqaa.⁹³

Another important aspect of the Syrian conflict that impacted Lebanon is the massive influx of refugees it created. Currently, around one million of Syrian refugees are registered in Lebanon by the United Nations High Commissioner for Refugees, which amounts to one sixth of the country's population. In reality this number is higher as all refugees do not register to the UN body and this number was higher in the years 2014-2015.⁹⁴ This influx was possible namely

⁹⁰ W. YOUNG, D. STEBBINS, B. A. FREDERICK, O. AL-SHAHERY, *op cit.* (note 102), p.27.

⁹¹ B. F. SALLOUKH, *op cit.* (note 99), p. 70.

⁹² *Idem.*

⁹³ B. F. SALLOUKH, *op cit.* (note 99), p. 70.

⁹⁴ UNHCR, Operational portal refugee situation in Lebanon, UNHCR, available at <https://data2.unhcr.org/en/situations/syria/location/71> consulted on 05.07.2019.

thanks to the 375 km of border between Syria and Lebanon. The country was not prepared for such an important arrival of people, there was no designated camps. In addition, the government stated that no camps will be constructed, which lead the Syrian refugees to move to the poorest areas of Lebanon in existing structures. The establishment of individuals from different confessions destabilise the pre-existing balance between neighbourhoods and create or increase existing tension between communities and leads to some altercations.⁹⁵ In addition, numerous Syrians were members of Daesh or the Al-Nusra Front in Syria and might still belong to the organisation in Lebanon.

One of the most important terrorist events linked to the Syrian conflict is the battle of Aarsal in 2014 (situation 50km away from the Syrian border) when Daesh was at its strongest. Back then, the organisation had control on wide territories over Syria and Iraq and declared in June of that year an Islamic caliphate.

In August 2014, the Lebanese Armed Forces arrest Imad Ahmad Jomma, leader of a Syrian group subordinated to Daesh. This arrestation is the trigger point of the battle. In response, Al-Nusra and Daesh launch attacks killing many civilians and soldiers.⁹⁶ In the end, 42 soldiers, members of the internal security forces and policemen were taken as hostages and the groups took over the city of Aarsal. After confrontations and negotiation, the Army agreed to allow the terrorist groups to leave the city and go back to Syria, in exchange of the release of all the hostages within the next 24 hours but only three were released.⁹⁷ In April, the Lebanese Armed Forces killed the head of Daesh's group in Aarsal and proceeded to arrestation and capture of numerous individuals suspected to have participate in the conflict.⁹⁸

In conclusion, the Syrian conflict spilled over to Lebanon in several ways. It woke up internal tensions between sects and other nationalities, created a massive influx of refugees which increase sectarian tensions and brought individuals associated with Daesh and Al Nusra from Syria to Lebanon. Finally, it led to some important conflict on the Lebanese territory such as Aarsal. However, a question remains, what is the place of children in this situation?

⁹⁵ W. YOUNG, D. STEBBINS, B. A. FREDERICK, O. AL-SHAHERY, *op cit.* (note 102), p.28.

⁹⁶ CIVIL SOCIETY KNOWLEDGE CENTRE, Aarsal conflict (starting August 2, 2014), Civil Society Knowledge Centre, available at <https://civilsociety-centre.org/timelines/27778#event-a-href-sir-clashes-between-army-and-militants-arsalclashes-between-army-and-militants-in-arsal-a> consulted on 05.07.2019.

⁹⁷ CIVIL SOCIETY KNOWLEDGE CENTRE, Aarsal conflict (starting August 2, 2014),

⁹⁸ B. F. SALLOUKH, *op cit.* (note 99), p. 71.

Section 2. Children and terrorism

Children have always been involved in terrorist related activities. But why recruiting children? What task do they perform? What is the situation in Lebanon?

Children are often used because they are precious instruments⁹⁹, may it be on the battlefield or not. The UNODC identifies six reasons for violent extremist groups to recruit children. First, children bring visibility and propaganda to the group. Children are used in media campaign and show how ruthless is the group, it is used to shock public opinion and induce fear. Second, the agency identifies that in some regions due to some endemic diseases, children constitute the major part of the population.¹⁰⁰ In addition, children are available in all regions of the world and actually represent 40% of the Muslim community.¹⁰¹ Thirdly, when a group is unpopular, it is harder to rally adults to the cause. Therefore, children are easier targets to recruit and ensure the continuity and the expansion of the group.¹⁰² Furthermore, children have an economic advantage, they cost less because they eat less and do not require to be paid.¹⁰³ In addition, thanks to the technological evolutions, weapons are smaller and easier to manipulate for children and there is thus no age constrain for children to fight.¹⁰⁴ Fifthly, their young age makes them really impressionable and compliant,¹⁰⁵ both physically and psychologically which makes them easier to control.¹⁰⁶ Violent extremist groups such as Daesh differentiate themselves from other armed groups or armies because of the extreme importance it grants to children. Indeed, since the goal of the organisation is to establish a Caliphate, children represent the future generation. They can answer specific needs of the Caliphate now but will also be in

⁹⁹ The following vocabulary is in no way reflecting the author's view but follows the ISIS's perspective on the question.

¹⁰⁰ UNITED NATIONS OFFICE ON DRUGS AND CRIMES, "Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist groups: the role of the justice system", 2018, available at https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf, consulted on 03. 07. 2018, p. 10 (here after, UNODC report).

¹⁰¹ N.A. FADHIL LUBIS, "The issue of child soldiers in Islamic perspectives", *MIQOT*, vol.XXXII, n°2, July-December 2008, p.172.

¹⁰² UNITED NATIONS OFFICE ON DRUGS AND CRIMES, "Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist groups: the role of the justice system", 2018, available at https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf, consulted on 03. 07. 2018, p. 10.

¹⁰³ FONDATION QUILLIAM, *Les enfants de daech*, ed. inculte/dernière marge, 2016, p. 40.

¹⁰⁴ UNODC Report, p. 11.

¹⁰⁵ FONDATION QUILLIAM, *op cit* (note 119), p. 40.

¹⁰⁶ UNODC Report, p. 11.

charge of tomorrows, will uphold and extend the group's ideology.¹⁰⁷ Children are “an investment for future generation”.¹⁰⁸ Finally, children represent a tactical advantage. Children are used as soldiers, but also as spies, human shields, cooks, suicide bombers, messenger, etc.¹⁰⁹ They attract less suspicion on them and are more likely to obey order and to act as they do not realise what the implications of what they are doing.¹¹⁰

There are five ways of children to join a terrorist group, children born in the organisation, children joining with a member of the family, orphans or abandoned children taken by the group, children abducted by the group and children “voluntarily” joining the group.¹¹¹ Parents can also sell their children for economic reasons. For example, in Pakistan children were bought to serve as suicide bomber and could be sold from 7,000\$ up to 14,000\$.¹¹²

In Lebanon¹¹³, according to statistics from the Ministry of Interior¹¹⁴, 1054 individuals were detained for terrorism, of which 209 children (May 2018). Usually the minors are between fourteen and eighteen when they commit the crime or are incarcerated. Statistics from the Department of Prison in the Ministry of Justice, the majority of children incarcerated for terrorism are 17 years old.¹¹⁵

Whereas in the beginning of the Syrian conflict more Lebanese than Syrian were involved in terrorist activities the tendency reversed in 2015, and a few Palestinian. From 2012 to 2018, 118 children were accused of terrorism-related offences. The children are accused on the basis of three different behaviour namely, playing an active role such as wearing explosive belts, fighting with the group, or carrying out activities supporting the work of terrorist groups (46%), adhering to terrorist groups (34%) and for apology of terrorism (20%). The majority of children

¹⁰⁷ FONDATION QUILLIAM, *op cit* (note 119), p. 40.

¹⁰⁸ FONDATION QUILLIAM, *op cit* (note 119), p. 27.

¹⁰⁹ UNITED NATIONS CHILDREN'S FUND, *Guide to the optional protocol on the involvement of children in armed conflict*, December 2003, p. 14.

¹¹⁰ UNODC Report, p. 11.

¹¹¹ M. BLOOM, “Weaponizing the Weak: The Role of Children in Terrorist Groups” in Washington & Lee Public Legal Studies, Research Paper Series, n°2019-06, January 2019, to be published in M. A. DRUMBLE, J. C. BARETT, *Research Handbook on Child Soldiers*, Edward Elgar Publishing, August 2019, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3316395, consulted on 28.09.2019, p.4.

¹¹² M. BLOOM, *op cit*. (note 127), p.5.

¹¹³ For further information, the UNODC will release a report on the rehabilitation of children accused of terrorism in Lebanon end of August/beginning of September 2019.

¹¹⁴ CONGRÈS MONDIAL SUR LA JUSTICE POUR LES ENFANTS, « Mécanismes régionaux et nationaux en faveur des enfants impliqués dans l'extrémisme violent », presentation of Mme Rita Deaibess, available at <https://docplayer.fr/112895903-Congres-mondial-sur-la-justice-pour-enfants-paris-30-mai-2018-rita-deaibess-responsable-de-l-aile-des-mineurs-prison-de-roumieh-liban.html> consulted on 13.11. 2018.

¹¹⁵ Annex 1.

have attained the second cycle of secondary education (73%) and one fifth only reaches the primary level. According to the Ministry of Interior, most of the children admit their implication in the crimes for which they are prosecuted, even if, they might now all realise the extent of the gravity of their actions. Some consider themselves as victims.

Often when talking with the children Ms. Jocelyne Karam (lawyer at the Father Afif Osseiran Foundation) notices that they were obliged to follow the orders of the organisation.¹¹⁶ Many children perform logistic and supportive task such as bakery, cooking, etc. She believes that in those cases the sentence ranging from a year to a year and a half is too high. Children also talk about threats made upon them or their families. From what she has seen 90% of the children were forced by fear. Only 10% of the children have actual religious beliefs and believe in the cause of the organisation. However, when it happens it's because they have been brainwashed, but after the death of some family members it influences the child. She explains that:

“when I see a child that actually believes in the ideology, they brainwashed him, after my personal inquiry with him, I learn that his brother is dead with them, he was influenced by the death of his brother, he joined for a cause, for God, they use a lot religion to influence them”

According to her, the primary reason for Lebanese children to work with terrorist organisation is economic, since the family is too poor to sustain itself, the child work with the group to gain money. With regard to Syrians, it is avoiding the death threat over their families. Indeed, in area controlled by Daesh, they force everyone to work with them otherwise they will kill the individual, his family, etc. The miserable life conditions of children are highlighted as primary factor for working with terrorist groups by all the actors of the judicial system (judges, lawyers, social workers, etc.).

This chapter provided a better insight on what does terrorism imply in reality in the Lebanese context. The next chapter sets the theoretical framework on which the thesis is based and explores social categorization and its influence on emotions and behaviours.

¹¹⁶ Interview with Ms. Jocelyne Karam.

Chapter 3. Social categorization and intergroup behaviour

The chapter aims at exploring the mechanism behind social categorization and its impact on the behaviour of individuals. The first section explores the process of categorization and stereotyping, whereas the second section describes how this categorization impacts the emotional response of the individuals and how events can affect the stereotypes. Finally, the chapter explores the behavioural impact of the categorization and emotional responses.

The present sections serve as analytical framework to provide one explanation for the difference of treatment of the child by different actors of the judicial system. It serves as basis of explanation on how the categorization of the child by specific actors will impact the behaviour of the actors towards him and consequently the respect of his rights, but also how this categorization can evolve over time and depending on specific events.

Section 1. Process of categorization and stereotyping

The categorization process is “*the natural cognitive process by which we place individuals into social groups*”. This process of categorization is automatic, spontaneous and unconscious (Crisp & Hewstone, 2007).¹¹⁷ The categorization can be based on various factors such as ethnicity, academic status, social role, etc. (Haslma & Fiske 1991, Stangor, Lynch, Duan & Glass 1992). Usually the individual is categorized as part of an “in-group” or an “out-group”. The individual member of the same social group will be considered as in-group and the individual not perceived as belonging to the group will be considered out-group (Brewer 1979).¹¹⁸ The process of social categorization is also linked to the process of “self-categorization”. According to the self-categorization theory, (Abrams 1999, Oakes, Haslam & Turner 1994) “*the social identity is inherently context dependent predicted that group-based emotions should be differentially elicited depending on the way people categorize themselves*”. The individual categorize himself as part of a group, based on the characteristics chosen by the individual which vary depending on the context. Depending on this self-categorization, the other individual will be socially categorized as in-groups or out-group member.

¹¹⁷ C. STANGOR, “Social Categorization and Stereotyping” in *Principles of social psychology*, 1st international edition, available at <https://opentextbc.ca/socialpsychology/chapter/social-categorization-and-stereotyping/> consulted on 18.06.2019.

¹¹⁸ T. D. NELSON, "The Neurobiology of Stereotyping and Prejudice", in D.D FRANK, J.H. TURNER, *Handbook of Neurosociology and Social Research*, Springer, 2013, pp. 351.

Categorization is closely linked to the stereotyping as individuals tend to give the same characteristics to members of out-groups whereas members of the in-groups are seen as unique individuals. This process is called the “*out-group homogeneity effect*” (Hamilton 1976, Ostrom and Sedikides 1992, Linville, Salovey & Fischer 1986, Meissner & Brigham 2001).¹¹⁹ This homogeneity effect is due to the fact that there is less contact with the out-group than the in-group. As the individual feels more comfortable in in-group situations as he feels he knows the characteristics of the group and knows how to behave within the group and what to expect from the group. Consequently, individuals have a tendency to stay with in-group members. In addition, the individual surrounds itself with other individuals sharing the same beliefs (Schaller & Conway 1999).¹²⁰ This creates a lack of knowledge on the out-group which leads to the development of negative feelings and underlying fear towards the members of the out-group (Allport 1954, Jones 1997, Mackie et al. 2009). In addition, categorization tends to modify the perception of reality and exacerbate the differences between the groups (Tajfel and Wilkes 1963).¹²¹

Once the group is seen as a homogenous whole, it is easier to apply stereotypes to members of that group, without even looking whether the attributed characteristics are valid or not, nor if it applies to every individual member of the group.¹²²

Stereotype is defined as a “*human tendency to think of people in similar terms based on the feature they shared*”, it follows the very famous quote of Lippman which described stereotypes as “*picture in our heads*”.¹²³ Whereas stereotypes might not always be negative for the stereotyped group, usually individuals tend to believe more positively about themselves than the members of the other group. (Greenberg et al. 1982, Taylor 1989). In addition, once the stereotype is established, it is hard to change. In a study from Trope and Thompson (1997), it was found that individuals will be less likely to address questions to stereotyped groups. Indeed, because of the effect of homogeneity, the individuals feel like they already know everything about the other group and do not need to know more. This process goes even further as the human mind tends to collect and retain information confirming existing beliefs and stereotypes. (Fyock & Stangor 1994).¹²⁴

¹¹⁹ T. D. NELSON, *op cit.* (note 134), p. 351.

¹²⁰ C. STANGOR, *op cit.* (note 132).

¹²¹ *Idem.*

¹²² *Idem.*

¹²³ T. D. NELSON, *op cit.* (note 134), p. 349.

¹²⁴ C. STANGOR, *op cit.* (note 132).

Once the individuals are categorized in groups, it is relevant to examine the relationship between the groups and what this categorization entails, as well on how it can evolve. Indeed, once the individual is categorized as member of a group, the relationship between the two groups trigger a certain set of emotions. In turn, these emotions will have a behavioural impact. This process is important to understand why a certain categorization of the child would lead the individual facing the child to behave in a certain way with him. The following section deals with this aspect.

Section 2. Inter-group emotional experience

There is often tension between different groups. This relationship is described by the inter-group threat theory. It examines the perception of threat and how it influences the emotional and behavioural response of the members of the group. It does not matter that the threat remains hypothetical, it is concerned with how real the threat is perceived.¹²⁵ The theory defines that a “*threat is experienced when members of one group perceive that another in a position to cause them harm*”.¹²⁶ The theory identified two types of threat, namely, realistic and symbolic. Realistic threat refers to potential physical or material harm to the individual of a group (e.g. torture, death, economic loss, personal security, etc.), whereas symbolic threat targets a threat to the to a group’s self-esteem or self-identify (e.g. ideology, morality, worldviews, etc.).¹²⁷ Four factors are identified to affect the perception of a threat: the inter-group relations, the cultural dimensions, the situational factors and the individual difference variables.

The inter-group relations vary on the power of the group. Whereas a low-power group is more likely to actually experience the threat, a high -power group is more likely to respond strongly to the threat because they have more to lose.¹²⁸ In-groups will perceive the out-group more threatening when it perceives that its cultural values and characteristics are threaten and that those values and characteristics differ widely from the ones of the out-group.¹²⁹ In addition, cultural dimensions play a role. Cultural dimensions cover “*values, rules, norms, and beliefs of social groups*”¹³⁰ Schwartz and Bilsky have established that cultures with a high need for security

¹²⁵ W.G. STEPHAN, O. YBARRA, K.R. MORRISON, "Intergroup threat theory", in D.D Frank, J.H. Turner, *Handbook of Neurosociology and Social Research*, Springer, 2013, p. 45.

¹²⁶ *Ibid*, p. 43.

¹²⁷ *Idem*.

¹²⁸ W.G. STEPHAN, O. YBARRA, K.R. MORRISON, *op cit.* (note 141), p. 45.

¹²⁹ *Ibid*, p. 46.

¹³⁰ *Ibid*, p. 48.

and a strong belief that the world is not safe, will most likely experience a feeling of threat.¹³¹ Thirdly, situational factors should be taken into consideration. It refers to the actual circumstances of specific interactions between the in- and out-group like, the setting, the goal of the interaction, the power of the groups, the actual power from one group to harm the other and the threats made against the group.¹³² Finally, Individual difference variables impact the threat perceived by the in-group. Classically, it relates to the strength of the in-group identity, the contact and knowledge of the outgroup. As example, in collectivist culture where there is a strong emphasis on the community, the group is a stronger component of the individual's identity than in individualist cultures. Therefore, any threat to the group will lead to stronger reactions from this individual. In addition, contacts with the out-group in negative settings are more likely to trigger a feeling of threat. Other numerous specific variables have been identified by researchers like self-esteem (Rosenberg, Cocker and Schwartz), chronic mortality salience (Greenberg, Salomon & Pyszczynski), paranoid world views (Kramer, Ybarra, Stephan, Schaberg), social dominance orientation (Pratto, Sidanus, Stallworth & Malle) and right-wing authoritarianism (Alterneyer).¹³³

The threat will induce three sets of responses, cognitive responses, emotional responses and behavioural responses. Only the cognitive and the emotional responses will be developed in the section, the behavioural response will be the subject of the following section.

The feeling of threat in the context of inter-group relations will trigger an emotional response which, according to studies usually is negative and has been proven to provoke fear, resentment, anger, contempt, anxiety, disgust, collective guilt and vulnerability and most likely rage, hatred, humiliation, dread, helplessness, despair, righteous indignations and panic. The perception of threat has an impact on the empathy demonstrated towards the different groups, which is increased for member of the in-groups and decreased for members of the out-group. It can also trigger pleasure at the suffering of an out-group, what Leach, Spears, Branscombe & Doosje call "*schadenfreude*".¹³⁴ More specifically, depending on the type of threat perceived, the emotion triggered will be different. Cottrell & Neuberg (2005) have established that a perceived threat to physical safety elicits self-reported fear. In addition, perception of threat also impacts on the process of inhumanisation of out-group members which is "*the unwillingness to*

¹³¹ W.G. STEPHAN, O. YBARRA, K.R. MORRISON, *op cit.* (note 141), p. 47.

¹³² *Ibid*, p. 48.

¹³³ *Ibid*, p. 49.

¹³⁴ *Ibid*, p. 51.

attribute the capacity to experience the same types of subtle emotions felt by the in-group to members of the out-group”.¹³⁵

As well, research in neurosociology have studied the functioning of the brain in the context of social categorization. Those researches examine which part of the brain is activated when the individual is confronted to in/out group members. The brain is composed of several parts which are each related to certain types of emotions. Analysing which part of the brain is active at what moment reveals the emotion associated with an in or out group member. Harris and Fiske (2006)¹³⁶ have found that the activation of the amygdala (responsible for fear) is very strong when the individual face another individual considered as an extreme out-group member (“*groups both stereotypically hostile and stereotypically incompetent*”¹³⁷). These results have been confirmed in a study run by Hart and al. on white and black Americans. However, more recent research suggest that the amygdala activity does not only demonstrates the intensity of fear but the intensity of the individual’s reaction to the out- group as well (Amodio and Liberman 2009).¹³⁸ Consequently, these findings show that facing the member of an out-group triggers strong negative emotions and mostly fear.

Another emotion that can be triggered by intergroup relations is collective guilt from members of the in-group. Miron and Brandscombe developed a model of justice based on collective guilt. They argue that the criteria to define whether or not a situation is just/unjust will be higher to reach when it comes to judging the out-group and lower when it comes to judging the in-group.¹³⁹ When injustice derives from actions of the in-group towards the out-group, collective guilt can be experience and members of the out-group are included in the in-group. Members of the out-group can be included in the in-group as member of a broader common group, or the human group.¹⁴⁰

Experience of collective guilt is conditional of two conditions. First, the individual member of the in-group should categorize himself as part of the advantages group/perpetrating group. Second, they should consider that the in-group is “*responsible for moral violation against the*

¹³⁵ W.G. STEPHAN, O. YBARRA, K.R. MORRISON, *op cit.* (note 141), p. 51.

¹³⁶ T. D. NELSON, *op cit.* (note 134), p. 351.

¹³⁷ L. T. HARRIS, S. FISKE, "Dehumanising the Lowest of the Low: neuroimaging response to extreme out-groups" in *Psychological Science*, vol.17, n°10, 2006, pp. 847.

¹³⁸ T. D. NELSON, *op cit.* (note 134), p. 352.

¹³⁹ A.M. MIRON, N. R. BRANSCOMBE, "Social Categorization, Standards of Justice, and Collective Guilt" in A. NADLER, T. MALLOY, J. D. FISHER, *The Social Psychology of Intergroup Reconciliation*, Oxford University Press, 2008, p. 79.

¹⁴⁰ *Idem.*

out-group"¹⁴¹ coming from illegitimate actions committed by the in-group.¹⁴² The emotion of collective guilt induces a change in categorization of the out-group victim.

Section 3. Modification of emotions and stereotypes

These emotions and stereotypes can also evolve. Modification of stereotyping is very important as it gives an explanation for potential behavioural changes over time.

In the context of inter-group relationships, the perception of threat involves a cognitive response which is translated by modifications in the perception of the out-group and the stereotypes associated.¹⁴³ According to Bar-Tal and Labin, two factors can influence the modification of stereotypes: active interventions and "real world events, experience or information".¹⁴⁴ For the scope of the present research only the later criteria will be examined. Whereas stereotypes are influenced by long term events such as war, it can also be altered by short term but important events related to the group's relationship. Bar-Tal and Labin consider thus stereotypes as "*seismograph of intergroup relations at any given time, since they change in response to information derived from major events pertaining to intergroup relations*".¹⁴⁵ The research focus on how major real-life events happening in an inter group context can impact stereotypes. The researchers define major events as "*extraordinary events, relevant to the group members' live, which are widely publicized through group's channels of communication and provide information that cannot be disregarded*".¹⁴⁶ They identify four characteristics of the major event susceptible to make an impact on the individual namely, the duration of the event, the level of trauma, the evaluative nature of the event (providing negative/positive meaning), the ambiguity of the event and the correspondence with the held stereotype. A terrorist attack can be considered as an important major event as it is "*short, traumatic, of negative nature, unambiguous and often in line with the held stereotype of the terrorist group*".¹⁴⁷ In their experiment, Bar-Tal and Labin surveyed young people were during a resting period, right after a terrorist attack and three months after the terrorist attacks.¹⁴⁸ The aim was to evaluate the

¹⁴¹ A.M. MIRON, N. R. BRANSCOMBE, *op cit.* (note 156), p. 80.

¹⁴² *Ibid.*, p. 81.

¹⁴³ W.G. STEPHAN, O. YBARRA, K.R. MORRISON, *op cit.* (note 141), p. 50.

¹⁴⁴ D. BAR-TAL, D. LABIN, "The effects of a major event on stereotyping: terrorist attacks in Israel and Israeli adolescents' perceptions of Palestinians, Jordanians and Arabs" in *Eur. J. Soc. Psychol.*, n°31, 2001, p. 265.

¹⁴⁵ *Ibid.*, p. 266.

¹⁴⁶ *Idem.*

¹⁴⁷ D. BAR-TAL, D. LABIN, *op cit.* (note 161), p. 267.

¹⁴⁸ *Ibid.*, p. 271.

impact of terrorist events in Israel and the evolution feelings of young Israeli towards Arab, Palestinian and Jordanians. The researcher found out that the perceptions of the different groups follows the “differential relations Israeli have with them”. Consequently, more negative feelings were held against Palestinians.¹⁴⁹ In general, the attacks negatively affected the perception of the three groups. As the terrorist attack elicits emotions of threat and anxiety, the most negative feelings were directed to the group considered as responsible for the terrorist attack, namely Palestinians. In the survey administered three months after the attack the feelings got back to a level similar to the pre-attack survey. However, idea of the stereotype remains the same as during the attacks or was even worsen.¹⁵⁰ Results showed that terrorist attacks influenced personal characteristics attributed to the terrorists such as loyalty, trustworthiness, violence, goodness, cruelty, etc.¹⁵¹ The study confirms that group events such as terrorist attacks impact the stereotypes and attitudes of a group towards another group.¹⁵²

Second, as mentioned in the previous section, an emotion such as collective guilt can lead to a “re-categorization” of the individual as part of a broader out-group. The modification of categorization depends on two contextual and one motivational variable. The first criterium is the degree of conflict between the groups. The more conflict there is, the more differences will be made salient between the groups and the hardest it is to feel empathy for the out-group.¹⁵³ Members of the group also feel more guilt when the individual who is harmed is closer to them than when he is a complete stranger. Furthermore, the regularity of interactions between both groups plays a role as it increases the knowledge on the out-group and reduces the perceived differences. It leads to re-categorization of the victim into a broader group. Finally, group identification influences categorization. When the individual highly identifies as belonging to the in-group, categorization is used to avoid “contamination” by the out-group. So high identifiers will less likely operate re-categorization in order to not contaminate the in-group.

In general, studies have demonstrated that the categorization in/out group will have an impact on the behaviour the individual and also affect the expectations on the behaviour of the other

¹⁴⁹ D. BAR-TAL, D. LABIN, *op cit.* (note 161), p. 275.

¹⁵⁰ *Ibid*, p. 276.

¹⁵¹ *Ibid*, p. 277.

¹⁵² *Ibid*, p. 278.

¹⁵³ A.M. MIRON, N. R. BRANSCOMBE, *op cit.* (note 156), p. 86.

individual (Allport 1954).¹⁵⁴ How does categorization and emotions impact the behaviour of the individuals towards the out-group? the following section attempts to answer this question.

Section 4. Behavioural impact

Appraisal theories of emotions (E.R. Smith 1993, 1999, group-based motions) explain how some contextual configurations can trigger emotions depending on how it is perceived by the individual.¹⁵⁵ This emotion triggered by the situation will impact the behaviour of the individual. The same dynamic occurs for groups. When the individual is part of a group and the group suffers prejudice or a positive treatment, the situation will trigger “group-based emotions”. The individual can be absorbed by the group and an emotion at the individual level can be triggered by the group even if the individual was not part of the event triggering the emotion.

When an individual is categorized as out-group or in-group, it will influence the way the individuals feels towards the other individual and will have an impact on his behaviour towards that person. Researchers have studied the behavioural response to inter-group threat. Stephan, Ybarra and Morrison, have identified several behaviours linked to perception of threat such as withdrawal, submission, negotiation and aggression, discrimination, lying, harassment, retaliation, etc. It can also take the form of direct hostility with the out-group.¹⁵⁶ However, threat can at some occasions trigger positive behaviours towards out-group members. This happens when the members of the group want to appear as non-prejudiced and convey a positive image of themselves or the group as a whole (Devine, Montheith, Zuwerink & Elliot 1991, Gaertner & Dovidio 1986).¹⁵⁷

Depending on the type of threat (realistic or symbolic), the behavioural response will differ.¹⁵⁸ Symbolic threat will most likely lead to dehumanization/infrachumanisation than realistic threat. It will also reduce empathy for the out-group as mentioned before. It leads to behavioural responses such as torture. Behavioural responses to realistic threat entail behaviour dealing directly with the threat (like aggression).¹⁵⁹ Mackie and al. hypothesized and found that when

¹⁵⁴ T. D. NELSON, *op cit.* (note 134), p. 351.

¹⁵⁵ M. DUMONT, V. YZERBYT, D. WIGBOLDUS, E. H. GORDIIN, "Social categorization and fear reactions to the September 11th Terrorist Attacks" in *Personality and Social Psychology Bulletin*, Vol. 29, issue 12, 1st December 2003, p. 1510.

¹⁵⁶ W.G. STEPHAN, O. YBARRA, K.R. MORRISON, *op cit.* (note 141), p.52.

¹⁵⁷ *Idem.*

¹⁵⁸ *Idem.*

¹⁵⁹ W.G. STEPHAN, O. YBARRA, K.R. MORRISON, *op cit.* (note 141), p.53.

the in-group is hurt and enjoys sufficient collective support, group members feel angry and report offensive action tendencies (and not fear and escape action tendencies).¹⁶⁰

More specifically, in a research dating from 2003, Dumont, Yberzyt, Wigboldus and Gordijn, studied whether or not, social categorization impacts the experience of fear and possibly the behavioural reaction of the individual.¹⁶¹ The research drew on the recent terrorist attacks of September 11, 2001 in New-York City. The latter research is relevant for the present research as it studies how terrorist attacks can impact the stereotype linked to terrorists and the behaviour of individuals in consequence.

Dumont and al. demonstrated that depending on the self-categorization of the individual as part of the group to which victims belong (emphasis on the European identity, similar as the American identity), it triggered more fear than when the individuals were perceiving victims as part of an out group.¹⁶² In addition, it influenced the response of the individual. The research found that two different behavioural responses are triggered by the categorization of the victims as close to the individual, as in-group. First, the research shows that when the individuals felt closely connected to the group of victims, he will most likely support an intervention of the North Atlantic Treaty Organisation.¹⁶³ This response was identified as link to the emotion of fear and the response, a way to protect Europeans from other potential aggression towards them specifically. Second, the reaction of individuals was to provide support and help and “engage with social sharing” with the victims.¹⁶⁴ Finally, the emotion will depend on whether or not the situation is relevant for the individual. the categorization of victims as in-group renders the global situation more relevant to the individual’s concerns.¹⁶⁵

Finally, Steel and Aronson have shown that the stereotypes not only influence the behaviour of the person stereotyping towards another individual but the behaviour of the stereotyped individuals himself. This influence can be important when it comes in believes about himself and his performances on important tasks.¹⁶⁶ Indeed, Steel and Aronson studied the stereotype of intellectual inferiority of black students over white students. Whereas one fears to confirm

¹⁶⁰ M. DUMONT, V. YZERBYT, D. WIGBOLDUS, E. H. GORDIJN, *op cit.* (note 172), p. 1510.

¹⁶¹ M. DUMONT, V. YZERBYT, D. WIGBOLDUS, E. H. GORDIJN, "Social categorization and fear reactions to the September 11th Terrorist Attacks" in *Personality and Social Psychology Bulletin*, Vol. 29, issue 12, pp. 1509-1520, 1st December 2003.

¹⁶² M. DUMONT, V. YZERBYT, D. WIGBOLDUS, E. H. GORDIJN, *op cit.* (note 172), p. 1514.

¹⁶³ *Ibid*, p. 1517.

¹⁶⁴ *Ibid*, p. 1519.

¹⁶⁵ *Ibid*, p. 1519.

¹⁶⁶ C. STANGOR, *op cit.* (note 132).

the stereotype, it is this fear that pressures the individual and lead to worse performances if the individuals is reminded of the stereotype just before taking the test. This is called the “stereotype threat”. These findings link to the labelling theory, which was developed in the first section, explaining how stereotypes and labelling actually influences the behaviour of the targeted person and lead to secondary deviance.

In relation with the re-categorization induces by collective guilt, Optow, as well as Boeckmann and Tyler have established that when members of the out-groups are included in a broader group including the in-group will be more concerned with respect for rights, fair treatment, fair legal procedure, etc.¹⁶⁷

In conclusion, this chapter explored the process of categorization, which consists of placing an individual into a social group based on certain characteristics. It creates two groups the in-group in which the individual self-categorize himself and the out-group where he categorizes other not member the same group. This categorization often leads to stereotypes and attribution of common attributes to the out-group without taking into account individual characteristics (homogeneity effect). The intergroup relations usually trigger negative emotions from the in-group towards the out-group like threat for example. In some cases when the out-group is responsible for moral violations towards the in-group can cause collective guilt. Emotions and stereotypes may evolve over time depending on some factors such as the occurrences of the relations between the groups, some major events, a gain of knowledge, etc. The evolution can take the form of re-categorization of a member of the out-group as a victim part of a broader group including members of the out-group and the in-group. Finally, categorization and the emotions linked to the process has an impact on the individual’s behaviour towards the out-group which can range from torture and aggression to compassion and greater respect for individual rights.

The following part of the research aims at applying this theoretical framework to actors of the judicial process in Lebanon and most specifically Beirut. Each chapter analyses how the child is categorized by each specific actor before describing how the judicial process unfolds and highlighting the discrepancies between law and practice.

¹⁶⁷ A.M. MIRON, N. R. BRANSCOMBE, *op cit.* (note 156), p. 84.

PART II. CASE STUDY

Chapter 1. The pre-trial

The journey of the child in the Lebanese judicial system begins with the law enforcement authorities. The pre-trial phase is divided in two moments, the arrest/the first hours of police custody and the investigations before the military prosecutor.

Section 1. The child as a threat

Law enforcement authorities are the first actors in contact with children in conflict with the law. Several law enforcement authorities operate in Lebanon, namely the police, the internal security forces (ISF) and the Lebanese Armed Forces (LAF). This section focuses exclusively on the LAF as terrorism is the competence of the Army.

Law enforcement authorities can come across children in different contexts, for example, regular migration control, specific counter terrorism operations, response to any threat, etc. The respondents of the Lebanese Armed Forces interviewed described their encounter with children mainly in the context of field operations.¹⁶⁸

Children involved in terrorist-related activities are clearly part of a stereotyped out-group. Following the discourse of Colonel Rizkallah and his staff, the characteristics of the group are that children are dangerous, treacherous and aggressive. Indeed, the general opinion is that children are “*a big danger*” when the Army goes on field operation. These children are considered as “*very criminal, the level of atrocity children commit is really high*”. The Colonel’s staff said that they are brainwashed and Colonel Rizkallah added that they are real “*killing machines*”. Therefore, they are more dangerous than other fighters, they have been brainwashed. Colonel Rizkallah mentioned that the main difference between the children involved with terrorist groups and other children they encounter is their aggressivity and his two colleagues agreed. Also, the fact that children are used for “*perfidy*”.

There is no individualisation of the members of the group. At no time it was mentioned that nuances should be made depending on the situation and the children. Their individuality is absorbed by the fact that children are associated with the terrorist group. This illustrates the out-group homogeneity effect. In addition to stereotypes, the group is also denied human characteristics, as it is referred to as “*a danger*”, “*killing machines*”.

¹⁶⁸ Interview with Colonel Ziad Rizkallah and his staff, Acting Director of the Directorate of International Humanitarian Law and Human Rights Department of the Lebanese Army, Office of Colonel Rizkallah at the General Directorate of Civil Defence (Beirut, Lebanon), 07.06.2019.

They mentioned that children are used as human shields, suicide bombers, etc. (like in Aarsal and the Al Nur camp). Colonel Rizkallah and his staff specified that the children are used as combatants. They do damage but do not directly participate in hostilities, they are more used as human shields. For example, in one of the missions they conducted, the father (who was wearing an explosive belt) used his son as a shield, the Army didn't shoot to not hurt the child and the father blew himself up. One mentioned that children are used in "*high manoeuvre*". They use the protection they have from human rights law. Children are used because the group knows it is more difficult for the army."

Even if there is acknowledgment that children are brainwashed and used by adults or the group, there is no mention of the fact that the children might be deprived of their autonomy in the process. The child is not perceived as potentially possessing the dual status of perpetrator and victim. In any case, children are combatants.

Children constitute a threat and the intergroup relations occur in dangerous and conflictual situations where the lives of both groups are at stake and threatened. In the context of conflict and field operations, children associated with terrorist groups constitute a symbolic and realistic threat to the LAF. In the present case, the realistic threat occurs when the LAF faces children during field operations, which is out of the scope of the present research and therefore will not be developed. With regard to symbolic threat, the ideology of terrorist groups fundamentally challenges the organisational structure and the values of the State. The child, as part of this group, is associated with this ideology. The threat is even more important in a country as Lebanon with a fragile sectarian balance, when it is targeted by extremist Islamist organisations such as Daesh and the Al-Nusra Front. State authorities such as the army represent the State. Direct attacks on the Army amount to a direct attack on the State. In addition, children associated with terrorist groups represent a realistic threat as, even if children do not directly participate in hostility, members of the Armed Forces mentioned that they do a lot of damage, which might result in the death of law enforcement authorities' members.

The Lebanese Armed Forces constitute a high-power group and have more to lose than terrorist groups. Interactions between the LAF and children associated with terrorist groups occur most of the time in a violent context where the goal of the interaction is to survive and win the fight. Clearly, children associated with terrorist groups, considered as a danger, trigger an important feeling of threat and fear. An emotional response implies impulsive actions and hinders the capacity to think clearly. In addition, as described in chapter 3 section 4, symbolic threat is most likely to trigger behaviour such as torture, aggression and inhumanisation. These emotional

behaviours are most likely to impair human rights of the individuals categorized as the threatening out-group, namely children associated with terrorist groups. Arrestation and pre-trial custody are the stages where there are the most allegations and actual human rights violations in the judicial process. It is the subject of the following section.

Section 2. Arrest and custody

When the child is arrested by law enforcement authorities, the code of criminal procedure and Law 422 on the protection of children in contact with the law, apply. According to the Code of Criminal Procedure, a suspect can be held in custody for 48h renewable on the authorisation of the Public Prosecutor.¹⁶⁹ Individuals may be held in detention since the time of the arrest for 48h.¹⁷⁰ The individual in custody has three main rights¹⁷¹, namely, the right to communicate, among others with his family or his lawyer, to meet with his lawyer and to ask for a medical examination. The judicial police must inform the suspect on his rights as soon as he enters custody.¹⁷² Law 422 only contains two provisions related to the arrestation phase, which is the mandatory assistance of a social worker¹⁷³ and a lawyer at any stage of criminal procedure¹⁷⁴. Despite the fact that only two provisions apply, in addition the spirit of law 422 applies through the general principles it lays down.

In addition to the right to a lawyer and to a social worker, Law 422 starts with overarching principles including the best interest of the child to protect him from delinquency¹⁷⁵ and an equitable and human treatment, avoiding as much as possible judicial procedures.¹⁷⁶ Even if the law does not especially mention the arrest and custody phase, it can be argued that these principles underpin the way juvenile offenders should be treated at all time when they come in contact with any law enforcement or judicial authority. With regard to the military law, it does not apply at that stage, however code of conduct of the various law enforcement authorities are relevant.

¹⁶⁹ Lebanese Code of Criminal Procedure, available at https://www.stl-tsl.org/sites/default/files/documents/legal-documents/relevant-lebanese-law/Lebanese_Code_of_Criminal_Procedure_2.5_PA.pdf, consulted on 23.04.2019, Art. 47, al.3 (here after, CCP).

¹⁷⁰ CCP, art. 47, al.4.

¹⁷¹ CCP, art. 47, al.5.

¹⁷² CCP, art. 47, al.6.

¹⁷³ Law 422 of the 6th of June 2002 on the protection of juvenile offenders, available at https://www.justice.gov.lb/public/uploads/Loi%20relative%20C3%A0%20la%20protection%20des%20d%C3%A9linquants%20juv%C3%A9niles_final.pdf, consulted on 01.03.2019, art. 34 (here after, L. 422).

¹⁷⁴ L. 422, art.42.

¹⁷⁵ L.422, art. 2.2

¹⁷⁶ L. 422, art. 2.3.

In practice, the LAF emphasized that they ensure that the child is accompanied by a social worker, parents when possible, and if it's a girl that there are female officers at every time “*as prescribed by the law on the **protection** (emphasis added) of minors in contact with the law*”¹⁷⁷ and the “internal regulation of the Lebanese armed forces”¹⁷⁸

In addition, the head of LAF has sent a document to all the army organs mentioning that it is compulsory to have a social worker during the interrogation. An Investigative Judge at the Military Court specified that usually the armies respect it, and there is just a problem with the intelligence service, which do not wait for a social worker to be present.¹⁷⁹

However, it should be said whereas some lawyers actually doubt it is always the case¹⁸⁰ others who have dealt with minors suspected of terrorism confirm that there is no social worker present at every time¹⁸¹. Indeed, a lawyer explains that, it is a problem in the cases of terrorism. It will always at some point be investigated by the army and the problem is that at the army “*the social worker does not exist*”. He specifies that before the police, the social worker will be present but that before the army it will never be the case. For these reasons, he believes it is a problem that the child is interrogated before the army.

With regard to the right to a lawyer during interrogation by the law enforcement authorities, a lawyer mentioned that it is never applied in general in Lebanon. This issue is one of the main problems in the Lebanese judicial procedure. In addition, a lawyer explained also that, most of people and even more young people waive this right under pressure of the authorities.¹⁸² They are told that it is going to take time before a lawyer arrives and during this time, they will be held in a cell so it would be better to refuse the presence of a lawyer.

Finally, both the Lebanese Armed Forces (LAF) and the Internal Security Forces (ISF) have elaborated Code of Conducts (CoC) in collaboration with the Office of the High Commissioner for Human Rights (OHCHR). Even if the CoC are not legally binding, it represents standards that must be respected by the authority. It also reaffirms the importance of respecting some outlined legal standards, and therefore it should be considered as part of this section. The ISF CoC is “*laying out the rights and obligations of its members and the way they should interact*

¹⁷⁷ Interview with Colonel Ziad Rizkallah and his staff.

¹⁷⁸ Interview with Colonel Ziad Rizkallah and his staff.

¹⁷⁹ Interview with an Investigative Judge at the Military Court, Military Court (Beirut, Lebanon), 20.06.2019.

¹⁸⁰ Interview with a lawyer, Court of Justice (Beirut, Lebanon), 02.04.2019.

¹⁸¹ Interview with a lawyer, Court of Justice (Beirut, Lebanon), 13.06.2019.

¹⁸² Interview with a lawyer, Court of Justice (Beirut, Lebanon), 02.04.2019.

with the public, authorities, and institutions".¹⁸³ The CoC lays out the values supposed to underpin the work of the ISF, which include respect for human rights. Chapter 8 of the CoC mention especially mentions the right of suspects and detainees, and recalls the rights under the Lebanese Constitution, the Universal Declaration on Human Rights and the Code of Criminal Procedure (CCP). Every detainee should be considered as innocent and treated decently and humanely and consequently, violence and coercion to collect evidence are prohibited.¹⁸⁴ The Lebanese Armed Forces CoC as well, emphasizes the importance of respecting human rights, the Lebanese Constitution and the UDHR. It specifically prohibits unnecessary violence against detainees.¹⁸⁵ Torture is also criminalised by the Criminal Code (art. 401) and Law.65/2017.

However, torture and coercion are still mainstream practices when individuals are interrogated by the militaries, even children. Despite the prohibitions, since the child is seen as a threat and a danger to the State, the interest and protection of the State override the rights of the individual. Use of torture by the military in Lebanon is widespread and well documented. However, in case of suspicion of terrorism, according to a lawyer it is systematic. Confession and conviction are more important as the threat has to be stopped in order for the in-group, to be protected.

A lawyer confirmed this.¹⁸⁶ He explained that in all the cases he has dealt with, there were allegations of torture, actually he never heard someone saying they have not been tortured. However, the problem is that he cannot prove it happen. Usually, cases are deferred to him six, seven months after the arrest, by the prisons, families of former prisoners, associations or international organisations such as the ICRC or the UN. At this stage there is no trace of torture anymore and nothing can be proven. He told the case of one of his minor clients accused for murder. He was prohibited to be with him before the police. His client confessed before the police and the militaries that he killed three or four persons. However, after, when talking with his lawyer he told him that he was tortured and this is why he confessed crimes he had not done. He mentioned that some things were written whereas he did not even talk about them.

In addition, a member of the Union for the Protection of Childhood in Lebanon (*Union pour la Protection de l'Enfance au Liban*, UPEL) mentioned that often the militaries behave

¹⁸³ LEBANESE REPUBLIC MINISTRY OF INTERIOR AND MUNICIPALITIES, DIRECTORATE GENERAL OF THE INTERNAL SECURITY FORCES, *Internal Security Forces Code of Conduct*, available at <http://www.isf.gov.lb/files/1582100364CoCEnglish.pdf>, consulted on 07.06.2019, p. 3 (here after, ISF CoC).

¹⁸⁴ ISF CoC, p. 29.

¹⁸⁵ Annex II, n° 11.

¹⁸⁶ Interview with a lawyer, Court of Justice (Beirut, Lebanon), 13.06.2019.

aggressively with the children even in day to day encounters, she specified that “*they forget that they deal with a child and not an adult*”.¹⁸⁷ However, it should be noted that the nationality of the child does not make any difference.

In contrast, the Investigative Judge at the Military Court told a story where the minor pretended to be tortured in order to have a lighter sentence.¹⁸⁸ The minor in question was the son of the head of a terrorist group in Aarsal who was killed. After his death, his son took the lead. He ended up before her and he refused to talk to her because she was a woman. Then, after a while he accepted, and he started crying, saying that law enforcement authorities beat him up, they forced him to confess. But the social worker was there and he signed every paper and declaration with her. She was there the whole process and it never happened. The judge said he was lying. Even the lawyer could not stand him crying and left the room.

After the arrest and the custody, the case will be sent to the Military Prosecutor for further investigations. If the child acted alone, the case will be sent to the Civil Prosecutor, whom will lead further investigation.¹⁸⁹ If the child acted with adults, the case will remain in the hands of the Military Prosecutor.¹⁹⁰

In any case, during the investigation, it is also only the Code of Criminal Procedure (CCP) and Law 422 that applies. Indeed, the military law specifies that the CCP also applies to the military investigator.¹⁹¹ During the investigation phase, the same two main rights are guaranteed by the law: the right to a lawyer and the presence of a social worker.

Firstly, the CCP, ensures that the Investigating judge informs the individual about his right to assistance of a lawyer during the questioning.¹⁹² However, whereas this right can be waived by the individual according to the CCP, it is mandatory under the juvenile law for the child to be assisted by a lawyer in any criminal procedure and others. If the family or the tutors of the child do not take the initiative to get a lawyer, it is the duty of the tribunal to designate one or to make request to the legal aid of the bar.¹⁹³

¹⁸⁷ Interview with a member of UPEL, office of the association in the Court of Justice (Beirut, Lebanon), 26.06.2019.

¹⁸⁸ Interview with an Investigative Judge at the Military Court, Military Court (Beirut, Lebanon), 20.06.2019.

¹⁸⁹ CCP, art. 243 (1) al.2 and Law 24 of 13th of April 1968 on the Military Justice, available at <http://legiliban.ul.edu.lb/Law.aspx?lawId=244405>, consulted on 20.03.2019, art. 42 (here after, Military Law).

¹⁹⁰ L. 422, article 33 and Military law art. 24.

¹⁹¹ Military law, art. 39.

¹⁹² CCP, art. 76.

¹⁹³ L.422, art. 40.

During that stage, the child will be held in military detention facilities as terrorism is the competence of the military. If there is not enough space in the military facility, the individual is transferred to a detention managed by the Internal Security Forces (ISF). In detention, the child must be separated from adults.¹⁹⁴

This requirement to separate children from adult was presented by the Lebanese Armed Forces as one of their main considerations when they arrest the child, in accordance with the law. They also specified that they try to evacuate the child to a safe place.¹⁹⁵

Second, the presence of a social worker is mandatory when the child appears for investigation before the public prosecutor. The social worker should arrive within the next six hours after the call and the investigation must not start before the arrival of the social worker. If needed, the prosecutor or the department for minors of the Ministry of justice will call a registered social worker to assist the investigation. If the investigation starts before the arrival of the social worker, the investigator might be subjected to disciplinary proceedings.¹⁹⁶

According to an Investigative Judge at the Military Court, in practice some military judges do not respect it. They have a saying at the Court "*sometimes the judge can protect the child even more than the social assistant*". For him 99% if not 100% of the cases there is a social worker if not it is because of lack of resources and they cannot wait forever but for some judge it is just not a priority.

Finally, during the investigation, the Public Prosecution Office or the Investigating judge may decide to keep the child in detention based on three grounds: if the offence punishable by more than one year's imprisonment, if the individual has a previous criminal conviction or if he has been sentenced to more than three months' imprisonment without suspension.¹⁹⁷ However, Law 422 lies more restrictive conditions to hold the child in detention.¹⁹⁸ Only one of the three grounds mentioned in the CCP are retained, the offence must be punishable by at least a year of imprisonment. In addition, the detention can be justified only for two reasons, namely protect evidences from destruction and to prevent the child to run away. In the cases where the child is

¹⁹⁴ L. 422, art. 2.3 and Decree n°6236 of 17th of December 1995, available at <http://legiliban.ul.edu.lb/Law.aspx?lawId=181721> consulted on 25.06.2019, art. 4.

¹⁹⁵ Interview with Colonel Ziad Rizkallah and his staff.

¹⁹⁶ L. 422, art.34 -35.

¹⁹⁷ CCP, art. 107, al. 3.

¹⁹⁸ L.422, art. 35.

tried with adults before the Military Court, this detention will be a problem. However, this issue will be developed in the next section.

In conclusion, children are categorized by the military as a danger, a threat. This feeling of threat triggers negative emotions which translate in aggressive behaviour such as torture despite the fact that it is prohibited by law and the law enforcement authorities' codes of conducts. It also leads to non-respect for the rights of the child.

Chapter 2. The trial

Once the investigations are closed, the case will be sent to the competent Court for trial. If the child acted alone, the Juvenile Judge will be competent, if the child acted with adults, the case goes before the Military Judge. Therefore, this chapter reviews the perception of the child by lawyers and judges within the civil and military judicial system.

Section 1. The child as victim and/or perpetrator

In the trial phase, judges, lawyers and social workers are present. When talking with the relevant actors, there is a clear difference in the approach that is taken in comparison with the Lebanese Armed Forces. The categorization of children associated with terrorist groups and charged with terrorist offences depends widely. Indeed, there are differences among the judges for example, which are not limited exclusively to the distinction civil/military. The same goes for the lawyers. The interviewees spoke for themselves and highlighted the different behaviour of other actors, but there is not one common voice, one common position for each category of actors (judges; military/civilian; lawyers).

Four out of the six interviewees consider the child as a victim. Whereas some acknowledge the dual status of the child (perpetrator/victim), other categorize the child as a victim in some circumstances and not in other.

Judge El Hassan, as well as Ms. A. Reda explained that some lawyers assist the child to get the money, from Beirut Bar Association legal aid, or from the family or whomever if it is a private lawyer. They do not make any request for the case of the child, are not aware of the case, and sometimes do not even speak during the session, which clearly shows disinterest in the matter at stake. Consequently, those lawyers will not ensure that the rights of the child are respected. However, other lawyers coming from the non-profit sector such as Ms. Hasna Abdul Reda (responsible for the legal aid programme of the Lebanese Center for Human Rights), and Ms. Jocelyne Karam draw another picture.

The child is categorized as a child or a minor. He is not referred to as a delinquent, a criminal or a terrorist. He is categorized as underaged individual which need to live in a nurturing environment with a minimum quality of living conditions, security, care and attention. The child is also seen as influenceable, and in certain cases deprived of autonomy and free-will.

Ms. Karam considers that the law itself does not see the child as individual with free will. She emphasized several times that those children are victims because they do not have free will and

were forced, for different reasons, to work with the group, but all are seen as a mean of survival. In any case, children are victims because they are forced and they are not considered as having the autonomy to join the terrorist groups.

However, depending on his action the child will be categorized one way or another. Often, the distinction is made between children believing in their actions, and in the ideology of the group they are associated with, despite the fact that it is known children can be brainwashed by the terrorist group. If the child believes in the ideology he is considered as responsible for his action as an autonomous individual. Even if, the joining is triggered by the death of a relative.

Ms. Karam and Ms. A. Reda are driven by the same consideration, namely that those children are children, and human beings, they all deserve to be defended and to receive the best treatment. Ms. A. Reda particularly emphasizes the fact that defence and treatment of these children is a human rights issue.¹⁹⁹ And Ms. Karam that the State and society are responsible for:

“Look at the Syrian territory and the camps in Lebanon, is it an environment for a child? We are currently facilitating the birth of terrorists. You have to study the case of the whole family, if the child is in danger, the State has to take care of the child and protect him, you are creating new bombs for the future”.

Despite this common personal opinion, the organisations of both lawyers have different approaches to those children. The Father Afif Osseiran Foundation took the decision to not legally represent the children but to give legal counsel, despite the fact that the foundation does not make any difference between children when they take them in charge in their center or in prison. During the peak of terrorist attack, those children were seen as *“little children who attacked the Lebanese Armed Forces”*. Ms. Karam goes on, *“there were a lot of dead and wounded from the army, we lost a lot of people against the Al-Nusra Front and Daesh, etc.”*. After a few years of dealing with children associated with terrorist groups, there is more knowledge and *“it is more flexible, now they know that the child is a victim, that he is not the terrorist”*. The perception of the child changed over time thanks to the multiplication of interactions and the gain of knowledge on the situation of children associated with terrorist groups and terrorist activities.

¹⁹⁹ Interview with Ms. Hasna A. Reda, lawyer responsible for the legal aid programme of the Lebanese Center for Human Rights, Office of Ms. A. Reda (Beirut, Lebanon), 10.06.2019.

Both judges expressed different views on children associated with terrorist group. A member of UPEL explained that in her experience, usually, juvenile judge tends to acknowledge the child as a victim whereas military judges tend to see children more like criminals.²⁰⁰

On one side the minor is considered as victims, who might do other victims and therefore measures should be taken. It seems to indicate that the Juvenile Court does not make any specific difference between the children accused of terrorism-related offences and the other juvenile offenders. On the other side the minor is seen after all as a terrorist and a criminal. It translates a different approach. The child is labelled as a criminal but more specifically as a terrorist, a certain type of criminal.

Both judges interviewed distinguished between their personal feelings and their function. As parents they cannot be insensitive to the situation of the children and imagine that it might their own, but they have to keep in mind that their duty is to judge them in accordance with the law. They acknowledged that it is not the children's fault if they end up in terrorist-related activities. All of them live in miserable conditions. There is the acknowledgment that the children have lived in poor conditions which led them to be involved in criminal activities.

Society and the State let children stay in those camps and those conditions which lead children to be involved in terrorist activities. They self-categorize themselves as members of the in-group, the society which is responsible for a moral violation towards the children, leading to a categorization of the children as victims, part of the group of human beings.

Interactions between the children and the lawyers and judges occur in a controlled and safe environment. The child is accompanied by law enforcement authorities. They do not constitute a direct threat to judges or lawyers. None of them have mentioned having had a bad experience with the children. Thanks to regular interactions between judges/lawyers and children, the differences made between those children and society are less prominent. When there is the acknowledgment that the child is a victim because of actions of society, he is re-categorized in a broader group including him and the members of the in-group, judges and lawyers. Consequently, as explained in chapter 3 section 4, there will be a greater concern for the respect of the rights and fair treatment of children in the judicial system.

²⁰⁰ Interview with a member of UPEL, office of the association in the Court of Justice (Beirut, Lebanon), 26.06.2019.

Section 2. Realities of the Juvenile and Military Courts

The law on the protection of juvenile applies to any individual under the age of eighteen years old.²⁰¹ The minimum age for criminal responsibility is set to seven years old. The age of the child should be confirmed by the competent authorities or by medical expertise. If the registers only mention the year of birth, and if the medical examination cannot determine the specific day and month, the individual should be considered as being born the 1st of July. The month of July was chosen because it is the middle of the year. Setting the month of birth on January would be too strict on the child but setting the month of December would be considered as too lenient. Therefore, the middle ground was found in July. Once the age is determined, it is considered definitive.²⁰² If the individual is a minor Law 422 will apply. However, the law does not mention what should be done when there is doubt regarding the age of the child and in the case where medical examinations cannot define his exact year of birth. In the situation where the individual is major when apprehended, he should be taken for trial as a child for the offences committed when he was minor.

As previously mentioned, if the child is the only individual involved in the case, or if he is involved with other minors, the competent Court will be the Juvenile Court. Consequently, the military prosecutor, the military investigative judge, or the Military Court will declare their incompetence and send the case to the Juvenile Court.²⁰³

One may wonder what is the rationale behind this rule. Before the law of 2002, the cases of children and adults were fully separated. The case of the child was always sent to the juvenile judge and the case of the adult before the other competent Court. However, then the adult was blaming the child and in the end the adult would be judged innocent and the child would be convicted. It led many contradictory sentences. As explained by an Investigative Judge at the Military Court, the spirit of the new rule is to offer the possibility for the child to defend himself before accusation made by adults. In general adults are *“happy to put all the liability on the child because they knew the child would get a lower sentence”*. Now, the child can refute those accusation before the same Court, which disposes of all the elements of the case.²⁰⁴

²⁰¹ L. 422, art. 1.

²⁰² L. 422, art 1. al.2.

²⁰³ CCP, art. 243 (1) al.2 CCP and Military law art. 42.

²⁰⁴ Interview with an Investigative Judge at the Military Court, Military Court (Beirut, Lebanon), 20.06.2019.

In practice, not all the cases involving only minors were automatically transferred to the Juvenile Court. For example, it happened that not all the cases were referred to the juvenile Court when there was a doubt on the age of the child. Me. Reda mentioned that it has already happened to her to ask the Court to declare itself incompetent because the child was only involved in the case.²⁰⁵ When there is a doubt concerning the age of the individual, he will be trailed as an adult. It is the role of the lawyer to prove that the child was minor when the alleged crime happened. It is a severe issue for children with no papers and no family. It changes a lot since for a child the sentence is 15 years maximum but for an adult it can go up to life sentence. The lawyer needs to be vigilant and remind the Court if they are not competent to deal with the case, otherwise the Court will proceed with the child. The Military Court will not always declare itself incompetent. However, now with pressure from the child's rights institutions, the cases are supposed to be automatically referred by the judges.

Another case was brought up by an Investigative Judge at the Military Court in the situation of the Aarsal Battle. In this case, 152 individuals were charged for terrorism and minors were involved. The judge was in charge of the investigation and, according to the law he should have deferred some children before the Juvenile Court as they were involved in acts of terrorism alone, even if it took place in the broader context of the Aarsal battle. However, the judge decided not to.²⁰⁶ He explained that in the context of Aarsal he believed it was better for the minors to be judged with the adults, before the Court that has all the evidence, the witnesses, and knows best the full case in order to fairly address the question of the responsibility of the child in those events. He emphasized that it was the only time he decided to not defer the case before the Juvenile Court, having as main consideration the interest of the children.

In addition, when the child is tried with adults before the Military Court, several challenges will arise. First, when the juvenile is involved with a group, he will be associated to this group even if he committed smaller offences or if he was just performing supportive task. It is harder to prove that the child is innocent as he is part of a stronger group than him and those adults have committed important crimes. This was the case in the Aarsal case. Minors were associated with this group of adult offenders. He will still most likely be declared guilty of terrorism. This phenomenon echoes the homogeneity effect described previously. Although, the present research focused on the categorization of children associated with terrorist group only and did not deeply studied that categorization of adults. However, adults do not benefit from the

²⁰⁵ Interview with Ms. Hasna A. Reda.

²⁰⁶ Military Court, decision N°134/2017 of the Investigative Judge.

characteristics that are usually attributed to children considered as victims which are the lack of free will and the influence from adults. Therefore, the child associated with the group of adults is deprived from those characteristics and then less likely to be acknowledged and categorized as a victim which means that the child will be sentenced more strictly.

A second issue with the child on trial with a group of adults (we talk about sometimes 20 people) is that the case is slower before the Courts. The case is more complex it requires more time. If one adult does not come with a lawyer then it is delayed for four or six months and in between the child is still in detention. Sometimes the Court might decide to release the child but it rarely happens in practice. The process sometimes takes a few months and sometimes a year, two years and this is too long for a minor who will remain in detention during the process.

In addition, a lawyer mentioned that those cases are not only purely legal, it is also politic, there are political compromises behind the situation. Indeed, he explains that, generally lawyers tend to wait and to lose time to find a political solution (such as a liberation in exchange of hostage release, etc.).²⁰⁷

Regarding the procedure, the Code of Criminal Procedure will apply before the Juvenile Court and the military law will apply before the Military Court. No matter the Court, Law 422 on the protection of juvenile will apply and trumps any provision contradictory with the law. Therefore, the section will mostly concentrate on the juvenile standards. A first important element is that the social worker must be present at all time. If the child has no social case following previous proceedings, the tribunal must, before reaching any decision, obtain a social inquiry from an accredited social worker. The investigation must compile the relevant information regarding to social and material condition of the child, as well as his level of integration, education, his morality, his intelligence, his mental and health state and any previous judicial measures. The social worker should also add recommendations for the rehabilitation of the juvenile in the light of the aforementioned report.²⁰⁸ The report has to be added to the case of the child and the judge cannot proceed before having this report at disposal.²⁰⁹ In addition, the trial should be held confidentially, only the persons directly related to the case like the parents and tutor, the plaintiff, social workers and lawyers, as well as any other person allowed by the tribunal is authorised to assist the session.²¹⁰ As mentioned in the

²⁰⁷ Interview with a lawyer, *Maison de l'Avocat* (Beirut, Lebanon), 18.04.2019.

²⁰⁸ L. 422, art. 41.

²⁰⁹ L. 422, art. 2., art. 22.

²¹⁰ L. 422, art. 40.

previous section, during the time of the investigations before the investigative judge and the trial the child might be held in detention. In this case, the child might be held in military detention facilities or military detention facilities

In the case where the child is judged before the Military Court, the Court will only rule on the responsibility of the child. Whereas the Juvenile Court judge the responsibility of the children involved alone in the case, but will rule on every sentencing.²¹¹ Whereas some judges believe it creates a better system for the child, others such as Zalfa El Hassan, President of the Juvenile Criminal Court of Beirut, disagrees. She believes that the child should be heard directly to the Juvenile Court and that there should be more dialogue between the Courts. She bases her opinion on the fact that the child, once alone and in a more comfortable environment, sometimes might tell another story, “*another truth*”.

As previously mentioned, in Lebanese law, terrorism is punished by life long sentences and death penalty. Death penalty is compulsory in the case where someone is killed or for the destruction, even partial of a building with even one person inside, the destruction even partial of a public building, an industry, a ship, or any other installation or if it hinders intelligence, communication services and transportation.²¹² Any plot to commit the previously mention acts will also be punished from forced labour for life.²¹³ However, law 422 provides that regular criminal sentences should be lowered for a juvenile offender. For crimes where normally death penalty and forced labour for life should be apply, the law lowers the punishment to imprisonment from 5 to 15 years. The imprisonment should take place in a correctional institution or a juvenile’s prison.²¹⁴ The juvenile judge can also modify the sentence after the judgement if he feels it is necessary.²¹⁵

Whereas one could expect harsher sentences from the military tribunal than the Juvenile Court, it is not always true, at least, there is no difference in Beirut.²¹⁶ Several actors from the judicial process mentioned this situation such as Ms Reda, and an Investigative Judge at the Military Court.

²¹¹ L.422, art. 33.

²¹² L. 11/01/1958, art. 6.

²¹³ L. 11/01/1958, art. 7.

²¹⁴ L. 422, art. 15.2.

²¹⁵ L. 422, art. 19.

²¹⁶ Interview with a member of UPEL, office of the association in the Court of Justice (Beirut, Lebanon), 26.06.2019.

The Investigative Judge notices that some Juvenile Courts give higher sentences to the child than the Military Court to adults. So, the adult will be sentenced to 2-3 years and the child to 6-7. and the judge knows the sentences of adults and still sentence the child with more years of detention. Similarly, Ms. Reda explained that in some Juvenile Courts such as the one in the Bekaa, the judge never gives sentences below seven or eight years of imprisonment.

In opposition, some judges like Judge El Hassan consider that the child tried with adults has already spent a long and sufficient time in prison. As she tells herself “*she plays with the law for the benefit of the child*”.²¹⁷ Even if the child is categorized as an out-group, he is recategorized as part of a broader group as a victim which lead to greater consideration for his rights and fairness of the procedure and the judgment.

For the Investigative Judge at the Military Court, the answer to this phenomenon might lie in the fact that juvenile judges are far from terrorist cases. They do not understand that terrorism is a different offence. Sometimes the child is convicted whereas, he did not do something because he wanted to nor because he wants to be a criminal. He lives in a bad society, he is poor, illiterate. At the Military Court they “*live with terrorism and terrorist every day*”. At the juvenile Court they're seen like usual criminal so the harsh sentences are applied. According to him the Military Court is better suited to understand cases of terrorism and the situation of the child associated to terrorism.

In opposition, according to a lawyer, it is easier to plea before the juvenile judge because juvenile justice is their expertise. The judge is different, he is no military, not related to armed forces or anything related to it such as the military of defence. One example is the case of torture previously mentioned. After meeting with his client after the interrogation, the lawyer asked the juvenile judge to annul the investigation because the social worker was not there. There were new investigations and the judge got a doubt on the culpability of the child and release him. This would not have been possible before the Military Court. It is easier to have a trial before the juvenile judge as it is a specialised judge. The judge is different he is not military nor affiliated to the military.²¹⁸ Consequently, the mindset is different.²¹⁹ Indeed, as explained in the previous section, military judges are more likely to consider the child as a criminal and a

²¹⁷ Interview with Judge Zalfa El Hassan.

²¹⁸ Interview with a lawyer, Court of Justice (Beirut, Lebanon), 13.06.2019.

²¹⁹ Interview with a lawyer, Court of Justice (Beirut, Lebanon), 13.06.2019.

terrorist even if mitigating circumstances may be recognized. Hence, the child will be considered as more responsible for his actions and has to amend.

However, major terrorist events influence judgments of the Courts. Indeed, a member of UPEL explained that the judgments given during the trials of the Aarsal battle were way harsher than usual.²²⁰ As in the study conducted by Bar-Tal and Labin on the impact of terrorist attacks on stereotypes, the event of Aarsal have had a negative impact on the image of children associated with terrorist groups. The battle of Aarsal is one of the major terrorist events since the beginning of the Syrian civil war and many members of the law enforcement authorities and especially the Lebanese Armed Forces lost their lives. Children were associated to this particularly traumatic event and as explained above, it was difficult at the time to consider them as victims, children were seen as the terrorist who have attacked and killed the militaries.²²¹ Hence, children tried during in the context of Aarsal received harsher judgments than in other trials involving the same crimes (death of law enforcement authorities).

Second, some professionals are not aware of the specificities of the law. Ms. A. Reda explained that once, she was waiting for her turn sitting in the Court, and a judge ordered a minor who was released to be arrested because he came without his lawyer. There is a military rule saying that if the person comes to the Court without a lawyer to gain some time he would be arrested. She stood up and said that it was contrary to L. 422, to which the judge declared that no, it wasn't contrary. She quoted the article and the prosecutor open the code and legislation and confirmed that she was right. The child had to remain free. Now there is better knowledge of the law with time but it is not always the case.²²²

This issue was also raised by an Investigative Judge at the Military Court.²²³ He imputes this problem to the Lebanese system in general which requires magistrates to normally rotate ever year. He himself, for example, has been a juvenile judge and a real estate judge before taking his functions at the Military Court. There is no specialisation. He emphasizes that terrorist offences are very specific crimes and therefore it should be dealt by magistrates with specific expertise in that field. It takes time for judges to adjust to their new functions and during this time they are doing some mistakes, for example on how a case should be built. If the prosecutor does not build a good case, evidence can be lost and it's too late for the investigative judge to

²²⁰ Interview with a member of UPEL.

²²¹ Interview with Ms. Jocelyne Karam.

²²² Interview with Ms. Hasna A. Reda.

²²³ Interview with an Investigative Judge at the Military Court, Military Court (Beirut, Lebanon), 20.06.2019.

change the case. This should be changed. Professionals should be wiser in applying the law and know that facts that happen. During 1-2 years they will make mistakes, not huge mistakes but it renders the work less efficient. The Judge went on mentioning that not every fact of the case is included in the file. When you have been working on terrorism for several years, you know everything that happened and influenced the case, when there is a new judge, they do not know all the facts. When the last stage of the procedure is to render the judgement, the judge in charge of the case will do it even though he was moved to another position. For other magistrates, the judge moves and cannot touch his files anymore. If he was to be moved, he should leave everything there as it is and it would go to the new judge without any transition or explanation. One similar observation was raised by Judge El Hassan. When the child is tried with adults before the Military Court, there is no dialogue between the Court and the judges lack elements to make an informed decision on the sentence.

The issue of judges' rotation and the fact that there is no specialisation also affects the categorization of the child. Indeed, as explained in the first part of the research, categorization is influenced, among other things, by knowledge on the out-group as well as the occurrence of intergroup interactions. These factors will also impact the re-categorization or not of the child as victim and member of a broader group including the child and the in-group. If the judge changes position every few years, he is less acquainted with situations related to terrorism and of children involved in those situations. Therefore, characteristics attributed to the out-group in which children belong to, will tend to be more stereotyped. By the time the judge gets to gain more knowledge on the group and changes his perception due to the frequent interactions, he will be moved to another Court and it is prejudicial for children who will receive harsher sentences.

The judgement before the juvenile and the military Courts can be challenged. Judgements of the Juvenile Court can be appealed before the civil Court of Cassation and judgments of the Military Court before the Military Court of Cassation.²²⁴ Rule of cassation are stricter before the Military Court. First, the delay to lodge an appeal is shorter. Second, the grounds for cassation are more limited. As previously mentioned, when the child is tried before the military court the lawyer loses an appeal. In the experience of Ms. A. Reda it is almost impossible to have a cassation as she would say "*they never accept the cassation, it is dismissal, on dismissal, on dismissal*".²²⁵ First, because of the strict grounds on which it can be based. In comparison,

²²⁴ Military law art. 73.3.

²²⁵ Interview with Ms. Hasna A. Reda.

before the civil Cassation Court, she can use even a tiny fault from the judge. Another reason is that the military Court is not obliged to provide verdict motivation. Ms. A. Reda only succeeded once before the civil Cassation Court. The sentence was lowered from three years to one year.

Ms. A. Reda also deplors the fact there is a defence problem. Some lawyers coming from the free legal aid do not know anything about the case, they have never met their clients. She explained that the once, two people were sentenced to 10 and 15 years respectively and they needed a cassation appeal and the lawyer said that “*he would not do anything*”.²²⁶ Lawyers are assigned randomly from a list. She said that she is specialised in criminal law, but even a lawyer specialised in criminal law might not be acquainted with military procedure, and also military cassation. The lawyer takes the case for the 400\$ he will receive. If there was no money at stake, he would not take the case, we do not talk about human rights anymore. She defends the case because she believes in human rights for all. She also mentioned that she does not believe that just providing legal aid is helping. Judge El Hassan comes to the similar conclusion.²²⁷ Some lawyers only come to the audience for the money they will get. She specified that in the majority of the cases she deals with, there is not one request made by the lawyer for the child. Again, it poses the same just exposed on the judges’ rotation. It should be mentioned that the lawyers interviewed in the context of this research showed a particular interest in the topic of children associated with terrorist groups and are acquainted with the case. Therefore, they are more likely to have a better opinion on these children and categorize them in accordance. It is not possible to define with exactitude how other lawyers would categorize such children, however, following the general categorization of individual associated with terrorism characteristics attributed to the group are negative. Passini, Palareti and Battistelli have established that terrorists are perceived as terrifying, violent, fanatic, extreme, criminal and ignorant by the general public.²²⁸ It can be assumed that lawyers not specialised in terrorist cases probably share most of this view.

In conclusion, the categorization of the child varies among lawyers and judges. On both sides, some individuals categorize the child as a perpetrator and/or a victim. However, there is a distinction to be made between military and civil judges. Military judges categorize the child as a criminal and a terrorist and acknowledge mitigating factors such as the fact that the child does not always have the choice to be involved in terrorism-related activities. Whereas juvenile

²²⁶ Interview with Ms. Hasna A. Reda.

²²⁷ Interview with Judge Zalfa El Hassan.

²²⁸ S.PASSINI, L. PALARETI, P. BATTISTELLI , *op cit.* (note 6), p.40

judges consider the child as a perpetrator and a victim. Following the findings of Optow, Boeckmann and Tyler, the categorization of the child as a victim leads to greater attention to the respect of his rights. It explains why there are less rights violations before the Juvenile Court than the Military Court. The same explanation is valid to explain the discrepancy between the different attitudes among lawyers. In contrast with the arrestation period during the child is systematically victim of rights violations, during the trial phase the number and gravity of violations will depend on the specific path of the child and the individuals he will face.

Chapter 3. The detention

After being convicted, the child spends his prison sentence in the juvenile aisle of the prison of Roumieh. During this period a variety of actors plays a role, the prison's staff, social workers, NGOs, ministerial departments and international organisations, especially the UNODC.

Section 1. The child as any other juvenile

There is a common categorization of children accused of terrorism. One major characteristic is that children are seen as any other children in detention, nationality or crime does not matter. The child is also considered as an adaptable individual who, in the right environment, can experience positive change. Judge Abi Nader explained that *“the phenomenon [of children accused of terrorism related offences] is easier to handle than adults. Since the child can easily learn, he can also easily forget than adults, it is also a factor that contributed to the success of the experience of children accused of terrorism”*.²²⁹ Ms. Kerkor confirmed saying that *“even with the most difficult children, in the end they are children, if you give them a ball they will run and play football”*.²³⁰

The child is also seen as a victim of society and a difficult environment which led him to take bad decisions. A member of the association *Mouvement Social* explained that *“the injustice starts when they live in a society denying their rights”*.²³¹ Some of the children do not even understand why they are in prison, that they joined “bad people” and took bad decision while working with them.

There is also a distinction that is made between being a terrorist and being charged with terrorism-related offences. This difference was underlined by Ms. Kerkor and a member of the association *Mouvement Social*. According to them, it is not because the child is accused of terrorism that he is a terrorist.²³² Again, this difference is made on the basis of the belief of the child in the ideology. The situation of children working with terrorist organisations for money because they need to survive is used as example.

²²⁹ Interview with Mr. Raja Abi Nader, Head of the Directorate of Prisons within the Ministry of Justice, Office of Mr. Abi Nader at the building Directorate of Prison (Beirut, Lebanon), 02.04.2019.

²³⁰ Interview with Ms. Rosy Kerkor, Former director of the juvenile department of the Roumieh Prison, Building of the Delinquent Juvenile Reform Department of the Ministry of Justice (Beirut, Lebanon), 18.06.2019.

²³¹ Interview with a member of the association *Mouvement Social*, Office of the association (Beirut, Lebanon), 19.06.2019.

²³² Interview with a member of the association *Mouvement Social*, Interview with Ms. Rosy Kerkor.

The specificity of this stage of the judicial procedure is that, in opposition with the trial stage, all actors involved are specialised in children's rights and they all have been working in this field for years. They work with the children on a daily basis and have a deep understanding and knowledge on their situation. For example, Ms. Bou Samra and Ms. Kerkor have been working for the past 25 years with juvenile offenders. Unlike judges who are responsible for several tribunals at the same time which might have nothing to do with each other, personnel of the ministries, prison and NGOs only take care of detainees including children. In addition, the interactions with the children occur in a safe and controlled environment and where the children can in any case not constitute a direct threat. None of the actor interviewed reported having any specific difficulties with the children over the years. Not even one specific event.

On the other hand, other authorities such as the general director of Roumieh's prison for example, are less in direct contact with children and have a different perception. As Ms. Kerkor explains, the biggest challenges when numerous children were accused of terrorism, lied with the authorities of the prison. They labelled the children as terrorist, a dangerous threat to be afraid of, mostly because it was a new phenomenon and they did not know how to react. Children are further categorized as a potential element of "*contamination for other children*". There is extra precaution when dealing with those children, for example, when the ISF pick them up to go to the Court, referred humorously as "*the SWAT team*".²³³ Hence, children are seen as terrorist, dangerous and a threat by the prison's authorities and the ISF.

Section 2. Life in prison

Once the child is judged and sentenced to measure of imprisonment, he will be transferred to the juvenile aisle of the prison of Roumieh which is a civil prison under the administration of the internal security forces. Several actors play a role when it comes to detention of sentenced children. Two ministries are involved, namely, the Ministry of Interior (to which the ISF are related) and the Ministry of Justice. The juvenile aisle of the prison is more specifically under the supervision of the Directorate of Prisons and the Delinquent Juvenile Reform Department within the Ministry of Justice. In addition, three NGOs have a contract with the government to ensure some services within the prison (*Mouvement Social*, Father Afif Osseiran Foundation and the Association for Protection of War Children). Finally, international actors such as the Office of the United Nations on Drugs and Crime support the work of the national entities.

²³³ Interview with Ms. Rosy Kerkor.

The law on the protection of juvenile offenders does not mention anything regarding the detention of the child. Conditions of detention are regulated by the Decree of 1949 on prisons and detention center and institutions for the reform and education of minor. The Decree does not specifically make reference to juvenile offenders except in the part related to institutions of reform (art. 136-153). Article 136 of the Decree refers to the criminal code, which was amended by Law 422. According to article 52 of the Law, the Department on minors within the Ministry of Justice will supervise the work that has to be done in all the case involving minors targeted by the present law and will elaborate rehabilitation and prevention plan, in conformity with standards defined by decrees of the council of ministry on proposal of the Ministry of Justice.

One of the main rights of the important rights of the child to be fulfilled it to be placed in a suitable environment separated from adults.²³⁴ This showed to be one main issue when Lebanon started dealing with an increase number of children accused of terrorism. Indeed, the head of Roumieh's prison as well as the General Prosecutor decided to keep the children in aisle reserved to adults. According to Judge Raja Abi Nader, Head of the Director of Prisons within the Ministry of Justice, the *"goal was to concentrate and the excuse was to not allowed defendants in terrorist cases to infect the other children"*.²³⁵ After pressure from the Directorate of Prison, the Delinquent Juvenile Department, Roumieh's juvenile department, NGOs and the UNODC, children were moved after a month to the juvenile part of the prison in accordance with the law.

The law on protection of juvenile offender does not specify anything more concerning the conditions of the juvenile offenders. This should be found again in the Decree of 1949. Specifically, regarding the condition of detention of juvenile, primary education is guaranteed by the law. Pedagogical materials are provided by the Lebanese primary educational programme.²³⁶ The education should be including theoretical and professional education²³⁷ (including carpentry, forging, sewing, etc).²³⁸ Setting aside this specific provision related to education, the law does not establish other specific rules related to juveniles.

Actually, since the law gives little guidance and dates back from seventy year ago, the direction of the juvenile department of Roumieh's prison plays an important role in shaping the living

²³⁴ L. 422, art. 2.3.

²³⁵ Interview with Mr. Raja Abi Nader.

²³⁶ Decree n° 14310 of the 11th of February 1949, available at <http://legiliban.ul.edu.lb/Law.aspx?lawId=204130> consulted on 25.06.2019, art. 138 (here after, Decree of 1949).

²³⁷ Decree of 1949 art. 137.

²³⁸ Decree of 1949 art. 138.

conditions of children in detention. Ms. Kerkor (former director of the juvenile department of the Roumieh prison) point out this lack of initiative in the law and explained that:

*“we only have the old law dating from decades back, it did not change and that is our problem. This is why we work and we are taking initiatives on that level. If I follow the law, I do not do anything. We take initiative for the parent’s visit for example, which is not written in the law”.*²³⁹

The categorization of the child as a victim with the characteristic of being able to change in the context of detention leads to a great respect for the children’s rights but also even the creation of new rights not provided by law in order to enhance the living conditions of the child and increase his chances of rehabilitation on release from prison.

For example, she explained that they worked in parent’s visits which is not regulated by the law. There was a particular problem when the first children accused of terrorism arrived at the prison. It is established at the juvenile department of the prison that children are allowed to see and eat with their parents in a room without any bars. However, when the first children accused of terrorism arrived the ISF was not in favour of that measure. Ms. Kerkor made clear that it was the policy for all the other children and it would be so even for children accused of terrorism.

The facts that children condemned for terrorism are discriminated from some authorities because seen as contagious and more dangerous triggers a reaction of protection of those children by opposing the authorities and recall that no discrimination can occur.

The approach of the juvenile aisle of the prison’s administration and the ministry of justice was to integrate the children accused of terrorism with the other children even against their will. Judge Abi Nader explained that some children refused to be separated, they wanted to keep their beard, they avoided to talk to female staff, refused to listen to music or to watch the tv.²⁴⁰ However, Ms. Hala Bou Samra, Head of the Delinquent Juvenile Reform Department of the Ministry of Justice, confirmed that they never experience specific problems with children accused of terrorism.²⁴¹

Ms. Kerkor explained that, once the child arrives at the prison, there is a first observational ten days phase during which the social worker defines the level of education of the child, his

²³⁹ Interview with Ms. Rosy Kerkor.

²⁴⁰ Interview with Mr. Raja Abi Nader.

²⁴¹ Interview with Ms. Hala Bou Samra.

behaviour, his intellectual capacities, etc. this observation aims at determining in what training the child will be placed. If the child is illiterate, he will be placed in an educational training. The prison does not dispose of the Lebanese educational system but provides a three months training to teach how to write, read and basic maths (for which the Father Afif Osseiran Foundation is responsible). If the child has a more advanced level, he will be directed to professional training (for which the association *Mouvement Social* is responsible). The child can choose the workshop he wants to follow (sewing, mechanics, electricity, informatic, etc.). The rehabilitation programme follows three axes: focus on educational activities to reinforce personal and social skills, integrate the children socially and culturally, focus on development of critical thinking and socialisation.²⁴² A member of the association *Mouvement Social* explained that they try to make the child think about what led him to prison, what led him to not be able to stand for himself and say no.

Children are allowed to remain in the juvenile aisle and benefit from a rehabilitation programme until they reach 21 years old. Then, they have to be transferred to the adult side where there is no rehabilitation programme. The advantage in the situation of children related to terrorism was that there were only a few which allows to get personalised programmes and more activities for the children.

Children do not have to follow a training but they understand it is in their best interest. Indeed, they can earn certificates at the completion of the training which is a positive factor when the child is waiting for his judgment or later in his life after the prison. In the end, even if some express reticence in the beginning, all children follow a training and integrate with the others. Children and members of the ministry, the prison and the NGOs establish a relationship based on trust with the children. They all emphasize that because they treat them with respect the children act the same. All the actors involved notice an evolution of the child even those actually believing in the terrorist group's ideology. Ms. Kerkor told as example the story of a child:

“he was refusing to shave, to talk to female staff, to watch tv and even music because it was haram, now he shaved and enjoys listening to music, he even sings!”

This story is just one among others. Surprisingly, detention can be a positive experience for the child. Ms. Karam explained that *“If the child remains in this environment (with a terrorist group) for too long, he will be used to this lifestyle. But when the child has been in prison for a year, they meet with other people and start to communicate, they change very quickly. When*

²⁴² Interview with Mr. Raja Abi Nader.

*you change the entourage of the child, he gets used to new living conditions and it is easier to work with the child”.*²⁴³ A member of the association *Mouvement Social* also mentioned that for some of those children it is the only occasion to get access to education and have some specific professional and educational certifications.

In contrast with the pre-trial and the trial stage, the child is not seen as any different from other juvenile delinquents. The child is categorized as a victim able to understand and correct the previous behaviour who led him in prison, which leads to a high level of protection of the rights of the child. It even goes further to increase the well-being of children. The juvenile aisle authorities, the NGOs and relevant governmental actors also make a point of honour to treat the child condemned for terrorism the same way as any other.

²⁴³ Interview with Ms. Jocelyne Karam.

CONCLUSION

The aim of the research was to study the link between social categorization of children suspected, accused and condemned for terrorism and their legal treatment in the Lebanese judicial system. By applying the social categorization and inter-group behaviour theories to actors of the judicial system at several stages of the judicial process and analysing law and practice, the research showed that social categorization by judicial actors does impact the legal treatment of the child.

The research started by trying to expose the complexity of the legal definition of terrorism. It clearly showed that there is no consensus on the content of the notion of terrorism. When a definition is reached, they are usually too broad and vague and are subject to broad interpretation. The Lebanese definition remains vague as it targets any act inducing a state of terror. Counter-terrorism legislations have the characteristic to be harsher in terms of fundamental rights than regular criminal law. Therefore, in the context of judicial proceedings the interpretation given to the content of terrorism will have an impact on the legal regime applied and the rights of the individual. The issue is not only related to interpretation but to the categorization of certain actions and persons as terrorist.

Social categorization is the natural placement of individuals into social groups, which creates two groups. The in-group and the out-group where other individuals categorized are placed based on certain of their characteristics. This process leads to a situation where the world is divided between “us” (in-group) and “them” (out-group). The out-group is attributed with certain characteristics, usually applied homogeneously over all the members of the group. In practice, inter-group relations trigger negative emotions which in turn lead to negative behaviour towards the out-group. However, in some cases, a member of the out-group can be re-categorized as a victim and as such, a member of a broad group including in-group and out-group members. The change of status from an out-group member to victim has as consequences to trigger more positive behaviour towards the victims, like greater respect and protection of his rights.

As examined in the research, the child can be categorized differently depending on the stage of the judicial process. In the pre-trial stage, the child is perceived as a threat, a danger, a terrorist by the law enforcement authorities due to the extremely difficult inter-group relationships. As previously mentioned, often, the law enforcement authorities and especially the army will be

the target of terrorist attacks. All participants to the attacks are direct threat to the lives of the soldiers. The child, by effect of categorization and out-group homogeneity effect is absorbed by the rest of the group even if he was not directly targeting the army. The emotional and behavioural response induced by threat is aggressive, implies less respect for the individual's rights and can even lead with torture. These conclusions are consistent with the practice. Whereas torture is prohibited by law and law enforcement authorities code of conducts, torture remains systematically used.

After his arrest and primary investigations, the child is deferred to the competent court, which can be the Juvenile Criminal Court of the Military Court. At this stage, different categorization operates, from the lawyers but also from the judges. There are always two types of categorization. On one hand, the child can be seen as a victim of society and the miserable conditions in which the State let him live in, which led him to turn to terrorist organisations to survive. On another hand the hard situation of the child is acknowledged but he remains categorized as a criminal and a terrorist. Whereas the former usually describes the approach of Juvenile Courts and the later the categorization before the Military Court, nuances should be made. There are always, on both sides, judges to care more or less about the situations of those children, which might worsen their legal treatment.

However, in general, before the Military Court the child is categorized as a criminal and a terrorist. Inter-group behaviours learn that in these cases there is less consideration for the situation of members of the out-groups and less consideration for their rights. The Military Court is a highly criticized institution for many human rights violations. In the present case, this translates by not always transferring the case of the child to the appropriate court and not waiting for the presence of the social worker. It also has an impact on the declaration of guilt of the child. In the case of the Juvenile Criminal Court, the situation is different. Indeed, the victim status of the child is acknowledged. The re-categorization of the child as victims implies more importance to his rights and situation in the idea of compensating the harm that has been done by the in-group which implies less rights violations. No system is perfect but there is a greater consideration to respect of the rights of the child and applying the most preferential legal treatment allowed by the law.

The same conclusion can be drawn for lawyers. Some lawyers take the defence of these children as a human rights issue considering the conditions which lead them to the Court and consider the child as a victim. Other just see them as another regular criminal, just 400\$ extra dollars on the pay check. There are flagrant differences in comparison with the situation before the law

enforcement authorities but the inter-group relationships are different. They occur in a safe and controlled environment and it allows for the categorization and stereotyping to evolve over time to a more positive perception.

Finally, if the child is convicted, he spends his prison sentence in the juvenile aisle of the prison. The prison staff, relevant governmental actors as well as NGOs all categorize the child as a victim and a juvenile offender not different than others. He is perceived as able to change and grow when placed in the appropriate environment. The categorization of the child as a victim and a regular juvenile does not only lead to the respect for his rights but also defence of his rights when endangered by some actors. Again, all the interaction occurs in a controlled environment and no one has ever experienced a bad encounter with a child. there is a great knowledge of the situation of children convicted for terrorism. In addition, since the relevant actor work in the same area for years, it is most likely than potential original negative stereotypes evolve over time to become in phase with the reality.

To the question: “mirror, mirror on the wall, am I only a terrorist after all?”, the answer will vary depending on who is inside the mirror. Different actors reflect different images, a delinquent, a criminal, a killing machine, a victim, a terrorist, a child, etc.

The research showed that social categorization is an explanation for the variations of legal treatment of the child along the judicial process. Even if this explanation should be taken into consideration with other factors such as financial, structural, political, cultural, it confirms that social categorization has a role to play. Further research should be conducted in order to precise the process of categorization and the correlative impact on legal treatment of the child suspected, accused and condemned for terrorism.

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ANNEX

Annex I – Statistics

Ministry of Justice
Prison Administration

Children in detention with charges related to terrorism

Based on Penal code Art. 314-316-317-318 and Terrorism law of 1958

Key figures 2012-2018

Children in detention

Year of entry	Total of PVE
Year 2012	3
Year 2013	7
Year 2014	30
Year 2015	18
Year 2016	20
Year 2017	40
Year 2018	21

Population's Age (at the admission)

Age	14	15	16	17	Under 18
Year 2012			2	1	
Year 2013			3	2	2
Year 2014	2	2	7	14	5
Year 2015		4	5	7	2
Year 2016		1	3	11	5
Year 2017	1	1	9	17	12
Year 2018			3	7	11

Top 3 Nationalities

	Lebanese	Syrian	Palestinian	All others
Year 2012	2	1		
Year 2013	6	1		
Year 2014	13	15	2	
Year 2015	12	5	1	
Year 2016	6	11	1	2
Year 2017	18	14	8	

Year 2018	1	13	5	2
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Annex II – LAF Code of Conduct

الجيش اللبناني في انفاذ القانون قواعد سلوك
الداخلي) (في عمليات حفظ الأمن

1- مقدمة

لبنان عضو مؤسس في منظمة الأمم المتحدة وجامعة الدول العربية، ملتزم باتفاقيات حقوق الإنسان الدولية التي صادق عليها، كما نص الدستور اللبناني في مقدمته على الالتزام بمواثيق الأمم المتحدة والإعلان العالمي لحقوق الإنسان وتجسيد هذه المبادئ في جميع الحقول والمجالات دون استثناء والعمل على ادماجها في القوانين الوطنية بواسطة السلطة التشريعية، والسهر على تنفيذها من قبل السلطة التنفيذية ومن ضمنها وزارة الدفاع الوطني - قيادة الجيش.

يهدف الجيش اللبناني في إطار المهام المتعددة التي يقوم بها، ومن بينها مساعدة السلطة السياسية، إلى تحقيق أمن الوطن والمواطن والمقيمين على أرضيه، ولا يألو جهداً في بذل التضحيات الكبرى من أجل ذلك في إطار سيادة القانون والالتزام بأحكام القانون الدولي لحقوق الإنسان واحكام القانون الدولي الانساني وبالأخص المادة الثالثة المشتركة من اتفاقيات جنيف الأربع.

تعكس هذه المهمة القيم النابعة من المجتمع ولصالحه، ومن ثم فإن تطبيق القانون يجب أن يحمل في طياته قيم العدالة والمساواة والنزاهة، إضافة الى الكرامة الانسانية وروح الالتزام بمعايير ومبادئ حقوق الانسان، وهذا يقتضي أن يكون المكلفون بانفاذ القانون (المساهمة في عمليات حفظ الأمن) ملتزمين بالإحتراف والمناقبية عند قيامهم بذلك.

والواقع أن لكل مهمة قواعد وأدوات تنظم عملها، وعادة ما تصاغ هذه القواعد في إطار: "دساتير- قوانين- مراسيم- تعليمات... الخ"، وفي هذا الإطار تنظم عمل الجيش اللبناني مجموعة من القوانين والمراسيم والتعليمات، بدءاً من الدستور مروراً بالقانون الدولي لحقوق الإنسان وبالإتفاقيات والمعاهدات الدولية ذات الصلة التي صادقت عليها الجمهورية اللبنانية، وبقانون الدفاع الوطني والقوانين الأخرى ذات الصلة، وصولاً إلى التعليمات والتوجيهات والأوامر التي تصدرها قيادة الجيش، وهذا ما يضيف الشرعية على عمله ويدفع عناصره إلى احترام القوانين واخضاعهم للمساءلة التأديبية والجزائية.

ونظراً لأهمية عمل عناصر الجيش اللبناني والواجبات التي يقومون بها والإختصاصات المسندة إليهم عند تكليف الجيش بحفظ الأمن أو إعلان حالة الطوارئ أو المنطقة العسكرية وطبيعة الصلاحيات التي يمارسونها وأثرها المباشر على الفرد والمجتمع والوطن، وحرصاً من قيادة الجيش اللبناني على ترسيخ مبادئ حقوق الإنسان وسيادة القانون، صدرت هذه المدونة التي تتضمن المبادئ والقيم والأعراف التي يجب أن تحكم سلوك العناصر في مهام حفظ الأمن، في سياق مكمل للتعليمات الصادرة في هذا المجال، وتماشياً مع المعايير الدولية التي تحكم سلوك المكلفين بانفاذ القانون، وتكون هذه المدونه عباره عن تعليمات واوامر مستدامه لعناصر الجيش اللبناني ويجب احترامها والالتزام بها.

2- أهداف المدونة.

- أ- تحديد قواعد السلوك للجيش اللبناني اثناء قيامه بوظائف انفاذ القانون في عمليات حفظ الأمن التي تسهم في تعزيز التفاعل بينه وبين المواطنين والمقيمين على الأراضي اللبنانية.
- ب- ضمان عدم التمييز خلال القيام بمهمة حفظ الأمن في سبيل تحقيق وضمان حقوق الإنسان والقيم الأساسية لدولة القانون.

- ج- التأكيد على أن مهام الجيش اللبناني تعكس مفهوم حكم وسيادة القانون الذي يحمي ويُعزز حقوق الإنسان تبعاً للدستور اللبناني والشرعة الدولية لحقوق الإنسان.
- د- التأكيد على أن احترام حقوق الإنسان هو من بين أسس الأمن والنظام العام مما يعزز من هيبة الدولة.
- هـ- تعد مدونة السلوك وسيلة هامة لتأكيد مشروعية علاقة المكلفين بحفظ الأمن بالمواطن اللبناني وأي مُقيم على الأراضي اللبنانية.

3- رؤيتنا.

- أ- حماية الحقوق والحريات والدفاع عنها من أي انتهاك.
- ب- احترام وتعزيز حقوق الإنسان.
- ج- النزاهة والشفافية.
- د- الحيادية وعدم التمييز.
- هـ- المثال الحسن في القيادة.
- و- تعزيز آلية المحاسبة.

4- قيمنا.

- أ- الشرف والنزاهة.
- ب- العدالة والمساواة.
- ج- المهنية واللياقة.
- د- القدوة في القيادة.

5- التدابير المتخذة لدى مساهمة الجيش في عمليات المحافظة على الأمن.

استناداً للمادة الرابعة من المرسوم الإشتراعي رقم 83/102 وتعديلاته (قانون الدفاع الوطني): "إذا تعرضت الدولة في منطقة أو عدة مناطق لأعمال ضارة بسلامتها أو بمصالحها يكلف الجيش بالمحافظة على الأمن في هذه المنطقة أو المناطق".

عند تكليف الجيش بالمساهمة في عمليات المحافظة على الأمن، تعتمد الوحدات وفقاً للحاجة إلى اتخاذ التدابير التالية:

- أ- تسيير دوريات.
- ب- إقامة حواجز تفتيش.
- ج- حماية نقاط حساسة وحيوية.
- د- إقامة سدود أمنية.
- هـ- التعامل مع التظاهرات.
- و- التعامل مع التجمعات.
- ز- التعامل مع التفجيرات.
- ح- تنفيذ مdahمات وتوقيف المخالفين وضبط الممنوعات.

6- المبادئ الأساسية لاستخدام القوة والأسلحة النارية في مهمة حفظ الأمن.

المبادئ التي تحكم استخدام القوة والأسلحة النارية من جانب المكلفين بحفظ الأمن:

أ- **الضرورة**: تستخدم القوة والأسلحة النارية بالتوافق مع القوانين الدولية ولغايات انفاذ القانون وفقاً للقوانين المحلية في الحالات التي تصبح فيها جميع الوسائل الأخرى غير فعّالة ولن تحقق النتائج المرجوة، فقط في الحدود اللازمة، ويُعتبر استعمال الأسلحة النارية تدبيراً أقصى. ينبغي بذل كل جهد ممكن لتلافي استعمال القوة والأسلحة النارية، ولا سيما ضد الأطفال.

ب- **التناسب:** يجب أن يكون إستخدام القوة والأسلحة النارية متناسباً مع الهدف المشروع المطلوب تحقيقه ومع الخطر.

ج- **المشروعية:** يجب أن يكون إستخدام القوة والأسلحة النارية متوافقاً مع القوانين الوطنية والقوانين الدولية ذات الصلة.

د- **المحاسية:** يجب أن تكون هناك إجراءات من قبل السلطة المسؤولة بحق من يخالف بنود المدونه.
هـ- **عدم التمييز:** يجب ان يتم انفاذ المهام بدون اى تمييز بشكل غير مشروع على أساس العرق، أو الجنس أو الدين أو اللغة أو اللون أو الرأى السياسى أو الأصل الوطنى أو أى تمييز من نوع آخر.
و- **الإحتياطيات:** اتخاذ كافة التدابير اللازمة للتدرج باستخدام القوة بهدف تقليل الضرر الناتج عن استخدامها وعدم التسبب بالضرر لغير المستهدفين.

7- **في السلوك والواجب المهني لعناصر الجيش اللبناني في انفاذ القانون.**

تضبط هذه المدونة الإلتزامات الأخلاقية والإنسانية والقانونية التي تحكم عمل عناصر الجيش اللبناني أثناء أداء واجباتهم وتسعى الى احترام حقوق الانسان وحماية الحريات العامة أثناء قيام الجيش بمهام حفظ الأمن. لذلك يلتزم عناصر الجيش بالتالي:

أ- العمل على توفير الأمن والسلامة العامة للجميع بسرعة وفعالية ومن دون تمييز، وعلى تقديم المساعدة اللازمة للأشخاص المعرضين للخطر في جميع الظروف كلما لزم الأمر بذلك.

ب- التصرف بإحترام وجدية وبدون تعالٍ اثناء ممارسة الوظيفة.

ج- الإلتزام بأعلى مستويات الانضباط المسلكي والمهني والوظيفي والاجتماعي والأخلاقي بما يمكن من تنفيذ المهام والواجبات الملقاة على عاتقهم بكفاءة ومهنية في إطار يحترم ويحمي حقوق الإنسان.

د- الإلتزام في كل الأوقات بالواجب الملقى على عاتقهم بموجب القانون للحفاظ على الإستقرارعلى نحو يتفق والدرجة العالية من المسؤولية التي تتطلبها أخلاقيات المهنة.

هـ- الإلتزام، في إطار المناقبية العسكرية، بأفضل العلاقات مع المدنيين ومؤسسات المجتمع المدني لتعزيز الثقة والتعاون معهم بغية أداء الواجبات المطلوبة بأعلى مستوى من الفاعلية.

و- الامتناع عن القيام بأي عمل من أعمال التعذيب أو المعاملة القاسية أو اللاإنسانية أو المهينة أو التحريض عليها أو التغاضي عنها.

ز- الامتناع عن تجاوز حد السلطة التي أعطيت لهم بموجب القوانين الوطنية النافذة ذات الصلة.

ح- الامتناع عن قبول أي رشوة أو هدية أو ارتكاب أي فعل من أفعال الفساد أو التستر عليه خلال قيامهم بواجبهم.

ط- عدم استغلال مناصبهم أو دورهم من أجل أي نفوذ أو مكتسبات شخصية، بل الخضوع للقوانين المرعية بشكل متساو مع جميع المواطنين.

ي- إفادة الرؤساء عن أي فعل مخالف للقانون إنطلاقاً من التزامهم القانوني والوظيفي.

ك- يُحظر على الرؤساء إعطاء أوامر غير مشروعة أو مخالفة للقانون، ولا تعتبر هذه الأوامر مانعة للمسؤولية.

ل- يُمَثَّل القادة قدوة للمرؤوسين.

8- **القواعد العامة لاستعمال القوة والأسلحة النارية.**

أ- عند حصول أعمال شغب أو تعديات، يقوم المكلفون بحفظ الأمن برد فعل متدرج يمكنهم من السيطرة على الوضع ابتداءً من وسائل الإقناع والتحذير كافة مع المحافظة التامة على هدوء الأعصاب ورباطة الجأش قبل اللجوء إلى استعمال القوة. وتتدرج وسائل الإقناع والتحذير للمخلين بالأمن كالتالي:

- (1)-المخاطبة المباشرة.
 - (2)-استعمال المذيع.
 - (3)-تحذير المتجمهرين بلغة واضحة ومفهومة بضرورة الانصراف وإعطاء وقت كاف للإنصياح.
 - (4) - استعمال الغاز المسيل للدموع وخرطوم المياه، عند حصول تعديات وشغب بحق المرافق العامة أو القوى المكلفة بحفظ الأمن ويكون استعمالهم متناسباً مع حجم التعدي وضرورياً بعد استنفاد كل الوسائل السلمية.
 - (5) - يحظر استخدام الأسلحة غير المميّنة بشكل قد يسبب الوفاة.
 - (6) - اتخاذ كل الإجراءات والتدابير الممكنة لعدم إصابة أشخاص غير متورطين.
- ب- يتدرج استعمال القوة تصاعدياً، بعد استنفاد وسائل الدفاع عن النفس، كما يلي:
- (1) - الأسلحة غير المميّنة.
 - (2) - أعقاب البنادق وعتاد مكافحة الشغب.
- ج- بعد استنفاد الوسائل أعلاه تستعمل الوحدات سلاحها الخفيف ومن ثم المتوسط في الحالات التالية حصراً:
- (1) - عند تعرض حياة الجند للخطر:
 - (أ) - بسبب إشهار سلاح ناري من قبل المشاغبين يتهدد حياة الجنود والآخرين بالموت أو بالأذى البدني البالغ.
 - (ب) - عندما تصبح وسائل العنف المستعملة ضدهم من قبل المشاغبين عامة وخطرة بحيث يصبح إكمال تنفيذ المهمة متعذراً.
 - (ج) - عند تعرضهم لأعتداء مباشر من مجموعة مشاغبين تفوقهم عدداً أو مجهزة بوسائل إعتداء، وذلك فور مباشرتها التسبب بالأذى الجسدي للجند أو محاولة السيطرة على مراكزهم أو على عتادهم.
 - (2) - للاحتفاظ بالأشخاص الموقوفين أو الموضوعين بعهدتهم أو لتأمين سلامتهم وفقاً للقانون الوطني ذي الصلة.
 - (3) - لتوقيف الأشخاص الخطرين والذين يحاولون الفرار من وجههم ولا ينصاعون للإنذار بالتوقف.
 - (4) - لتوقيف المركبات التي تتخطى حواجزهم (اجتياز الحاجز باتجاههم) بالرغم من الإنذارات (يتم إطلاق النار باتجاه الإطارات).
- د- في حال اللجوء إلى فتح النار بالأسلحة الخفيفة، ينفذ الرمي بناءً على أمر من آمر القوى، بالتدرج التالي:
- (1) - رمي تحذيري في الهواء عند عدم التجاوب مع وسائل الإقناع وبعد الإنذار بأن الوحدة ستستعمل السلاح.
 - (2) - رمي صائب من قبل رماة مهرة / قناصة معينين سلفاً على أهداف محددة (حامل سلاح) وعلى مكان في الجسم غير مميت.
 - (3) - يتوجب على آمر القوة تحديد عدد الطلقات الواجب رميها عند إعطاء أمر فتح النار للتثبت من الوصول إلى النتيجة المتوخاة.
 - (4) - على آمر القوى تكرار مضمون الإنذار والرمي التحذيري قبل إصدار الأوامر وفتح النار على الأهداف المحددة، كلما كان ذلك ممكناً.
- هـ- يجب تقديم الإسعافات الطبيه اللازمة للمصابين من جراء استخدام القوة وبالأخص الأسلحة النارية وعلى وجه السرعة دون ابطاء.
- و- يفاد الرؤساء شفهاً وبالسرعه الممكنه، عن استعمال الأسلحة النارية فور حدوثه وعن الإصابات التي تحققت على ان يعد لاحقاً تقريراً مفصلاً بالواقعة.
- ز- يجب ابلاغ اقارب او معارف المصابين بأسرع وقت ممكن.

9- في تسير دوريات وإقامة حواجز ونقاط تفتيش.

- أ- يجب على عناصر الجيش اللبناني، أثناء قيامهم بواجباتهم، احترام الكرامة الإنسانية وصونها، والمحافظة على حقوق الإنسان المحمية بموجب القوانين الدولية والوطنية.
- ب- يعامل الأشخاص المارين على حواجز التفتيش باحترام دون أي تمييز وبشكل لائق وحازم وبطريقة تحفظ كرامتهم عند توقيفهم للتفتيش أو للتأكد من هويتهم أو من المستندات القانونية للمركبات التي يقودونها.
- ج- الابتعاد عن التصرفات المسيئة على أنواعها كالتحرش بالعابرين أو ضربهم أو إهانتهم.
- د- عدم إثارة أحاديث جانبية مع العابرين تتجاوز حدود المهمة المطلوبة.
- هـ- عند عدم امتثال أحد الأشخاص لأوامر عناصر الحاجر يتم توقيفه باستعمال القوة المتناسبة مع الوضع دون إفراط أو تعسف وفق ما تقتضيه الضرورة.
- و- يراعي عناصر الحاجر الحالات الإنسانية متى وجدت.
- ز- يجب تفتيش النساء من قبل العسكريين الإناث فقط وفي مكان مناسب.

10- في التعامل مع التظاهرات والمتظاهرين.

- أ- يكفل الدستور اللبناني حق التجمع السلمي.
- ب- يحظر استخدام الأسلحة النارية لفض التظاهرات والتجمعات السلمية.
- ج- يمكن لعناصر الجيش استخدام القوة في حالات الضرورة القصوى فقط وللحد الذي يمكنهم من أداء وظيفتهم.
- د- يجب توجيه إنذار إلى المتظاهرين بضرورة التفرق إذا دعت الحاجة لذلك.
- هـ- في كافة الاحوال إظهار النية لاستخدام القوة بطريقة تؤدي إلى عدم استعمالها الا عند الضرورة.
- و- معاملة المواطنين باحترام وحزم مع التشديد على القوى قبل تنفيذ أي مهمة بوجوب التقيد التام بهذا المبدأ.
- ز- تجنب استخدام القوة في فض التظاهرات السلمية، وعند الضرورة يجب أن يكون استخدام القوة محدوداً وفي أقل مستوياته مع حظر استخدام القوة المميتة إلا في الحالات المنصوص عليها في القانون.
- ح- التفاوض مع المتظاهرين، وإذا فشل التفاوض في فض التظاهرة، فإن على القوى تحذير المتظاهرين من أنها ستستخدم القوة في حال عدم التفرق.
- ط- يمكن استخدام حد ادنى من القوة مثل خرطوم المياه، وإذا لم يحقق ذلك النتيجة المرجوة يمكن استخدام الأسلحة غير القاتلة مثل الغازات المسيلة للدموع.
- ي- يجب أن يكون استخدام القوة متناسباً، وبأقل إصابات وخسائر ممكنة.
- ك- يجب أن يُميّز بين المتظاهرين السلميين وأولئك الذين يستخدمون العنف، ومحاولة عزل العنيفين منهم وحماية أولئك السلميين.
- ل- إذا كان العنف الممارس من قبل المتظاهرين لا يشكل تهديداً بالموت أو الإصابات الخطيرة فلا يجب استخدام الأسلحة النارية.
- م- يُحظر حمل أيّ أعتدة غير مسلمة من الجيش أثناء التعامل مع التظاهرات أو التجمعات.
- ن- يُحظر استخدام عبارات مسيئة أو إشارات مهينة أو تهديد المتظاهرين.
- س- لا يمكن استخدام القوة القاتلة إلا في حال خطر وشيك قد يؤدي إلى قتل أو إصابة شخصاً آخر إصابة بالغة، وعندما يكون هذا هو السبيل الوحيد لمنعه من القيام بذلك.

ع- يجب على عناصر الجيش احترام القواعد والمعايير الوطنية والدولية المتعلقة بحرية المعلومات وكذلك على عمل وسائل الإعلام بصوره تضمن احترام حياد الصحفيين والاعلاميين ووصولهم الى أماكن المظاهرات للتصوير والمقابله مع مراعاة الظروف والإجراءات اللازمة للحفاظ على سلامتهم.

11- في التوقيف والتعامل مع المحتجزين.

- أ- لا يجوز إلقاء القبض على أي شخص أو اعتقاله أو ملاحقته أو إدانته، إلا في الحالات وطبقاً للإجراءات التي ينص عليها القانون.
- ب- لا يسمح بالدخول إلى مسكن شخص دون رضاه، أو في غيابه، إلا بحالة الجرم المشهود أو استناداً لإستتابة قضائية (إجراء تفتيش، توقيف شخص) وذلك بين الساعة الخامسة صباحاً والثامنة ليلاً.
- ج- يُحظر على عناصر الجيش استخدام العنف تجاه الموقوفين الذين لا يبدون أية مقاومة.
- د- عدم التمييز بين المشتبه فيهم، وخاصة بسبب أصولهم، جنسيتهم، دينهم، أفكارهم واتجاهاتهم السياسية أو الفكرية، أو لأية اعتبارات أخرى.
- هـ- يسمح للموقوف الاتصال بأحد أفراد عائلته أو بصاحب العمل أو بمحام يختاره عند صدور قرار التوقيف بعد مراجعة النيابة العامة العسكرية.
- و- يتمتع الموقوف بالحقوق في المعاملة وفقاً لقواعد ومبادئ قانون حقوق الإنسان.
- ز- يُعتبر كل شخص بريئاً، إلى أن يصدر حكم بالإدانة في حقه.
- ح- تراعى مبادئ التناسب خاصة عندما يتعلق الأمر باستعمال القوة.
- ط- يجب اتخاذ كافة التدابير والاحتياطات لحماية الموقوف من غضب الجمهور وفضول وسائل الإعلام.
- ي- السهر على حماية حياة وصحة كل شخص محتجز، حتى ولو لم يطلب بنفسه أية مساعدة أو علاج طبي.
- ك- يمنع استعمال أي شكل من أشكال العنف أو المعاملة القاسية أو المهينة.
- ل- يجب التدخل لوقف الانتهاكات وإفادة الرؤساء عن ذلك.
- م- يحظر اللجوء إلى التعنيف في السعي للحصول على فعالية أكثر أثناء الاستجواب الأولي.
- ن- وفي جميع الحالات يتعين عدم استعمال القوة إلا في الحدود وضمن الحالات التي تستلزم اللجوء إلى ذلك.

12- احترام المدونة.

على عناصر الجيش:

- أ- احترام مدونة السلوك هذه والالتزام ببندوها ومنع وقوع أية مخالفة لمضمونها.
- ب- قمع هذه المخالفات عند وقوعها.
- ج- إبلاغ الأمر إلى رؤسائهم عندما يتوفر لديهم ما يحملهم على الاعتقاد بوقوع أو احتمال وقوع مخالفات وشيكة لهذه المدونة.
- د- فتح تحقيق فوري في كافة المخالفات لهذه المدونة والقيام بالمساءلة والمحاسبة اللازمة وفقاً للصلاحيات.

ملحق.

1- الدستور اللبناني.

2- القانون الدولي لحقوق الإنسان والاتفاقيات والمعاهدات الدولية ذات الصلة:

أ- الإعلان العالمي لحقوق الإنسان.

ب- العهد الدولي للحقوق المدنية والسياسية.

ج- إتفاقية مناهضة التعذيب وغيره من ضروب المعاملة القاسية أو اللاإنسانية أو المهينة.

3- القوانين الوطنية العادية:

أ- قانون أصول المحاكمات الجزائية.

ب- قانون العقوبات العام.

ج- قانون الدفاع الوطني.

د- قانون القضاء العسكري.

4- وثائق الأمم المتحدة:

أ- المبادئ الأساسية المتعلقة باستخدام القوة والأسلحة النارية بواسطة الموظفين المكلفين بإنفاذ القانون والتي إعتدها المؤتمر الثامن للأمم المتحدة حول منع الجريمة ومعاملة المذنبين، هافانا كوبا 1990.

ب- مدونة السلوك الخاصة بالموظفين المكلفين بإنفاذ القانون التي تم إعتماها في قرار الجمعية العامة رقم 169/34 تاريخ 1979/12/17.

ج- مجموعة القوانين الخاصة بحماية كل الأشخاص الخاضعين لأي شكل من أشكال الإحتجاز أو السجن، والتي إعتدها الجمعية العامة للأمم المتحدة في قرارها رقم 173/43 تاريخ 1988/12/9.

د- القواعد النموذجية الدنيا لمعاملة السجناء.

هـ- المبادئ التوجيهية الخاصة بحقوق الإنسان في الحدود الدولية التي اصدرها مكتب المفوض السامي لحقوق الإنسان.

و- المبادئ المتعلقة بالمنع والنقصى الفعالين لعمليات الاعدام خارج نطاق القانون والاعدام التعسفى والاعدام دون محاكمه (1989).

5- التعليمات والتوجيهات والأوامر التي تصدرها قيادة الجيش. ومنها تعليمات تتعلق بمساهمة الجيش في عمليات حفظ الأمن.

6- ارقام مهمه:

▪ قيادة الجيش 1701

Annex III – Interviews

Interview with Mr. Raja Abi Nader, Head of the Directorate of Prisons within the Ministry of Justice, Office of Mr. Abi Nader at the building Directorate of Prison (Beirut, Lebanon), 02.04.2019.

Interview with a lawyer, Court of Justice (Beirut, Lebanon), 02.04.2019

Interview with Hala Bou Samra, Head of Delinquent Juvenile Reform Department of the Ministry of Justice, Office of Ms. Bou Samra at the building of the Delinquent Juvenile Reform Department (Beirut, Lebanon), 03.04.2019.

Interview with Ms. Jocelyne Karam, Lawyer at the Father Afif Osseiran Foundation, Office of the Association (Fonar, Lebanon), 23.05.2019.

Interview with Colonel Ziad Rizkallah and his staff, Acting Director of the Directorate of International Humanitarian Law and Human Rights Department of the Lebanese Army, Office of Colonel Rizkallah at the General Directorate of Civil Defence (Beirut, Lebanon), 07.06.2019.

Interview with Ms. Hasna A. Reda, Lawyer responsible for the legal aid programme of the Lebanese Center for Human Rights, Office of Ms. A. Reda (Beirut, Lebanon), 10.06.2019.

Interview with a lawyer, Court of Justice (Beirut, Lebanon), 13.06.2019.

Interview with a member of the association Mouvement Social, Office of the association (Beirut, Lebanon), 19.06.2019.

Interview with a lawyer, Maison de l'Avocat (Beirut, Lebanon), 18.04.2019.

Interview with Ms. Rosy Kerkor, Former director of the juvenile department of the Roumieh Prison, Building of the Delinquent Juvenile Reform Department of the Ministry of Justice (Beirut, Lebanon), 18.06.2019.

Interview with an Investigative Judge at the military court, military court (Beirut, Lebanon), 20.06.2019.

Interview with Judge Zalfa El Hassan, President of the Juvenile Criminal Tribunal of Beirut, Office of Judge El Hassan – Court of Justice of Beirut (Beirut, Lebanon), 20.06.2019.

Interview with a member of UPEL, office of the association in the Court of Justice (Beirut, Lebanon), 26.06.2019.