

# Armed conflict and national security depriving children of liberty in the MENA region: Case studies and good practices

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**Abstract:** *The UN Global Study on Children Deprived of Liberty outlines various pathways to detention in the contexts of armed conflicts and national security. A particular focus of this article falls on a comparative study between three case studies in the Arab region – notably Iraq & Syria (ISIS regions), Libya, and the Occupied Palestinian Territories (OPT). This comparative study is used in order to identify common problems as well as common good practices towards reaching a preliminary regional approach. With the defeat of ISIS, approximately 29 000 children have been detained in the northeast of Syria and in Iraq. Of those, only a limited number of children have been repatriated to their or their parents' countries of origin, highlighting the overall reluctance of states to repatriate jihadist fighters for alleged security concerns. Detained children associated with ISIS are susceptible to radicalisation, aggravated socio-psychological harm and deprivation of the right to a normal childhood. The changing nature of armed conflict from 'traditional' wars to conflicts between non-state armed groups corresponds with an increase in the treatment of children as perpetrators rather than victims (especially in Libya). Children affiliated with terrorist groups are put to trial in circumstances that are contrary to international child justice standards. In the OPT, a high number of arrested children are mistreated, while they are also subjected to military courts and law. While states have the primary duty to prevent any potential security threats (including terrorism), protecting children from all types of violence is an obligation under international human rights law. Recognising the pressing need to liberate children from their precarious situation within detention camps, this article calls for concerted efforts to bring adequate solutions in accordance with international standards of justice for children in a way that promotes their rehabilitation and reintegration.*

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**Key words:** *children's rights; armed conflict; national security; deprivation of liberty; children deprived of liberty; children in Palestine; children of ISIS; children in Libya; UN Global Study on Children Deprived of Liberty; deprivation of liberty on grounds of armed conflict; deprivation of liberty on grounds of national security*

## 1 Introduction

Due to the political situation in the region, the Arab world has seen the rights of the child violated in many ways. Indeed, as soon as armed conflicts, civil wars and social unrests occur, children's rights are often severely violated given their specific vulnerability when the state and law enforcement are absent in certain geographical areas. Moreover, under the conditions of armed conflict or civil war, children can further be exploited as fighters between different sects or imprisoned in camps. In these situations, children are often displaced with their families, which by extension also leads to the deprivation of other rights such as access to education and health. By using a comparative approach, this study focuses on three case studies so as to determine the best regional approaches for dealing with children deprived of liberty in the context of armed conflict and national security. Israel and the Occupied Palestinian Territories (OPT) offer an exemplary case where children are being detained in the contexts of both armed conflict and national security. The UN Global Study on Children Deprived of Liberty (UN Global Study) found that since the Israeli occupation of the West Bank in 1967, an estimated 46 512 Palestinian children have been arrested and detained by the Israeli military on alleged security grounds (Nowak 2019: 559). According to a 2018 report by the Military Court Watch, children held in military custody are continually subjected to widespread, systematic and institutionalised ill-treatment, including being arrested at night during military raids at their houses, where soldiers would tie, blindfold and transfer them to interrogation centres. In many cases arrested Palestinian children are transferred to prisons outside the West Bank, thus depriving them of their right to family contact. The report also provides that in 97 per cent of child detention cases in 2017, the children lived and were arrested in an area very close to illegal Israeli settlements in the West Bank, suggesting a systematic link between the two (Nowak 2019: 600).

To introduce a second example, the deprivation of children's liberty in Libya occurs in connection to armed conflict in addition to the detention of migrants taking place for reasons of national security. Despite the complexity of the armed conflict in Libya, where armed groups and militias hold considerable power, many European countries have struck deals with Libyan authorities to control the flow of migrants from Africa to Europe. As a result, Libyan authorities arrest and move thousands of migrants to detention centres, detaining children in the same facilities as adults. These

detention centres reportedly are in extremely bad condition, resulting in people dying from a lack of food, clean water and basic medical care (Nowak 2019: 456).

A third example of deprivation of liberty in the context of an armed conflict and on national security grounds is the detention of children associated with the Islamic State of Iraq and Syria (ISIS) in Iraq and Syria. It is estimated that approximately 35 000 children were deprived of liberty in the context of armed conflict in camps in both countries in early 2019 (Nowak 2019: 568). Moreover, this estimation does not include the undocumented cases of children held in camps, military barracks, intelligence facilities, and other centres run by military or government-aligned militias.

The above cases illustrate grave violations of international humanitarian law relating to the protection that ought to be afforded to children in conflict situations. In times of armed conflict, children benefit from the general protection provided to civilians not taking part in the hostilities, including the right to life, the prohibition of coercion, torture, collective punishment and reprisals (article 27-34 GCIV and article 75 API). Given the particular vulnerability of children, the Geneva Conventions of 1949 (GCIII and GCIV) and their Additional Protocols of 1977 (API-II) oblige the parties to the conflict to provide children with special protection pertaining to the care and aid they require, including evacuation, assistance, identification and family reunification.

Although international humanitarian law categorically prohibits the recruitment and participation of children below the age of 15 years in armed groups, children who do directly take part in the hostilities do not lose this special protection. Rather, child combatants are entitled to privileged treatment due to their age-specific status. Although Iraq, Syria and Palestine have all acceded to the Geneva Conventions and ratified their Additional Protocols (which Israel notably has not ratified), the legal vacuum that can exist during a conflict, the enactment of emergency and anti-terrorism laws, and the general lack of child-friendly proceedings, especially in the military justice systems, all make children particularly vulnerable to ill-treatment and abuse.

Therefore, the purpose of this article is to provide a snapshot of the situation of children deprived of liberty in the context of armed conflicts and for national security reasons in the Middle East and North Africa (MENA) region. A synthesis of the common legal, political and social frameworks that contribute to the violation of children's rights, or alternatively provide children with age-appropriate special protections, will be drawn through the analysis of the three above-mentioned case studies in order to articulate an appropriate regional approach.

## 2 Methodology

This article utilises a comparative case study approach to conduct an analysis and synthesis of the similarities, differences and patterns of three cases where children have been deprived of liberty due to an armed conflict or for national security reasons in the MENA region. The aim of this analysis is to understand which common social, legal, structural or policy factors in the MENA region render children vulnerable to a deprivation of their liberty or, alternatively, provide safeguards and protection to children. In so doing, the research will complement the initial findings of the UN Global Study and its chapters related to children in armed conflict and children in national security situations by addressing the following research questions:

- To what extent do the responsible states in the selected three cases fail to ensure the protection of children from the deprivation of their liberty, as per the provisions of international law and national legislation?
- What are the main reasons causing children to be deprived of their liberty in the selected three cases?
- What best practices and recommendations could be proposed at the national level in each of the cases for overcoming these reasons?
- What best practices and recommendations could be proposed at the regional level for overcoming these reasons?

The MENA region is characterised by several protracted armed conflicts, including in Syria, Iraq, Libya, Yemen and in the Occupied Palestinian Territories. Although the region as a whole enjoys immense cultural diversity and richness, its states share certain commonalities in their political history and are situated in a distinct geopolitical reality that make their conflicts interlinked and thus useful to compare. For this reason, the armed conflicts and/or national security situations in Syria, Iraq, Libya and the OPT are selected for closer examination, based on their common features (for instance, the large-scale use of detention of children) and the accessibility of information (for instance, in the case of Yemen there is much less information available about children).

A qualitative multiple-case study methodology is employed for the research, to facilitate exploration of the research questions within the context of the examined phenomenon and using a variety of data sources. Such methodology is appropriate when it is necessary to cover the contextual conditions in the research due to their key relevance to the phenomenon under study (Baxter & Jack 2008: 544-545). The methodology also ensures that the issue is not explored through one lens, but rather through a variety of lenses, allowing for multiple facets of the phenomenon to be revealed and understood (Baxter & Jack 2008: 544-545). Furthermore, the methodology is chosen because it is particularly

useful for evaluating the implications of existing laws and policies and for proposing future interventions that will have a positive impact.

After carefully exploring each of the cases, a comparison of the multiple cases will be made, in order to produce generalised knowledge about how and why particular programmes or policies that share common features have worked or failed to work. Selecting this approach stems from the assumption that despite the differing nature of conflicts and security situations, the three cases share enough common factors that allow for a production of generalisations that can be used as recommendations for regional mechanisms and policies. In order to facilitate the drawing of generalisations, the following conceptual framework will be used when analysing the cases:



*Figure 1: Conceptual framework for analysing cases*

The main information sources used for the research include the data produced as part of the UN Global Study, as well as papers written by other research institutions and reports produced by the United Nations (UN) and international non-governmental organisations (NGOs). The main research strategy involves desk research through an in-depth review of literature. Besides this, two key interviews were conducted, one with an expert from the office of the UN Special Representative of the Secretary-General for Children and Armed Conflict and a second with an expert from Addameer for Prisoner Support and Human Rights Association in Ramallah, to verify the findings gathered from desk research. One limitation faced was a lack of field access, preventing the undertaking of interviews with experts from local NGOs on the Libyan and Iraqi/Syrian

case studies. However, interviews were conducted via zoom meetings to obtain the necessary information.

### **3 Legal framework**

#### **3.1 International legal framework**

International law and standards generally consider children taking part in armed conflicts as victims of these conflicts, rather than perpetrators. In fact, international law prioritises the demobilisation of child soldiers, providing them with the support and rehabilitation needed for them to be able to live normal lives as children again (ICRC 2010).

##### ***3.1.1 International humanitarian law***

In war, children benefit from the general protection of international humanitarian law (IHL) as civilians or combatants. There are also provisions recognising their particular vulnerability and needs in armed conflicts (ICRC 2010). Under the 1977 Additional Protocols to the Geneva Conventions, recruitment or participation in hostilities of children under the age of 15 years, by government or non-state armed groups, is prohibited (Additional Protocols 1977). Nevertheless, and in violation of IHL, a significant number of children around the world are actively taking part in hostilities, or in providing forces or armed groups with assistance, such as in carrying supplies to them (ICRC 2010).

State parties in an international armed conflict are allowed to hold civilians, including children, in administrative detention only for actual security reasons. Administrative detention of children should be an exceptional measure, and a measure of last resort in general. Furthermore, it should be solely allowed in cases where the state has a legitimate reason to believe that the child could pose a serious threat to its security. Even in the case where detention of children is allowed, a review of this detention should take place as soon as possible and at least twice a year, and the child detained should have the right to challenge his or her detention (Nowak 2019).

In a non-international armed conflict, the detention of children generally is governed by domestic law, including the state's obligations under international human rights law (Nowak 2019).

##### ***3.1.2 International human rights law***

The Convention on the Rights of the Child (CRC), which has achieved almost universal ratification, also included the 15-year age limit in relation to child recruitment in armed conflict. Under CRC, when recruiting

children between 15 and 18 years of age, states should prioritise the oldest. The Optional Protocol to CRC on the Involvement of Children in Armed Conflict (OP-CRC-AC) raised the minimum age for recruitment of children in armed conflict to 18 years. A large majority of states have deposited declarations that they are considering a minimum age of voluntary recruitment of at least 18 years of age (OP-CRC-AC 2000). In addition, OP-CRC-AC highlights the importance of demobilisation, rehabilitation and reintegration of children who have been involved in armed conflict.

International human rights law is applicable at all times, including during an armed conflict. Both the International Covenant on Civil and Political Rights (ICCPR) and CRC apply in times of armed conflict. Following international standards, the right to be free from arbitrary detention and fair trial rights are non-derogable, even in times of armed conflict and national security threats (OHCHR 2013). Similarly to IHL, CRC provides that children's deprivation of liberty shall be used only as a measure of last resort and for the shortest appropriate period of time (OHCHR 2019) and as stated in article 37(b) of CRC.

According to article 39 of CRC,

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child (CRC 1989).

International human rights law is applicable to all children, notwithstanding the scale and the seriousness of the committed crime (Nowak 2019). This means that, even when facing a crime that allegedly threatens the national security of a state, international principles governing children's deprivation of liberty must be observed. Even in national security or terrorism-related crimes, the deprivation of liberty shall be used only as a measure of last resort and for the shortest appropriate period of time (Nowak 2019). The CRC provisions concerning the right to personal liberty in article 37 and fair trial rights under article 40 are also applicable to a child who may have committed national security or terrorism-related crimes.

International standards provide that 'children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualised approach' (GC 24 2019).

CRC similarly provides that the treatment of children in the context of national security offences must respect the dignity of the child, ensure the best interests of the child, and generally treat the child with a perspective

toward rehabilitating and reintegrating him or her back into society. CRC further encourages resorting to measures alternative to judicial proceedings and detention in cases where a child has actually committed a crime (CRC 1989).

### **3.1.3 *International criminal law***

The definition of the International Criminal Court (ICC) of war crimes includes the conscription, enlistment or use of children under the age of 15 years to participate actively in hostilities (Nowak 2019). Under the Rome Statute, the Court does not have jurisdiction over children who were under the age of 18 at the time of the alleged commission of a crime (Rome Statute 1998).

### **3.1.4 *United Nations Security Council***

The UN Security Council issued several resolutions on children and armed conflicts. Most prominently, Resolution 2427 provides that no child should be deprived of his or her liberty unlawfully or arbitrarily. It also urges states to establish measures to facilitate handing these children over to the relevant civilian protection authorities and to consider alternative measures to judicial prosecution and detention, with a perspective to rehabilitate and reintegrate children who participated with armed forces or armed groups.

## **3.2 *Regional legal framework***

Regional legal instruments could offer guidelines more tailored to the respective member states in realising the protection of children when deprived of liberty. Various human rights instruments at a regional level exist which could guide improvements in the protection of children in the MENA region. This part will delve into these instruments, their relation to children's deprivation of liberty and the extent to which they are implemented at the national level of the case studies outlined in this article.

### **3.2.1 *African human rights framework***

The African Charter on Human and Peoples' Rights (African Charter) entered into force in 1986 and has been ratified by Libya, among 53 African states. Its commission is established within the predecessor of the African Union (AU), the Organisation of African Unity (OAU) (Bilo & Machado 2018). Although there is no separate section dedicated to the rights of the child, article 18 calls for the protection of the child. Article 18 of the African Charter holds the family to be 'the natural unit and basis of society', and furthermore ensures the protection of the rights of the child 'as stipulated in international declarations and conventions'.

The African Charter on the Rights and Welfare of the Child (African Children's Charter) is a separate instrument of the AU that pays special attention to children's rights in the African context, as well as mentioning the rights of refugee children in particular. Libya also ratified this Charter (Bilo & Machado 2018). In line with CRC, a child is defined as every human being below the age of 18 years. Apart from this, standards relating to non-discrimination and the best interests of the child are defined. The latter is outlined in article 4, which stipulates that 'the best interests of the child shall be the primary consideration in all judicial or administrative proceedings'. Furthermore, article 17 delves into administration of juvenile justice, where all aspects of a child's special treatment are outlined. These include, but are not limited to, the need to ensure that no child 'is subjected to torture, inhuman or degrading treatment or punishment' as well as being 'separated from adults in their place of detention or imprisonment'. Furthermore, reintegration into his or her family and social rehabilitation are seen as an essential aim in the treatment of every child during trial.

### **3.2.3 Arab human rights framework**

The League of Arab States (LAS) adopted the Arab Charter on Human Rights, which entered into force in 2008. Among others, the Charter has been ratified by Libya, Palestine and Syria. This Charter also barely refers to children in specific, apart from article 38 which stipulates that '[t]he State shall ensure special care and protection for the family, mothers, children and the elderly'. A considerable limitation to the rights contained in this charter is the fact that it permits state parties to derogate from their obligations 'in exceptional situations of emergency which threaten the life of the nation' (WHO). Although the Charter has a weak track record in terms of its monitoring and enforcement mechanisms, a treaty body does exist, namely, the Arab Human Rights Committee.

In 1983, the League of Arab States adopted the Charter of the Rights of the Arab Child. This treaty has been ratified by Iraq, Libya, Palestine and Syria, among other LAS member states. While the Charter sets out some basic rights for Arab children, states are obliged to strengthen their legal frameworks in pursuit of those, as the title of the Charter shows these rights do not cover minority children living in Arab states (Osterhaus 2017).

The Arab Framework on the Rights of the Child is a resolution following the Thirteenth Arab Summit in 2001. It aims to incorporate principles such as 'non-discrimination, best interests of the child, and ... the right of the child to life, to development, protection and participation' into LAS member states' legislation (Abdul-Hamid 2008). Hence, it offers a step in between the principles of CRC and integration into national legislation.

Although its status and the number of signatories remain unknown to this day, the Covenant on the Rights of the Child in Islam is the only human rights instrument specifically concerned with Muslim-majority countries as it was adopted by the Organisation of Islamic Cooperation (OIC) in 2005. While it does show a commitment to support children's rights and includes an article on child refugees, the text leaves much room for interpretation. Not only does it lack a defined age limit to be considered a child, but it has also been criticised for lacking provisions referring to how armed conflicts affect children (Mosaffa 2011).

## **4 Main findings**

### **4.1 Case study: Detained children in Syria and Iraq**

The phenomenon of foreign fighters in Syria and Iraq victimises children in various ways. First, the hostile environment in which rights, such as the right to mobility and movement, are denied causes children physical and mental suffering. In many instances arbitrary detention, mistreatment and abuse follow the alleged association with terrorist groups or the alleged association of family members. Those who have been fortunate enough to be freed from detention, children or others, may suffer from stigma and discrimination, including from their own communities. This manifests itself differently based on gender. Therefore, children associated with the activities of terrorist groups need to be viewed first and foremost as victims. The individual circumstances of each case ought to be taken into account and need to be in line with international juvenile justice standards, in particular having regard to the minimum age of criminal responsibility.

#### **4.1.1 Domestic legal framework**

The Iraqi Federal Government and the Kurdistan Regional Government adopted anti-terrorism laws in 2005 and 2006 respectively. These laws are characterised by a broad definition of terrorism, which increases the number of detained children on national security-related charges, including for association with armed groups, primarily ISIS. This remains a key child protection concern as in 2018, over 900 children were detained in the Kurdistan region (KRI). There have been reports of lack of due process for children allegedly affiliated with ISIS and of ill-treatment and torture of children while in detention (HRC 2019: 9).

While the Iraqi Federal Anti-Terrorism Law is silent on fair trial rights and procedural guarantees, article 13 of the KRI Anti-Terror Law stipulates that accused persons should be treated fairly in accordance with the law during interrogation, including through the provision of a lawyer. Torture and inhuman treatment are also explicitly prohibited. However, contrary to international law, article 13 of the KRI Anti-Terror Law allows

for confessions extracted under duress to be used in court if they are supported by other evidence (UNAMI 2020: 6).

In addition, the Iraqi Juvenile Welfare Law applies to persons under the age of 18 years at the time of the offence. While the law envisages several protective measures for children in the justice system and reduces the maximum penalty to 15 years' imprisonment, the minimum age of criminal responsibility is set very low, namely, at nine years of age (UNAMI 2020: 4).

For the Syrian Arab Republic, the Penal Code was amended in 2013 to outlaw the recruitment of children under 18 for either involving them in hostilities or other related acts such as carrying arms, ammunition or equipment; transporting or placing explosives; manning check-points; conducting surveillance or information gathering; or use as human shields. This comes after the ratification of CRC, yet reports reveal that the Syrian government has continued to use children as soldiers or in government-affiliated militias (HRC 2018: 15).

Following the defeat of ISIS, over 55 000 suspected Daesh fighters and their families have been detained in Syria and Iraq. The majority of these individuals are Syrian or Iraqi. They also include alleged foreign fighters from nearly 50 countries. More than 11 000 suspected family members of foreign ISIS fighters are held at the Al Hol camp in North-Eastern Syria in inadequate conditions. The United Nations Children's Fund (UNICEF) estimates that there are 29 000 children of foreign fighters in Syria – 20 000 from Iraq – most of them under the age of 12 years (OHCHR 2019).

#### ***4.1.2 Recruitment and use of children in armed conflict***

Children were recruited and used to actively participate in hostilities. Government forces in Syria and associated militias as well as non-state armed groups are responsible for using children under the age of 18 years in hostilities, undermining their protection in armed conflict and exposing them to further risks to their life (UNSC 2018: 4).

Armed groups and terrorist organisations, including Jabhat al-Nusra, Ahrar al-Sham, Jund al-Aqsa, Nour al-Din al-Zinki and Sultan Murad Brigades, as well as Free Syrian Army affiliated groups, recruited and used children, undermining their protection under international humanitarian law (SGCAC 2019: 2). Financial incentives for boys to join their ranks were created, taking advantage of the deteriorating economic situation in areas under their control. Recruited children have been also used in a variety of unarmed roles, including as cooks, informants and porters.

Additionally, ISIS systematically recruited and used children for direct participation in military operations (HRC 2020: 12). It established 'cub

camps' across its territory, where children of various backgrounds were trained for combat roles and suicide missions, for example, Yazidi boys as young as seven who were forcibly transferred from Sinjar in Northern Iraq in August 2014 and brought into Syria for this purpose.

In Iraq, the UN verified the recruitment and use of 109 children (UNAMI/OHCHR 2018: 5). The majority of cases were attributed to ISIS, which used children as combatants and suicide bombers, including in Syria. Many children had been abducted by ISIS for the purpose of recruitment and sexual abuse. The remaining children had been recruited and used by unidentified groups and other parties, including the Kurdistan Workers' Party and other Kurdish armed groups.

According to verified data from 2014, when official monitoring began, until 2019, close to 5 000 children had been recruited into the fighting in both Syria and Iraq (UNICEF).

#### **4.1.3 Children in detention**

In North-West Syria, the escalation of the conflict combined with harsh winter conditions on top of an already dire humanitarian crisis has exacted a heavy toll on thousands of children in detention centres. At least 28 000 children from more than 60 countries remain languishing in displacement camps in Syria, deprived of the most basic services. Only 765 children have been repatriated to their countries of origin as of January 2020 (HRC 2020: 15).

In Iraq the detention of children on national security-related charges, primarily for alleged association with ISIS, remained a key child protection concern. In 2017 at least 1 036 children (12 girls), including 345 in the Kurdistan region, had been detained and in 2018, over 900 more children. Several reports point out the lack of due process for children allegedly affiliated with ISIS and of ill-treatment and torture of children while in detention (UNAMI/OHCHR 2018: 22).

The UN in 2019 called for the protection, repatriation, prosecution, rehabilitation and reintegration of children with links to UN-listed terrorist groups (UNCCT 60). Yet, different challenges remain for the implementation of this recommendation.

#### **4.1.4 Challenges to repatriation**

First of all, the anti-terrorism legislation adopted by various UN member states plays a role challenging repatriation. Such considerations apply to children whose parents are accused or convicted of being foreign fighters and, therefore, they have their rights infringed upon because of the criminal status of their parents. One of these rights is repatriation, as several states

prevent effective entrance back to the country of origin for the child of a criminal (Van Poecke & Wauters 2021: 2). Therefore, detaining children or otherwise penalising children based on allegations against their parents is discriminatory and is specifically forbidden under CRC (UNCCT 66).

Second, children born in former ISIS-controlled areas also face numerous obstacles to obtain civil registration, since documents provided by armed groups are not recognised by most governments. The situation of displaced children, in particular those persisting in al-Hol or al-Roj camps with familial links to ISIS fighters, is particularly precarious. Of some 45 000 children who were at al-Hol camp, including those born as a result of rape, a large number lack birth registration documents, either due to lost documents or an inability to register. In addition, the denial of the rights of women and girls to confer their nationality upon their children or nationality laws that are discriminatory on other grounds present additional hurdles. This, in turn, jeopardises their rights to a nationality, hinders family reunification processes and puts them at a higher risk of exploitation and abuse. The situation of those born in other camps is also problematic as births were never officially registered with competent authorities, resulting in a lack of civil documentation and rendering children effectively stateless (Amnesty International 2018: 34). Moreover, stripping parents of their nationality has negatively impacted children, including their ability to exercise basic human rights. Proposals by states to repatriate children without their mothers may also run counter to the principle of the best interests of the child.

In addition, a child may be affected by the deprivation of nationality as a counter-terrorism measure. Some states have adopted legislation enabling authorities to revoke citizenship under specific circumstances, such as when the return of a citizen is considered to present a threat to national security or the vital interests of the state. In many states, this measure may only be taken when individuals possess dual or multiple nationalities. Some domestic legislations, however, do not provide protection against statelessness (OHCHR July 2020).

Fourth, most governments do not offer repatriation assistance to citizens in the conflict zones of Iraq and the Syrian Arab Republic, including men and women who are suspected of being foreign terrorist fighters and their children. Some states also lack representation in those areas and are unable to provide effective consular services. For legal, practical and political reasons, some countries offer such assistance only when their nationals manage to appear at their embassies or consulates and their nationalities are established, including through DNA testing. This situation raises questions as to how these states are implementing their obligations to children who, under the law, are entitled to nationality by descent.

When it comes to the responsibility of Iraq and Syria in the repatriation process, data collection and data sharing with relevant countries who seek to repatriate their citizens is central. In this regard, it has been noted that securing data and records and communicating them have presented a real challenge. The repatriation process was greatly affected due to the lack of access to data of who needed to be repatriated. With a substantial number of those detained for not holding official papers (part of it is explained by the notion of the rejection of state building and traditional institutions), correct data on age, citizenship and other details was missing on many occasions. Gender-delineated data was also not always available. Sub-categorisation of minors as infants (0 to four years), children (five to 14 years), and teenagers (15 to 18 years) has an impact on how countries will deal with them but was always mismanaged. These challenges have proven to slow down the repatriation process but, more importantly, to misguide national, regional and global databases used to develop adequate strategies.

A second responsibility is to deal with those who were not repatriated because their countries refused them. As an example, in Iraq there currently are a number of detained French citizens who joined ISIS and whom the French government under Macron's administration refuses to put on trial back home (France 24 2019).

It thus is crucial for all states involved to ensure that their legislation and actions demonstrate their commitment to both effective counter-terrorism measures and protection of human rights, which are not conflicting goals, but are complementary and mutually reinforcing (UN Global Counter Terrorism Strategy 2018: 5).

#### **4.1.5 Good practices**

- Some North African states have signed handover protocols following the UN Security Council Resolution 2427 (2018). The Resolution calls for 'standard operating procedures for the rapid handover of the children concerned to relevant civilian child protection actors', transferring children associated with armed forces and armed groups to child welfare centres. The aim is to ensure rehabilitation and reintegration into society (UNGS 2019: 15).
- In Morocco, rehabilitation is prioritised over criminal prosecution, taking into consideration the fact that prosecution itself may further traumatise children returning from conflict-affected areas. The government has devised a rehabilitation programme aimed at eventually releasing the children to their families. The programme also contains reconciliation aspects developed in consultation with religious scholars (UNCCT 76).

- As per the 23 February 2018 Prime Minister's instruction, the government of France prioritises the unity of siblings concerning children returning from conflict areas. Children over 18 months are placed with a foster family with their siblings. Usually, a judge at a juvenile court convenes a hearing to review a foster order and to order a long-term solution to prevent leaving the child in the foster family's care. This comes in application of the CRC provision stipulating that a child cannot be separated from his or her parents against his or her will unless 'competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child' (UNCCT 51).
- The government of Tunisia allows any child to return to Tunisia as long as the mother is established as a Tunisian and the accompanying child is hers. If the child does not have any documentation to prove his or her birth, the mother or the public prosecutor on behalf of the child files a civil case to establish nationality and civil status through civil registration. DNA testing may be used to establish the child's nationality; however, it has to be conducted under the supervision of the judiciary to ensure the best interests of the child. This comes in line with human rights considerations relating to granting nationality and the practice of performing DNA testing on children (UNCCT 45).
- Several states have opted for children associated with non-state armed groups designated as terrorist to be tried in special courts for children. While many states have been reluctant to bring home child nationals associated with such groups from conflict-affected areas, some states have adopted return plans with clear responsibilities for state authorities concerning the necessary steps for the safety, reintegration and rehabilitation of such children (UNGS 2019: 15).
- In order to strengthen the national legal protection system for children in Syria, the Penal Code was amended in under 18 for either involving them in hostilities or other related acts such as carrying arms, ammunition or equipment, transporting or placing explosives, manning check-points, conducting surveillance or information gathering, or use as human shields. In addition, the national criminal procedures law in Syria stipulates that upon the arrest of a child, he or she should be medically examined by a doctor, and the parent of the child should be informed of the right to have the assistance of counsel. According to article 44(b) of the Juvenile Delinquents Act, the parent or guardian of the child has an obligation to provide them with a lawyer when charged with a crime or misdemeanour should the parent or guardian not have the capacity to do so, the juvenile court will appoint them on their behalf.

- The UN Madrid Guiding Principles (2015) recommend to member states to ensure that their competent authorities are able to apply a case-by-case approach to returnees on the basis of risk assessment, the availability of evidence and related factors. Member states should develop and implement strategies for dealing with specific categories of returnees, in particular minors, women, family members and other potentially vulnerable individuals, providers of medical services and other humanitarian needs and disillusioned returnees who have committed less serious offences. Prosecution strategies should correspond to national counter-terrorism strategies, including effective strategies to counter violent extremism.

## **4.2 Case study: Libya**

In Libya, various factors enable the deprivation of children's liberty. The year 2014 marked the start of Libya's second civil war following the 2011 Arab Spring. Since then, fighting between the Government of National Accord (GNA), the House of Representatives through the Libyan National Army and various militant groups has been plaguing the country. Children are suffering greatly from the indirect and direct consequences of these hostilities. The Libyan population is increasingly fleeing, while children are dying from indiscriminate attacks or recruited for fighting (UNICEF 2020). On top of this, large-scale migration detention is taking place as child migrants are being detained for reasons of national security. These detention centres already put children in dire conditions, which are further exacerbated by the armed conflict being waged in the country. As such, the reasons for detaining children on grounds of national security or due to armed conflict are highly intertwined.

### ***4.2.1 Deprivation of liberty in relation to national security grounds***

Although Libya is in political disarray, it remains a central migration route (Baldwin-Edwards & Lutterbeck 2019: 2241). During Gaddafi's rule, Libya offered mass employment to mostly African migrants (Baldwin-Edwards & Lutterbeck 2019: 2241). Increasingly, it also came to attract migrants aiming to use Libya's central location at the North African coast as a take-off point for Europe. Law 19 (2010) on Combating Irregular Migration and Law 6 (1987) on Regulating Entry, Residence and Exit of Foreign Nationals to/from Libya outline that 'undocumented entry, stay and exit is punishable by imprisonment, fines and forced labour' (Baldwin-Edwards & Lutterbeck 2019: 2255). These laws do not distinguish between forms of migration, be it a refugee, asylum seeker or human trafficking victim (UNSMIL & OHCHR 2016: 11). No formal procedures exist for judicial recourse when detained (HRW (2019)). Contrary to this, international human rights law stipulates that being a migrant 'should not constitute a criminal offence' (UNSMIL & OHCHR 2016: 9). Furthermore, as detention is never in the child's best interests, children should not be

detained based on their parents' migration status (UNSMIL & OHCHR 2016: 9). The minimum age of criminal responsibility in Libya rests at seven years (Nowak 2019: 438). What the Libyan authorities define as a child varies between detention centres, but is always below international law's definition of all persons under the age of 18 years (HRW 2019: 54). Statistics on the numbers of detained migrants are difficult to obtain. Yet, following data shared by the United Nations Support Mission in Libya (UNSMIL), 'children represent about 10 percent of the migrant and refugee population, with more than half of them being unaccompanied' (UNSMIL & OHCHR 2018: 11). Data by UNICEF (2017) on the year 2016 showed similar figures, yet pointed out that the real numbers of migrant children in Libya are at least three times higher. Further data (UNICEF 2017: 4) shows that three-quarters of the migrant children interviewed 'had experienced violence, harassment or aggression'. This includes both verbal and physical abuse, where girls reported a higher incidence than boys (UNICEF 2017: 4).

Out of the 34 detention centres, the Department for Combating Illegal Migration (DCIM) of the Libyan government runs 24 detention centres (UNHCR 2017). Although DCIM is supposedly responsible for migration detention, it seems that centres have fallen into the hands of whichever group holds power in the region in which the centre is located (Baldwin-Edwards & Lutterbeck 2019: 2247). In these centres there are no separate facilities for children (Nowak 2019: 270). Reports illustrate the appalling conditions in which detainees are required to live (GDP 2018: 17; Mangan & Murray 2016; OHCHR 2018). Detainees have reported a lack of 'adequate washing and sanitation' facilities and severely overcrowded cells (Nowak 2019: 596). Furthermore, adequate nourishment is lacking, also for breast-feeding mothers and their new-born children. There is no or insufficient health care for children and adults and 'there are no regular, organised activities for children, play areas or any kind of schooling' (HRW 2019: 2). Moreover, the trauma experienced along the journey to Libya or while detained leaves 'a profound impact on children's mental health' that is not dealt with (HRW 2019: 55). Overall, the lack of effective state oversight of these institutions is one of many factors making the gathering of verified information difficult for organisations working on Libya (Sabarthes 2020).

Human traffickers contribute hugely to the numbers of detained migrant children. Exploitation already starts during the journey to and within Libya (UNICEF 2017). Although 79 per cent of trafficking victims are perceived to be women and children, it is important to note that survivors of sexual exploitation are more likely to be counted than survivors of labour exploitation, which might target more men and boys (UNICEF 2017).

#### **4.2.2 Deprivation in relation to armed conflict**

These violations of children's rights occur against a background of a protracted armed conflict and economic crisis in which human trafficking is thriving (UNICEF 2017: 11). Post-Gaddafi Libya is marked by competing actors making claims on the nation's political leadership, namely, the House of Representatives, the General National Congress and the UN-backed Government of National Accord. Children are detained for the purpose of 'intelligence extraction, sexual exploitation, torture or enforced disappearance on the basis of alleged reasons ranging from charges on national security, counter terrorism, association of family members with insurgent groups to unlawful gatherings' (Nowak 2019: 235). Furthermore, the use and recruitment of children as child soldiers in non-combatant and combatant roles has for years been on the rise (RDCSI 2017). The relationship of armed groups or human traffickers to those with political power seemingly has given them impunity for their acts (HRW 2019: 13).

Arbitrary arrest and subsequent detention of children is used as a tactic within the conflict, as is the recruitment of child soldiers. Identity plays a role, exemplified by the mass arrests of men and boys on the basis of their tribal identity by the Libyan National Army (Nowak 2019: 587). Voicing criticism or merely insufficient support to the Libyan National Army have also been grounds for arrest and detention of children ((Nowak 2019: 588). Detention of particularly women and girls by the Libyan National Army 'for the purposes of prisoner exchanges [or] to extort money from the children's relatives' have been reported (Nowak 2019: 589).

#### **4.2.3 Good practices**

- Working with the principle of the best interests of the child, Libya indicated that 'children are left in the custody of their parents or with a foster family while awaiting judgment' (Nowak 2019: 267).
- On paper, specialised child courts exist in Libya, although they have not been implemented in practice up until now (Nowak 2019: 294).
- At the local level, municipal leaders have shown a commitment to protecting children from the conflict by establishing reintegration centres providing services for the purpose of rehabilitation and reintegration of children under 18 and adults who were involved when they were still under-aged. This happens in cooperation with UNICEF (SRS/CAAC 2016).
- In 2019, UNHCR together with LibAid started a psychosocial programme at the gathering and departure facility in an attempt to provide some normalcy and hope for many formerly detained youngsters. Due to worsening security in Tripoli, the psychosocial

programme for children is being put on hold for the time being (UNHCR 2020).

- Multidisciplinary workshops have been organised for Libyan professionals working with children in conflict with the law. Professionals participated in two training workshops on restorative justice and the use of non-custodial measures for children, where they were provided with knowledge on the fundamental principles of juvenile justice with a particular focus on diversion, community-based rehabilitation programmes and probation (UNICEF 2020). The training sessions are part of a planned programme aimed at developing a juvenile justice system in Libya that responds to the needs of children and which is in line with the UN Convention on the Rights of the Child.

### 4.3 Case study: Israel's occupation of the Palestinian territory

Children's deprivation of liberty is one form of the systematic violations to Palestinians' rights in the context of the Israeli occupation. According to the UN Global Study (2019), an estimated 46 512 Palestinian children have been arrested and detained since 1967 by the Israeli military on alleged security grounds. Throughout 2019, the Israeli military arrested around 5 000 Palestinians, including 889 children. Moreover, it has issued around 1 074 administrative detention orders, including four concerning children (Taha 2020).

#### 4.3.1 *Military law in the Occupied Palestinian Territories*

Israeli military courts in the OPT were established in 1967 as part of applying military law following the occupation (B'Tselem 2017). The military interrogation centres and courts have since been used to prosecute hundreds of thousands of Palestinians, including children, for 'security offences' and offences that are a 'threat to the public order,' including traffic and criminal offences unrelated to security (B'Tselem 2017). Throwing stones represents a common offence with which Palestinian children are charged and prosecuted before military courts (DCIP 2012: 16).

The judges and prosecutors of the military justice system are military officers in regular or army reserve service, putting into question the independence and impartiality of the judges (DCIP 2012: 15). One common practice for cases before military courts is to keep the accused in detention until the end of the legal proceedings (B'Tselem 2017). This violates international law by which Israel is bound, providing that children should only be detained as a measure of a last resort and for the shortest appropriate period of time (CRC 37(b)).

According to Defence for Children International, an average of 500 to 700 Palestinian children are interrogated, detained and imprisoned every

year under the military law (DCIP 2012: 23). In 2009 (and after 42 years of trying Palestinian children as young as 12 in the same courts as adults) the military juvenile court was created (FCO 2012). The order creating the juvenile court included provisions that stipulate some aspects of protection to the child, but many systematic violations to these provisions were reported. According to information provided by practitioners on the ground, the Israeli authorities do not differentiate between adults and children in the treatment during the arrest and in detention, even if there are separate detention facilities in some cases (Taha 2020).

An Israeli military commander can order the administrative detention of a person without charges or trial, including children (DCIP 2012: 44). A military court judge reviews the process, which is described by monitoring NGOs as 'generally based on secret evidence which the recipient of the order is not entitled to see' (DCIP 2012: 44). Administrative detention could last for up to six months and can be renewed for an indefinite number of times. No child was reported to be held in administrative detention between December 2011 and September 2015 (MCW 2019). However, administrative detention orders resumed to be issued against children since October 2015, where tens of children were and continue to be held in administrative detention (B'Tselem 2020). According to interviewee Suhail Taha, there are cases of administrative detention of Palestinian children in Israeli prisons. In addition, it is a systematic practice by the Israeli military to arrest children for hours for interrogation absent minimum guarantees such as contacting their family and/or a lawyer (Taha 2020).

#### **4.3.2 Fair trial rights**

Children held in custody are commonly denied fair trial rights, both pre-trial and throughout the trial. The UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict received testimonies from 166 children reporting ill-treatment and violations of due process by Israeli forces, including physical violence in 2018 (Sabarthes 2020).

Administrative detention for unspecified periods of time and keeping children in custody throughout the entire trial period are both forms of arbitrary detention prohibited by international law. It has also been reported that children are brought in chains before a military court within eight days of their arrest (DCIP 2012: 7). In several cases, it is the first time for them to see a lawyer and/or a parent since the time of their arrest. Access to military courts is heavily restricted and controlled, which affects the ability of families to visit their detained children.

It has been reported that in 29 per cent of cases, detained and interrogated children in the Israeli military court system are shown or forced to sign documents in Hebrew, which they do not understand (DCIP

2012: 37). Also, in cases when a Palestinian child reaches 18 years during the trial, he or she will be considered an adult, including in the judgment (Taha 2020).

### **4.3.3 *Ill-treatment during arrest and detention***

Palestinian children arrested by the Israeli army are subjected to widespread, systematic and institutionalised ill-treatment, including being arrested at night during military raids at their houses where soldiers would tie, blindfold and transfer them to interrogation centres (MCW 2019). These children would not be told where they are being taken, neither would their families (Taha 2020).

Reports further show that the majority of detained Palestinian children experience coercive interrogation, physical and verbal abuse, which in many cases lead to confessions. According to a report by Military Court Watch (2019), UNICEF's 2013 conclusion that 'the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalised' was still valid at the time of the report's publication in June 2019. After their arrest and during interrogation, many children (like adults) would be held in solitary dark cells where they lose any sense of time, have access to no proper means of ventilation, exposed to extreme temperatures and loud music at night in some cases (Taha 2020). The UN Committee against Torture expressed concerns of having children kept in solitary confinement in Israeli prisons. In addition, NGOs reported a general absence of effective complaint mechanism to the violations of applicable domestic and international law in detention (Taha 2020). Children could be kept for up to 40 days for interrogation (Taha 2020).

Detained children are systematically transferred outside the West Bank to prisons inside Israel, which is a violation of article 76 of the Fourth Geneva Convention and the Rome Statute of the ICC (GCIV 1949). Practically, this means that many children get either limited, or no family visits, which is also affected by the movement restrictions between different territories. The UN Human Rights Committee noted in its Concluding Observations for its ninety-ninth session in 2010 that Israel's Supreme Court upheld the ban on family visits to Palestinian prisoners in Israel, including for children.

A Bill was introduced to Congress in the United States of America by Congresswoman Betty McCollum to promote human rights for Palestinian children by ending abusive Israeli military detention practices (HR 2407 Act 2019). Her legislation, the Promoting Human Rights for Palestinian Children Living Under Israeli Military Occupation Act HR 2407, aims to amend a provision of the Foreign Assistance Act known as the Leahy Law prohibiting funding for the military detention of children in any country,

including Israel. The Bill also establishes the Human Rights Monitoring and Palestinian Child Victims of Israeli Military Detention Fund, authorising \$19 million annually for NGO monitoring of human rights abuses associated with Israel's military detention of children. The fund also authorises qualified NGOs to provide physical, psychological and emotional treatment and support for Palestinian child victims of Israeli military detention, abuse, and torture (HR 2407 Act 2019).

#### **4.3.4 Good practices**

The research team working on this article was not able to identify concrete good practices in this case study through desk research. Furthermore, the experts and practitioners interviewed for this article work on either documenting a limited scope of violations, or on providing assistance to detained victims, and thus they were not in a position to provide information on good practices. Some theoretical aspects were noted in the research, but the extent to which these aspects are observed in practice is unknown to the research team.

It has been reported that children are generally held in detention in separate facilities from adults. This also applies during trial as there is a juvenile military court. However, as mentioned above, there is little difference in treatment of detained adults and children (Taha 2020). Some positive aspects in theory include that the court may order a report by a social worker on the detained child, to help the court to take the specific circumstances of the child into consideration in deciding the appropriate sentence (DCIP 2012: 17). Also, judges in juvenile military courts are asked to receive 'appropriate training' to be able to review cases of children (DCIP 2012: 17).

## **5 Comparative analysis and regional approach**

From the case studies delved into in this article it becomes clear that the deprivation of children's liberty does not only have various causes, but also affects different facets of children's lives and future outlooks. When comparing cases in the MENA region, overarching trends appear to be deprivation of liberty due to armed conflict and/or for reasons of national security. Hence the cases discussed aim to showcase the myriad of ways in which this deprivation of liberty occurs. There are many intricacies related to the particular contexts of a specific country, region or conflict that influence the way in which children become deprived of liberty and what recourse is available to them. Besides this, the particularities deriving from a child's identity, legal status or gender ought not to be overlooked.

Nonetheless, from comparing the case studies of Syria and Iraq, Libya, and Israel and the OPT within the MENA region, there are also some

commonalities to be found. The common problems and common good practices are outlined to pinpoint the gaps in the approach through which these countries tackle children's deprivation of liberty in the context of armed conflict and national security, and provide recommendations.

### **5.1 Common problems in the region**

An overall problem faced in the region is armed conflict. The change from 'traditional' wars between states to armed conflict involving non-state actors influences the deprivation of children's liberty as it complicates the implementation of legal standards through the lack of accountability of these non-state actors. Partly due to these widespread conflicts, migratory flows span over the region and beyond. These migration flows in many instances are considered threats to national security. Examples include refugees or migrants in Libya, or the children of (foreign) alleged ISIS fighters in Syria and Iraq. Either due to armed conflict or for reasons of national security, the right to movement and mobility of children thus is denied, often by placing these children in detention.

The question of the age at which a child can be lawfully detained is a salient issue in the region. Standards of criminal responsibility of children clash with international law standards in various ways. In Syria and Iraq, children can be detained and put on trial only by virtue of an alleged affiliation of family members with armed or terrorist groups. Similarly, in Libya it is the status of migrant children's parents that leads them to be detained. In Israel, Palestinian children are detained and put to trial in front of military courts for matters that are unrelated to security.

The detention that follows from these aspects above cannot be considered in the best interests of the child. In addition, it clashes with international legal standards against torture and other cruel, inhuman or degrading treatment due to the conditions in which children are held. Furthermore, these children are placed at risk of being exploited even more. As if the events leading up to a child being placed in a detention centre are not traumatising enough, the living conditions in these centres further aggravate the situation. Moreover, it is clear that the region lacks effective juvenile rehabilitation centres that would allow children to not only cope with their traumatic experiences, but to also re-enter society as constructive members.

In general there are little to no child-appropriate proceedings implemented. On the one hand, this is due to different definitions of who is considered 'a child'. On the other hand, this is due to the fact that children who turn 18 at the time of their trial are suddenly considered adults – regardless of their age at the time of the alleged crime. What further complicates this is the absence of complaint mechanisms upon which these children can rely.

## 5.2 Common good practices in the region

While the situation of detained children in the region seems very disturbing, certain common good practices are worth specifically highlighting.

Prioritising the child's best interests has been at the centre of a substantial number of laws, policies, programmes and practices throughout the region and have been implemented in accordance with the international *corpus juris* on the rights of children. Working with this principle is demonstrated when it comes to the importance of enabling children to have a family that is enshrined in article 8 of CRC. In Libya, children awaiting trial are to be left in the custody of their parents or with a foster family. In Syria and Iraq, uniting children with their mothers for the repatriation process is encouraged if the mother does not pose a threat to the child. Some states such as France which absorbed a number of children returnees ensured the unity of siblings and children above 18 months when placed with a foster family. Being in a family environment is seen as key to developing the sense of identity and belonging after having endured ideological indoctrination and conditioning.

Second, juvenile justice was implemented through the creation of juvenile special courts in Palestine and in Libya – where, so far, it exists only on paper. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, define a juvenile as 'a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult'. In the case of Palestine, however, reports reveal that there is no difference in the treatment of detained adults and children.

Another observed good practice is the deliberate choice of certain countries to prioritise rehabilitation and integration of children over criminal prosecution. This is particularly noted in the case of children repatriated from conflict zones in Syria and Iraq. North African countries, notably Morocco and Tunisia, have opted for this strategy. In Libya, reintegration centres were put in place for children who were involved in the fighting by different armed groups. There often is a stigma that children who belonged to armed groups are immoral, untrustworthy or dangerous and, therefore, many individuals are rejected by community members, making reintegration not an option. Reintegration centres thus are an important step as their existence shows that children who took an active part in conflicts are viewed as victims rather than perpetrators, and as a result require psychosocial rehabilitation and social reintegration.

## 6 Conclusion and outlook

A main regional challenge is the way in which children allegedly associated with armed conflict or national security concerns are perceived

by authorities in the MENA region. In many cases these children are viewed as perpetrators and are accused of committing crimes, notably terrorism-related crimes, thus deserving to be detained and punished. As illustrated above, many children in the region are subjected to pre-trial detention without basic fair trial guarantees. According to international law and standards, children who are detained for association with armed groups are victims of grave violations of human rights and international humanitarian law and, therefore, states should prioritise their recovery and reintegration and not punish them. States should ensure to provide the appropriate rehabilitation and reintegration assistance, in the best interests of the child, including to children of foreign fighters.

In addition, according to international law and standards, states must refrain from the arrest or detention of children, except as a last resort and based on specific and credible evidence of criminal activity. States should also prioritise excluding these children from the criminal justice system as far as possible. Torture and other forms of ill-treatment currently existing in the region must be strictly prohibited. States should treat children charged with criminal offences in compliance with international human rights and child justice standards, including ensuring due process guarantees such as access to counsel, contact with the family and the right to challenge their detention promptly and before an independent and impartial judge.

Due to the continuity and complexity of children's deprivation of liberty in the MENA region, establishing an international or regional specialised mechanism is strongly recommended. This mechanism should collect data, monitor the various situations with regard to children's deprivation of liberty, make recommendations and take measures to ensure compliance with the CRC, OP-CRC-AC, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and other international instruments addressing the rights of the child. Moreover, this mechanism should provide capacity building to different stakeholders including members of governments and civil society, on the importance and the procedures required to protect children's rights, especially in the contexts of armed conflicts and national security concerns.

## References

- Abdul-Hamid Y (2008). *Child rights situation analysis for Middle East and North Africa region* Save the Children Sweden, available at [https://www1.essex.ac.uk/armedcon/story\\_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa%5B1%5D.pdf](https://www1.essex.ac.uk/armedcon/story_id/Child%20Rights%20Situation%20Analysis%20for%20Middle%20East%20and%20North%20Africa%5B1%5D.pdf) (last visited 16 May 2020)

- Amnesty International 'The condemned: Women and children isolated, trapped and exploited in Iraq (2018) Report MDE 14/8196/2018, available at <http://tiny.cc/4zmgmz> (last visited 2 March 2020)
- Baldwin-Edwards M & Lutterbeck D 'Coping with the Libyan migration crisis' (2019) 45 *Journal of Ethnic and Migration Studies* 2241, available at doi: 10.1080/1369183X.2018.1468391 (last visited 26 March 2020)
- Bilo C & Machado AC 'Children's right to social protection in the Middle East and North Africa region – An analysis of legal frameworks from a child rights perspective' (2018) Brasilia and Amman: International Policy Centre for Inclusive Growth and UNICEF Middle East and North Africa Regional Office, available at [https://ipcig.org/pub/eng/RR24\\_Children\\_s\\_Right\\_to\\_Social\\_Protection\\_in\\_the\\_Middle\\_East\\_and\\_North\\_Africa\\_Region.pdf](https://ipcig.org/pub/eng/RR24_Children_s_Right_to_Social_Protection_in_the_Middle_East_and_North_Africa_Region.pdf) (last visited 17 May 2020)
- B'Tselem 'Statistics on administrative detention' (2020), available at [https://www.btselem.org/administrative\\_detention/statistics](https://www.btselem.org/administrative_detention/statistics) (last visited 3 April 2020)
- B'Tselem 'The military courts' (2017), available at [https://www.btselem.org/military\\_courts](https://www.btselem.org/military_courts) (last visited 29 March 2020)
- Defence for Children International (DCIP) 'Bound, blindfolded and convicted: Children held in military detention' (2012) Defence for Children Palestine, available at [https://www.dci-palestine.org/bound\\_blindfolded\\_and\\_convicted](https://www.dci-palestine.org/bound_blindfolded_and_convicted) (last visited 29 March 2020)
- Defence for Children International (DCIP) 'Statement during panel event: "Access to justice for children and young people"' (2019), available at <https://defenceforchildren.org/statement-during-panel-event-access-to-justice-for-children-and-young-people/> (last visited 11 February 2021)
- Osterhaus J (2017) *The Arab human rights system* Bonn: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), available at [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/E-Info-Tool/e-info-tool\\_abc\\_of\\_hr\\_for\\_dev\\_coop\\_the\\_arab\\_hr-system.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/E-Info-Tool/e-info-tool_abc_of_hr_for_dev_coop_the_arab_hr-system.pdf) (last visited 16 May 2020)
- European Asylum Support Office (EASO) 'Syria security situation: Country of origin information report' (2019), available at doi: 10.2847/267982 (last visited 27 February 2020)
- France 24 'Over 400 IS group-linked French nationals detained in Syria, Paris says' (2019), available at <https://www.france24.com/en/20190528-syria-isis-france-nationals-detained-hundreds-kurds-le-drian-idlib-terrorism-death-row> (last visited 11 February 2021)
- Global Detention Project (GDP) Country report immigration detention in Libya: 'A human rights crisis' (2018), available at <https://www.refworld.org/docid/5b8802614.html> (last visited 28 March 2020)
- Human Rights Watch (HRW) "'No escape from hell": EU policies contribute to abuse of migrants in Libya' (2019), available at ISBN: 978-1-6231-36994 (last visited 26 March 2020)
- Human Rights Watch (HRW) "'Maybe we live and maybe we die": Recruitment and use of children by armed groups in Syria (2014), available at ISBN: 978-1-62313-1425 (last visited 24 March 2020)
- Human Rights Council "'They have erased the dreams of my children": Children's rights in the Syrian Arab Republic' (2020), Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic A/HRC/43/CRP.6, available at <http://tiny.cc/ldmzmz> (last visited 19 March 2020)
- Icrc.org 'Children protected under international humanitarian law – ICRC' (2010), available at <https://www.icrc.org/en/doc/war-and-law/protected-persons/children/overview-protected-children.htm> (last visited 17 May 2020)

- Mangan F & Murray R 'Prisons and detention in Libya' (2016) Peaceworks No 119, available at ISBN: 978-1-60127-619-3 (last visited 28 March 2020)
- Military Court Watch 'Monitoring the treatment of children held in Israeli military detention' (2019) Military Court Watch Annual Report, available at [http://www.militarycourtwatch.org/files/server/MCW%20ANNUAL%20REPORT%20\(2019\).pdf](http://www.militarycourtwatch.org/files/server/MCW%20ANNUAL%20REPORT%20(2019).pdf) (last visited 29 March 2020)
- Mosaffa N 'Does the Covenant on the Rights of the Child in Islam provide adequate protection for children affected by armed conflicts?' (2011) 8 *Muslim World Journal of Human Rights*, available at <https://doi.org/10.2202/1554-4419.1220> (last visited 11 February 2021)
- Sabarthes N 'Interview for Global Classroom paper, children's deprivation of liberty in armed conflicts and on national security grounds in the MENA region' 3 August 2020; Interviewee is a political affairs officer at the Office of the SRSR for Children and Armed Conflict in the UN
- Nowak M 'United Nations Global Study on Children Deprived of Liberty' (2019), available at <https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562> (last visited 20 March 2020)
- Romé Dallaire Child Soldiers Initiative (RDCSI) 'Libya country report: Children and security' (2017), available at <https://www.childsoldiers.org/wp-content/uploads/2020/01/Libya-January-2017-Report-1.pdf> (last visited 14 April 2020)
- Special Representative of the Secretary-General for Children and Armed Conflict (SRSR/CAAC) 'Libyan city commits to protect children from armed conflict' (2016), available at <https://childrenandarmedconflict.un.org/2016/04/a-libyan-city-commits-to-protect-children-from-armed-conflict/> (last visited 14 April 2020)
- Taha S 'Interview for Global Classroom paper, children's deprivation of liberty in armed conflicts and on national security grounds in the MENA region' 14 July 2020; interviewee works at Addameer for Prisoner Support and Human Rights Association in Ramallah
- UK Foreign and Commonwealth Office 'Children in military custody' (2012), available at [http://www.childreninmilitarycustody.org.uk/wp-content/uploads/2012/03/Children\\_in\\_Military\\_Custody\\_Full\\_Report.pdf](http://www.childreninmilitarycustody.org.uk/wp-content/uploads/2012/03/Children_in_Military_Custody_Full_Report.pdf) (last visited 29 March 2020)
- UN General Assembly Rome Statute of the International Criminal Court (last amended 2010) 17 July 1998
- UN Global Counter-Terrorism Strategy (2018), available at <https://www.un.org/counterterrorism/un-global-counter-terrorism-strategy> (last visited 12 February 2021)
- United Nations High Commissioner for Refugees (UNHCR) 'Libya: Detention centres' 21 September 2017, available at <https://data2.unhcr.org/en/documents/download/61006> (last visited 27 March 2020)
- United Nations High Commissioner for Refugees (UNHCR) 'The challenge of helping child refugees in Libya overcome trauma' (2020), available at <https://www.unhcr.org/news/stories/2020/1/5e3008ed4/challenge-helping-child-refugees-libya-overcome-trauma.html> (last visited 20 August 2020)
- UN Office of the High Commissioner for Human Rights (OHCHR) 'Abuse behind bars: Arbitrary and unlawful detention in Libya' (2018), available at <https://www.refworld.org/docid/5b5590154.html> (last visited 28 March 2020)
- Office of the High Commissioner for Human Rights (OHCHR) 'Core human rights in the two Covenants' (2013), available at <https://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf> (last visited 17 May 2020)
- OHCHR General Comment 24 – Convention on the Rights of the Child (2019), available at <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf> (last visited 17 May 2020)

- United Nations Security Council, Resolution 2427, S/RES/2427, 9 July 2018
- OHCHR 'UN expert welcomes UK Court of Appeal decision in Shamima Begum case' (2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26107&LangID=E> (last visited 12 February 2021)
- UNICEF 'A deadly journey for children: The Central Mediterranean migration route' (2017), Child Alert, available at [https://www.unicef.org/publications/files/EN\\_UNICEF\\_Central\\_Mediterranean\\_Migration.pdf](https://www.unicef.org/publications/files/EN_UNICEF_Central_Mediterranean_Migration.pdf) (last visited 26 March 2020)
- UNICEF Regional Conference on Children's Access to Justice Conference Report, 25-27 February 2020, Sarajevo, Bosnia and Herzegovina, available at <https://www.unicef.org/eca/media/12831/file> (last visited 20 August 2020)
- United Nations Support Mission in Libya (UNSMIL) & Office of the United Nations High Commissioner for Human Rights (OHCHR) 'Desperate and dangerous: Report on the human rights situation of migrants and refugees in Libya' (2018), available at <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf> (last visited 26 March 2020)
- United Nations Support Mission in Libya (UNSMIL) & Office of the United Nations High Commissioner for Human Rights (OHCHR) 'Detained and dehumanised' Report on human rights abuses against migrants in Libya (2016), available at [https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf) (last visited 26 March 2020)
- UN Human Rights Council: Working Group on the Universal Periodic Review 2020, Iraq, available at <http://tiny.cc/vemgmz> (last visited 10 March 2020)
- UNICEF Handbook: Children affected by the foreign fighters phenomenon: Ensuring a child rights based approach, available at <http://tiny.cc/w5mgmz> (last visited 15 March 2020)
- UNICEF 'Libya: Tens of thousands of children at risk amidst violence and chaos of unrelenting conflict' (17 January 2020), available at <https://www.unicef.org/press-releases/libya-tens-thousands-children-risk-amidst-violence-and-chaos-unrelenting-conflict> (last visited 23 July 2020)
- United Nations Assistance Mission in Iraq (UNAMI) 'Trials under the anti-terrorism laws and implications for justice, accountability and social cohesion in the aftermath of ISIL, January 2020 report', available at <http://tiny.cc/wth0mz> (last visited 11 March 2020)
- Van Poecke & Wauters 'The repatriation of European nationals from Syria as contested before domestic courts in Belgium and beyond' (2021), available at [https://www.researchgate.net/publication/348658530\\_The\\_Repatriation\\_of\\_European\\_Nationals\\_from\\_Syria\\_as\\_Contested\\_before\\_Domestic\\_Courts\\_in\\_Belgium\\_and\\_Beyond](https://www.researchgate.net/publication/348658530_The_Repatriation_of_European_Nationals_from_Syria_as_Contested_before_Domestic_Courts_in_Belgium_and_Beyond) (last visited 11 February 2021)
- WHO *Arab Charter on Human Rights* Health and Human Rights Factsheet, available at <https://www.who.int/hhr/Arab%20Charter.pdf> (last visited 16 May 2020)
- UNHCR 'The challenge of helping child refugees in Libya overcome trauma' (2020), available at <https://www.unhcr.org/news/stories/2020/1/5e3008ed4/challenge-helping-child-refugees-libya-overcome-trauma.html> (last visited 16 May 2020)
- United Nations Security Council Counter-Terrorism Committee Madrid Guiding Principles: A practical tool for member states to stem the flow of foreign terrorist fighters' (2015), available at [https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Madrid-Guiding-Principles\\_EN.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2016/10/Madrid-Guiding-Principles_EN.pdf) (last visited 16 May 2020)

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