

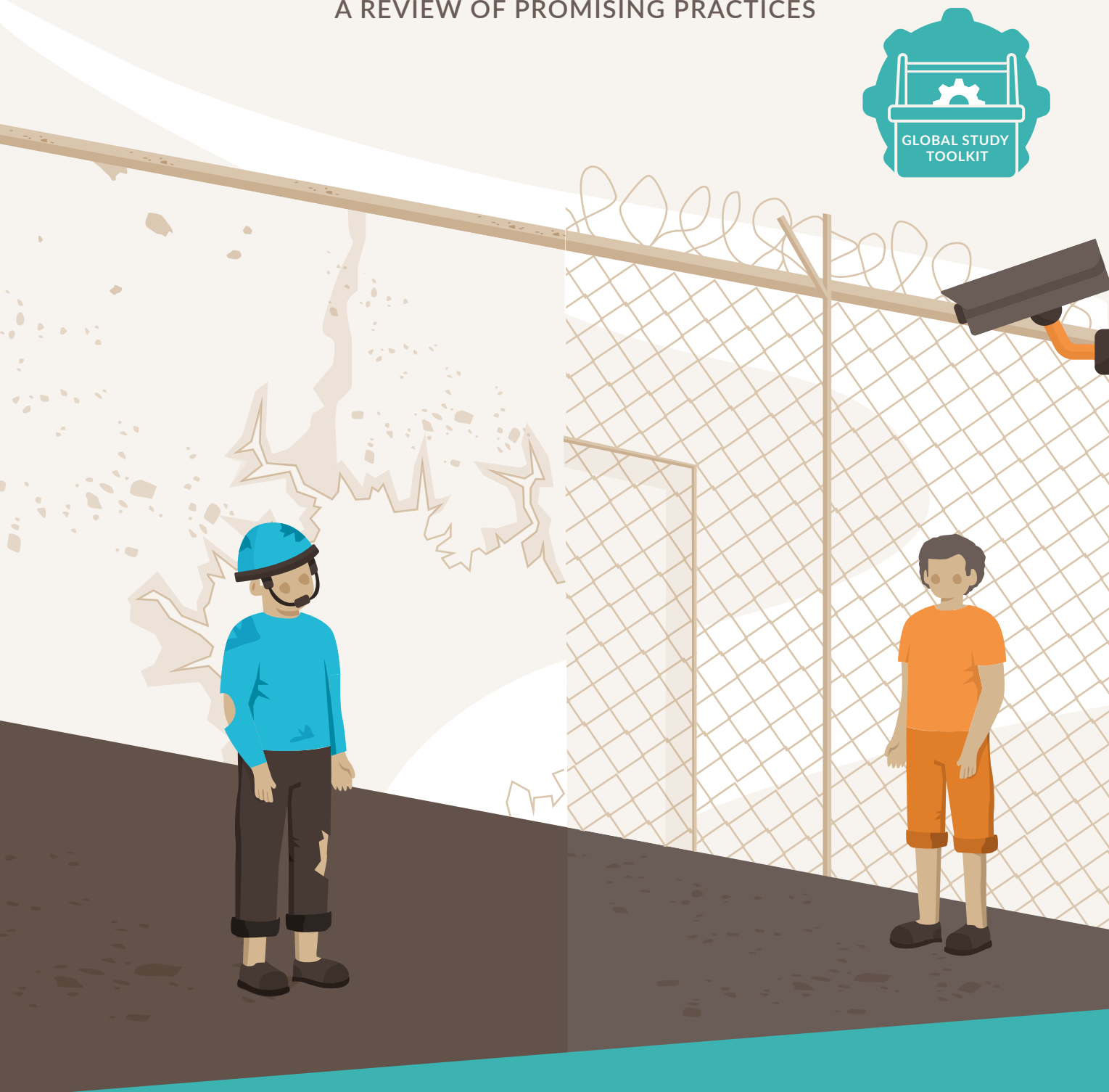
ENDING DEPRIVATION OF LIBERTY OF CHILDREN

**ARMED
CONFLICT**

AND

**NATIONAL
SECURITY**

A REVIEW OF PROMISING PRACTICES



Global Study on Children
Deprived of Liberty



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Summary:

This toolkit is a series of publications, all of which build on the findings and recommendations of the UN Global Study on Children Deprived of Liberty, an extensive study that analyses different areas in which children are deprived of their liberty. This tool provides illustrations of states' practices across the world correlating with the recommendations of the Global Study in the contexts of armed conflict and national security. An interactive version containing promising practices on all the Global Study areas can be found under www.nochildbehindbars.com. If you want to share further examples of cases and/or other materials, please get in contact with us through our email address globalstudy@gchumanrights.org.

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List of Abbreviations

Global Study	UN Global Study on Children Deprived of Liberty
UN	United Nations
OPAC	Optional Protocol on the Involvement of Children in Armed Conflict
CRC	United Nations Convention on the Rights of the Child
IHL	International Humanitarian Law
ICL	International Criminal Law
ILO	International Labour Organisation
ICC	International Criminal Court
Rome Statute	Rome Statute of the International Criminal Court
IDP	Internally Displaced Person
IS	Islamic State, also Islamic State of Iraq and Syria/the Levant or Daesh
HDPN	Humanitarian-Development-Peace Nexus
DDR	Disarmament, Demobilisation and Reintegration
UNODC	United Nations Office on Drugs and Crime
UNICEF	United Nations Children's Fund
CVE	Countering Violent Extremism
LTTE	Liberation Tigers of Tamil Eelam
FARC-EP	Revolutionary Armed Forces of Colombia – People's Army
UNSC	United Nations Security Council

1. INTRODUCTION

This toolkit is part of a series of publications, all of which build on the findings and recommendations of the UN Global Study on Children Deprived of Liberty (thereafter Global Study). This Study analyses different areas in which children are deprived of their liberty, namely: administration of justice, children in prison with their caregivers, in the field of migration, in institutions, in the context of armed conflict and on national security grounds.

The aim of these toolkits is to guide states and other relevant actors to implement the recommendations of the Global Study by providing examples of practice and further tools. The examples are regarded as 'promising practices', as they contain actions that support the implementation of the Global Study recommendations



BOX 1 – Global Number of Children in All Situations of Deprivation of Liberty

Combining two thematic areas of the United Nations Global Study on Children Deprived of Liberty, this toolkit outlines how to implement the Global Study's recommendations for reducing the number of children detained in situations of **armed conflict** and for **national security** reasons.

While the Global Study addresses these thematic areas separately, the toolkit takes a joint approach out of a pragmatic motive: the underlying reasons for detention are often overlapping. Within situations of armed conflict or in non-conflict settings, children are mainly detained for their or their family members' (alleged) membership in armed groups or groups designated terrorist or violent extremist, but also for gang involvement or illegal online activities.

Out of the six thematic areas covered by the Global Study, the two areas addressed by this toolkit only comprise a rather small proportion of all children deprived of liberty worldwide (ca. 37,000 out of 7.2 million children – though a conservative estimate).¹ It is, however, a **highly neglected minority**, often exposed to the most dire human rights situations in terms of access to nutrition, healthcare, education, and experiencing detention after past exposure to, and in some cases involvement in, extreme violence.

More than 1 in 6 children worldwide live in a conflict zone;² and the nature of conflicts is changing towards a higher prevalence of intrastate conflicts with numerous non-state actors, some of them designated terrorist or violent extremist, involved as parties to the conflict. These fragmented, chaotic situations create contexts where states are often unable to effectively monitor and enforce children's rights. Children are thus in many cases deprived of liberty because of security-centred, often militarised approaches by state authorities to regain control. The increasing number of children detained in situations of armed conflict is closely linked to the implementation of strict counter-terrorism measures on a global scale in the past decades since 11 September 2001. This security-centred, militarised approach to counter-terrorism, however, does not only occur in fragile or failed states embroiled in conflict, but is also exercised by authorities in peaceful democracies which want to be perceived as 'tough on terrorism'.

This approach stands in opposition to a principle of international children's rights law which stipulates that children who are associated with armed groups or groups designated terrorist or violent extremist should be considered **not perpetrators but victims** entitled to rehabilitation and reintegration. Detention of children in situations of armed conflict is often accompanied by experiences of extreme violence, injury or disability, trauma, and loss of family members and the home. There are many tools and strategies which promote a human rights-based, child-friendly approach to such minors, which may prevent their detention and instead facilitate their sustainable rehabilitation and reintegration into the communities.

This prioritisation of child protection in contexts of armed conflict and when affiliated with armed groups resulted in the first of currently three UN Global Studies on children's rights: in 1996, the UN Secretary General released the comprehensive report on children affected by armed conflict prepared by independent expert Graça Machel, referred to as the **Machel Report**. It drew attention to a range of issues related to **children and armed conflict**, such as child soldiers, refugee children, and psychological consequences of conflict.³ The children and armed conflict agenda was further consolidated in 2005 through UN Security Council Resolution 1612, which made this topic an important feature of the Security Council's thematic work and established a Monitoring and Reporting Mechanism (MRM).⁴ Within this framework, a categorisation of six grave violations affecting children in times of conflict has been established: recruitment and use, killing and maiming, sexual violence against children, attacks on schools and hospitals, abduction and denial of humanitarian access.⁵ Every year, the Secretary General publishes a report on these six grave violations, naming both state and non-state parties to conflict who are guilty of committing them (except denial of humanitarian access which does not yet qualify as a criterion for listing).⁶ However, despite all these measures, 'there has been only a very small decline in the overall number of parties recruiting or using child soldiers'⁷ or children affiliated with armed groups designated violent extremist since the 1990s.

Therefore, the objective of this toolkit is to **provide guidance and recommendations** for stakeholders, including state authorities, representatives of international organisations and NGO workers, on how to apply a children's rights framework to the challenging context of armed conflicts or in response to national security strategies. It follows an approach that is in line with the UN Convention on the Rights of the Child (CRC) and in particular its Optional Protocol on the Involvement of Children in Armed Conflict (OPAC). The toolkit aims at presenting alternatives to the detention of children and promising practices for removing children from armed groups or groups designated terrorist or violent extremist, reintegrating them into their communities and providing rehabilitation. It can be of use both for informing law-making and creating preventive structures, as well as for developing handover procedures, institutionalising diversion mechanisms, training officials within the child justice system, and supporting de-radicalisation and rehabilitation programmes.

This work is the fourth in a series of toolkits being developed in the context of follow-up activities to the Global Study, supported by the Global Campus of Human Rights and Right Livelihood. It may therefore draw on the rich research of colleagues in linking recommendations and promising practices relating to (1) **the administration of justice**, (2) **migration-related detention** and (3) **children in institutions** to the situation of children deprived of liberty in the context of armed conflict or on national security grounds. The links are evident: these children are often caught up in the justice systems with charges for crimes which usually carry severe penalties (such as membership in a terrorist organisation), when fleeing conflict zones in many cases end up in migration camps often resembling detention camps, or find themselves deprived of their liberty in institutions after having lost or having been separated from their parents. Therefore, it is crucial to understand the four toolkits as closely interlinked and situations of deprivation of liberty of children often at the intersection of many vulnerabilities, contextual factors and actors, and – in particular in relation to this toolkit's topic – as a **fluid process** where children may move from one situation of deprivation of liberty to another. Only by taking this holistic view can we comprehensively address the larger context of depriving children in situations of armed conflict or associated with national security concerns of their liberty and of many of their children's rights more broadly.

¹ See chapter 13 on *Children Deprived of Liberty in the Context of Armed Conflict* and chapter 14 on *Children Deprived of Liberty on National Security Grounds* in: Manfred Nowak, *The United Nations Global Study on Children Deprived of Liberty*, Messaggio, Geneva 2019, pp. 564-653.

² Ibid., p. 567.

³ UNICEF, *The Machel Review 1996-2000: A Critical Analysis of Progress Made and Obstacles Encountered in Increasing Protection for War-Affected Children*, New York, 2000, p. 3.

⁴ UN Security Council, Resolution 1612, S/RES/1612, 26 July 2005.

⁵ Ibid.

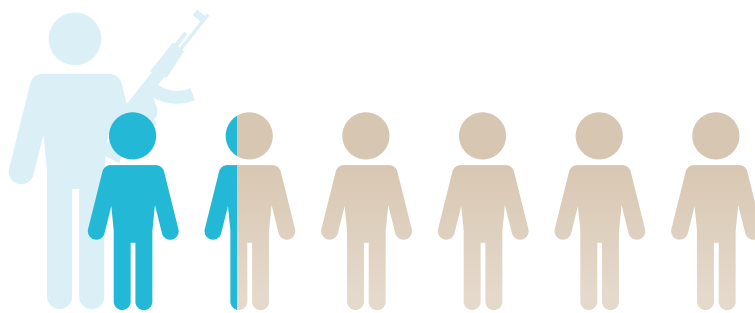
⁶ UN Secretary-General, *Children and armed conflict: Report of the Secretary General*, A/73/907-S/2019/509, 20 June 2019, pp. 40-41.

⁷ Carol Bellamy and Jean Zermatten, *Realizing the Rights of the Child*, Rüffer & Rub, Zürich 2007, p. 230.

2. MAIN FINDINGS OF THE GLOBAL STUDY

2.1 Overview

Globally, over **420 million children** live in situations of armed conflict. In many conflict areas, state armed forces and non-state armed groups recruit children as combatants, guards, spies, messengers, cooks and for other roles, including sexual exploitation.⁸ Save the Children reports that almost 1.3 billion children, which is more than half of all children globally, are living in one of 39 countries where one or more conflict actors were reported to have recruited children.⁹ Children's association with armed actors and involvement in hostilities puts them at a heightened risk of detention.



MORE THAN 1 OUT OF 6 CHILDREN LIVED IN A CONFLICT ZONE IN 2017.

BOX 2 – Children Living in a Conflict Zone

Data collected for the UN Global Study indicate that about **37,000 children** are deprived of liberty in the contexts of armed conflict and national security. This concerns 35,000 children in at least 16 countries in the context of armed conflict,¹⁰ and at least 1,500 children in 31 countries without armed conflict within their territory on grounds of national security. These numbers are conservative estimates.¹¹

It is remarkable that this figure includes an estimated **29,000 foreign children of alleged fighters for the so-called 'Islamic State'** (also known as Islamic State of Iraq and Syria/the Levant or Daesh, hereafter IS) detained in 2019 on grounds of national security in the context of the on-going armed conflict in Iraq and Syria.¹² The true number is likely to be considerably higher, taking into account undocumented cases in camps for internally displaced persons (IDPs), military and intelligence facilities, and makeshift detention centres. These children find themselves at the intersection of the contexts of armed conflict and national security.

⁸ Gudrun Østby, Siri AasRustad & Andreas ForøTollefsen, 'Children affected by Armed Conflict, 1990-2017,' *Conflict Trends*, Peace Research Institute of Oslo (PRIO), 2018.

⁹ Kristin Kamøy, *Stop the War on Children: A Crisis of Recruitment*, Save the Children, 2021, p. 3.

¹⁰ Those countries with conflict situations with the highest numbers of detained children are Syria, Nigeria, Iraq, Israel, the Democratic Republic of Congo, and Somalia.

¹¹ Nowak, pp. 564-653.

¹² UNICEF, 'Protect the Rights of Children of Foreign Fighters Stranded in Syria and Iraq', *Statement of the UNICEF Executive Director, Henrietta Fore*, 21 May 2019, available at [R](#) (accessed 19 April 2022).

In addition, detention rates of children in situations of armed conflict and on national security grounds have increased alarmingly in the past years.¹³ One central reason is the implementation of **counter-terrorism measures** in response to the significant increase in the number of **terrorist attacks** globally since 2001, driven largely by violent extremist groups such as the IS, Boko Haram, the Taliban, and Al-Shabab. Thus, the vast majority of states have adopted new **counter-terrorism legislation** or expanded the scope of existing laws in ways that negatively affect children. Although the recruitment of children into non-state armed groups is unlawful, counter-terrorism legislation often treats children as perpetrators rather than victims, and places them at heightened risk of detention for alleged national security offences. Such laws frequently fail to differentiate between adults and children, **provide fewer procedural guarantees**, and impose **harsher penalties**.

In addition to detentions by state authorities, non-state armed groups (including those designated as terrorist) have recruited thousands of children, in some cases across borders, to carry out suicide and other attacks, and for various support roles. The internet has also provided such groups with new avenues to recruit children, who are often particularly susceptible to propaganda and online exploitation.

Children detained in the context of armed conflict often find themselves **doubly victimised** and caught in a cycle of violence. First, armed groups illegally recruit them, usually through coercion or deception. In result, children may suffer from exposure to extreme violence, trauma and deprivation. Second, state authorities or opposing armed actors detain them for their association with those very groups, often in inhuman and appalling conditions, and in many cases subjecting them to torture or ill-treatment in order to extract confessions, gather intelligence, or as punishment.

Overall **detention conditions** are often extremely poor, with severe overcrowding and grossly inadequate sanitation, food, and health care. In several countries, children have died in custody owing to poor conditions or ill-treatment.¹⁴ Once released, children may face **alienation or rejection from their communities**, and find it difficult to resume education or find employment, making them susceptible to re-recruitment.

2.2 Pathways to Detention

In the context of armed conflict and on national security grounds, children are detained for a variety of reasons:

- Membership in or association with an armed group, or a group termed terrorist or violent extremist
- Alleged association of family members
- Within armed conflicts, because of place of origin, religion or ethnicity
- Hostage taking and ransom
- Sexual exploitation
- Security sweeps
- Gang activities
- Online activity, including apology for terrorism

Many children are deprived of liberty because of their **involvement with non-state armed or terrorist groups**. Several states criminalise mere association with non-state armed groups or groups designated as terrorist or violent extremist, even if no other crime has been committed. Some children who have been recruited across borders by such groups have been detained and prosecuted upon return to their home countries.

¹³ Nowak, pp. 567f and 620f.

¹⁴ Committee on the Rights of the Child, *Concluding Observations on the combined third to fifth periodic reports of the Democratic Republic of Congo*, CRC/C/COD/CO/3-5, 28 February 2017, para. 33.

In **armed conflicts**, children are detained for mere association with an armed group, alleged involvement of family members with such groups, because they appear to be of fighting age, belong to a certain religion or ethnicity, or come from a region where armed groups are active. They are captured during hostilities and military operations, or during security sweeps, including house raids and checkpoint searches. Although most children are detained by government forces, armed groups also detain children as punishment, for recruitment purposes, to extract ransom, for sexual exploitation or as bargaining chips for prisoner exchanges. The overwhelming majority of children detained for association with armed forces are boys, while girls are at a heightened risk of detention for sexual violence or activities of their family members.

In the context of **national security** concerns, children have been detained for and even convicted of terrorism-related offences, not for violent activity but simply for posting content on online platforms such as Facebook or Twitter that is perceived as supporting non-state armed groups designated as terrorist. Criminalising 'apology for' or 'glorification of' terrorism has further led to the detention of young children, despite calls by the UN Secretary General to criminalise by law only direct incitement to terrorism. New legislation based on overly broad definitions of terrorism is also used to detain children for a wide range of activities outside of national security concerns, such as participation in peaceful protests, involvement in banned political groups or alleged gang activity. Additionally, thousands of foreign children from over 80 countries, who joined the IS either alone or with their families, currently remain in de facto prison camps as their countries of origin refuse to accept them back.

Following their arrest, children have been detained without charge or trial for years and, when convicted, often by **adult or military courts**, have sometimes received harsh sentences, including the death penalty. **Torture and ill-treatment** of detained children has been reported in many cases to extract confessions. Diversion or non-custodial solutions are often unavailable. In addition, some states have lowered the **minimum age of criminal responsibility**, or the minimum age allowing for investigative detention, in exceptional cases based on the type or severity of the offence.

3. INTERNATIONAL LEGAL FRAMEWORK

As regards the **relevant international legal framework on child protection**, there are certain provisions applicable to the broader context of child involvement in armed groups or groups termed terrorist or violent extremist, and provisions more specifically applying to either situations of armed conflict or the counter-terrorism sphere.

There are several important principles of the global child protection framework in situations of armed conflict and national security. At the centre is the general **prohibition of recruitment** or use of children by armed forces or non-state armed groups.¹⁵ The CRC confirms 15 years as minimum age for military recruitment in Article 38(2),¹⁶ a provision which has attained the status of customary international law.¹⁷ The gap of protection from children aged 15 to 18 has been addressed through the adoption of the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) in 2000, as of January 2023 ratified by 173 states.¹⁸ It increases the age limit for recruitment of children from 15 to 18 years; however, it imposes different standards on state forces and non-state armed groups. Article 4 OPAC prohibits non-state armed groups 'under any circumstances, [to] recruit or use in hostilities persons under the age of 18 years'¹⁹ while only calls on state parties to 'take all feasible measures to prevent such recruitment and use'²⁰. Overall, both the CRC and OPAC impose on states an obligation of conduct rather than an obligation of result, not effectively banning all underage recruitment. The lack of symmetry has been criticised as 'hampering international efforts to persuade non-state armed groups to release the children they have recruited'²¹.

Another very important concept with regard to child recruitment and children's involvement in situations of armed conflict is that they should be treated first and foremost as **victims of crimes** committed by adults.²² In other words, children 'should be considered primarily as victims of offences against international law; not only as perpetrators'²³, reiterated in the Paris Principles of 2007, a non-binding international instrument protecting children in situations of armed conflict endorsed by 112 States. This is also based on the understanding that child recruitment is barely a voluntary process. Often, recruitment of children is "not a free choice but the result of indoctrination, incitement to vengeance, poverty, destitution, severe pressure, the prospect of physical protection, or simply immaturity"²⁴. Therefore, the prohibition of recruitment holds in all contexts, regardless of whether it is forced or allegedly voluntary.²⁵ Similarly, this should provide a safeguard against criminalising children's mere membership in a non-state armed group or terrorist organisation.

As a consequence, children formerly associated with armed groups should be 'treated in accordance with international law in a framework of restorative justice and social rehabilitation'²⁶. This implies a **rejection of the use of detention** in line with Article 37(b) CRC: 'No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'²⁷. In addition, the UN Human Rights Committee interpreted a state obligation to protect individuals from abduction or detention by other actors operating within their territory, including armed or terrorist groups.²⁸

¹⁵ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, (adopted 25 May 2000, entered into force 12 February 2002) Article 4.

¹⁶ UN Convention on the Rights of the Child, Article 38(2)-(3).

¹⁷ Francesca Capone, 'Worse than Child Soldiers? A Critical Analysis of Foreign Children in the Ranks of ISIL', *International Criminal Law Review*, no. 17, 2017, p. 166.

¹⁸ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

¹⁹ Ibid, Article 4(1).

²⁰ Ibid, Article 4(2).

²¹ Child Soldiers International, 'International laws and child rights' [website], available at [CS](#) (accessed 22 June 2022).

²² UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated With Armed Forces or Armed Groups*, February 2017, p. 9.

²³ Ibid.

²⁴ Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child*, The Hague, Kluwer Law International, 1999, p. 660.

²⁵ Nowak, p. 623.

²⁶ UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated With Armed Forces or Armed Groups*, February 2017, p. 9.

²⁷ UN Convention on the Rights of the Child, Article 37(b).

²⁸ Nowak, p. 572.

Despite primarily understanding children in these contexts as victims of human rights violations, they are not immune from criminal responsibility. Thus, in exceptional cases when children may have committed serious offences or pose a serious threat to a state's national security, detention may be necessary as a last resort.²⁹ In such cases, **international child justice standards** need to be strictly applied, as enshrined in Articles 37 and 40 CRC. Any child that was found to have infringed the law by their involvement with armed or terrorist group has a right 'to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'³⁰. This is in line with the primary consideration that should be given to the **best interests of the child** by all stakeholders, including 'public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'³¹, a key principle enshrined in Article 3 CRC. This approach includes adopting a case-by-case analysis, avoiding to the maximum extent possible judicial proceedings, and where necessary, only at specialised children's courts, and considering alternatives to detention, which encompasses care, guidance and supervision orders, counselling, probation, foster care, educational and vocational training programmes. In addition, states should not lower the minimum age of criminal responsibility based on the type or severity of the offence.³² Broadly speaking, 'a juvenile justice system serves the dual purpose of preserving public safety whilst upholding the rights of the children'³³. Thus, Article 40(3) CRC requests states to introduce a specific child justice system (including laws, procedures, authorities and institutions).³⁴ For more detailed information, see *The Global Study Toolkit on Children Deprived of Liberty in the Administration of Justice*.

This entails that demobilisation, rehabilitation and reintegration of former child soldiers should be prioritised, and that states should take all appropriate measures to promote the **physical and psychological recovery** of child victims in 'an environment which fosters the health, self-respect and dignity of the child'³⁵. This is enshrined not only in Article 39 CRC, but also in Article 6(3) OPAC: 'States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.'³⁶ The Paris Principles establish that children should be released without conditions, and handed over to an independent and mandated civilian process with the goal to returning them to their family and community as soon as possible. During interviews for purposes of family tracing and pairing with potential release programmes, no information may be collected for military purposes.³⁷

Article 2 CRC secures the **extraterritorial application** of the Convention's provisions, calling on states to ensure the rights and freedoms of all children under their jurisdiction.³⁸ This protection requirement may extend beyond state borders, when nationals are involved in armed conflicts or terrorist activities abroad. This provision should be interpreted as to include an obligation on states to prevent children from joining armed or terrorist groups abroad, as well as a responsibility to facilitate their return and rehabilitation in cases where prevention was not feasible. The UN Security Council has specifically applied this to children associated with foreign terrorist fighters, which additionally includes an obligation to provide access to health care, psychosocial support and educational programmes after demobilisation.³⁹

²⁹ Ibid, p. 570.

³⁰ UN Convention on the Rights of the Child, Article 40(1).

³¹ UN Convention on the Rights of the Child, Article 3(1).

³² Nowak, p. 623.

³³ Global Counterterrorism Forum, *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context* (2016), p. 3.

³⁴ UN Interregional Crime and Justice Research Institute, *Children and Counter-Terrorism*, Torino 2016, p. 18.

³⁵ UN Convention on the Rights of the Child, Article 39.

³⁶ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Article 6(3).

³⁷ UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated With Armed Forces or Armed Groups*, February 2017. See also: Nowak, p. 576.

³⁸ UN Convention on the Rights of the Child, Article 2(1).

³⁹ Nowak, p. 626.

In times of armed conflict or when there are serious threats to national security, the international human rights framework allows for **lawful derogations and restrictions**. Derogations may be invoked 'in time of a public emergency which threatens the life of the nation'⁴⁰, which may include armed conflict and serious terrorist attacks. However, certain rights are exempt from derogation, including the absolute prohibition of torture, slavery and servitude, the right to life, the prohibition of detention for debt or the prohibition of retroactive criminal laws.⁴¹ The UN Human Rights Committee further expanded the interpretation of non-derogable human rights provisions in times of emergency to certain fair trial and personal liberty guarantees, such as the presumption of innocence and habeas corpus proceedings.

The CRC does not contain a similar derogation clause, meaning that child rights protection also applies in all situations of armed conflict.⁴² However, there are further provisions under **international humanitarian law** (IHL) applying only to those contexts where children find themselves in armed conflict. The applicable legal framework consists of the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as customary IHL.⁴³ IHL is broadly divided into two categories: situations of international armed conflict (generally between two or more states) and non-international armed conflict (between government forces and armed groups, or among armed groups). In an international armed conflict, administrative detention (internment) of civilians – including children – is admissible only if absolutely necessary for the security of the detaining power, needs to be regularly reviewed, and the right to challenge detention must be granted. There are fewer procedural guarantees for non-international armed conflict, which is governed primarily by domestic law and the generally applicable broader human rights framework.⁴⁴

In addition to IHL, **international criminal law** (ICL) also adds to child protection in armed conflict. The Rome Statute of the International Criminal Court (Rome Statute) includes under Article 8(2)(e)(vii) that 'conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities'⁴⁵ is a war crime. Prior to the International Criminal Court (ICC), the Special Court for Sierra Leone was the first international court to try perpetrators of violations of ICL relating to the recruitment of children.⁴⁶ Further protection is granted to children through their status as victims in Article 26 of the Rome Statute which precludes anyone under the age of 18 at the time of commission of a prosecutable offence from ICC jurisdiction.⁴⁷ This provision served as an example to a number of states who do not prosecute children for crimes committed during their association with an armed group, even though it might be permissible in domestic law. Finally, children in situations of armed conflict are additionally protected by **international labour law**. The recruitment and use of minors for armed conflict constitutes one of the worst forms of child labour according to the International Labour Organisation (ILO).⁴⁸

⁴⁰ ICCPR, Article 4(1).

⁴¹ ICCPR, Article 4(2). See also: Nowak, p. 571.

⁴² UN Interregional Crime and Justice Research Institute, p. 22.

⁴³ Nowak, p. 570.

⁴⁴ Nowak, p. 571.

⁴⁵ Rome Statute of the International Criminal Court (adopted 17 July 1998, last amended 2010), Article 8(2)(e)(vii).

⁴⁶ One example is the case against former Liberian President Charles Ghankay Taylor who was convicted for inter alia the recruitment and use in hostilities of children below 15 years. See: Special Court for Sierra Leone, 'The Prosecutor vs. Charles Ghankay Taylor' [website], available at [SCSL](#) (accessed 22 June 2022); Child Soldiers International, 'Special Court for Sierra Leone – Appeals Chamber confirms conviction of Charles Taylor' [website], available at [CSInt](#) (accessed 22 June 2022).

⁴⁸ Rome Statute of the International Criminal Court, Article 26. International Labour Organization Worst Forms of Child Labour Convention (adopted 17 June 1999, entered into force 19 November 2000) C182.

On the **counter-terrorism framework**, there is no comprehensive treaty on terrorism at the international level, one of the most contested questions being the wording of an internationally binding definition of terrorism. Instead, the international counter-terrorism framework has been established in a sectoral manner, with 19 UN level conventions and related protocols each addressing a specific manifestation of terrorism, the oldest of which was adopted in 1963.⁴⁹ In addition, it is complemented by a series of UN Security Council and General Assembly resolutions, the UN Global Counter-Terrorism Strategy, and customary international law.⁵⁰ These different sources set out a range of acts which states are expected to criminalise and prosecute, such as terrorist bombings, preparation of, cross-border travelling for and financing of terrorism, or providing or receiving terrorist training.⁵¹ A useful soft law instrument on children's rights is the *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context*.⁵²

In addition, children who were recruited by terrorist or violent extremist groups may be considered **victims of trafficking**. The 'recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'⁵³ is defined as trafficking in persons. Exploitation may refer to sexual exploitation, forced labour, organ removal, but also use of persons in armed conflict, terrorist or other criminal activities.⁵⁴ Understanding the linkages between trafficking in persons, transnational crime and international terrorism highlights the need for a strong, multi-faceted protection framework, especially for children as among the most vulnerable victims.

⁴⁹ The conventions cover areas such as civil aviation, hostage taking, nuclear material, or the financing of terrorism. For the full list see: UNOCT, 'International Legal Instruments' [website], available at [R](#) (accessed 24 May 2022).

⁵⁰ Nowak, p. 625.

⁵¹ Nowak, p. 625f.

⁵² Global Counterterrorism Forum, *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context*, 2016, available at [R](#) (accessed 24 April 2022).

⁵³ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 15 November 2000, Article 3(a).

⁵⁴ Nowak, p. 628.

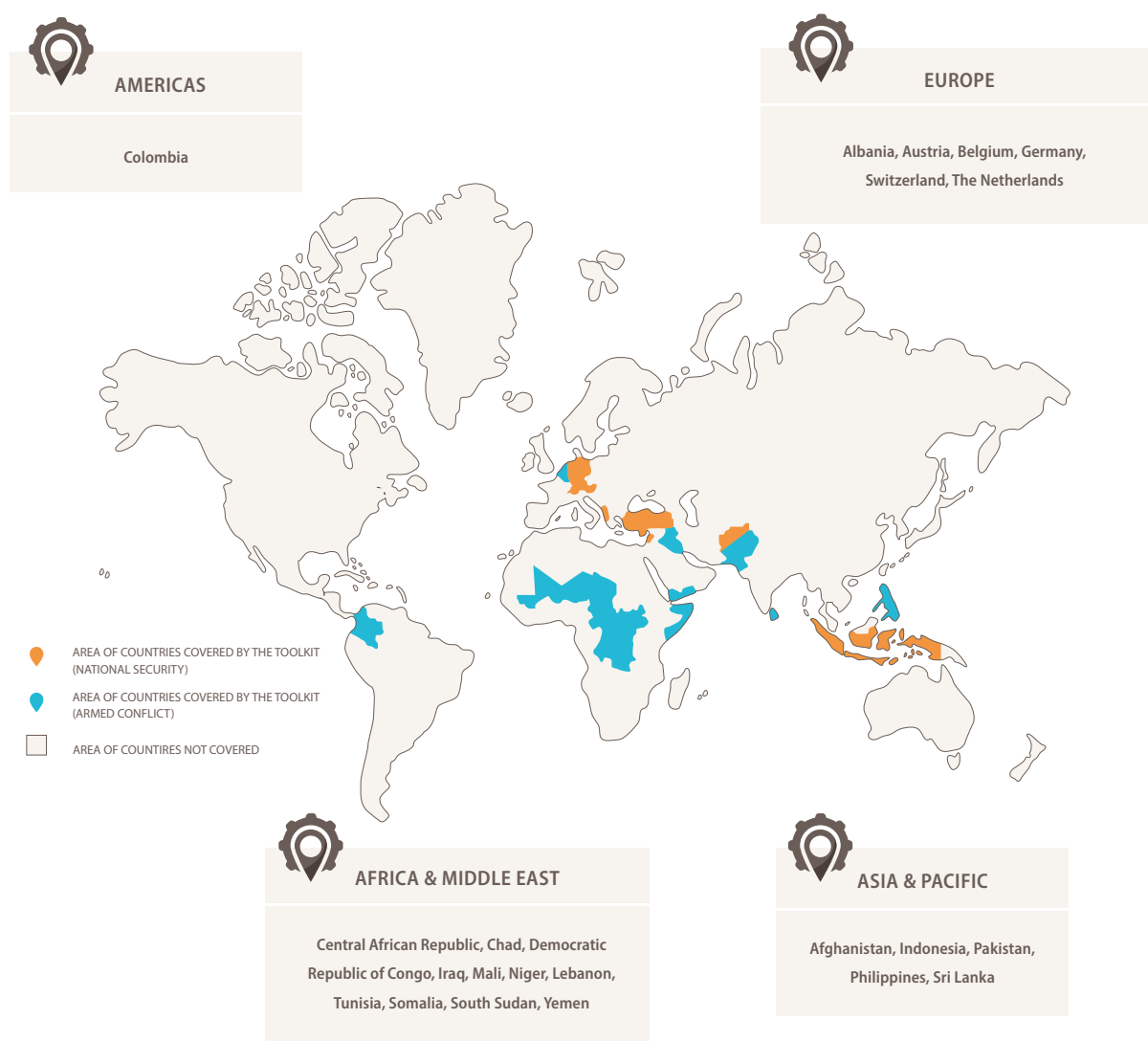
4. GLOBAL STUDY RECOMMENDATIONS & PROMISING PRACTICES

This section looks at the recommendations of the UN Global Study on Children Deprived of Liberty in the contexts of armed conflict and national security. It presents practical recommendations for implementation and promising practices from a variety of countries.

The focus areas of this section are:

1. Child protection in law relating to armed conflict and national security
2. Specific protection for children suspected of national security offences
3. Handover protocols and standard operating procedures
4. Rehabilitation and reintegration
5. Return of foreign children associated with armed groups

For general recommendations that are aimed at promoting diversion, non-custodial measures, and a child-friendly justice system, please refer to the *Global Study Toolkit on Children Deprived of Liberty in the Administration of Justice*. In general, all child protection principles in the administration of justice equally apply to children detained in the context of armed conflict or on grounds of national security. Especially in the latter case, counter-terrorism legislation should under no circumstances be used to circumvent child protection standards.



BOX 3 – Map on Promising Practices

4.1 Child Protection in Law Relating to Armed Conflict and National Security

RECOMMENDATION

In line with UN Security Council Resolution 2427 (2018), states should recognise that children who were detained for association with armed groups, including those designated terrorist or violent extremist, are **first and foremost victims of grave abuses of human rights** (and international humanitarian law in situations of armed conflict). As a priority, states should facilitate their **recovery** and **reintegration** and hold those who recruit and use them to account.

RECOMMENDATION

In line with the *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, states should **not detain, prosecute, or punish children** who have been associated with armed forces or armed groups, including those designated terrorist or violent extremist, solely for their **membership** in such forces or groups. They should similarly not be detained for preventive purposes; alleged offences by family members; intelligence-gathering; purposes of ransom, prisoner swaps, as leverage in negotiations; or for sexual exploitation.

As regards child involvement in armed forces, states should apply a **minimum age of 18 years** not only for the recruitment and use of children by armed groups but also for voluntary recruitment of state armed forces in line with Article 3 OPAC. A majority of state parties to the Optional Protocol have already deposited a declaration with the UN Secretary-General stating that they observe a minimum age of voluntary recruitment of at least 18 years of age.⁵⁵

With regard to child involvement in armed groups, some states have adopted **special laws** or directives aimed at child protection in an attempt to prevent recruitment and secure the release of children. However, similar to the practice around handover protocols and standard operating procedures, the application of child protection laws is inconsistent.

Some examples:

In **Colombia**, the peace agreement between the conflict parties, the government forces and the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP), contained important child protection clauses. An early warning mechanism was introduced to prevent at-risk children from recruitment and use. Oversight of this mechanism was with the Office of the Ombudsman of Colombia, which monitored a selected number of at-risk municipalities, and issued corresponding reports. In addition, as part of the peace process, a special reintegration programme for former child soldiers was established.⁵⁶

⁵⁵ Nowak, p. 573.

⁵⁶ UN Security Council, *Children and armed conflict in Colombia: Report of the Secretary-General, S/2019/1017*, 31 December 2019.

In the **Democratic Republic of Congo**, a directive prohibiting government armed forces from recruiting children and detaining them for their association with armed groups was signed in May 2013 by the Ministry of Defence and Veteran Affairs.⁵⁷ It further includes reference to severe disciplinary and penal sanctions for those violating this directive. The adoption of the directive was accompanied by an order to release and transfer to child protection actors of all children detained for their alleged association with armed groups.⁵⁸

In the **Philippines**, the Special Protection of Children in Situations of Armed Conflict Act was signed into law in January 2019. It establishes a comprehensive programme for children involved in armed conflict, covering preventive measures, rescue, as well as rehabilitation and reintegration. In an effort to reduce the number of children deprived of liberty, it criminalises arbitrary detention or unlawful prosecution of children allegedly associated with armed forces or groups. A multi-stakeholder approach emphasises the involvement of governmental and non-governmental child protection actors, including local communities and faith-based groups.⁵⁹

There are a number of additional examples on how to provide child protection in cases of terrorism-related or violent-extremism-related offences.

In **Afghanistan**, the Law on Combat against Terrorist Offences of 2008 specifies that children accused of terrorist offences must be treated in accordance with the country's child justice law: 'If the offences mentioned in this Law are committed by juveniles, the proceedings to these offences shall be carried out according to the Law on Juvenile Violations.'⁶⁰ This precludes the death penalty or life imprisonment, and orders detention only as last resort and for the shortest period of time for the purposes of rehabilitation and re-education. In practice, however, this law has not been applied in a consistent manner already before the Taliban takeover in 2021,⁶¹ and is increasingly less likely to be effectively implemented.

In **Indonesia**, the 2002 Anti-Terrorism Law similarly prohibits sentencing children to the death penalty and life imprisonment, and prescribes that minimum sentences for terrorism-related offences do not apply to children.⁶³ The applicable child justice framework specifies that children accused of terrorism-related offences should be brought before specialised child courts.⁶⁴

In **Lebanon**, the National Strategy for Preventing Violent Extremism was adopted in 2018. One of the strategy's nine pillars focuses on 'Empowering Youth', and follows an approach that emphasises child and youth involvement in decision-making and strengthening personal capacities to facilitate reintegration. It further includes several provisions relating to child protection, such as the establishment of juvenile detention facilities and rehabilitation centres for minor girls, and the provision of special training on dealing with children accused of violent-extremism-related offences to the police, judges and social workers.⁶⁵

RECOMMENDATION

States should **never** use the gravity of the offence, even when it is linked to national security, as a justification to **lower the minimum age of criminal responsibility**.

⁵⁷ Directive no. VPM/MDNAC/CAB/0909/2013 on the implementation of the Action Plan.

⁵⁸ Nowak, p. 609.


⁵⁹ Republic Act 11188 ('Special Protection of Children in Situations of Armed Conflict Act'), 10 January 2019. See also: Nowak, p. 609.

⁶⁰ Islamic Republic of Afghanistan, *Law on Combat against Terrorist Offences (2008)*, Article 5.

⁶¹ Nowak, p. 648.

⁶³ Republic of Indonesia, Law No. 15 of 2003, 'Anti-Terrorism Law'.

⁶⁴ Nowak, p. 648.

⁶⁵ Presidency of the Council of Ministers (Lebanon), *National Strategy for Preventing Violent Extremism*, 2018. Available at 

Article 40(3)(a) CRC requires state parties to establish a minimum age of criminal responsibility,⁶⁶ meaning 'the age at which a person can be charged with a criminal offence and processed within the criminal justice system'⁶⁷. The UN Committee on the Rights of the Child calls on states to set the minimum age of criminal responsibility not lower than 14 years.⁶⁸ In addition, the Committee expressed its concern about 'practices that permit the use of a lower minimum age of criminal responsibility in cases where, for example, the child is accused of committing a serious offence'⁶⁹. In relation to children involved with armed forces or groups, 'psychological evidence demonstrates an inability to adequately consent to involvement in violent activity and a lack of capacity to fully understand the consequences of this involvement'⁷⁰, underlining the importance of distancing children from criminal responsibility in cases of recruitment or involvement at a young age. In addition, courts or judges are sometimes awarded discretionary powers to assess children's levels of maturity, often without including a professional psychological evaluation.⁷¹ After the adoption of UNSC Resolution 2178 and the following amendments to national counter-terrorism legislations, many states expanded their capacity to prosecute individuals for terrorist crimes.⁷² This includes the criminalisation of membership in a terrorist group in a number of countries, which, however, should not extend these charges to minors.

In response to international efforts to raise the minimum age of criminal responsibility, several countries have done so, even beyond the Committee's recommendation of minimum 14 years.

In **Argentina**, for example, the minimum age of criminal responsibility is 16 years. Children under the age of 16 cannot be held criminally liable as they are presumed to lack criminal intent.⁷³

Further good practices and examples can be found in the *Global Study Toolkit on Children Deprived of Liberty in the Administration of Justice*.

4.2 Specific Protection for Children Suspected of National Security Offences

RECOMMENDATION

States should explicitly exclude children from national counter-terrorism and security legislation, and ensure that children suspected of national security offences are treated **exclusively within child justice systems**, with full child justice guarantees, including access to counsel, the right to challenge their confinement, protection of privacy, and contact with their families.

RECOMMENDATION

States should ensure that counter-terrorism legislation with penal sanctions is **never used against children peacefully exercising their rights to freedom of expression, freedom of religion or belief, or freedom of association and assembly**.

⁶⁶ 'States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.' See: UN Convention on the Rights of the Child, Article 40(3).

⁶⁷ Child Rights International Network, 'Minimum Ages of Criminal Responsibility in Europe' [website], available from [R](#) (accessed 26 June 2022).

⁶⁸ UN Committee on the Rights of the Child, *General Comment No. 24 (2019): Children's rights in the child justice system*, 18 September 2019, para. 22.

⁶⁹ *Ibid.*, para. 25.

⁷⁰ EU Radicalization Awareness Network Centre of Excellence, *RAN Manual – Responses to returnees: Foreign terrorist fighters and their families*, Amsterdam 2017, p. 69.

⁷¹ *Ibid.*

⁷² European Parliamentary Research Service, *The return of foreign fighters to EU soil: Ex-post evaluation*, Brussels 2018, p. 43.

⁷³ Regimen Penal de la Minoridad, Ley No. 22.278 of 25 August 1980, Argentine Republic.

Criminal investigation may still extend to children above the respective minimum age of criminal responsibility in certain cases, i.e. 'where a child is classified as a security threat, juvenile detention is considered a possible option'⁷⁴. Again, it is important to see the children's victim status first and be guided by the best interests of the child as a primary consideration.⁷⁵ The *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context* suggests that different experts should advise in this decision, including psychologists or social workers.⁷⁶ It is very important to use this expertise in analysing individual cases as children involved in terrorist-related crimes usually not share a specific profile.

Some states have also incorporated **child protection clauses in their counter-terrorism legislation**, emphasising the competency of the national child justice systems or precluding certain sentences in counter-terrorism cases involving children. In this context, the *Neuchâtel Memorandum* provides specific guidance regarding the treatment of children allegedly involved in terrorism activities. They put forward a list of thirteen good practices⁷⁷:

- **Good Practice 1:** Address children alleged to be involved in terrorism-related activities in accordance with international law and in line with international juvenile justice standards.
- **Good Practice 2:** Assess and address the situation of children in a terrorism-related context from a child rights and child development perspective.
- **Good Practice 3:** Address children's vulnerability to recruitment and/or radicalization to violence through preventive measures.
- **Good Practice 4:** Develop targeted prevention strategies with a strong focus on the creation of networks to support children at risk.
- **Good Practice 5:** Address children prosecuted for terrorism-related offenses primarily through the juvenile justice system.
- **Good Practice 6:** Apply the appropriate international juvenile justice standards to terrorism cases involving children even in cases that are tried in adult courts.
- **Good Practice 7:** Consider and design diversion mechanisms for children charged with terrorism-related offenses.
- **Good Practice 8:** Consider, and apply where appropriate, alternatives to arrest, detention, and imprisonment, including during the pre-trial stage and always give preference to the least restrictive means to achieve the aim of the judicial process.
- **Good Practice 9:** Apply the principle of individualization and proportionality in sentencing.
- **Good Practice 10:** Hold children deprived of their liberty in appropriate facilities; support, protect, and prepare them for reintegration.
- **Good Practice 11:** Develop rehabilitation and reintegration programs for children involved in terrorism-related activities to aid their successful return to society.
- **Good Practice 12:** Design and implement specialized programs for terrorism cases to enhance the capacity of all the professionals involved in the juvenile justice system.
- **Good Practice 13:** Design and implement monitoring and evaluation programs to ensure the effective implementation of international juvenile justice standards.

⁷⁴ European Parliamentary Research Service, p. 48.

⁷⁵ Global Counterterrorism Forum, *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context*, 2016, available at [R](#) (accessed 24 April 2022), p. 3.

⁷⁶ *Ibid.*, p. 8.

⁷⁷ *Ibid.*

Some examples:

In **Austria**, children or young persons charged with terrorism-related offences and in pre-trial detention are required to participate in Social Network Conferences (SoNeKos), which are established by the Austrian Probation Services and run by a non-governmental organisation. The conference aims at reducing detention periods and ensure better (re-)integration into social and school/work environments. It brings together different stakeholders, including the offender, their family, friends, teachers, and other relevant persons from their environment, as well as the probation officer. Tailored programmes are developed, including educational and vocational goals and therapy, which enter into force upon a judge's approval.⁷⁸

In **Lebanon**, male minors sentenced for violent extremism related crimes are detained in the juvenile wing of Roumieh Prison. In 2013, the Ministry of Justice launched a programme together with UNODC, the 'Reconciliation with Life' project targeted at these juveniles. It centred at eliminating differentiation between these juveniles and juveniles detained for other crimes, reducing stigma and labelling. Multicultural activities were organised to expose juveniles to increase their knowledge on different world views, deconstruct religious misconceptions and encourage critical thinking. In addition, the juveniles were offered access to vocational activities, including sewing, mechanics, electricity, informatics, and other fields. Finally, the programme also provided training and tools to the prison staff.⁷⁹

4.3 Handover Protocols and Standard Operating Procedures

RECOMMENDATION

In line with UN Security Council Resolution 2427, states should adopt and implement standard operating procedures for the **immediate and direct handover of children** from military custody to appropriate child protection agencies.

In the context of demobilisation of child soldiers, detention of children can be avoided by adopting **standard operating procedures**, including **handover protocols** for the release and transfer of detained children associated with armed groups to child protection agencies for rehabilitation and reintegration. Defined by Watchlist on Children and Armed Conflict: 'Handover protocols are typically agreements by a government and/or allied armed forces or groups, to swiftly transfer children to civilian

authorities (which may include an appropriate government ministry, and/or the UN and its partners) for reintegration when these children are detained/in the custody of/under the command and control of security actors for their alleged association with an armed group or force.'⁸⁰

⁷⁸ OIJ, *Children, the justice system, violent extremism and terrorism: An overview of law, policy and practice in six European countries*, 2018, pp. 35-37.

⁷⁹ Terre des Hommes, *Access to Justice for Children and Youth in counter-terrorism contexts: An analytical and practical guide to foster the development and implementation of specialised, child rights-based and accountable justice systems*, 2020, pp. 31-32.

⁸⁰ Watchlist on Children and Armed Conflict, *A Path to Reintegration: The Role of Handover Protocols in Protecting the Rights of Children Formerly Associated with Armed Forces or Armed Groups*, New York 2020, p. 9.

The UN Security Council in its Resolution 2427 encourages states to establish ‘standard operating procedures for the rapid handover of these children to relevant civilian child protection actors’⁸¹. Thus, these standard operating procedures, including protocols, are usually signed by the government, often together with UN agencies and other child protection stakeholders present in the country, in particular the relevant UNICEF offices. It is usually more difficult to negotiate handover protocols in counter-terrorism contexts because of the heightened sensitivities around the security threat linked to children formerly associated with terrorist or violent extremist groups.⁸²

As established by Watchlist on Children and Armed Conflict, handover protocols should contain the following elements:⁸³

- An assigned government agency notifying civilian child protection authorities about children allegedly associated with armed groups in its custody;
- In custody, children should be separated from adults, and boys should be separated from girls; and they should be protected from violence and receive basic care including food and shelter;
- Armed forces handing the children in custody over to relevant civilian authorities, ideally within a very short amount of time;
- Civilian child protection actors ensuring swift and orderly family reunification, interim care, cross-border repatriation, or another durable solution;
- State authorities applying preparedness measures, such as appointing focal points for the implementation and dissemination of the protocol.

Some examples:

In **Mali**, handover protocols were signed in 2013 between the government and UNICEF. These stipulated a handover of children to the government agency in charge of child protection or UNICEF within 48 hours. The protocols immediately resulted in the release of many boys who had been detained for their alleged association with armed groups.⁸⁴

In **Niger**, the government signed handover protocols for the protection of children associated with armed groups, including terrorist organisations like Boko Haram. It provides for immediate handover of detained children to child protection services, except when flagrant crimes have been committed, and prohibits interrogation and collection of information (for military or media purposes) to protect the children's privacy.⁸⁵ Similar protocols have been signed, or negotiations initiated, for the other countries in the Lake Chad area, which are similarly affected by terrorist activities of Boko Haram, including **Nigeria**, **Chad** and **Cameroon**.⁸⁶

In **Somalia**, standard operating procedures were adopted for children formerly associated with armed groups, some of them violent extremist, like Al-Shabab, in 2014. Similar to the example in Mali, children were required to be handed over to child protection agencies or UNICEF within 72 hours of entering into custody (which, however, was not always effectively implemented in a timely manner).⁸⁷

In **Yemen**, a handover directive was signed with an armed group, the Ansar Allah (previously known as Houthis) in April 2020. This is the only protocol signed with a non-state actor, and resulted in the release of 68 children from detention.⁸⁸

⁸¹ UN Security Council, Resolution 2427, S/RES/2427, 9 July 2018.

⁸² Watchlist on Children and Armed Conflict, p. 3.

⁸³ Ibid, pp. 11-12.

⁸⁴ Nowak, pp. 607f.

⁸⁵ Ibid.

⁸⁶ Watchlist on Children and Armed Conflict, pp. 11-12.

⁸⁷ Ibid, p. 608.

⁸⁸ Ibid, p. 9.

4.4 Rehabilitation and Reintegration

RECOMMENDATION

States should ensure that children formerly associated with armed forces and armed groups, including those designated terrorist or violent extremist, are provided with **appropriate rehabilitation and reintegration assistance**, and where possible and in the best interests of the child, family reunification. Such assistance should take into account the specific situation and needs of girls associated with armed forces and armed groups in order to guarantee equal access to rehabilitation and reintegration assistance.

RECOMMENDATION

States should take all necessary measures to ensure that **rehabilitation programmes are neither punitive nor discriminatory**, do not amount to arbitrary detention, and are not used as a means to stifle children's right to freedom of expression or to access information.

The previously described handover protocols and standard operating procedures may form part of a wider disarmament, demobilisation and reintegration (DDR) framework. It describes a process in which 'children shall be separated from armed forces and groups, handed over to

child protection actors and supported to demobilize and reintegrate into families and communities'⁸⁹. After extracting children from armed forces or groups through disarmament and demobilisation, the important process of reintegration begins. In this context, reintegration is defined by the UN as 'the reintroduction back into society of children who were formerly associated with armed groups or armed forces in a peaceful and sustainable way'.⁹⁰ They further specify: 'Whether they were active combatants, or scouts, cooks or porters, their experiences leave them traumatized and robbed of a childhood. Reintegration services include prolonged psychosocial support, vocational training, quality education, health care and cater to other vital needs. Reintegration efforts should be supported by long-term, multi-year funding mechanisms.'⁹¹ UN DDR similarly describes the multisectoral needs of children formerly associated with armed forces and groups: 'boys and girls often require support in (re)accessing education, an alternative livelihood, medical and mental health services, including reproductive health services and sexual violence recovery services, as well as other services that promote life skills and help them establish a meaningful role in society'.⁹²

⁸⁹ UN DDR, 'IDDRS Framework, Module 5.20: Children and DDR', available at [R](#) (accessed 17 April 2022).

⁹⁰ UN Office of the Special Representative of the Secretary-General on *Children and Armed Conflict, Reintegration of Former Child Soldiers*, New York 2018.

⁹¹ Ibid.

⁹² UN DDR, 'IDDRS Framework, Module 5.20: Children and DDR', available at [R](#) (accessed 17 April 2022).

The **Global Coalition for Reintegration of Child Soldiers**, an alliance of UN member states, UN agencies, the World Bank, civil society organisations and academia, co-chaired by the Office of the UN Special Representative on Children and Armed Conflict and UNICEF, published briefing papers on improving child reintegration programming and funding. Their main recommendations in this regard are⁹³:

- Promote child reintegration as the **shared responsibility of multiple stakeholders** across sectors and the Humanitarian-Development-Peace nexus (HDPN);
- Make reintegration support available to children for a minimum of **3-5 years** per child, based on the needs of the child and his or her family and community;
- Build programming around one coherent framework with **measurement tools and indicators** that can be used across the continuum;
- Conduct **research** and generate **evidence** at the field level to show which interventions in support of child reintegration are most effective and warrant further investment;
- Fund **community-based reintegration programming** that can address children's needs in the medium- to longer-term, and that span the HDPN continuum seamlessly;
- Leverage existing **funding** mechanisms to achieve results, and create new mechanisms as required;
- Ensure access to reintegration support for boys and girls **without discrimination**.

As part of a broader DDR framework, government agencies, UNICEF and international and local non-governmental organisations run a variety of **rehabilitation and reintegration programmes**, providing health services, psychosocial support and family reunification.⁹⁴ Education may also play an important role, increasing future employment opportunities of former child soldiers and instilling a sense of normalcy and safety. Access to education and becoming part of the labour force also assists children in re-defining their identity from soldier to civilian.⁹⁵ **Community-based reintegration** can also be essential by addressing potential stigma and reprisals against released children and encourage recovery of the entire community.⁹⁶ This is often particularly important for girls, who may risk rejection from their local communities after having been sexually exploited by members of armed groups. Association with armed groups designated terrorist might also decrease chances of successful reintegration because of the heightened stigma attached to children formerly associated with them. This often also results in prolonged detention in camps for refugees or internally displaced persons.⁹⁷

⁹³ Highlights added. See: Global Coalition for Reintegration of Child Soldiers, *Improving Support to Child Reintegration: Summary of findings from three reports*, New York 2020.

⁹⁴ Information provided by UNICEF, March 2019.

⁹⁵ Theresa S. Betancourt (et al.), 'Research Review: Psychosocial adjustment and mental health in former child soldiers – a systematic review of the literature and recommendations for future research', *Journal of Child Psychology and Psychiatry*, January 2013, Vol. 54(1), pp. 17–36.

⁹⁶ Nowak, pp. 611–612.

⁹⁷ Ibid, p. 611.

Some examples:

In the **Democratic Republic of Congo**, research on girls formerly associated with armed groups established several important factors for successful reintegration:⁹⁸

- Full acceptance by the girls' families and communities upon return as the foundational factor, helping them to regain their social value and overcome stigma;
- Inclusion into existing community activities;
- Educational opportunities, to strengthen their roles in the community;
- Work opportunities and access to the labour force.

In **Iraq**, many children formerly associated with ISIS are deprived of liberty in prisons or in secluded sections of refugee camps. Nevertheless, there are local examples of successful reintegration activities: the town of al-Shura in northern Iraq, for example, accepted back women and children formerly associated with ISIS, and elders are assisting reintegration into local schools. Local leaders have strongly advocated with government authorities to allow local families to return after their involvement with ISIS, emphasising the importance of reintegration and education of children to prevent further radicalisation, continuously fuelling the conflict in the region. Essential to the success of the initiative was the leadership by the town's elders and an extended family willing to accept back their relatives.⁹⁹

In **Mali**, UNICEF provided former child soldiers support during their stay in transit centres through offering a variety of services, including nutrition and health, psychosocial support, education opportunities, and support to family reunification.¹⁰⁰

In **Pakistan**, a project was launched in 2017 to establish a rehabilitation centre for boys formerly associated with the Taliban. The centre offered primary and secondary education, vocational and technical training, as well as psychological and religious support. The centre housed boys who join voluntarily, were sent by their parents or transferred after military arrest, and usually remained for about two years before they return to their communities.¹⁰¹

In **South Sudan**, childcare centres have been established, housing children who were released from detention following their alleged association with armed groups and are awaiting family reunification. At these centres, children are provided a safe place to stay, access to psychosocial support and health screenings, and participate in reintegration activities including educational games and counselling.¹⁰²

Similarly, in **South Sudan**, comprehensive research on the reintegration of girls formerly associated with armed groups was conducted by UNICEF to provide recommendations for successful reintegration and rehabilitation. Besides many of the factors listed above in the context of the Democratic Republic of Congo, this research adds as potentially important factors psychosocial support, the healing power of supportive listening, possibilities to practice their religion and engaging religious leaders, support for small businesses, and medical and psychosocial attention to experiences of sexual violence.¹⁰³

⁹⁸ Child Soliders International, *What the Girls Say: Improving practices for the demobilisation and reintegration of girls associated with armed forces and armed groups in Democratic Republic of Congo*, London 2017, pp. 63f.

⁹⁹ Nowak, pp. 611-612.

¹⁰⁰ Ibid, p. 610.

¹⁰¹ Terre des Hommes, *Access to Justice for Children and Youth in counter-terrorism contexts: An analytical and practical guide to foster the development and implementation of specialised, child rights-based and accountable justice systems*, 2020, p. 33.

¹⁰² UN Office of the Special Representative of the Secretary-General on Children and Armed Conflict, *Reintegration of Former Child Soldiers*, New York 2018.

¹⁰³ UNICEF, *Practical Guide to fulfil the reintegration needs and rights of girls formerly associated with armed forces and armed groups in South Sudan*, New York 2019.

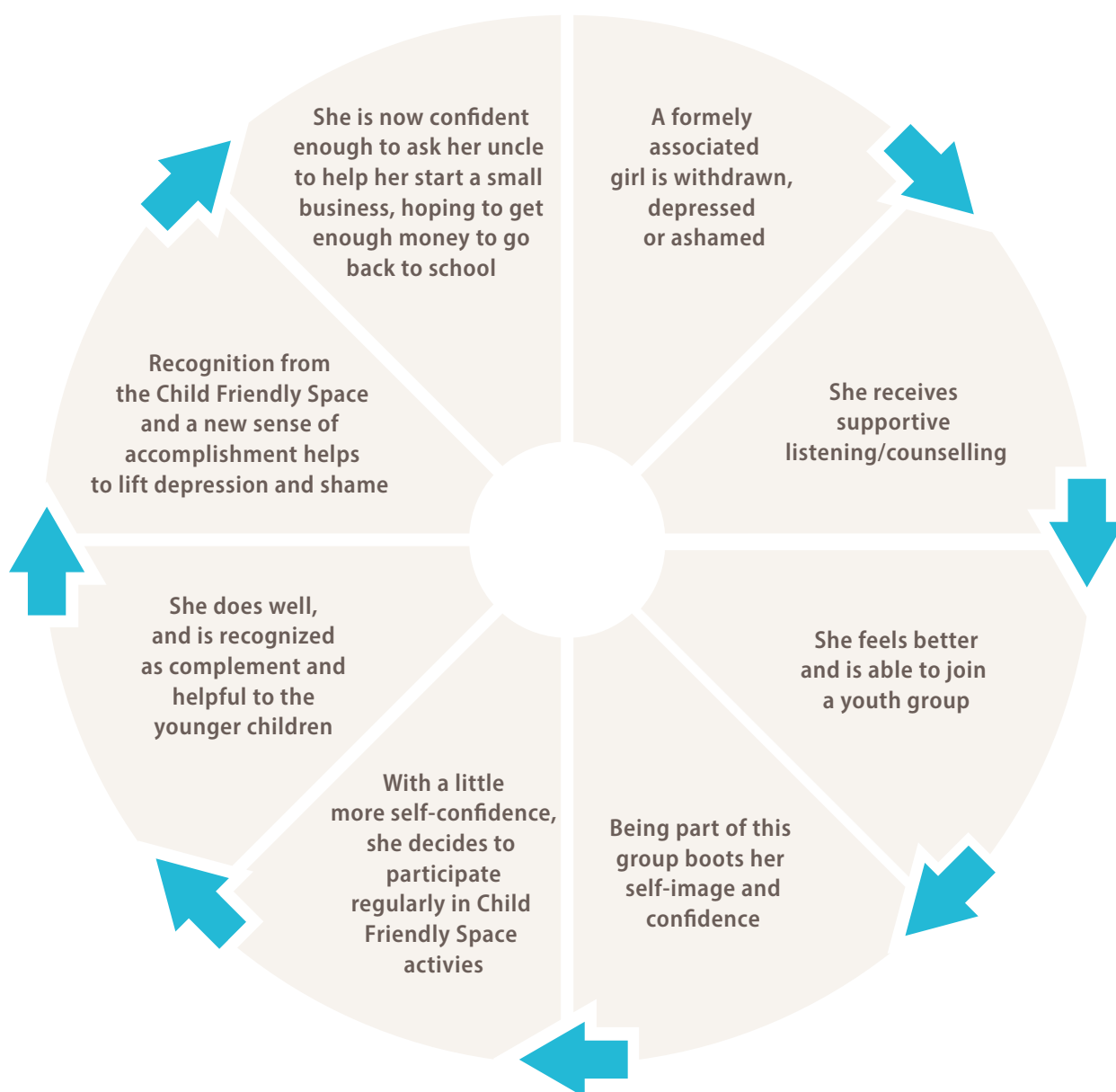


Image: An example for psychosocial recovery through positive socialising activities. Source: UNICEF 2019.¹⁰⁴

In [Sri Lanka](#), children were prioritised in the government's rehabilitation programme for detained former members of the Liberation Tigers of Tamil Eelam (LTTE). It focused on rehabilitation by developing formal schooling and vocational training programmes, psychosocial and creative therapies, spiritual, religious, and recreational activities, social cultural and family as well as community rehabilitation.¹⁰⁵

¹⁰⁴ Ibid.
¹⁰⁵ Ibid, p. 38.

4.5 Return of Foreign Children Associated with Armed Groups

RECOMMENDATION

States should **not use counter-terrorism powers to prosecute foreign children for unlawful presence or illegal entry into a state**, particularly when they have travelled to the country with their families or have been born in the country.

RECOMMENDATION

States should develop and **apply a tailored and individual case management approach** to children associated with non-state armed groups, including those designated terrorist or violent extremist, taking into consideration specialised services for health-related assistance, educational and vocational measures and economic and social support. Priority must be given to the best interests of the child.

RECOMMENDATION

States should **take responsibility for children abroad who are their citizens and who may be detained on security related offences** or for association to armed groups, including children born to their nationals. Based on the child's best interests, they should facilitate the return of such children to their country of origin for rehabilitation, reintegration, and/or prosecution, as appropriate, in full compliance with international law. This requires compliance, specifically, with the rules governing family separation as well as the principle of non-refoulement.

In an effort to protect the best interests of foreign children associated with armed groups, including those designated terrorist or violent extremist, both the 'host' and home governments should coordinate to ensure the prevention of detention and safe return. This means that the authorities of the countries where foreign children have allegedly become associated with armed groups should not detain children unless absolutely necessary for security reasons. Instead, the authorities of the home countries of these children should assume responsibility for these minors involved with armed groups abroad by facilitating their return.

In relation to foreign children associated with ISIS in Iraq and Syria, very comprehensive efforts were taken by the **Kosovar** government which ordered 'the largest one-time repatriation to Europe so far'¹⁰⁶, returning 110 citizens including 74 children. **Russia, Kazakhstan** and **Uzbekistan** have also returned considerable numbers of children.¹⁰⁷ Similarly, **Turkey** received about 200 children from Iraq in May 2019.¹⁰⁸ Less sweeping measures were taken by other European states. The Covid-19 pandemic further hindered repatriation efforts after spring 2020.

¹⁰⁶ Yee, V., 'Thousands of ISIS Children Suffer in Camps as Countries Grapple With Their Fate', The New York Times, 8 May 2019, available at [R](#) (accessed 17 April 2022).

¹⁰⁷ Ibid.

¹⁰⁸ 'Irak überstellt fast 200 Kinder türkischer Dschihadisten an die Türkei', Zeit Online, 29 May 2019, available at [R](#) (accessed 17 April 2022).

As regards **family separation**, Article 9 CRC extends responsibility to states to ‘ensure that a child shall not be separated from his or her parents against their will’¹⁰⁹, referring both to the child’s and the parents’ will. However, separation from parents is permissible ‘when 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’¹¹⁰. Nevertheless, there are situations where remaining with the family is impossible or inadvisable. Article 20 CRC thus regulates alternative or foster care for children ‘temporarily or permanently deprived of [their] family environment, or in whose own best interests cannot be allowed to remain in that environment’¹¹¹. In such situations, alternative care shall be ensured in the forms of foster care, adoption, or placement in family-type settings, or, where in line with the best interests of the child, in the wider family environment.

In the case of **children formerly associated with ISIS** returning to their home countries, the question of whether to separate children from their parents is a primary concern, since parents have in most cases been a key reason for their involvement with the terrorist group. However, impending family separation may provide an incentive for parents not to cooperate with authorities in the facilitation of their own and their children’s return to their home countries. In practice, children often stay with their mothers, as women affiliated with ISIS are prosecuted less frequently than men.¹¹²

In order to facilitate rehabilitation in the context of national security and terrorism-related offending, a **case-by-case assessment** of the situation of each child is essential, taking into account the best interests of the child in all actions and decisions concerning him or her. Such an assessment needs to take into consideration the special circumstances of each case, including the children’s social and cultural context and family situation.¹¹³ This could take the form of a **probation system** supported by social workers facilitating the child’s social reintegration process, including education and vocational training.

Some examples:

In **Albania**, return proceedings are overseen by the Coordination Center for Countering Violent Extremism (CVE Center), which connects local stakeholders, frontline practitioners and policymakers, and develops and shares best practices and advice on countering violent extremism. It was established in 2018 and reports directly to the Prime Minister’s Office. Instead of applying a security-centred approach to return proceedings, the CVE Center employs a multidisciplinary team of experts which oversee returns from pre-arrival to reintegration.¹¹⁴

In **Belgium**, the return of all children below the age of ten from conflict zones is automatically granted if Belgian descent is proven, while older children are handled on a case-by-case basis. Upon arrival, children undergo a psycho-medical evaluation. Subsequent programmes are targeted at reintegration of the children into routine social and school life. While priority is given to keeping children with their family, juvenile judges (on rare occasions) decide to place minors in foster care as a protection measure.¹¹⁵

¹⁰⁹ UN Convention on the Rights of the Child, Article 9(1).

¹¹⁰ Ibid.

¹¹¹ Ibid, Article 20(1).

¹¹² EU Radicalization Awareness Network Centre of Excellence, p. 73.

¹¹³ Nowak, p. 648.

¹¹⁴ European Commission, pp. 8-9.

¹¹⁵ Ibid, p. 12.

In **Germany**, return and reintegration is pursued through a multi-agency approach. This involves a range of regional authorities, including besides the police, intelligence services, law enforcement, courts and probation officers, also child protection services, schools, counselling and psychological/psychotherapeutic support, employment services, as well as non-governmental deradicalisation programmes. The Federal Office for Migration and Refugees' Advice Centre on Radicalisation coordinates civil society organisations providing counselling to radicalised individuals and their families.¹¹⁶

In addition, in **Germany**, the Violence Prevention Network is one of several non-governmental organisations working on the deradicalisation of young people detained for violent-extremist crimes. Their training programmes, which are voluntary for participants and usually start within five months of imprisonment, include civic education and anti-violence training. Participants meet on a weekly basis in small groups, and training may continue after their release from detention. Counselling services are also extended to parents and family members of at-risk or radicalised youth.¹¹⁷

In **Switzerland**, return and reintegration is handled on the local level by the respective Swiss canton's prosecutor's office. Decisions are taken with regard to special educational care or therapeutic treatment on a case-by-case basis, and irrespective of the commission of a crime. Protective measures that can be applied include supervision, personal or outpatient care, or accommodation. While deprivation of liberty can be ordered when a crime has been committed, other potential applicable penalties include an admonition, a personal work order or a fine.¹¹⁸

In **the Netherlands**, specific return plans are developed for these children formerly associated with ISIS. Set up by child protection boards, the plans address the return environment of the child, including professional care needs, educational needs, and potential safety measures. Implementation is overseen by an individual case officer and the respective local municipality.¹¹⁹

In **Tunisia**, the 1995 Child Protection Code established a probation system for the reintegration of children who have committed terrorism-related offences. This system allows children for a duration of one to three years to live in 'guarded freedom' instead of detention. At the same time, judge-appointed social workers functioning as probationary officers assist the child's reintegration through education and vocational training, as well as recreational activities.¹²⁰

¹¹⁶ European Commission, *Repatriated foreign terrorist fighters and their families: European experiences & lessons for P/CVE*, Brussels 2021, pp. 7-8.

¹¹⁷ EU Radicalization Awareness Network Centre of Excellence, *Foreign fighter returnees & the reintegration challenge*, Brussels 2016, p. 7.

¹¹⁸ UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups*, Vienna 2017, p. 80.

¹¹⁹ Nowak, p. 649.

¹²⁰ Ibid.

5. FURTHER RESOURCES AND TOOLS

International Law:

- UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002).

International Soft Law Instruments:

- The Paris Principles: Principles and Guidelines on Children Associated With Armed Forces or Armed Groups (2017).
- Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context (2016).
- Vancouver Principles on Peacekeeping and Preventing the Recruitment and Use of Child Soldiers (2017).

UN Reports:

- Annual Report of the Secretary General on Children and Armed Conflict (<https://childrenandarmedconflict.un.org/document-type/annual-reports/>)
- Publications by the UN Office of the Special Representative of the Secretary General for Children and Armed Conflict (<https://childrenandarmedconflict.un.org/virtual-library/documents/publications/>)

Child Soldiers World Index:

The Child Soldiers World Index was developed by the non-governmental organisation Child Soldiers International, which has unfortunately ceased its operations in 2021. The responsibility for the index was taken over by the Dallaire Institute, however, it is currently under construction. And since the link unfortunately isn't working, let's replace it with: <https://www.dallaireinstitute.org/>

EU Sources:

- EU Radicalization Awareness Network Centre of Excellence, *RAN Manual – Responses to returnees: Foreign terrorist fighters and their families*, Amsterdam 2017.
- European Parliamentary Research Service, *The return of foreign fighters to EU soil: Ex-post evaluation*, Brussels 2018.
- European Commission, *Repatriated foreign terrorist fighters and their families: European experiences & lessons for P/CVE*, Brussels 2021.

Thematic Sources:

On children and armed conflict: United Nations University, *Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict*, New York / Tokyo 2018. Kristin Kamøy, *Stop the War on Children: A Crisis of Recruitment*, Save the Children 2021.

On children and counter-terrorism: UN Interregional Crime and Justice Research Institute, *Children and Counter-Terrorism*, Torino 2016.

On children and violent extremism: UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups*, Vienna 2017.

On girls associated with armed forces/groups: UNICEF, *Girls Associated with Armed Forces and Armed Groups: Lessons learnt and good practices on prevention of recruitment and use, release and reintegration*, New York 2020. Available at https://alliancecpha.org/en/system/tdf/library/attachments/tn_gaafag_eng.pdf?file=1&type=node&id=41543

On child justice in counter-terrorism contexts: Terre des Hommes, *Access to Justice for Children and Youth in counter-terrorism contexts: An analytical and practical guide to foster the development and implementation of specialised, child rights-based and accountable justice systems*, 2020. Available at https://www.tdh.ch/sites/default/files/tdh_wfd_guide_access_to_justice_children_youth_in_counter-terrorism_contexts_en_final_compressed.pdf

On handover protocols: Watchlist on Children and Armed Conflict, *A Path to Reintegration: The Role of Handover Protocols in Protecting the Rights of Children Formerly Associated with Armed Forces or Armed Groups*, New York 2020.

On the minimum age of criminal responsibility: Penal Reform International, *The minimum age of criminal responsibility*, Justice for Children Briefing No. 4, London 2013. Available at https://cdn.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-4-v6-web_0.pdf

Further Reading:

UN Office of the Special Representative of the Secretary-General on Children and Armed Conflict, *Reintegration of Former Child Soldiers*, New York 2018.

UNICEF, *The Machel Review 1996-2000: A Critical Analysis of Progress Made and Obstacles Encountered in Increasing Protection for War-Affected Children*, New York, 2000.

Child Soliders International, *What the Girls Say: Improving practices for the demobilisation and reintegration of girls associated with armed forces and armed groups in Democratic Republic of Congo*, London 2017.

OSCE/ODIHR, *Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework*, Warsaw 2018.

UN Development Programme, *Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point for Recruitment*, New York 2017.

UNICEF, *Silent Shame: Bringing out the voices of children caught in the Lake Chad crisis*, Dakar 2017.

Joana Cook and Gina Vale, 'From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, London, 2018.

Save the Children, *Stop the War on Children: Protecting Children in 21st Century Conflict*, London, 2019.

Human Rights Watch, *"They Didn't Know if I Was Alive or Dead": Military Detention of Children for Suspected Boko Haram Involvement in Northeast Nigeria*, New York 2019.

Human Rights Watch, *"Everyone Must Confess": Abuses against Children Suspected of ISIS Affiliation in Iraq*, New York 2019.

Human Rights Watch, *Extreme Measures: Abuses against Children Detained as National Security Threats*, New York 2016.

Amnesty International, *Dangerously Disproportionate: The Ever-Expanding National Security State in Europe*, London, 2017.

UNESCO, *Preventing violent extremism through education: A guide for policy-makers*, Paris 2017. Available at <http://unesdoc.unesco.org/images/0024/002477/247764e.pdf>

6. GLOSSARY

Children: In line with the UN Convention on the Rights of the Child, the term child refers to any individual below the age of 18, unless majority is attained earlier under respective domestic law.¹²¹

Children associated with armed forces or groups: Using the *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* (Paris Principles) as reference, this term describes ‘any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes’¹²². The term child soldier may be used interchangeably, however, it is less precise as it evokes the perception that children must be involved in direct hostilities or military activities.

Child justice system (= juvenile justice system): This comprises the legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders.¹²³

Deprivation of liberty: ‘Any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.’¹²⁴

Disarmament, demobilisation and reintegration (DDR) framework: It describes a process in which ‘children shall be separated from armed forces and groups, handed over to child protection actors and supported to demobilize and reintegrate into families and communities’¹²⁵.

Foreign terrorist fighters (FTFs): Following UNSC Resolution 2178 (2014), FTFs are ‘individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict’¹²⁶.

Handover protocols: These are ‘typically agreements by a government and/or allied armed forces or groups, to swiftly transfer children to civilian authorities (which may include an appropriate government ministry, and/or the UN and its partners) for reintegration when these children are detained/in the custody of/under the command and control of security actors for their alleged association with an armed group or force’¹²⁷.

Minimum age of criminal responsibility: This describes the minimum age below which the law determines that children do not have the capacity to infringe the criminal law.¹²⁸

Rehabilitation: This refers to restoring a person to good health or a constructive place in society, often through therapy and education. Article 40 CRC specifies that every child in conflict with the law has the right to be treated in a way which takes into account the desirability of promoting his/her reintegration and assuming a constructive role in society.¹²⁹

Reintegration: It consists of re-establishing roots and a place in society for children who have been in conflict with the law so that they feel part of, and accepted by, the community. This involves a process of social, economic and political reintegration, for example: through the restoring of family, peer and community relationships; and through participation in educational or livelihood activities, cultural and leisure activities, and decision-making processes.¹³⁰ In the context of children and armed conflict, reintegration is defined by the UN as ‘the reintroduction back into society of children who were formerly associated with armed groups or armed forces in a peaceful and sustainable way’¹³¹.

Terrorism: There is no internationally agreed upon definition of terrorism, its contested nature is reflected in different definitions in domestic laws or academia. The Academic Consensus Definition understands terrorism as ‘a doctrine about the presumed effectiveness of a special form or tactic of fear-generating, coercive political violence and, on the other hand, a conspiratorial practice of calculated, demonstrative, direct violent action without legal or moral restraints, targeting mainly civilians and non-combatants, performed for its propagandistic and psychological effects on various audiences and conflict parties’¹³².

Violent extremism: While there is no universally accepted definition (similar to the concept of terrorism) UNESCO defines it as ‘the beliefs and actions of people who support or use violence to achieve ideological, religious or political goals’, which may include ‘terrorism and other forms of politically motivated violence’¹³³.

¹²¹ UN Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), Article 1.

¹²² UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated With Armed Forces or Armed Groups*, February 2017, p. 7.

¹²³ UN Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, UN Doc. CRC/C/GC/24 (18 September 2019).

¹²⁴ UN Rules on the Treatment of Juveniles Deprived of their Liberty (Havana Rules), Article 11(b).

¹²⁵ UN DDR, ‘IDDRS Framework, Module 5.20: Children and DDR’, available at [UN](#) (accessed 17 April 2022).

¹²⁶ UN Security Council Res 2178, 24 September 2014, preambles.

¹²⁷ Watchlist on Children and Armed Conflict, *A Path to Reintegration: The Role of Handover Protocols in Protecting the Rights of Children Formerly Associated with Armed Forces or Armed Groups*, New York 2020, p9.

¹²⁸ UN Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, UN Doc. CRC/C/GC/24 (18 September 2019).

¹²⁹ UNICEF Toolkit on Diversion and Alternatives to Detention, 2009, Glossary.

¹³⁰ Ibid.

¹³¹ UN Office of the Special Representative of the Secretary-General on Children and Armed Conflict, *Reintegration of Former Child Soldiers*, New York 2018.

¹³² A. Schmid, ‘Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review’, *International Centre for Counter-terrorism*, The Hague, 2013, p. 16.

¹³³ UNESCO, [UNESCO](#), Paris 2017.

NOTES

