

THE DETENTION OF CHILDREN IN THE CONTEXT OF ARMED CONFLICT

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ABSTRACT

In recent years, governments have increasingly detained children for suspected association with non-state armed groups, particularly in conflicts involving violent extremist groups. Between 2012 and 2017, the United Nations recorded a five-fold increase in the detention of children in armed conflict.¹ At any given time, thousands of children are imprisoned for suspected association with armed groups, often without charge and in inhuman and degrading conditions.

¹ United Nations, “Children and Armed Conflict: Report of the Secretary-General (A/68/878–S/2014/339)” (New York: United Nations, May 15, 2014), https://www.un.org/ga/search/view_doc.asp?symbol=a/68/878; United Nations, “Children and Armed Conflict: Report of the Secretary-General (A/73/907–S/2019/509)” (New York: United Nations, June 20, 2019), https://www.un.org/ga/search/view_doc.asp?symbol=S/2019/509&Lang=E&Area=UNDOC.

According to the UN, at least 15 countries detained children in the context of armed conflict in 2018, including Afghanistan, Cameroon, Democratic Republic of Congo, Iraq, Israel, Lebanon, Libya, Mali, Myanmar, Niger, Nigeria, Philippines, Somalia, Sudan, and Syria.² Children are most likely to be detained in conflicts involving violent armed extremist groups such as the Islamic State (ISIS), Boko Haram, Al-Shabaab, and the Taliban.³

International law prohibits the use of children in hostilities or any recruitment of children by armed groups.⁴ Children, as victims of that crime, are to be provided with rehabilitation and reintegration, and should not be criminalized or imprisoned for their association with armed groups.⁵ In many armed conflicts, governments have upheld this obligation to provide children with assistance for their recovery and reintegration. The UN reports that since 2000, at least 130,000 child soldiers have been released or demobilized from armed forces and armed groups and benefited from rehabilitation assistance.⁶

In the drive to counter violent extremist groups, however, many governments have abandoned their obligation to provide rehabilitation and reintegration, and instead have adopted punitive approaches towards children that include detention and unnecessary criminal prosecution and imprisonment. Since 2001, at least 140 countries have adopted or amended counter-terrorism legislation that often fails to distinguish between adults and children, includes overly broad definitions of terrorism, and imposes harsh penalties.⁷ Of particular concern, some states have criminalized mere association with terrorist or armed extremist groups, contrary to standards recommending that children should not be prosecuted solely for association with armed groups, including terrorist organizations.⁸ As

2 United Nations, "Report of the Secretary-General 2019."

3 United Nations, "Report of the Secretary-General 2019."

4 *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, adopted May 25, 2000, entered into force, February 12, 2002. Currently, 170 countries are party to the *Optional Protocol*

5 *Ibid.*, art. 7; see also UNICEF, "The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups" (New York: United Nations, February 2007), paras. 3.6 and 8.7, https://childrenandarmedconflict.un.org/publications/ParisPrinciples_EN.pdf.

6 OSRSG CAAC, "Lessons Learned and Best Practices," Office of the SRSR for CAAC, n.d., <https://childrenandarmedconflict.un.org/lessons-learned-and-best-practices/>.

7 Fionnuala Ní Aoláin, "Impact of Measures to Address Terrorism and Violent Extremism on Civic Space and the Rights of Civil Society Actors and Human Rights Defenders," *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism* (New York: United Nations, March 1, 2019), para. 3, <https://digitalibrary.un.org/record/3802009>.

8 In its 2019 *General Comment on administration of justice*, the Committee on the Rights of the Child stated that states "should refrain from charging and prosecuting them for expressions of opinion or for mere association with a non-State armed group, including those designated as terrorist groups." CRC/C/JGC/24, September 18, 2019. The *Paris Principles* also recommend against prosecuting or

a consequence, children are detained and sometimes prosecuted not for violent criminal acts, but for mere association with violent extremist groups, despite the illegality of their recruitment.

This article argues that the increasing detention of children in the context of armed conflict is both contrary to international law and counter-productive for preventing future violence. It identifies specific steps that peacekeepers and other stakeholders can take to reduce the detention of children and ensure their rehabilitation and reintegration.

Although non-state actors also detain children, as hostages, for sexual exploitation, as punishment for refusal to join their forces, for ransom, and other purposes, the focus of this article is on detention by government forces.

APPREHENSION OF CHILDREN AND ABUSES IN DETENTION

Security forces apprehend children during military operations or on the battlefield, and round them up during mass security sweeps, at checkpoints, or during house raids. Studies have found that many of these children may have little to do with armed groups, but may be detained because they appear to be of fighting age, come from communities perceived to be sympathetic to the opposition, or have family members that have been involved with armed groups.⁹

Once apprehended, children may be detained in military prisons, military barracks or camps, intelligence facilities, juvenile detention centers, or makeshift centers run by military or government-aligned militias.¹⁰ Once detained, children may be subjected to coercive interrogation or torture, often to obtain confessions, and to other abuses and violations of due process. Children are often held without charge, with no access to legal assistance, or opportunities to appear before a judge. Conditions of detention typically fall far short of international standards, and may be overcrowded, lack basic sanitation and health care, and deny children access to their families, education, and recreation.

Multiple research studies have documented serious abuses against children detained in the context of armed conflict. In Iraq, for example, authorities have arrested thousands of children for alleged affiliation with ISIS, used torture to coerce confessions, and convicted

punishing children solely for association with armed forces or armed groups (Principle 8.7).

9 see Siobhan O’Neil and Kato van Broeckhoven, eds., *Cradled By Conflict: Child Involvement with Armed Groups in Contemporary Conflict* (Tokyo: United Nations University, 2018), https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf; Manfred Nowak, “Global Study on Children Deprived of Liberty” (New York: United Nations, July 11, 2019), <https://digitallibrary.un.org/record/3813850>.

10 Nowak, “Global Study on Children Deprived of Liberty.”

hundreds of children of ISIS association in hasty, unfair trials. Children interviewed by Human Rights Watch reported that security officers tortured them to get confessions, beating them with plastic pipes, electric cables, or rods, subjecting them to electric shocks, or using painful stress positions. Many of the children said they had little or no actual involvement with ISIS, but confessed simply to stop the torture.¹¹

In 2018 and 2019, the UN monitored over 600 trial hearings of ISIS suspects in Iraq, including 44 cases with a defendant who was a child at the time of the alleged offense. It found an overreliance on confessions and frequent allegations of torture. Judges did not question confessions obtained through torture, and frequently convicted defendants for mere association with ISIS, without distinguishing between those who participated in violence and those who may have had minimal involvement or joined through coercion. More than half of the child defendants were sentenced to more than 10 years in prison.¹²

Between 2013 and 2019, Nigerian authorities detained more than 3,600 children as Boko Haram suspects, including over 1,600 girls. The detainees included children as young as five, and babies and toddlers detained with their mothers. Children detained at the Giwa military barracks in Maiduguri, the main military detention facility in the Northeast, described squalid, severely overcrowded conditions, overwhelming heat, and frequent hunger and thirst. Some of the children interviewed by Human Rights Watch were detained for months, others for years. None were ever charged with a crime, saw a lawyer, or were brought before a judge.¹³

In Somalia, the authorities' approach to children suspected of involvement with Al-Shabaab has varied widely. Some children have been handed over to NGO-run child rehabilitation and reintegration centers, while others have been prosecuted in military courts on criminal charges of Al-Shabaab membership, murder, or conflict-related offenses. In other cases, authorities have released children in exchange for bribes from their relatives. Interrogators and guards have subjected children to coercive treatment including intimidation, threats,

11 Human Rights Watch, "'Everyone Must Confess': Abuses against Children Suspected of ISIS Affiliation in Iraq" (New York: Human Rights Watch, March 2019), https://www.hrw.org/sites/default/files/report_pdf/iraq0319_web_1.pdf.

12 UN Assistance Mission for Iraq and Office of the United Nations High Commissioner for Human Rights, "Human Rights in the Administration of Justice in Iraq: Trials under the Anti-Terrorism Laws and Implications for Justice, Accountability and Social Cohesion in the Aftermath of ISIL" (Baghdad: United Nations, January 2020), https://www.ohchr.org/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf.

13 Jo Becker and Anietie Ewang, "They Didn't Know If I Was Alive or Dead": Military Detention of Children for Suspected Boko Haram Involvement in Northeast Nigeria (New York: Human Rights Watch, 2019).

and in some cases, beatings and torture, primarily to obtain confessions. Children tried in military courts have received sentences of 10 to 20 years, and in some cases, death.¹⁴

CONSEQUENCES OF DETENTION

Not surprisingly, many children subjected to detention end up feeling doubly victimized, first by the armed group that recruits them or attacks their community, and then by their own government. For example, a 15-year old boy in Somalia was forcibly recruited by Al-Shabaab, and then sentenced to ten years in prison by a military court for terrorism. He told investigators, “I feel afraid and let down. Al-Shabaab forced me into this, and then the government gives me this long sentence.”¹⁵ A boy detained in Nigeria said, “I am not happy with Boko Haram because they killed my people. I also do not like the military because they detained me for no reason. There was nothing good about my experience in detention. My years were wasted in suffering.”¹⁶

Rehabilitation and reintegration assistance can help children reenter school or gain vocational training so that they rejoin civilian life. In contrast, the consequences of detention can be profoundly negative. Detention delays children’s return to school, perpetuates family separation, exacerbates physical and mental health issues, creates long-term stigma, and can foster resentment and alienation that can lead to future violence. In 2019, the UN Committee on the Rights of the Child noted that the punitive approach adopted by some states was resulting in “lasting consequences for the development of the child and having a negative impact on the opportunities for social reintegration, which in turn may have serious consequences for the broader society.”¹⁷ The UN Secretary-General has similarly warned that depriving children of liberty because of their association with armed groups “is contrary to the best interests of the child, but also to the interests of society as a whole,” noting that such detention can lead to the creation of community grievances.¹⁸ Similarly, the UN High Commissioner on Human Rights has stated that detention can “reinforce terrorist narratives about the cruelty or injustice of the State, increase the likelihood of re-association and

14 Human Rights Watch, “It’s Like We’re Always in a Prison’: Abuses Against Boys Accused of National Security Offenses in Somalia” (New York: Human Rights Watch, 2018), https://www.hrw.org/sites/default/files/report_pdf/somalia0218_web.pdf.

15 Human Rights Watch interview with “Hamza,” Mogadishu, Somalia, October 2017.

16 Human Rights Watch interview with “Abdulsalam,” detained for nearly a year at Giwa barracks at age 17 in 2017. Maidiguri, Nigeria, June 2019.

17 Committee on the Rights of the Child, General Comment No. 24, CRC/C/GC/24, September 18, 2019, para. 99.

18 United Nations, “Children and Armed Conflict: Report of the Secretary-General (A/70/836–S/2016/360)” (New York: United Nations, April 20, 2016), para. 16, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/111/19/pdf/N1611119.pdf?OpenElement>.

complicate subsequent integration or reintegration efforts.”¹⁹ Rather than reducing threats, detaining children may only increase them.

PREVENTING DETENTION

The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“the Paris Principles”), adopted in 2007 and endorsed by over 110 states, state that children who are associated with armed forces or armed groups should not be prosecuted or punished solely for their membership in those forces or groups, and that if children are accused of crimes, alternatives to judicial procedures should be sought wherever possible, and “every effort” should be made to seek alternatives to placing a child in an institution.²⁰

In 2018, the UN Security Council specifically addressed the detention of children in armed conflict, emphasizing that no child should be deprived of his or her liberty unlawfully or arbitrarily. The Council called on all parties to cease unlawful or arbitrary detention as well as torture or other cruel, inhuman or degrading treatment or punishment imposed on children during their detention, and encouraged states to establish “standard operating procedures for the rapid handover of these children to relevant civilian child protection actors.” It urged states to consider nonjudicial measures as alternatives to prosecution and detention, and reiterated the international standard that the deprivation of liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time.²¹

In 2019, the African Committee of Experts on the Welfare and Rights of the Child recommended that states “end military detention of children and adopt formal handover protocols that provide for the swift transfer of children from military custody to civilian child protection authorities.”²² Similarly, the 2019 UN Global Study on Children Deprived of Liberty also recommended standard operating procedures for the “immediate and direct handover” of children from military custody to appropriate child protection agencies.²³

19 Human Rights Council, “Protection of Human Rights and Fundamental Freedoms While Countering Terrorism (A/HRC/40/28)” (New York: United Nations, January 10, 2019), para. 55, <https://undocs.org/A/HRC/40/28>.

20 UNICEF, “The Paris Principles,” paras. 3.11, 7.21, 7.45, 8.7, 8.8, and 8.9.

21 Security Council Resolution 2427 (2018), paras. 19-21.

22 African Committee of Experts on the Rights and Welfare of the Child, “Outcome Statement for the Day of General Discussion on Children Affected by Armed Conflict” (Cairo: African Union, November 26, 2019), https://www.acerwc.africa/wp-content/uploads/2019/12/Outcome-Statement_-ACERWC-Day-of-General-Discussion_-final.pdf.

23 Nowak, “Global Study on Children Deprived of Liberty,” paras. 133–134.

HANDOVER PROTOCOLS

In recent years, several states have signed explicit agreements, known as “handover protocols,” to swiftly transfer children from military custody to civilian child protection authorities for rehabilitation and reintegration. Since 2013, Sudan, Niger, Chad, and Mali have each signed such handover protocols. The protocols typically require the transfer of children within a very short period of time, usually 24 to 72 hours, and can minimize any military detention of children. Implementation of the protocols has been uneven in practice, but have facilitated the release of children detained for association with armed groups. For example, after Mali signed a handover protocol in 2013, military authorities transferred more than 70 children detained for suspected involvement with armed groups to a rehabilitation program.²⁴

Handover protocols are negotiated on an individual basis, with the assistance of the United Nations, and typically include the following elements:

- A commitment by defense and security forces to immediately, or within 24-72 hours, hand over children apprehended in the context of armed conflict to an appropriate ministry responsible for child welfare, or to UNICEF;
- Designation of a focal point to monitor the transfer of children and ensure effective communication;
- A commitment to provide children special care while in military custody, including separation from adults, food, shelter, and protection from all forms of violence, abuse, and neglect;
- A commitment to protect the children’s identity and privacy;
- A commitment to prohibit any interrogation for military purposes;
- A commitment by UNICEF to facilitate the appropriate care of transferred children, including through the provision of food, shelter, and psychosocial care, in collaboration with its operational partners.

In several other countries, UNICEF has been in dialogue with national governments regarding handover protocols. However, as of early 2020, the majority of countries known to detain children for alleged involvement with armed groups had not signed such an agreement.

24 United Nations, “Report of the Secretary-General on children and armed conflict in Mali (S/2018/136)” (New York: United Nations, February 21, 2018), para. 28, <https://undocs.org/S/2018/136>

RECOMMENDATIONS

Recommendations for States

Governments involved in armed conflict should make public commitments to end the detention of children in armed conflict and work with the United Nations and civilian child protection actors to establish effective rehabilitation and reintegration programs. Governments should sign and implement handover protocols to ensure the swift transfer of children for rehabilitation and avoid detention for more than a very short period.

Donor governments and those providing security assistance can urge conflict countries to take these steps. They can allocate assistance specifically for rehabilitation programs, and condition security assistance on the release of children from detention and the signature and implementation of handover protocols.

The United Nations should actively engage with relevant states to advocate for the release of children, assist in the establishment of rehabilitation and reintegration programs, and engage in negotiations for the signature, effective implementation, and monitoring of handover protocols.

Recommendations for Peacekeeping

Under the Vancouver Principles, troop-contributing countries commit to ensure that any children apprehended during peacekeeping operations are treated in accordance with international standards. The child's best interests are to be a primary consideration, and children are to be handed over expeditiously to child protection actors and civilian authorities, in line with established policies and guidance.²⁵

To effectively implement this principle, peacekeepers should be familiar with international standards that prioritize rehabilitation and reintegration for children affected by armed conflict and reserve detention only as a last resort and for the shortest appropriate period of time. Peacekeeping missions should be aware of child protection actors (including relevant UN agencies such as UNICEF, government ministries, and non-governmental organizations) that operate rehabilitation and reintegration programs, and establish effective channels of communication and standard operating procedures to ensure the swift transfer of any children taken into custody during peacekeeping operations to such actors.

Force commanders should also be familiar with any handover protocol signed by the

²⁵ Global Affairs Canada, "The Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers," Global Affairs Canada, February 21, 2017, sec. 9, https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/principles-vancouver-principes-pledge-engagements.aspx?lang=eng.

national government, and help facilitate its implementation, as appropriate. In states that have not signed a handover protocol, mission leadership should encourage relevant decision makers to do so and to release any children in detention for alleged association with armed groups.

CONCLUSIONS

Detention is almost never in the best interests of a child. Under international law, it should be used only in the most exceptional cases. Yet in the context of armed conflict, children are increasingly detained. Some may have joined armed groups because they felt they had no choice, while others come under suspicion because of alleged activity by their family members, or simply because armed groups are active in their community. In any case, the recruitment of children by non-state armed groups, including violent extremist groups, is always illegal. Detention and prosecution should focus on the adults responsible, not the children.

The increase in children detained in the context of armed conflict represents a worrying departure from the principle that children involved in armed conflict are entitled to rehabilitation and reintegration. Endorsers of the Vancouver Principles, and all countries contributing troops to international peacekeeping missions, can set a good example by avoiding the detention of children, advocating for the release of all detained children, and ensuring effective procedures to transfer children to child protection authorities for the assistance they need to rebuild their lives.

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