



**Position of the United Nations Special Rapporteur on
the promotion and protection of human rights and
fundamental freedoms while countering terrorism
on the human rights of adolescents/juveniles being
detained in North-East Syria.**

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Position of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria

The Special Rapporteur has consistently expressed her concerns about the treatment of women and children being held in a number of camps,¹ including but not limited to, Al Hawl and Roj in North-East Syria.² With thirteen other Special Procedures mandate holders and two Working Groups she has identified a credible basis to hold that multiple human rights violations attach to this group specifically finding torture, inhuman and degrading treatment including sexual violence and reproductive harm; arbitrary detention; right to life infringements; freedom of movement restrictions; erasure of the right to family life; fundamental infringements on right to health; abrogation of the right to education; denial of the right to non-discrimination; lack of the right to clean and safe water alongside multiple violation of the rights of the child.³ She has expressly affirmed the obligations of States in respect of their third country nationals to **urgently repatriate** those nationals subject to the principle of non-refoulement. She has articulated the duties incumbent upon States in these exigent circumstances to take proactive and positive measures to safeguard the fundamental and non-derogable rights of their nationals being detained in North-East Syria in order to prevent irreparable harm to them. In this regard, the Special Rapporteur, in tandem with the Committee on the Rights of the Child,⁴ has endorsed the functional or ‘control of rights’ approach to the exercise of extraterritorial competency. In this position paper, the mandate further expresses its views on the treatment of and legal obligations due to children, specifically male boys and adolescents who have been detained by the Syrian Democratic Forces and particularly those **now or about to** cross the threshold to adulthood.

The conditions in Al Hawl and Roj camps run by the Syrian Democratic Forces are well-documented and it is undisputed that the consequences for children are devastating. The camps are makeshift and locked. They are made up of unstable tent-like structures which collapse in strong winds or flood with rain or sewage, hygiene is almost non-existent, limited drinking water is often contaminated, latrines are overflowing, mounds of garbage litter the grounds, and illnesses including viral infections are rampant. Food, water, health care and essential non-food supplies are provided by under-resourced humanitarian groups and

¹ The views of the Special Rapporteur and her multiple interventions on these matters can be found here: <https://www.ohchr.org/en/issues/terrorism/pages/srterrorismindex.aspx>

² For example, Guweiran military prison in Hasakeh (approximately 700 detained boys aged between 10-17); Alaya Prison in Qamishli (approx. 32 detained boys aged 12-15) and the Houry Centre (approx. 147 detained boys) in Tel Maruf.

³ Including the right to life, the right to be free from torture, inhuman and degrading treatment, the right to health, the right to education, the right to water and sanitation, the right to adequate food and freedom from hunger, and the right to adequate housing.

⁴ UN Committee on the Rights of the Child, L.H. et al v. France, communications No.79/2019 and No. 109/2019, [CRC/C/85/D/79/2019–CRC/C/85/D/109/2019](https://www.ohchr.org/en/docd/commun/communications/communications-no-79-2019-and-no-109-2019)).

organisations. The Special Rapporteur has been profoundly concerned by the dire, and sometimes fatal, conditions children are facing in these camps.

Several UN bodies have insisted on the obligations imposed to all parties to this conflict to provide special protection to children and respect the civilian and humanitarian character of camps, detention sites and settlements. In its general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, the Committee on the Rights of the Child noted that for rights to be meaningful, effective remedies must be available to redress violations (para. 23). None are available to children whose rights are being violated in these camps.

In parallel to Al Hawl and Roj, a number of detention-like facilities have been operating in North-East Syria⁵ in which men, boys, and a small number of women⁶ are being held in dire prison-like conditions.⁷ The Special Rapporteur is aware of a number of formal detention facilities holding boys in abhorrent conditions including inadequate shelter, no bedding provision, unmanaged overcrowding, no access to sunlight, insufficient latrine access and virtually no shower access. Malnourishment is rife. Boys held in these facilities suffer from scabies and other skin conditions, they are vulnerable to HIV, Tuberculosis and Covid-19 exposure. Boys in these detention facilities endure untreated war injuries, missing limbs, and severe trauma. These conditions meet the threshold for torture, inhuman and degrading treatment under international law, and no child should have to endure them. The *de facto* culling, separation and warehousing of adolescent boys from their mothers is an abhorrent practice inconsistent with the dignity of the boy child.

In particular, a sizeable number of adolescent boys are being held in such prison facilities as *de facto* adults on what appears to be multiple spurious grounds. At least one of

⁵ The Special Rapporteur acknowledges that the vast majority of these facilities are under the *de facto* control of non-State actors but to her knowledge at least one such detention facility appears to be under the effective authority of a State. The mandate recognizes the parallel applicability of certain international humanitarian norms to the questions addressed in this position paper.

⁶ The Special Rapporteur notes that some younger children are being held in detention with their mothers in prison facilities rather than in the camps.

⁷ Following the battles in Raqqah and Dayr al-Zawr governorates between 2017 and 2019, men and boys, including foreigners, aged 12 and above with alleged links to ISIL, were taken to detention facilities run by the Syrian Democratic Forces in the east. Third country national have mostly been kept in detention, although some foreign ISIL suspects have been repatriated or otherwise transferred, including to stand trial in their home countries, or in Iraq where some were reportedly sentenced to death. The vast majority, however, remain in detention or internment (CoI Syria, A/HRC/46/55, para. 54). According to the self-administration, as of 12 June 2020, no trials of third-country nationals for association with ISIL had been held. Regarding juvenile justice, some 110 boys between 12 and 18 years of age with alleged links to ISIL were, as at mid-2020, held in the Houry Rehabilitation Centre - a juvenile rehabilitation centre - on the basis of their association with ISIL, while others were held together with adults at certain periods in other detention facilities. It was also reported that children were also held in other detention facilities, including the Allaya and Hasakah prisons. The majority of these children had also been accused of affiliation with ISIL or had been recruited by Syrian Democratic Forces/Kurdish People's Protection Units and accused of offences including spying. Adults released from these facilities reported that children were held in the same cells as adults at certain periods. It was not clear whether these children had been charged with any offence (CoI Syria, A/HRC/45/31, para. 78). See also HRW, *Thousands of Foreigners Unlawfully Held in NE Syria*, 23 March 2021.

these detention facilities has been described as a “rehabilitation” camp.⁸ The Special Rapporteur unreservedly voices her concern at this nomenclature. None of the children held in this camp have had any or adequate legal basis to justify their detention; none were legally represented in any administrative process placing them there; no ‘best interest’ test was or could have been adequately applied to place them there; no assessment of their protection or other needs has been conducted; no child has meaningful exit from this camp unless and until he is repatriated to his country of citizenship. The stigma of detention, notwithstanding that it is arbitrary and capricious, may make the prospect of their return more difficult by circular stigmatizing logic of having been detained. There is no legal or policy basis to describe such any such site as a “rehabilitation” facility, and its existence stands in *per se* contravention of the human rights and humanitarian law duties due to highly vulnerable children in a situation of conflict.

Children in these camps and detention facilities should first and foremost be viewed as victims. As such, they are entitled to protection. Instead, the Special Rapporteur observes practices of systematic human rights violations. The multiple rationales for the detention of boys and adolescents appear to include: 1) some unaccompanied/orphaned boys being placed in detention based on conjectures of their presumed association with ISIS or other groups; 2) some boys being detained based on family ties, i.e. on the presumptions of the affiliations of their parents; 3) some boys being claimed as child ISIS affiliates and being detained for unspecified/presumed crimes or security reasons; 3) some boys having crossed an arbitrary age threshold and then being separated from their mothers who are held in main camps Al Hawl and Roj and thereafter being brought to separate detention facilities.⁹ **No** human rights and rule of law compatible determination has been made to justify their detention.¹⁰ In all these contexts, the children concerned were treated with no attention to their **best interests** (Convention on the Rights of the Child, Article 3); **no legal process** has been undertaken to determine the appropriate care, responsibility rights or needs of these children (Convention on the Rights of the Child, Article 27 & 40); **traumatic separation** from mothers has been conducted without any legal regulation or recourse (Convention on the Rights of the Child, Article 9 & 16); **physical and psychological violence** to young boys has no remedy (Convention on the Rights of the Child, Articles 19, 20, 24, 34 & 37); **health is profoundly compromised** by sub-human standards of indefinite detention including augmented risks by virtue of the Covid-19 pandemic (Convention on the Rights of the Child, Article 24);¹¹ **and**

⁸ On the information available to the mandate, conditions in this camp are somewhat ‘better’ than Al Hawl and Roj, though such terminology is itself problematic given the arbitrariness of the confinement. There is running water, children are supplied beds, and there is courtyard access. However, activities primarily consist of craft-making with no formal education given the lack of resources. It is not clear if and to what degree the boys are allowed to have family contact with their mothers.

⁹ Detention on any/all of these grounds appears incompatible with the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by General Assembly Resolution 40/33 of 29 November 1985 and the United Nations rules for the Protection of Juveniles Deprived of their Liberty, or the Havana Rules, was adopted by General Assembly Resolution 45/113 of 14 December 1990.

¹⁰ Convention on the Rights of the Child, art 37(b). See also, Paris Principles, art. 8.

¹¹ See also, UNODC Technical Assistance Service, Protecting Children Deprived of their Liberty During the Covid-19 Outbreak found here: https://www.unodc.org/documents/Advocacy-Section/MoS_Children_in_detention_COVID-19.pdf

disabled boys have no meaningful access to adequate education, assistive technologies, health or rehabilitation opportunities (Convention on the Rights of the Child, Article 23). In short, every conceivable legal right to live a dignified and protected life as a child has been denied to these children.

Boys as Victims

The Special Rapporteur emphasises that boys detained in these circumstances must be treated primarily as victims of terrorism consistent with the Convention on the Rights of the Child, Security Council Resolution 2427 (OP20) and General Assembly Resolution 60/1.¹² She stresses that these boys¹³ were **primarily** brought to Syria or Iraq by parents or other family members considered or suspected of affiliation with ISIS¹⁴ and **did not or could not provide meaningful consent** to being brought to the territory or were born to an individual from Syria or a foreign national considered or suspect of affiliation with ISIS (F(T)F).¹⁵ An unknown number of children were conceived from acts of rape and sexual coercion during the conflict, or forced marriage.¹⁶ No child is responsible for the circumstances of his birth and cannot be punished, excluded, deemed unworthy of human rights protection by virtue of the status or acts of his parents. Children do not enjoy the independence, agency and range of choices open to adults. Even in cases where boys may have travelled to Syria to join ISIS or were not otherwise forcibly recruited, most child association with terrorist groups involves some form of coercion or constraint.¹⁷

¹² In General Assembly resolution 60/1 entitled “World Summit Outcome 2005” which was adopted on 16 September 2005, Member states stressed “the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief”; The 2007 Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups; UN Security Council Resolution 1314 (2000)

¹³ As per the definition contained in the Convention on the Rights of the Child, article 1 “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

¹⁴ On the scale of female and child presence in Syria and Iraq and the adeptness of ISIS in recruiting minors see Joana Cook & Gina Vale, From Daesh to ‘Diaspora’: Tracing the Women and Minors of Islamic State (2018) found at: <https://giwps.georgetown.edu/resource/from-daesh-to-diaspora/>

¹⁵ The United Nations Security Council resolution 2178 (2014) defines foreign terrorist fighters as those “who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories 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”(para. 6(a)); The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (Child Soldiers Protocol), specifically addresses the practice of recruiting and using children as soldiers in armed conflict and bans the use of children under the age of 18 in armed conflicts. The Special Rapporteur states the obvious while the Optional Protocol permit the voluntary enlistment of 16- and 17-year-olds into armed forces, this provision does not apply to the action of conscription, enlistment or use in terrorist organizations.

¹⁶ On children born of rape in conflict see generally Joanne Neenan, (2017). *Closing the protection gap for children born of war - Addressing stigmatisation and the intergenerational impact of sexual violence in conflict*. LSE & FCO. <http://www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-Children-Born-of-War.pdf>; Conflict-related sexual violence remains underreported owing to a lack of trust in the justice system, a fear of reprisals, pressure from family members, and stigma codified in the law, which allows perpetrators to quash a criminal case by marrying their victims (S/2021/312 30 March 2021); See also CoI, A/HRC/43/CRP.6, paras.77 and 89. CoI, A/HRC/37/72/CRP.3, paras. 83-87 and report of the UN HCHR, A/HRC/40/28, para. 25..

¹⁷ Report UN HCHR, A/HRC/40/28, para. 36. It is also worth noting the use of propaganda and methods used online by ISIS to recruit children.

The Special Rapporteur highlights the **gender stereotypes that attach to young male children and adolescents**, and in particular the role that stereotypes of masculinity can play in defining the response of States to their child nationals being detained in these camps. Scholars and policy makers now have a much better understanding of the gendered and masculinity tropes that can lead to violent extremism and membership of terrorist organizations.¹⁸ However, much less attention has been paid to the gendered construction of certain male children in this conflict setting as being inherently unworthy of the status of civilian, child or victim status, and presumed by virtue of gender (male), religious affiliation (Muslim) and geography (Syria) to be ‘non-child’ for the purposes of international law protection.

The Special Rapporteur calls out ill-grounded presumptions that all male children, including those over the age of 10 in the Syrian conflict zone are to be presumed violent extremists or terrorists.¹⁹ Given the lack of agreed definition on both of these terms their application to boy children who have experienced systematic violations of their human rights is profoundly regrettable. She judges that it is vital to acknowledge that boys have been victimized throughout the conflict – via exposure, direct and indirect human rights violations as well as the violent ritualization of having their lives regulated by violent non-State actors for extended periods.²⁰ Extreme trauma includes seeing one or both parents killed in their presence, watching family members die of war wounds or disease, and seeing parents vanish into ISIS or SDF prisons. Arbitrarily snatching children from their mothers in these contexts layers trauma on top of acute trauma.

International law recognises that children engaged in hostilities ‘should be considered primarily as victims of offences against international law, not only as perpetrators’, even when children are associated with armed groups who are accused of crimes under international law.²¹ Extending the arm of counter-terrorism to children involved with non-state armed groups designated as ‘terrorist’ shifts the discourse from protection to punishment, from protected victim to security threat. In turn, this also changes the protection to which they are entitled notably regarding detention, applicability of criminal law and treatment under criminal justice, as well as their rights, away from a child right perspective and the question of responsibility

¹⁸ Abby L. Ferber & Michael S. Kimmel, *The Gendered Face of Terrorism*, 2 SOC. COMPASS 870, 874 (2008); ERIN M. SALTMAN & MELANIE SMITH, TILL MARTYRDOM DO US PART: GENDER AND THE ISIS PHENOMENON 9, 16 (Institute for Strategic Dialogue 2015); Dallin Van Leuven et al., *Analysing the Recruitment and Use of Foreign Men and Women in ISIL through a Gender Perspective*, in FOREIGN FIGHTERS UNDER INTERNATIONAL LAW AND BEYOND 97, 108 (2016)

¹⁸ Dallin Van Leuven et al., *Analysing the Recruitment and Use of Foreign Men and Women in ISIL through a Gender Perspective*, in FOREIGN FIGHTERS UNDER INTERNATIONAL LAW AND BEYOND 97, 108 (2016)

¹⁹ FIONNUALA NI AOLAIN ET AL, ON THE FRONTLINES (2011) (on the inherent problematic of entrenching] hegemonic masculinity by perpetuating gender stereotypes positioning all men or boys as prone to violence and all women or girls as vulnerable to victimization).

²⁰ Conrad Nyamutata, *Young Terrorists or Child Soldiers? ISIS Children, International Law and Victimhood* 25(2) Journal of Conflict and Security Law 237-261 (2020)

²¹ UNSCR 2427 OP20; Paris principles, 3.

for violations of the rights of the child, including recruitment and use.²² The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict provides that States should criminalize the recruitment or use in hostilities of children under 18 by non-State armed groups (art.4(2)).²³ Children, as victims of that crime, should not face criminal charges for the **mere fact of their association** with a terrorist group or for activities that would not otherwise be criminal such as cooking, cleaning, or driving. In cases where serious breaches of domestic or international law including war crimes, crimes against humanity, and genocide have been committed by minors, prosecution may be appropriate and should be conducted with the essential guarantees of fair trial due to all children charged with serious criminal offences under law and in compliance with international juvenile justice standards.²⁴ The Special Rapporteur notes that the interplay of serious violations of international law committed by persons who are or were previously child soldiers is not new to international criminal law.²⁵

The Special Rapporteur takes account of the grave challenges presented to these boys whose development have been framed by absence, want, violence and tragedy. She is aware of the harms done to boys who are inculcated into cultures of emotional famine, competitiveness, destructiveness, including the suppression of emotion, the rejection of any sign of weakness, the normalisation of extreme violence and hatred of others and the projection of violence and power.²⁶ She recognizes the weight that has been placed on the boy child in these contexts to fulfil masculine expectations including violence from an early age in sites defined by the power exercised by men with guns, enabled and supported by multiple stakeholders who have failed to exercise protection, dignity and worth to their lives.

The gendered practice of detaining male children indefinitely and without legal process is a violation of international law.²⁷ States of citizenship have an obligation to undertake

²² Report UN HCHR, A/HRC/40/28, para. 34.

²³ Decisions by the International Criminal Court and the Sierra Leone Tribunal affirm that the conscription, enlistment use of children in hostilities is a war crime, prohibited by customary and treaty law. *See* Prosecutor v. Thomas Lubanga Dyilo 1cc-01/04-01/06 and Prosecutor v. Fofana, Case No. SCSL-04-14-A, Appeals Judgment (May 28, 2008).

²⁴ Paris Principles 3.6, specifically noting that detention for children should be exceptional and for the shortest appropriate duration.

²⁵ See e.g. the Trial of Dominic Ongwen and noting the opening Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the opening of Trial in the case against Dominic Ongwen acknowledging his position as a former child soldier forcibly recruited <https://www.icc-cpi.int/Pages/item.aspx?name=2016-12-06-otp-stat-ongwen>

²⁶ This may become a “proving ground for masculinity” viewed as a “rite of passage, transforming boys into men”. See, Helena Carreiras Gender and the Military: Women in the Armed Forces of Western Democracies (2006) 41. Through participation in conflicts and the failure to protect them from conflict, boys may feel that they have become men, and they may find male role models.

²⁷ According to the CoI Syria, “the Syrian Democratic Forces are also holding thousands of men and boys suspected of former membership of or association with ISIL, often incommunicado, without access to adequate judicial guarantees. Those who have not been charged under criminal provisions or undergone an individual assessment by an impartial and independent body as to whether their internment is justified on grounds of imperative reasons of security are being unlawfully deprived of their liberty”. “Notwithstanding the security threat posed by many alleged former ISIL members, blanket internment of civilians by the Syrian Democratic Forces who originally resided in areas where ISIL imposed its rule by violent means cannot be justified. In particular, the civilians interned since at least 2018 include tens of thousands of children (...) and others who do

positive measures to prevent their child nationals from being detained indefinitely in despicable prison conditions in North-East Syria.²⁸ The practice of separating male children from their mothers in the camps of North-East Syria is a violation of international law, inconsistent with the best interest of the child, a breach of family rights, and appears prima facie discriminatory. States of citizenship have an obligation to act to prevent or remediate the harms that have and are being caused by such separation. The practice of holding boy children in mixed detention facilities with older men, who may have been associated with ISIL and other armed groups puts them at risk, constitute a violation of international law and is inconsistent with the rights of the child.²⁹

Children Crossing the Threshold from Childhood to Adulthood in Places of Unlawful Detention

Children who are unlawfully detained in prison or camp facilities in north-east Syria should urgently be repatriated unless non-refoulement prohibitions are engaged. In non-refoulement cases, alternative safe and agreed repatriation to third States must be expedited. The Special Rapporteur calls on States to promptly consider the need to make provision for children and their mothers who cannot safely be returned to countries of citizenship due to a well-founded fear of persecution or threat of harms which violate the non-derogable norms of international human rights law.³⁰

The unlawfulness of detention as a child does not render such detention lawful once a child crosses the threshold of adulthood.³¹ Specifically, there is no lawful basis to detain an adult on the **basis of** their newly acquired adult status when previous detention was in violation of international law. The “status” of such individuals remains that of presumed victim until evidence of specific acts constituting serious crimes under domestic or international law are adduced. Such transitioning persons (from child to adulthood in detention) should have the benefit of measures to redress harms caused by armed conflict, non-State armed groups or States during their childhood.³² Such transitional persons are equally entitled to repatriation, appropriate reintegration and rehabilitation measures commensurate with the scale of violations experienced in childhood and adolescence. This includes adequate

not represent any imperative security threat. Therefore, in many instances, the ongoing internment of these individuals continues to amount to unlawful deprivation of liberty. The failure to provide appropriate medical care or assistance to encamped residents also constitutes a violation of the prohibition of cruel, inhuman or degrading treatment, and contravenes the right to health”. A/HRC/46/55, paras 95 and 96,

²⁸ Repatriation is the only comprehensive response that amounts to a positive implementation of Security Council resolutions 2178 (2014) and 2396 (2017) and is considerate of a State’s long-term security interests.

²⁹ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “Havana Rules”), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”). + ICCPR + CRC + HRC jurisprudence

³⁰ Cf. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

³¹ Convention on the Rights of the Child Article 37(b).

³² Paris Principles 3.6, 3.7 & 3.8.

health and psycho-social care, education to remedy loss and deficits due to conflict and incarceration, disability provision as necessary, and ongoing material support to enable access to employment and full participation in society.

Criminal liability should only be sought in respect of children transitioning to adulthood in rare circumstances,³³ where the child is objectively identified as having the requisite mental intent to commit a criminal act as well as sufficient evidence to prove the criminal act alleged. Guilt by family association is a clear breach of international law, and the rights of the child. The fact of association with and training by ISIL for selected boys does not constitute evidence of criminality per se on the part of children who were not in a position to exit the terrorist group, subject to coercive control and direct violence to maintain their presence in the group. Here, the jurisprudence of the Committee on the Rights of the Child in respect of children rights in juvenile justice provide substantial guidance to State and is commended for application to the context of children in detention in prison-like conditions in north-east Syria.³⁴

Human Rights Violations Experienced by Children/Adolescents in Detention

Children currently in detention by the SDF in north-east Syria are victims on multiple levels. Some boy children prior to capture and arbitrary detention by the SDF have been exploited by ISIS and other groups on multiple levels. They are victims of terrorism on numerous perimeters. They have experienced severe, undulating exposure to traumatic and brutal violence. Some have been directly physically injured by bombs, gunfire or direct assault by non-State actor groups or affiliated individuals. Their treatment and recovery is undermined by a lack of access to required medical and psychological care. Boys have contracted diseases and chronic conditions in places of detention, including diseases such as tuberculosis. Most are malnourished and lack adequate and nutritionally age-appropriate access to food and water. Some are orphaned and have lost all ties to extended family by virtue of unlawful detention and lack of capacity to speak with family members overseas or in territories nearby. Some (solely boys) have been forcibly separated from their mothers, deemed no longer children by the detaining authorities based on an arbitrary set of assumptions that their move to teenage years justifies the deprivation of family support, and the positionality of child within their family structure. The harm of separation for a child creates long-term and often irreparable damage, limiting their psycho-social development, depriving them of nurture and connection. It constitutes a breach of their right to protection as a child and a fundamental infringement of the right to family life.³⁵

³³ See generally UNODC, *Handbook Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System* (2018). Note General Comment No 10 CRC para 6. “States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children.

³⁴ The Committee on the Rights of the Child (CRC), General Comment No. 10 (2007), found here <https://www.refworld.org/docid/4670fca12.html>

³⁵ Convention on the Rights of the Child, Article 9.

Some children may have endured ferocious recruitment methods including threats or actual harms to other family members including enslavement, sexual exploitation, exposure to constant fear, indoctrination and psychological pressure and being forced to commit acts of violence.³⁶ Many boys were directly injured during the conflict, some in hostilities. When individually exploited by ISIS the combination of young age, psychological malleability, and coercive conditions may have resulted in the criminal behaviour including in some cases acts of terrorism, war crimes, or crimes against humanity.

Boys Subject to Trafficking

The Special Rapporteur is concerned that the adolescents concerned may **have been** or **will become** victims of trafficking. She notes that young men and boys are the silent victims of trafficking, less visible than their female counterparts.³⁷ Under applicable international law, trafficking generally requires three elements: 1) an “act” including recruitment or transportation with 2) the specific intent or ‘purpose’ to exploit, and 3) the use of certain means.³⁸ She underscores that such means do not necessarily involve the use of physical force, but include deception involving abuse of power or a position of vulnerability. This element is particularly cogent as regards children. Particular attention should be paid to men who, at the time of receipt or recruitment by ISIS-related individuals, were under the age of 18. Regional human rights standards underscore the absence of consent for children recruited as minors. Such individuals should be regarded as victims of trafficking in human beings independent of consent given or other coercive methods applied in accordance with Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings. State parties to that Convention are also under a clear obligation to “return without undue or unreasonable delay” any victim that is a national of that State or in which that person had the right of permanent residence prior to victimization (Article 16 of aforementioned Convention).” She recalls her previous concerns that the parents of such adolescents, specifically mothers, who travelled to Syria and Iraq may have also been the victims of trafficking.³⁹

She recalls that children are frequently targeted by terrorist and non-state actor groups, including ISIS.⁴⁰ She finds that the training, deployment, and indoctrination of children by ISIS and similar groups in the circumstances of the self-declared Caliphate can meet the definition of child trafficking when there is an ‘act’ (e.g. recruitment or transportation) with

³⁶ UNODC *supra* note 25, at 2.

³⁷ The trends on boys’ vulnerability to trafficking have increased during the Covid-19 pandemic UNODC *Share of Children Among Trafficking Victims Increases, Boys Five Times* (Feb 2021) found at; <https://www.unodc.org/unodc/en/press/releases/2021/February/share-of-children-among-trafficking-victims-increases--boys-five-times-covid-19-seen-worsening-overall-trend-in-human-trafficking--says-unodc-report.html>

³⁸ 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

³⁹ A/HRC/46/36

⁴⁰ Evidence of such recruitment is documents *inter alia* by UNODC Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (2017) p1.

the specific intent to exploit. For these children, who are victims of terrorism no specific “means” are required. A minor, cannot **in any circumstance** (and these circumstances being uniquely coercive and controlling), legally give consent to their own exploitation by a terrorist organization.

Under the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, States have an international obligation not only to identify traffickers but also to identify victims of trafficking.⁴¹ It is highlighted that a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. The Special Rapporteur notes her profound concern at the failure of States to address the context of trafficking in respect of the situation of children, including boys in north-east Syria. The Recommended Principles and Guidelines state, that victims must be provided with protection, not punishment, for unlawful acts committed as a direct consequence of being trafficked. Recommended Principle 7, concerning protection and assistance to victims of trafficking, provides that “trafficked persons shall not be detained, charged or prosecuted.” Recommended Principle 8 prescribes that States shall ensure victims of trafficking “are protected from further exploitation and harm and have access to adequate physical and psychological care.” The obligation of States to remedy and prevent the harms of trafficking in north-east Syria can only be adequately discharged by returning them to their country of citizenship.

State Obligations to Children held in Detention in North-East Syria

The Special Rapporteur makes note that many of the young boys currently held in unlawful detention will struggle with feelings of vulnerability, loss of hope for their futures and stigma. It is essential that States facilitate acknowledgment of the experiences of violation by boys and that the hard conversations about State responsibility are fully engaged. There is a critical need to ensure reporting, advance accountability, enable safe repatriation, engage meaningful reintegration and healing. This will require developing substantive global, regional and national programs to aid this population.

It is essential that such children are not placed in a situation of de facto or risk of statelessness. Boys born in Syria who are not recognized by their parents’ home countries, subsist in a situation of legal limbo with no meaningful access to the ‘right to have rights’.⁴² This lacuna requires immediate remedy by states of nationality, and the implementation of the

⁴¹ *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary* (United Nations publication, Sales No. E.10.XIV.1).

⁴² The Special Rapporteur recalls the Secretary-General’s Report on Human Rights and Arbitrary Deprivation of Nationality. States must ensure that their domestic law provides safeguards to fulfil the right of the child to acquire a nationality. See A/HRRC/25/28, Para 43, “This includes providing access to nationality for all children born on their territory who would otherwise be stateless and for all children born abroad to one of their nationals who would otherwise be stateless. States must ensure that these safeguards allow for acquisition of nationality by an otherwise stateless child as soon as possible after birth”.

right to a nationality for these vulnerable children. The Special Rapporteur decries the invidious practices of State who will only accept the return of traumatized children on the basis that they separate from their mothers. This inhuman choice between family separation and the vindication of citizenship is one that should not be accepted in civilized societies.

Longer term solutions must include (1) rehabilitating children /boys who have committed serious and systematic human rights and humanitarian law violations; (2) promoting tolerance of such children/boys so that they are accepted by their families and communities when the victims of their crimes may have been family or community members or where the perception of their involvement creates fear and bias against them; (3) determining whether these children are eligible for asylum under refugee law; (4) provide bespoke and human rights compliant solutions for children unable to return safely to countries of citizenship; (5) addressing the educational and health needs of boy who have experienced long-term detention in north-east Syria in home countries with scarce resources. In a broader view, the rehabilitation and reintegration of these children will be critical to the long-term stability of Syria, Iraq and beyond as we increasingly understand the intergenerational effects of sustained violence in that region over the medium and long term. Children who have absorbed and acted out violent norms pose immense challenges to and opportunities for the sustainability of peace and to the broadest possible realization of stability and security. She cautions against expansion and refurbishment of further prisons and “rehabilitation” centers in this context,⁴³ given the clear evidence that existing practices and institutions are and function in a manner *prima facie* inconsistent with international law.

States must always undertake individualised assessments pertaining to the specific situation where gender harms are identified. This principle is broadly understood in respect of women and girls but should be fully practiced in relation to boys.⁴⁴ States must be conscious of the gender-specific traumas than can be experienced by boys, as well as the various human rights violations that they are subjected to in the context of their detention and the impact of those conditions on their mental and physical health. Adequacy of alternatives to detention for children in vulnerable situations and in particular, victims of trafficking is critical. Victims or potential victims of trafficking should not be placed under detention or any alternative to it, they should be promptly identified and referred to the appropriate services for early support and long-term assistance. It is imperative that State responses including illegal or arbitrary deprivation of liberty do not perpetuate or contribute to further victimisation of those who have already experienced profound violence and trauma.⁴⁵

⁴³ Including the provision of financial and infrastructure support to enable building and sustaining these facilities. *See e.g.* Lead I.G. Report to the US Congress found at: <https://media.defense.gov/2021/Feb/09/2002578750/-1/-/1/1/LEAD%20INSPECTOR%20GENERAL%20FOR%20OPERATION%20INHERENT%20RESOLVE.PDF> and Reports of Coalition Support to the expansion of prison facilities found at: <https://www.defenseone.com/policy/2021/02/coalition-plans-expand-giant-isis-prison-syria/172270/>

⁴⁴ See in particular CTED Trends Report on the Gender Dimensions of the Response to Returning Foreign Terrorist Fighters (2019) and UNDP/ICAN, *Invisible Women* (2019).

⁴⁵The UN Global Compact/CTITF Working Group on promoting and protecting human rights and the rule of law while countering terrorism, “Guidance to States on Human Rights-Compliant Responses to the Threat Posed by Foreign Fighters” (2018)

Long term solutions must also include the investigation and prosecution of adults who have recruited children or ordered them to commit terrorist acts, including the children's own rights in terms of accountability and reparation. Where States have violated children's rights, including arbitrary detention, in the name of counter-terrorism and national security, children must be recognised as victims of these violations, which must be independently investigated and perpetrators held accountable. States must also increasingly prevent the recruitment of children by terrorist groups, as part of the broader obligation to prevent the exploitation of children under the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. Prevention of recruitment by terrorist groups should not translate into unchartered preventive approaches that focus on the child as a potential risk rather than potentially at risk of exploitation because it forms part of a broader counter terrorism strategy. Measures to prevent the recruitment of children by terrorist groups must always be legal, proportionate, necessary, non-discriminatory and non-arbitrary.

The Special Rapporteur is aware that the concerns she has raised in respect of detained boys and adolescents are not abstract but pertain directly to the detention of hundreds of children in North-East Syria. Each day in the life of a child is precious. Every day in which a child experiences hunger, harm, violence, and fear has life-long effects. States have an obligation to protect their most vulnerable citizens. The time for action is long passed in North-East Syria.
