

**Position Paper of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism on the Rights of Children in Contexts affected by Counter-Terrorism<sup>1</sup>**

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## **Introduction**

Since its establishment, the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Special Rapporteur) has reaffirmed that well-settled international human rights law obligations are owed to children and apply in full force in the context of countering terrorism including in the context of military, security or counter-terrorism operations.<sup>2</sup> International law recognizes that children are particularly vulnerable to coercion and abuse, and must therefore be afforded heightened protections in *all* contexts, including judicial and non-judicial counter-terrorism proceedings including in the very criminalisation and definitional framework of terrorism-related offences. This position paper provides a summary stock take of the ongoing misuse and abuse of counter-terrorism and broader national security measures to justify violating children's rights and fundamental freedoms—with a particular focus on the criminal justice context.

The paper builds on the 2019 United Nations Global Study on children deprived of liberty, which found that the vast majority of States have expanded the scope of their counter-terrorism laws and regulations in recent years, posing direct risks for children, including a heightened risk of detention for terrorism or related national security offences, often exacerbated by ill treatment and deleterious conditions of confinement, as well as fundamental due process violations.<sup>3</sup> According to the 2023 Secretary-General's annual report on children and armed conflict, in 2022 at least 2,496 children were detained for actual or alleged association with armed groups, including groups designated as terrorist by the United Nations, or for national security reasons.<sup>4</sup> The Special Rapporteur echoes in this context the March 2023 joint statement

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<sup>2</sup> See, e.g., A/HRC/6/17; A/HRC/46/36; UA SDN 7/2022; UA BHR 11/2014; UA EGY 11/2018; Position paper 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 (May 2021), [https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT\\_Position\\_human-rights-of-boys-adolescents-2021\\_final.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf).

<sup>3</sup> Global study on children deprived of liberty, 11 July 2019, A/74/136, paras. 74-78.

<sup>4</sup> Children and armed conflict, Report of the Secretary-General, 5 June 2023, A/77/895-S/2023/363, para. 4. (The Special Rapporteur notes that this figure does not account for the 31,900 children detained in al Hol and al Roj camps in Northeast

of the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Representative on Violence against Children, and the United Nations Committee on the Rights of the Child, which expressed alarm at “[i]ncreasing practices of arresting and detaining children identified as associated with armed group” including groups designated as terrorist by the United Nations, and underscored the importance and urgency of respecting, protecting, and fulfilling child rights in the context of counter-terrorism measures.<sup>5</sup>

While the Special Rapporteur recognises the legitimate State interest in advancing individual and collective security as affirmed by both the Universal Declaration and the United Nations Charter, that interest does not justify the violation of children’s rights. With a particular focus on the criminalisation of terrorism-related offences and related judicial proceedings against children for such offences, the Special Rapporteur enumerates here the heightened protections and fundamental procedural guarantees owed to all children (i.e. any individual under the age of 18) under international law, including in counter-terrorism contexts. The position paper proceeds in three parts. Part I sets out the wide-ranging rights protections afforded to children under international law, including international human rights law and international humanitarian law, recognizing the vulnerabilities that exist for children throughout the entirety of childhood. Part II illustrates how States have in recent years invoked counter-terrorism and national security objectives to derogate from these well-settled protections, citing specific examples of States lowering the minimum age of criminal responsibility, removing children from juvenile or child justice systems to special counter-terrorism or military courts, flagrantly violating minimum procedural standards, including those specific to children, and instituting disproportionate sentences which amount to cruel and inhuman punishment, such as the death penalty and life imprisonment. Finally, Part III positively acknowledges the promising practices of some States that promote the protection of children’s rights in the context of countering terrorism and concludes with a set of recommendations to concretise international human rights law compliance and child protection in the counter-terrorism context.

## **I. International human rights law stipulates heightened protections for children, including in the counter-terrorism context**

International law provides robust protections for children, i.e., every human being below the age of eighteen years.<sup>6</sup> International law recognises children as fully-fledged rights holders and provides them with robust protections. Several international human rights treaties—namely, the Convention on the Rights of the Child (CRC), the most widely adopted international human rights treaty, and its Optional Protocols, as well as the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)—provide for a wide range of children’s rights that apply in full force in contexts of counter-terrorism, security, and emergency measures. This includes settings where non-state armed groups designated as terrorist organisations by the United Nations control territory or institutions or are active. These treaties are supplemented by several non-binding human rights law instruments, including the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) and the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles), each of which provides further guidance on the requisite protections of children with relevance to counter-terrorism and related contexts.

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Syria and the 1,000 children detained in prisons or other places of detention in the territory; see Technical Visit to the Northeast of the Syrian Arab Republic, End of Mission Statement,

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>

<sup>5</sup> UN Experts Stress Urgent Need to Ensure Child Rights while Implementing Counter-terrorism and National Security Measures (Mar. 14, 2023), [https://childrenandarmedconflict.un.org/2023/03/un-experts-stress-urgent-need-to-ensure-child-rights-while-implementing-counter-terrorism-and-national-security-measures/#:~:text=\\*%20The%20Special%20Representative%20of%20the,its%20current%20Chair%2C%20Mikiko%20Otani](https://childrenandarmedconflict.un.org/2023/03/un-experts-stress-urgent-need-to-ensure-child-rights-while-implementing-counter-terrorism-and-national-security-measures/#:~:text=*%20The%20Special%20Representative%20of%20the,its%20current%20Chair%2C%20Mikiko%20Otani).

<sup>6</sup> Convention on the Rights of the Child (1989), art. 1.

These standards are supplemented by General Comment No. 24 of the Committee on the Rights of the Child which addresses children’s rights in child justice systems.<sup>7</sup>

Two overriding international human rights law principles, among others, apply across contexts to all children: non-discrimination and the best interests of the child. Pursuant to the international law requirement of non-discrimination, States parties are obligated to ensure that children within their jurisdiction enjoy their rights, “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”<sup>8</sup> In this regard, the Convention on the Rights of Child has established that “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.<sup>9</sup> This requires fulsome attention to the agency of the child, but also other identifying characteristics, recognising the intersectional experiences of marginalised groups, including ethnicity, religion, indigeneity, gender, sexual orientation, disability, and refugee or migrant status.<sup>10</sup>

The “best interests of the child” requirement obliges State authorities to make the best interests of children a primary consideration when making decisions that affect children.<sup>11</sup> The best interest principle applies to all children without discrimination whether they are nationals, asylum-seekers, refugees, internally displaced, migrants or stateless and that the principle also applies whether children are with their parent/caregivers or unaccompanied or separated. The CRC is clear that this principle applies equally to judicial bodies, administrative authorities, legislative bodies, and both public and private social-welfare institutions. The requisite prioritisation of the best interests of the child is also considered customary international law by some academics and commentators.<sup>12</sup>

The fundamental rights of the child as enshrined under international human rights law include an interrelated set of rights and freedoms applicable to all persons, as well as additional measures of protection owed to children due to their status and particular vulnerabilities.<sup>13</sup> These rights and freedoms include:

- the inherent right to life, freedom from torture or other cruel, inhuman or degrading treatment or punishment, and freedom from arbitrary deprivation of liberty—whereby “arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time” and “[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”;<sup>14</sup>
- fundamental procedural guarantees which reflect the rights of children to access justice and remedy, including a minimum age of criminal responsibility; the right to prompt and direct notification of

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<sup>7</sup> General Comment no.24, Committee on the Rights of the Child, 18 September 2019, CRC/C/GC/24, see particularly paras 97-101. The Special Rapporteur also takes note of Security Council Resolution 2427 (2018) which contributes to a comprehensive framework to protect children in armed conflict inter alia OP20 & 21.

<sup>8</sup> Supra note 6 (CRC), art. 2.(underscoring the essential principle of individual criminal responsibility).

<sup>9</sup> Supra note 6 (CRC), art 2 (2).

<sup>10</sup> See generally CRC; see also SRCT&HR Global Study on the impact of counter-terrorism on civil society and civic space, ch. 1(2), [https://unglobalstudy.wpengine.com/wp-content/uploads/2023/06/SRCT\\_GlobalStudy.pdf](https://unglobalstudy.wpengine.com/wp-content/uploads/2023/06/SRCT_GlobalStudy.pdf).

<sup>11</sup> Supra note 6 (CRC), art. 3.

<sup>12</sup> See, e.g., Geraldine Van Bueren, *Children’s Rights in International Human Rights Law* (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran eds. 2018) 331; René Provost, *Judging in Splendid Isolation* 56 AMER. J. COMPARATIVE L. 125, 137 (2008); Arabella Lang, *UN Convention on the Rights of the Child: A Brief Guide*, HOUSE OF COMMONS LIBRARY 4, 6-7 (Nov. 29, 2016), <https://researchbriefings.files.parliament.uk/documents/CBP-7721/CBP-7721.pdf>.

<sup>13</sup> See, e.g., UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, arts. 10 and 24.

<sup>14</sup> Supra note 6 (CRC), arts. 6, 37.

charges and access to legal and other appropriate assistance; non-retroactivity of charges; the right to be considered innocent until proven guilty; the right to maintain contact with family when in detention, and to be treated in a manner that takes into account the needs of persons of their age; and the right to a hearing before a competent, independent and impartial authority or judicial body without delay;<sup>15</sup> in this regard, stressing that prosecution must be evidence rather than confession based, and prosecution of children must be undertaken in specialised children's courts or in the absence of such specialised bodies by specially trained personnel.<sup>16</sup> The obvious corollary of these fundamental precepts is that trial of children by military, national security or counter-terrorism courts would be inconsistent with international law;

- the right to preserve one's identity, including nationality, name, and family relations as recognised by law without unlawful interference;<sup>17</sup>
- non-separation from parents against the child's and the parents will, except 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;<sup>18</sup>
- rights to freedom of expression, thought, conscience, and religion, and association, including assuring that any child capable of forming his or her own views enjoys the right to express those views freely in all matters affecting the child, with the views being given due weight in accordance with their age and maturity;<sup>19</sup>
- the right to protection of the law against "arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation";<sup>20</sup> and
- rights to healthcare, education, social security, and a standard of living adequate for the child's physical, mental, spiritual, moral, and social development.<sup>21</sup>

Crucially, the CRC requires States parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation" and with regard to potential judicial proceedings, requires States to seek "[w]henver appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected."<sup>22</sup> The CRC specifically requires States to use methods of reintegration when dealing with children, listing alternatives such as counselling, educational and vocational training programs, and more.<sup>23</sup>

The above rights and freedoms apply equally in contexts of counter-terrorism, armed conflict, and settings where groups designated as terrorist may be active. Indeed, children and armed conflict has long been a priority agenda item of the Security Council (S/RES/1261), with recognition of the "deliberate targeting of children in situations of armed conflict and the harmful and widespread impact of armed conflict on children, and the long-term consequences this has for durable peace, security and

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<sup>15</sup> Supra note 6 (CRC) arts. 37, 40. Reflecting that the substance of access to justice and remedy is inclusive of but goes beyond child justice.

<sup>16</sup> General Comment no.14, Committee on the Rights of the Child, 29 May 2013, CRC/C/GC/14, paras 27-29, and 96

<sup>17</sup> Supra note 6 (CRC)art. 8.

<sup>18</sup> Supra note 6 (CRC)art. 9.

<sup>19</sup> Supra note 6 (CRC)arts. 12-15.

<sup>20</sup> Supra note 6 (CRC)art. 6.

<sup>21</sup> Supra note 6 (CRC)arts. 24-29.

<sup>22</sup> Supra note 6 (CRC) arts. 19, 40(3).

<sup>23</sup>Supra note 6 (CRC)art. 40.

development.”<sup>24</sup> The adoption of this first Security Council resolution institutionalising the Children in Armed Conflict Agenda (CAAC) signalled what has become sustained engagement by the Security Council holding the treatment of children in armed conflict as an issue affecting peace and security.<sup>25</sup> The Special Rapporteur echoes the observation by the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Representative of the Secretary-General on Violence against Children, and the UN Committee on the Rights of the Child that in these conflict settings where counter-terrorism measures are widely used, children are often placed in detention or deprived of liberty and “doubly victimised and caught in a cycle of violence, including being exposed to torture.”<sup>26</sup> Therefore it is vitally important pursuant to international human rights law and international humanitarian law that any reintegration support to these children include “access to age and gender-appropriate services, including mental health and psychosocial support, education, and legal assistance.”<sup>27</sup> Moreover, under international refugee law, any children enjoying or seeking refugee status must “receive appropriate protection and humanitarian assistance” in line with the CRC and other applicable international human rights and humanitarian instruments.<sup>28</sup> The Special Rapporteur highlights her concern the broad political consensus among States that appears in the Children and Armed Conflict agenda is siloed from or often deliberately ignored for children who seek and require protection in counter-terrorism contexts. She further observes a consistent lack of attention to the necessary protections due to the child in the implementation of counter-terrorism measures, as well as in counter-terrorism technical assistance whether bilateral or multilateral in nature.

In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties are also obligated to take all feasible and concrete measures to ensure the protection and care of children who are affected by armed conflict.<sup>29</sup> In this context, the Special Rapporteur notes her identification of increasing overlap between situations of armed conflict and situations in which terrorist acts and counter-terrorism activities occur. In her report to the General Assembly at its seventy-third session (A/73/361), she observed that counter-terrorism measures are frequently taken in the context of armed conflict in which international humanitarian law applies. That reality is further illustrated by the number of non-international armed conflicts involving non-State armed groups subject to terrorist designation by the United Nations and its targeted sanctions regime or included on regional and national terrorist sanctions lists. Such overlap underscores the need to ensure both the relevant application of international humanitarian law to protect children as well as the parallel application of international human rights law norms. The Special Rapporteur has previously clarified that certain rights

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<sup>24</sup> S/RES/1314 (2000), para. 1; see also Children and Armed Conflict, *Annual Report of the Secretary-General, Children Affected by Grave Violations: Trends and Developments 2021*, A/76/871-S/2022/493, <https://childrenandarmedconflict.un.org/wp-content/uploads/2022/07/Summary-of-the-Annual-Report-of-the-Secretary-General-on-Children-and-Armed-Conflict-2021-3.pdf>.

<sup>25</sup> Noting also UNSCR 1314 (2000), UNSCR 1379 (2001), UNSCR 1539 (2004), UNSCR 1612 (2005), UNSCR 1882 (2009), UNSCR 2143 (2014), and UNSCR 2225 (2015).

<sup>26</sup> UN Experts Stress Urgent Need to Ensure Child Rights while Implementing Counter-terrorism and National Security Measures (Mar. 14, 2023); see also CRC, art. 38 (“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”).

<sup>27</sup> UN Experts Stress Urgent Need to Ensure Child Rights while Implementing Counter-terrorism and National Security Measures (Mar. 14, 2023).

<sup>28</sup> CRC, art. 22.

<sup>29</sup> CRC, art. 38(4). See also regarding the protection of children in armed conflict, Geneva Convention (No. IV) Relative to Protection of Civilian Persons in Time of War, arts. 14, 17, 23, 24, 38(5), 50, 82, 89, 94, 132, Aug. 12, 1949, 75 U.N.T.S. 287; International Criminal Court Statute, specific provisions concerning children include art. 6(e), defining forcible transfer of children as genocide; and art. 7(2)(c) which defines enslavement as a crime against humanity as “exercise of any or all of the powers attaching to the right of ownership,” including “in the course of trafficking in ... children”; and arts. 8(2)(b)(xxvi), 8(2)(e)(vii) proscribing conscription, enlistment, and use in hostilities of children under fifteen. *Id.*, art. 54(1)(b) requiring adjustments based on victim or witness circumstances, including age or crimes involving violence against children; *id.*, art. 68(1) setting out protection measures for victims and witnesses, with particular attention to age and to crimes involving violence against children; *id.*, art. 68(2) permitting *in camera* or other special proceedings if victim or witness is a child.

are non-derogable and that “States must apply the tests of legitimacy, proportionality and necessity when choosing measures in response to crisis.”<sup>30</sup> She underscores in this regard the positive interface of both international human rights law and international humanitarian law,<sup>31</sup> and the continued applicability of the CRC and other international human rights law treaties even when a child is considered as a terrorist threat or in violation of terrorism-related offences. Indeed, States cannot invoke terrorism or ongoing armed conflict to justify the violation of children’s rights protected under international law, nor as a way to avoid any human rights obligations that apply to children in all circumstances.<sup>32</sup> The Special Rapporteur further notes in this context the further protections to which children are entitled in armed conflict as provided under international criminal law.<sup>33</sup>

In addition to the international law treaty obligations set out above, other UN human rights instruments enumerate further guidance for the protection of children in the counter-terrorism context. These instruments point to a clear consensus on the protection due to the child and the obligations of States including with respect to contexts affected by terrorism and counter-terrorism. The key take-away is that mere framing of a situation as one that engages counter-terrorism does not negate these clearly defined obligations for States. For instance, with respect to armed conflicts, the Paris Principles affirm the need for a “child rights-based approach to the problem of children associated with armed forces or armed groups.”<sup>34</sup> The Principles provide specific guidance on reintegration efforts and explicitly states that children recruited or used by armed forces or groups and, by extension, groups designated as terrorists, must be treated primarily as victims of rights violations and “should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership of those forces or groups.”<sup>35</sup> The Committee on the Rights of the Child, General Comment No. 24 states that all children charged with offences, regardless of the gravity or the context, are dealt with in terms of articles 37 and 40 of the Convention, and 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. The Beijing Rules set standards for the treatment of children in judicial proceedings, emphasising that juvenile justice systems should be distinct and separate from adult procedures.<sup>36</sup> Similarly, the UN Rules for Protection of Juveniles mandate that “[j]uveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.”<sup>37</sup>

The Special Rapporteur highlights a concerning lack of conformity for the primacy of international human rights law standards on children’s rights, including coherence and reiteration of standards under the Convention on the Rights of the Child in the counter-terrorism process, including regrettably by United Nation bodies, such as the Counter-Terrorism Committee and its Executive Directorate. Specifically, among the one publicly available report of the Counter-Terrorism Committee on its follow-up visit to Finland, the Special Rapporteur observes a lack of focused dialogue and framing of obligations under relevant counter-terrorism Security Council resolutions in compliance with the State’s obligations under

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<sup>30</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights challenge of states of emergency in the context of countering terrorism, 1 March 2018, A/HRC/37/52, paras. 28, 41.

<sup>31</sup> See generally A/75/337.

<sup>32</sup> See A/75/337; ICRC, LEGAL PROTECTION OF CHILDREN IN ARMED CONFLICT (2003), <https://www.icrc.org/en/document/legal-protection-children-armed-conflict-factsheet>.

<sup>33</sup> See, e.g., Rome Statute, art. 8(2)(e)(vii).

<sup>34</sup> UN Children's Fund (UNICEF), The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups, February 2007, para. 1.5.

<sup>35</sup> *Supra* note. 34 (Paris Principles), paras. 8.14-8.15.

<sup>36</sup> See, e.g., Beijing Rules, paras. 1.6, 13.3.

<sup>37</sup> G.A. Res. 45/113, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 13 (Dec. 14, 1990).

international human rights law on the rights of the child. In all counter-terrorism assessments, the essential and core standard that should guide realisation of the rights of the child, including in counter-terrorism and preventing and countering violent extremism efforts, is the best interest of the child.<sup>38</sup> This standard is absent across issues such as non-detention of children, psycho-social support, engagement of protective services, individualised risk assessments (with no noted distinction between adults and children), and engagement of cross-sectoral institutions.<sup>39</sup> She further underscores the lack of direct cross-referencing and engagement with recommendations set forth by the Committee on the Rights of the Child that specifically relate to the CTC report on the rights of migrant children and continued discrimination and the institutionalisation of children and adolescent health. The positive recognition of the CTC in the report on these issues do not comport with recommendations of the Committee on the Rights of the Child, which has documented insufficient implementation of recommendations on discrimination of migrant children and deinstitutionalisation of children.<sup>40</sup> Positively, the Special Rapporteur notes the reiteration and emphasised importance of the States' engagement with the United Nations High Commissioner for Refugees to prevent the detention of children in this report as an example. She further positively acknowledges more systemically, the mainstreaming of children's rights under international law in the Counter-Terrorism Committee's Technical guide to the implementation of Security Council resolution 1373 (2001) and other relevant resolutions and notes her concern that this particular country assessment lacks key features of a children's rights assessment as even framed within the guidelines for implementation.<sup>41</sup> The Special Rapporteur further remains concerned that these discrepancies may be pervasive in the UN system, transposed upon guidelines for best practice, programmatic guidelines whether internal or external to the UN, and recommends continued normative leadership and guidance from UNICEF and other specialised actors inform all efforts in the UN's counter-terrorism and P/CVE efforts. In line with her broader calls to fundamentally centre human rights in the work of UN counter-terrorism bodies, she makes clear that human rights compliant counter-terrorism including UN programming, capacity building or technical assistance must centre the rights of the child and to ensure that recommendations and dialogue with Member States reflect the totality and specificity of their treaty obligations under international law.

## **II. States regularly invoke counter-terrorism and security objectives to nullify and derogate from well-settled children's protections and rights under international human rights law**

Many States use counter-terrorism and other security concerns to justify rolling back rights and the robust protections owed to children under international human rights law. This Part provides specific examples of the ongoing misuse of counter-terrorism laws and measures against children to nullify and/or exempt children's rights, including by lowering the minimum age of criminal responsibility, removing children from juvenile justice systems, violating fundamental fair trial and due process safeguards, and instituting harsh and disproportionate sentences and administrative sanctions. The Special Rapporteur expresses serious concern that multiple States have cited counter-terrorism and security objectives both to depart from the requisite heightened protections for children under international human rights law—often under the problematic and non-international law compliant position that the severity of terrorism-related offences justifies such derogation—and to deprive children of basic procedural guarantees applicable to all persons under international law, in violation of well-settled fair trial and due process rights. The cumulative

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<sup>38</sup> [Report of the Counter-Terrorism Committee on its follow-up visit to the Republic of Finland](#) (9–11 April 2019)(CTC, Finland Assessment, 2019).

<sup>39</sup> Supra note 38 (CTC report Finland) See e.g., paras. 122, 152-3, 158, 170.

<sup>40</sup> CRC /C/FIN/CO/4, paras. 2, 7-9. Although the latest Concluding Observations for Finland date back to 2011, the disparate framing and dialogue on the issues as represented by these reports and the continued challenges on these issues through the States' implementation of the CRC and its Optional Protocols remain.

<sup>41</sup> Supra note 38 (CTC report Finland) , para. 122.

impacts posed by these often-overlapping practices are profound and exacerbate the already-vulnerable position of children in counter-terrorism settings with life-long consequences on children.

A. Minimum Age of Criminal Responsibility for Terrorism-Related Offences

The minimum age of criminal responsibility—including as stipulated in article 40 of the CRC—is generally intended to reflect that children below a certain age shall be presumed not to have the capacity to infringe penal law.<sup>42</sup> Despite the Committee on the Rights of the Child’s encouragement to States to increase the minimum age of criminal responsibility to at least 14 years,<sup>43</sup> as of 2019, over 120 States had maintained the minimum age at below 14.<sup>44</sup> Moreover, multiple States have lowered the ages at which children can be criminalised for serious offences, including terrorism-related offences which is directly contrary to the guidance of General Comment 24 (CRC) which states that “States should not create exceptions to lower the minimum age of criminal responsibility in cases where, for example, a child is accused of committing a serious offence, including national security and terrorist offences”.<sup>45</sup> For example, in Hungary, although the minimum age of criminal responsibility is 14 years old, the State lowered it to 12 for terrorism-related and other serious offences.<sup>46</sup> Similarly, in El Salvador, the State lowered the minimum age of criminal responsibility from 16 to 12 for children accused of membership in “terrorist groups or any other criminal gang,” a charge punishable by up to 10 years in prison for those under 16.<sup>47</sup> In her technical visit to North-East Syria, where she visited camps managed by the Autonomous Administration of North-East Syria (AANES) henceforth referred to as a detaining authority, the Special Rapporteur encountered children as young as 10 in detention facilities for terrorism-related affiliation, and none had been subject to legal process.<sup>48</sup>

***The Special Rapporteur urges States to increase the minimum age of criminal responsibility, and she seriously cautions against creating exceptions for terrorism-related offences.*** In no situation should children below the minimum age of criminal responsibility be deprived of liberty. She reaffirms the recommendation of the Global Study on children deprived of liberty that “States should never use the gravity of an offence, even when linked to national security, as a justification for lowering the minimum age of criminal responsibility.”<sup>49</sup> More fundamentally, the invocation of terrorism to justify carving out exceptions is “not based on a rational understanding of children’s development.”<sup>50</sup> Both the Committee on the Rights of the Child and the UN Office on Drugs and Crime have expressed concern that it “cannot be assumed that the seriousness of the act that the child has allegedly committed necessarily implies a greater maturity of that person.”<sup>51</sup> Moreover, UNICEF has described lowering the minimum age of criminal responsibility as an “act of violence against children,” whereby States punish children rather than

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<sup>42</sup> Supra note 6 (CRC), Article 40

<sup>43</sup> Committee on the Rights of the Child, General Comment no. 24 (2019), CRC/C/GC/24, paras. 20-24.

<sup>44</sup> Global study on children deprived of liberty, 11 July 2019, A/74/136, para. 43.

<sup>45</sup> Supra note 43 (CRC GC 24), para 25

<sup>46</sup> See CRC/C/HUN/6, para. 241 (2019); *Act C of 2012 of the Criminal Code*, § 16 (Hun.), available at [https://f.hubspotusercontent00.net/hubfs/8779058/delete-technology-2021/pdf/J2012T0100P\\_20200101\\_FIN.pdf](https://f.hubspotusercontent00.net/hubfs/8779058/delete-technology-2021/pdf/J2012T0100P_20200101_FIN.pdf).

<sup>47</sup> UNICEF, *Encarcelar a los niños, niñas y adolescentes no es la solución a la violencia de pandillas en El Salvador* (Apr. 7, 2022); see also OL SLV 4/2022.

<https://www.hrw.org/news/2022/04/08/el-salvador-sweeping-new-laws-endanger-rights>.

<sup>48</sup> See Technical Visit to the Northeast of the Syrian Arab Republic, End of Mission Statement,

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>

<sup>49</sup> Global study on children deprived of liberty, 11 July 2019, A/74/136, para. 141.

<sup>50</sup> See CRC/C/GC/24, para. 25 (Sept. 18, 2019) [hereinafter CRC General Comment 24].

<sup>51</sup> UNODC, *Handbook on Children Recruited and Ex-ploited by Terrorist and Violent Extremist Groups* (2017), 76; see also A/63/41, para. 34 (“The Committee strongly recommends that States parties set a minimum age for criminal responsibility that does not allow, by way of exception, the use of a lower age.”).



prioritising their protection.<sup>52</sup> Put simply, as the capacity of children does not vary by offence, nor should the minimum age of criminal responsibility.<sup>53</sup>

## B. Removal from Juvenile/Child Justice Systems

The Special Rapporteur affirms that whenever a decision has been made to prosecute a child who is below 18 years of age but above the minimum age of criminal responsibility, such a prosecution should only take place in a specialised juvenile/child justice system designed to meet the special needs of children and the requirements of the CRC for children accused of having violated penal law.<sup>54</sup> She underscores in the counter-terrorism context the leading principles for any comprehensive policy for juvenile justice as identified by the Committee on the Rights of the Child: non-discrimination, best interests of the child, the right to life, survival and development, the right to be heard, and the respect for the dignity of the child.<sup>55</sup>

Notwithstanding the fundamental principles of juvenile justice enshrined under international human rights law, multiple States have removed children from juvenile/child justice systems for prosecution and cases involving terrorism-related offences—as with the lowering of the minimum age of criminal responsibility, often due to the stated gravity of the offence. For instance, in the United Kingdom, where the minimum age of criminal responsibility is 10 years old and children between 10-17 are generally tried in Youth Court—which unlike the standard Crown Court, incorporates special protections for children—there is an exception for certain offences, including terrorism-related offences, which permit trial of children before the Crown Court as adults.<sup>56</sup>

Not only are children often removed from juvenile justice systems on the basis of the severity of terrorism-related offences, but they are often put before specially constituted counter-terrorism courts or military commissions. Indeed, some States' domestic laws explicitly require that all terrorism-related cases, including those involving children, be prosecuted before military courts. For instance, in Israel, military courts enjoy jurisdiction over all security offences, including terrorism-related offences, for children 12 years of age or older.<sup>57</sup> A UNICEF report from 2013 estimated that between 2003 and 2013 7,000 children had been detained, interrogated, prosecuted and/or imprisoned within the Israeli military justice system.<sup>58</sup> In Egypt, four children were allegedly tried for terrorism and other offences before a military court, along with more than 300 individuals.<sup>59</sup> The Special Rapporteur has consistently condemned the use of these exceptional judicial bodies whether for children or adults, as they lack the requisite independence, impartiality, and procedural guarantees that are well-settled under international human rights law.<sup>60</sup> Similarly, the Human Rights Committee has specifically expressed concern regarding the “broad

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<sup>52</sup> *Lowering the Age of Criminal Responsibility Is Against Child Rights*, UNICEF (Jan. 18. 2019), <https://www.unicef.org/philippines/press-releases/lowering-age-criminal-responsibility-against-child-rights-unicef>.

<sup>53</sup> *Supra* note 43 (CRC GC 24), para. 25.

<sup>54</sup> *Supra* note 51 (UNODC Handbook), 77; *Supra* note 43 (CRC GC 24) paras 29-32 and para 46

<sup>55</sup> General Comment no.10, Committee on the Rights of the Child, 25 April 2017, CRC/C/GC/10, paras. 6-13; see also Part I, *supra*.

<sup>56</sup> United Nations Interregional Crime and Justice Research Institute, *Children and Counter-Terrorism* 31, 2016 <<https://unicri.it/report-children-and-counter-terrorism>>.

<sup>57</sup> CCPR/C/ISR/CO/5 (citing military court orders of administrative detention of Palestinians, particularly children).

<sup>58</sup> *Children in Israeli Military Detention: Observations and Recommendations*, UNICEF, February 2013, p.9

<sup>59</sup> Opinion adopted by the Working Group on Arbitrary Detention, 23 January 2020, A/HRC/WGAD/2019/65.

<sup>60</sup> See, e.g., OL SAU 12/2020; A/HRC/49/45, para. 23; *Supra* note 43 (CRC GC 24) para 96; see also generally Position paper of the Special Rapporteur on Covid-19, counter-terrorism and emergency law, <<https://www.ohchr.org/en/special-procedures/sr-terrorism/activities#:~:text=Position%20paper%20of%20the%20Special%20Rapporteur%20on%20the%20protection%20and%20promotion%20of%20human%20rights%20and%20fundamental%20freedoms%20while%20countering%20terrorism%20on%20COVID%2D19%2C%20Counter%2DTerrorism%20and%20Emergency%20Law>>.

jurisdiction of military courts that extends to . . . children,” noting a number of fair trial guarantees violated by such exceptional courts.<sup>61</sup>

***The Special Rapporteur urges States not to remove children from juvenile/child justice systems including on the basis of the severity of terrorism-related offences.*** Moreover, where children above the minimum age of criminal responsibility are suspected of association with a terrorist group and committing a crime, ***States should prioritise non-judicial measures focused on human rights compliant rehabilitation and reintegration of the child rather than prosecution.***<sup>62</sup> Furthermore, in accordance with the Paris Principles, children should not be criminalised for mere association with a terrorist group, as this would involve prosecution for a status which is derived from an act constituting a violation of their rights (i.e. recruitment or trafficking).<sup>63</sup> Rather, they should only be prosecuted for non-associational acts which are criminal by law in their own right, e.g. murder or rape, rather than acts which are not otherwise criminalised, e.g. performing cooking or cleaning services. The principles also provide that where children are accused of crimes under international or national law allegedly committed while they were associated with an armed group, they remain entitled to be treated in accordance with international juvenile standards.<sup>64</sup> The SR underscores the need for a child rights-based approach to all children above the minimum age of criminal responsibility but below 18 years old—regardless of the nature of the charged offences—including by ensuring that where trial is deemed necessary, children are consistently tried in juvenile justice systems and enjoy heightened protections, including protecting the right to privacy of child defendants and consistent access to their parent or guardian.

### C. Detention of Children for Terrorism-Related Offences

In order to be compliant with the Convention on the Rights of the Child, states should make all efforts to apply diversions and non-custodial measures to children that infringe penal laws, reflective of the need to apply the law in a manner that promotes the child’s sense of dignity and worth, taking into account their age as well as capacity for constructive societal reintegration. This could be achieved through a variety of different measures such as counselling, education and vocational training programmes, probation and foster care. The detention of children, particularly where it occurs as a form of large-scale mass detention, constitutes a structural failure of the system to protect the child. It is unacceptable both in principle and practice and it should cease as a policy priority for Member States. States should focus on reintegrating, rather than criminalising, children, including children related to or associated with groups designated as terrorist, treating them primarily as victims when devising counter-terrorism responses.<sup>65</sup> In all cases it is a *ius cogens* norm that criminal responsibility is individual and must be proven. While international law is clear, in practice, many States do not fulfil their obligations towards children, particularly in the context of terrorism and national security practice. The Special Rapporteur echoes with concern the finding of the former Special Rapporteur on torture and other cruel, inhuman or degrading treatment that “although alternative or non-custodial measures are provided by law, in a high percentage of cases, detention is the preferred option and not the last resort”.<sup>66</sup> Indeed, as the Global Study on children deprived of liberty found, “[m]any children are detained not because of actual association with non-State armed groups designated as

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<sup>61</sup> Concluding observations on the third periodic report of Lebanon, Human Rights Committee, 9 May 2018, CCPR/C/LBN/CO/3, para. 43; see also *infra*, Part II.D.

<sup>62</sup> A/HRC/40/28, para. 52 (citing SCR2225 (2015)); GCTF, Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context (2015).

<sup>63</sup> *Supra* note. 34 (Paris Principles), articles 8.7 and 3.6

<sup>64</sup> *Supra* note. 34 (Paris Principles), article 8.8

<sup>65</sup> Human rights implications of the development, use and transfer of new technologies in the context of counter-terrorism and countering and preventing violent extremism, Report by the Special Rapporteur, 1 March 2023, A/HRC/52/39, para 51-55 (noting in particular the status of children detained in North-East Syria as victims of terrorism).

<sup>66</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 15 March 2015, A/HRC/28/68, para. 53 (citing A/HRC/22/53/Add.3, para. 53).

terrorist, but on the assumption that they are sympathetic to those groups or on the suspicion of their family members being involved with such groups.”<sup>67</sup> Terrorism-related offences for which children have been detained and even convicted have further included legitimate, non-violent activities such as social media posting, on the basis of ethnicity or religion, or simply coming from a conflict area where groups designated as terrorist are active.<sup>68</sup> The Security Council has urged states to consider non-judicial measures as alternatives to prosecution and detention for children formerly associated with armed forces and groups, expressed “grave concern at the use of detained children for information gathering purposes” in particular and emphasized that their deprivation of liberty should only be used as a measure of last resort.<sup>69</sup>

The Special Rapporteur expresses profound concern that children across regions are being arrested and detained in large numbers for terrorism-related offences, often without a warrant or an allegation of having committed a specific crime. Indeed, the Special Rapporteur’s Global Study on the impact of counter-terrorism on civil society and civic space documented children as young as 13 years-old facing arbitrary arrests and detention on the basis of counter-terrorism—at every stage of judicial proceedings, including at the pre-charge, pre-trial, and post-conviction stages, as well as in administrative detention.<sup>70</sup> In North-East Syria, children comprise over half of the population in locked detention facilities (camps), including al-Hol, where 31,900 children are held, and al-Roj, and at least one thousand boys deprived of their liberty remain in adult prisons and other detention centers absent any legal procedures, in what can only be described as a legal ‘black hole’.<sup>71</sup> In this context, the Special Rapporteur incorporates by reference her end of mission statement from her technical visit to the Northeast of the Syrian Arab Republic, as well as her Position paper on the Human rights of adolescents/juveniles being arbitrarily detained in North-East Syria in the name of counter-terrorism.<sup>72</sup> In Mali, at least 30 boys were captured and detained for their purported association with armed groups, with five children detained for prolonged periods in contravention of the Protocol on the Release and Handover of Children Associated with Armed Forces and Groups.<sup>73</sup> In recent years hundreds of children have also been arbitrarily arrested and detained in Cameroon, Nigeria, and Niger due to their and/or their parents’ alleged association with Boko Haram.<sup>74</sup> In India, law enforcement officials allegedly detained children unlawfully in Jammu and Kashmir including on anti-terror and broader security grounds.<sup>75</sup> In Israel and the Occupied Palestinian Territory, at least 852 Palestinian children were detained

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<sup>67</sup> Global study on children deprived of liberty, 11 July 2019, A/74/136, para. 93.

<sup>68</sup> UN Global Study on Children Deprived of Liberty, Armed conflict & national security toolkit, Global Campus of Human Rights & Right Livelihood, p. 10.

<sup>69</sup> UN Security Council Resolution, 9 July 2018, S/RES/2427, paras. 20 and 21

<sup>70</sup> See SRCT&HR Global Study on the impact of counter-terrorism on civil society and civic space, p. 55.

<sup>71</sup> See Technical Visit to the Northeast of the Syrian Arab Republic, End of Mission Statement,

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>; see also

Children in Northeast Syria must be urgently repatriated: UN Experts (Mar. 31, 2023),

<https://www.ohchr.org/en/statements/2023/03/children-northeast-syria-must-be-urgently-repatriated-un-experts#:~:text=The%20two%20largest%20locked%20camps,under%20the%20age%20of%20five>.

<sup>72</sup> See Position of the Special Rapporteur on the human rights of adolescents/juveniles being detained in North-East Syria,

[https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT\\_Position\\_human-rights-of-boys-adolescents-2021\\_final.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCT_Position_human-rights-of-boys-adolescents-2021_final.pdf).

<sup>73</sup> Children and armed conflict, Report of the Secretary-General, 9 June 2020, A/74/845-S/2020/525, para. 110; Children and armed conflict, Report of the Secretary-General, 5 June 2023, A/77/895-S/2023/363, para. 124.

<sup>74</sup> CRC/C/CMR/CO/3-5, paras. 22, 46; S/2017/304, paras. 38-40; A/HRC/30/67, para. 62; CAT/C/NER/CO/1, para. 29; WGEID, General allegation, 120<sup>th</sup> session (Feb. 10-14, 2020),

[https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/Allegations/120\\_Nigeria.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/Allegations/120_Nigeria.pdf); see also /755/895-S/2023/363.

<sup>75</sup> See Azera Parveen Rahman, *Child Friendly Space: Where fearless hearts thrive and young spirits soar*, UNICEF INDIA (Mar. 21, 2019), <https://www.unicef.org/india/stories/child-friendly-space-where-fearless-hearts-thrive-and-young-spirits-soar>; *Nine-year-old among nearly 150 children briefly held in Indian Kashmir: court probe*, REUTERS (Oct. 1, 2019),

<https://www.reuters.com/article/us-india-kashmir-children/nine-year-old-among-nearly-150-children-briefly-held-in-indian-kashmir-court-probe-idUSKBN1WG47W>; OL IND 7/2020.

by Israeli forces on the basis of terrorism and related security allegations in 2022.<sup>76</sup> In Germany, France, Spain, Italy, and other countries, “apology” for or “glorification” of terrorism is criminalised and has led to the detention of children.<sup>77</sup>

The conditions of detention in most of these situations are often dire and marked by serious human rights violations of profound consequence for the well-being and development of the children. By way of example, in North- East Syria, the detention conditions including for children have been held by the Special Rapporteur to amount to mass arbitrary detention and torture and cruel, inhuman and degrading treatment, posing imminent risk to their lives, development, and physical and mental integrity, precluding any chance to live with dignity as required under the CRC.<sup>78</sup> In Iraq, the UN Assistance Mission for Iraq reported in January 2020 that at least 60 percent of the terrorism-related defendants who were children at the time of the commission of the offence raised allegations of torture or ill-treatment.<sup>79</sup> In Israel and the Occupied Palestinian Territory, at least 82 children have reported ill-treatment by Israeli forces while in administrative detention, including physical violence directed against them during detention in 2022,<sup>80</sup> and a significant portion of children have been subjected to solitary confinement for an average of 12.5 days, causing serious physical and psychological distress.<sup>81</sup>

Child detention, whether for a matter of hours or years, can have serious repercussions for the health and development of children, causing ongoing and intense physical and psychological harms, deep resentment towards the government or de facto detaining authorities, and obstacles to education and work. As the Secretary-General has found, “[d]etained children are critically vulnerable and at heightened risk of violence, including sexual violence, torture, exploitation and neglect. Children deprived of liberty need to urgently benefit from individualised care and protection, including nutrition, medical and psychosocial care, and access fundamental rights, including to due process.”<sup>82</sup> Moreover, the Special Rapporteur echoes the concerns stated in the UN Global Study on children deprived of liberty that in the counter-terrorism context, children are particularly vulnerable to being moved “from one situation of deprivation of liberty to another” and there is therefore a “fluid process” requiring a holistic, comprehensive approach.<sup>83</sup> For example, in her July 2023 visit to North-East Syria she identified the transfer of adolescent and juvenile boys between prisons, camps and other detention centers as one of her greatest concerns concerning the rights and welfare of the male child.

***The Special Rapporteur calls on States and de facto detaining authorities to grant independent, impartial UN access to all detention sites and to urgently pursue alternatives to detention for children, including due to suspected association with groups designated as terrorist by the United Nations.*** Pursuant to the CRC, States should prioritise the release and reintegration of children to civilian actors in ***all*** contexts, including in the context of armed conflict. The Special Rapporteur reiterates here the findings of the Special Representative of the Secretary-General for Children and Armed Conflict that detaining children for their alleged affiliation with armed groups “is contrary not only to the best interests of the child,

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<sup>76</sup> Children and armed conflict, Report of the Secretary-General, 5 June 2023, A/77/895-S/2023/363, para. 87; Situation of human rights in the Palestinian territories occupied since 1967, Note by the Secretary-General, 21 September 2022, A/77/356, para 59

<sup>77</sup> UN Global Study on Children Deprived of Liberty, Executive Summary, Global Campus of Human Rights & Right Livelihood, p. 60.

<sup>78</sup> See Technical Visit to the Northeast of the Syrian Arab Republic, End of Mission Statement; see also Children in Northeast Syria must be urgently repatriated: UN Experts (31 March, 2023).

<sup>79</sup> UNAMI & OHCHR, 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, pp. 8-9.

<sup>80</sup> Children and armed conflict, Report of the Secretary-General, 5 June 2023, A/77/895-S/2023/363, paras. 87, 99.

<sup>81</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59, para. 67.

<sup>82</sup> Children and armed conflict, Report of the Secretary-General, 9 June 2020, A/74/845-S/2020/525, para. 13.

<sup>83</sup> UN Global Study on Children Deprived of Liberty, Armed conflict & national security toolkit, Global Campus of Human Rights & Right Livelihood, p. 7.

but also to the interests of society as a whole.”<sup>84</sup> The Special Rapporteur further underscores the Security Council’s emphasis on the “need to pay particular attention to the treatment of children associated or allegedly associated with all non-state armed groups, including those who commit acts of terrorism, in particular by establishing standard operating procedures for the rapid handover of these children to relevant civilian child protection actors” and by ensuring that children “be treated primarily as victims of violations of international law” in accordance with the CRC.<sup>85</sup> Indeed, the Special Rapporteur reminds Member States of the Security Council’s call to comply with obligations under the CRC and to provide “access for civilian child protection actors to children deprived of liberty for association with armed forces and armed groups.”<sup>86</sup>

#### D. Violations of Fundamental Procedural and Due Process Guarantees

States regularly invoke counter-terrorism to justify deviating from fundamental procedural protections for children, such as the right to legal and other appropriate assistance, including having counsel present during any questioning, prompt and direct information of charges, notification of parents or guardians of arrest and charges and subsequent access to them, the right to a hearing before an independent and impartial tribunal, the right to privacy, the presumption of innocence, non-retroactivity, the right not to self-incriminate, the right to legal aid, and the right to appeal.<sup>87</sup> As the UN Global Study on children deprived of liberty documented, in recent years, children have increasingly been treated as perpetrators rather than victims, subject to fewer procedural guarantees under applicable national counter-terrorism laws.<sup>88</sup> For example, in Egypt, Special Procedures mandate-holders have observed that children can be detained for 28 days without their parents being informed of their detention or the reason therein.<sup>89</sup> Children have also allegedly been denied access to counsel during terrorism-related interrogations.<sup>90</sup> Similarly, in Israel and the Occupied Palestinian Territory, a majority of Palestinian children in detention are reportedly interrogated without a parent or legal representation.<sup>91</sup> In North-East Syria no child deprived of liberty has had access to either legal aid/ legal counsel or any judicial proceedings. In Turkey, there are high numbers of children in the criminal justice system under counter-terrorism measures and in one documented case, a minor was taken into custody and interrogated without access to a lawyer for alleged support of an illegal terrorist organization—a fair trial violation as determined by the European Court of Human Rights.<sup>92</sup> Since then, the Committee on the Rights of the Child has further found in Turkey “[s]ystematic quality issues regarding legal assistance to children, including the lack of standard operating procedures and training programmes for lawyers.”<sup>93</sup>

***The Special Rapporteur underscores that specialised juvenile justice systems should have jurisdiction over children and should ensure all due process and fair trial guarantees under international human rights law are enforced.*** Indeed, regardless of the type of terrorism-related offences alleged, States must apply the fundamental due process guarantees specific to children as guaranteed under the CRC and

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<sup>84</sup> Children and armed conflict, Report of the Secretary-General, 20 April 2016, S/2016/360, para. 16.

<sup>85</sup> Supra note 69 (S/RES/2427), para. 19.

<sup>86</sup> Supra note 69 (S/RES/2427), para. 20.

<sup>87</sup> See Part I, *supra*; see also, e.g., CRC, arts. 16, 40; UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, art. 14.

<sup>88</sup> UN Global Study on Children Deprived of Liberty, Armed conflict & national security toolkit, Global Campus of Human Rights & Right Livelihood, p. 0.

<sup>89</sup> OL EGY 4/2020, pp. 9-11.

<sup>90</sup> OL EGY 4/2020, pp. 9-11.

<sup>91</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59, para. 67; see also A/HRC/WGAD/2018/73, Category III.

<sup>92</sup> UNODC, Justice for Children in the Context of Counter-Terrorism: A Training Manual (2019), p. 91 (citing European Court of Human Rights, *Salduz v. Turkey*, Application No 36391/02, Judgment of 27 November 2008).

<sup>93</sup> CRC/C/TUR/CO/4-5, para. 49.

international law and should also apply the Beijing Rules.<sup>94</sup> The Special Rapporteur also notes in this regard the broader guidance provided in the Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context. She echoes the Committee on the Rights of the Child's observation that "a key condition for a proper and effective implementation of these rights or guarantees is the quality of the persons involved in the administration of juvenile justice"—whether prosecutors, counsel, law enforcement, social workers, judges, or otherwise.<sup>95</sup> The SR also emphasizes that the right of a child to be heard is a fundamental component of fair trial and must apply at all stages of judicial proceedings, from the pre-trial stage onwards, in accordance with their age and maturity.<sup>96</sup> She echoes the observation of UNODC that the "use of child-sensitive communication can transform a child's experience of the justice system and strengthen the integrity of the fair trial process."<sup>97</sup>

#### E. Disproportionate Sentencing & Sanctions

States frequently invoke counter-terrorism and security threats to justify the use of harsh and disproportionate sentencing and penalties against children. Indeed, increasingly it has been documented that new counter-terrorism laws have often failed to distinguish between children and adults, and further impose harsh penalties for children.<sup>98</sup> Due to their young age, the harmful effects of these distressing experiences can be lasting and profound, including heart disease, substance abuse, depression, and suicide.<sup>99</sup> These practices violate article 40 (3) of the CRC, which requires states to apply measures specifically applicable to children and in particular encourages the use of various alternatives to judicial proceedings reflective of a child's unique status and best interests in cases where they are accused of having infringed penal law.<sup>100</sup> They also contravene the fundamental international law requirement of proportionality, which applies to sentencing for all individuals under international human rights law.<sup>101</sup> The Special Rapporteur underscores in this regard that the Committee on the Rights of the Child and the Human Rights Committee have both stressed that life imprisonment without the possibility of release is never an appropriate punishment for an offence committed by a child.<sup>102</sup>

Despite the prohibition under international human rights law of the use of the death penalty and life imprisonment against children,<sup>103</sup> several countries still invoke these measures in terrorism-related cases involving children or individuals who committed the alleged offences when they were children. For instance, in Egypt, children faced the death sentence in a mass military court trial involving terrorism and other serious offences.<sup>104</sup> In Somalia, a military court convicted six teenage boys for involvement in

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<sup>94</sup> See also Havana Rules; Riyadh Guidelines; UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and other key principles.

<sup>95</sup> Supra note 55 (CRC/C/GC/10), para. 40.

<sup>96</sup> Supra note 55 (CRC/C/GC/10), para. 44.

<sup>97</sup> UNODC, Justice for Children in the Context of Counter-Terrorism: A Training Manual, p. 69.

<sup>98</sup> UN Global Study on Children Deprived of Liberty, Armed conflict & national security toolkit, Global Campus of Human Rights & Right Livelihood, p. 9.

<sup>99</sup> United Nations University, Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict (2018), 224; Supra note 51 (UNODC Handbook), 98; Why Detaining Children is Harmful, UNICEF USA, Marion Heart 21 June 2018 <<https://www.unicefusa.org/stories/why-detaining-children-harmful>>; Their DNA Will Remember: The Long-Term Effects of Childhood Detention, Lisa Learman, Biomedical Odyssey, John Hopkins Medicine, 19 July 2019 <<https://biomedicalodyssey.blogs.hopkinsmedicine.org/2019/07/their-dna-will-remember-the-long-term-effects-of-childhood-detention/>>

<sup>100</sup> Supra note 6 (CRC), art. 40.

<sup>101</sup> General Comment no.31, Human Rights Committee, 26 May 2004, CCPR/C/21/Rev.1/Add. 13, para. 6; see also Beijing Rules, para. 5.1.

<sup>102</sup> Supra note 55 (CRC/C/GC/10); CCPR/C/112/D/1968/2010, paras. 7.7, 7.11.

<sup>103</sup> The prohibition of the death penalty against children is a *jus cogens* norm. A/67/279, para. 62.

<sup>104</sup> Urgent appeal to Egypt: UN experts call for release of four minors facing detention (Mar. 6, 2020).

armed groups.<sup>105</sup> Four of them were sentenced to death and two to several decades of imprisonment. Most of them were under the age of 15 at the time of their arrest. During her technical visit to the North-East of the Syrian Arab Republic the Special Rapporteur met with boys convicted of terrorism at age 12 and serving sentences of between 12-15 years of imprisonment.<sup>106</sup> In Saudi Arabia, notwithstanding legislative and other governmental attempts to limit the use of the death penalty against children, it is alleged that the public prosecution may still enjoy the discretion to order the death penalty for terrorism-related crimes, including where allegedly committed by children at the time of the offence.<sup>107</sup> In the United Kingdom, legislation allows for life imprisonment of children, with an overwhelming proportion of children in detention belonging to ethnic minority groups.<sup>108</sup>

States have also invoked counter-terrorism and broader national security concerns to justify additional and harsh forms of punishment at sentencing, including citizenship-stripping protocols. In Australia, for example, dual nationals over the age of 13 automatically lose their Australian citizenship if they join or fight for a non-State armed group designated as a terrorist organisation.<sup>109</sup> The Special Rapporteur has previously expressed her profound concerns regarding such citizenship-stripping policies, specifically in the context of Northeast Syria. She noted that they could lead to statelessness, traumatic separation from parents and how they undermine reintegration efforts and can cause great “sadness, anger, low self-esteem, and can inhibit children’s sense of belonging and ability to connect with others.”<sup>110</sup> In other instances, across regions, the Special Rapporteur understands that children and families have been subjected to listing due to their presence in conflict zones where terrorist groups are active and also experienced harsh administrative sanctions including the revocation or cancellation of social welfare benefits due to alleged affiliation with sanctioned individuals—again with dire consequences for fundamental social and economic rights, the right to equality and non-discrimination, the right to privacy as well as family life.<sup>111</sup>

***The Special Rapporteur urges States to ensure the dignity and worth of the of child as a foundation of sentencing and to seek non-custodial alternatives to imprisonment including community-based options in line with the best interests of the child, the dignity and rights of the child.*** As the CRC indicates, States should seek alternatives to detention and incarceration whenever possible to ensure “children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”<sup>112</sup> Moreover, children must be provided adequate medical care, psychosocial support, and educational and vocational opportunities to facilitate reintegration upon release. The Special Rapporteur notes in this context the vital role of social workers, child psychologists, as well as prosecutors and judges in sentencing, and the importance of ensuring the availability of and their familiarity

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<sup>105</sup> Somalia: Calls for Justice as Four Children Sentenced to Death over Involvement With Armed Groups, 11 February 2022 <<https://www.savethechildren.net/news/somalia-calls-justice-four-children-sentenced-death-over-involvement-armed-groups>>

<sup>106</sup> End of mission statement is found here:

<https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/EoM-Visit-to-Syria-20230721.pdf>

<sup>107</sup> See, e.g., AL SAU 8/2022; UA SAU 4/2021; A/HRC/WGAD/2020/92.

<sup>108</sup> List of issues prior to submission of the combined sixth and seventh reports of the United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of the Child, 4 March 2021, CRC/C/GBR/CO/6-7, para. 53; see also para. 26 (counter-terrorism measures pursuant to the Prevent Strategy disproportionately affecting Muslim children and children of Asian descent).

<sup>109</sup> UN Global Study on Children Deprived of Liberty, Global Campus of Human Rights & Right Livelihood, p. 647.

<sup>110</sup> Position of the Special Rapporteur on the human rights consequences of citizenship stripping in the context of counter-terrorism with a particular application to North-East Syria, p. 15 (2022), <https://www.ohchr.org/sites/default/files/2022-03/Deprivation-of-Citizenship.docx>.

<sup>111</sup> Human rights impact of counter-terrorism and countering (violent) extremism policies and practices on the rights of women, girls and the family, 22 January 2021, A/HRC/46/36, paras. 20-21.

<sup>112</sup> *Supra* note 6 (CRC), art. 40.

with alternatives to detention and identifying “protective, supportive, educational and security measures” consistent with international juvenile justice standards.<sup>113</sup>

### III. Conclusion & Recommendations

Despite the general trend towards the abuse of children’s rights in contravention of State’s international law obligations, the Special Rapporteur notes that several States have recently implemented promising practices that promote the protection of children’s rights in the context of counter-terrorism.<sup>114</sup> These practices include specific child protection laws or directives that apply to children suspected of terrorism-related offences, protocols and standard operating procedures for handovers from government custody to child protection agencies and reintegration initiatives, among others, as documented and assessed in further detail in the UN Global Study on children deprived of liberty.<sup>115</sup> She notes in this respect practices she saw in Kazakhstan, Uzbekistan and Bosnia and Herzegovina for children returning from Northeast Syria, which are based on long-term integration and sustained intersectional, multidisciplinary and family-oriented solutions that ensure children receive the educational, psycho-social and economic supports needed to build a normal and dignified life, highlighting nonetheless that long term assessments are needed to ensure continued commitment and funding.<sup>116</sup> The Special Rapporteur encourages States to urgently explore implementation of analogous practices, and further underscores the importance of providing for oversight and accountability mechanisms to ensure their effectiveness and human rights compliance.

In conclusion, the Special Rapporteur urges States to respect the full range of children’s civil, political, social, economic, and cultural rights in the context of counter-terrorism, countering violent extremism conducive to terrorism, and broader national security contexts. She encourages States to review domestic legislation to ensure alignment with international norms enumerating the rights of the child in these contexts. States must halt the practice of arbitrary arrests and detention of children and the invocation of children as terrorism threats to limit children’s substantive and procedural protections under law. Instead, States must delineate substantive and child-focused protections that are followed regardless of the purported severity of the offences charged. Diversion and non-custodial alternative measures must be used and children in armed conflict should be treated primarily as victims. Finally, States must prioritise alternatives to detention in all cases.

To this end, the Special Rapporteur urges States to:<sup>117</sup>

1. **Treat** children primarily as victims of rights violations in the context of counter-terrorism responses and recognise them as fully-fledged rights-holders, in accordance with their obligations under the CRC.
2. **Explicitly exclude** children from the ambit and scope of counter-terrorism legislation.

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<sup>113</sup> See Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, Good Practice 8.

<sup>114</sup> Follow-up report to the joint study on global practices in relation to secret detention in the context of countering terrorism, Report of the Special Rapporteur, 25 March 2022, A/HRC/49/45/Add.1; Visit to Kazakhstan, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 22 January 2020, A/HRC/43/46/Add.1

<sup>115</sup> See generally UN Global Study on Children Deprived of Liberty, Armed conflict & national security toolkit, Global Campus of Human Rights & Right Livelihood.

<sup>116</sup> Supra note 113 (A/HRC/49/45/Add.1); Supra note 113 (A/HRC/43/46/Add.1) <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/statements/2023-01-20/SR-Terrorism-EoM-Bosnia-And-Herzegovina-20Jan23.pdf>

<sup>117</sup> The Special Rapporteur also reaffirms here the broader recommendations set out in the Global Study on children deprived of liberty. A/74/136, paras. 139-143.



3. **Commit to ending** the detention of children for actual or alleged association with armed groups, including groups designated as terrorist in accordance with the Paris Principles.
4. **Explicitly incorporate** State obligations under the Convention on the Rights of the Child into domestic law and amend counter-terrorism legislation that is not consistent with them. Notably, this includes prioritising the best interests of the child, with express textual recognition of the continued applicability of the best interest principle in counter-terrorism and national security contexts, including in law, practice and any decisions about children.
5. **Remove any exceptions** to the minimum age of criminal responsibility and ensure that all children who are above the minimum age but below the age of 18 are exclusively processed through a juvenile justice system rather than the adult criminal justice or special terrorism or military court system.
6. **Comply with international juvenile justice standards** when prosecuting children and guarantee in full the right to fair trial and minimum procedural standards stipulated for children under international human rights law.
7. **Use** arrest, detention, and imprisonment only in exceptional circumstances, and in all cases practise the following: (1) apply arrests, detentions and imprisonments exclusively as a last resort in line with the best interests of the child, (2) prioritise non-custodial alternatives as alternatives to prosecution where possible and (3) implement handover protocols and reintegration initiatives that ensure the swift transfer of children from government custody to appropriate civilian child protection agencies to children associated or allegedly associated or children recruited or used by groups designated as terrorist.
8. **Institute a moratorium** on the use of the death penalty, life imprisonment, and citizenship stripping practices by States for children accused of terrorism-related offences or based on their parents' beliefs or acts, and including offences linked to extremism and national security.
9. **In the exceptional cases** where children are placed in detention, ensure that children are provided adequate medical care, psychosocial support, and educational and vocational opportunities while they are detained and to facilitate reintegration upon release.
10. **Grant unimpeded access** to UN human rights and child right experts and child protection actors across all detention facilities; and
11. **Increase independent oversight** of and accountability mechanisms for the State's handling of children in counter-terrorism contexts.