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Bridging the Gap:

Bringing the Response to
Children Formerly Associated with
ISIL in Iraq in Line with International
Child Protection Standards

Executive Summary

The Islamic State of Iraq and the Levant's (ISIL) brutal three-year occupation of large areas of Iraqi territory has left the country grappling with widespread devastation, destruction, and displacement. ISIL waged a campaign of unspeakable violence against the Iraqi people with acts that may amount to war crimes, crimes against humanity, and genocide.¹ In particular, ISIL preyed on children, viewing them as lethal, loyal fighters crucial to the group's long-term success. ISIL's recruitment tactics relied on force, such as through mass abductions of vulnerable populations, as well as ideological and manipulative methods that idealized the group and promised children power and economic support.

Many children experienced unspeakable trauma during their association. ISIL sent children to training centers where they were indoctrinated, sometimes drugged, and desensitized to extreme violence. ISIL used most children in active combat and severely punished those who rebelled. ISIL also used children, many of them girls, to carry out suicide attacks. A minority of the children were used in supporting roles, such as cooking, cleaning, or operating checkpoints.

¹ United Nations Security Council, Fifth Report of the Special Adviser and Head of the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant ("Accountability for Crimes Committed by Da'esh/ISIL") (S/2020/1107), November 11, 2020, <https://digitallibrary.un.org/record/3892569?ln=en> (accessed February 8, 2021), para. 2.



About Watchlist

Watchlist on Children and Armed Conflict strives to end violations against children in armed conflicts and to guarantee their rights. As a global network, Watchlist builds partnerships among local, national, and international nongovernmental organizations, enhancing mutual capacities and strengths. Working together, we strategically collect and disseminate information on violations against children in conflicts in order to influence key decision-makers to create and implement programs and policies that effectively protect children.

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watchlist@watchlist.org
www.watchlist.org

The conflict prompted a largescale humanitarian and protection crisis, with millions of civilians displaced and facing limited access to basic services. Three years after formally declaring victory over ISIL, authorities are slowly shifting gears from providing emergency assistance to long-term recovery and development support.

Critical to this transition is the need to develop a rights-based strategy to address and reintegrate thousands of children associated with ISIL and other parties to the conflict. Not only is this a moral imperative and obligation under international law, but also an essential component of peace and stability in the region. The timing of this is particularly crucial considering the pending return of more than 30,000 Iraqis, primarily women and children, from Al-Hol displacement camp in northeast Syria, some of whom may be children formerly associated with ISIL.

There is currently no national strategy or legal framework guiding the Government's response to children associated with armed forces and armed groups (CAAFAG). To the extent that reintegration support is provided, it is primarily led by humanitarian and protection actors, often on a limited and short-term basis.

In some cases, Iraqi and Kurdish authorities have detained CAAFAG for their suspected association with ISIL, including instances where there is no evidence of a child committing a violent crime. Surveys conducted by a humanitarian organization suggest that, as of January 2021, approximately 2,294 children were detained in official Baghdad-controlled prisons for their involvement in ISIL.² Their sentences range, on average, from five to 15 years. The influx of children has overwhelmed the juvenile justice system, leaving detainees in overcrowded facilities lacking in space, food, clean water and sanitation, and adequate mental health and psychosocial support. Most CAAFAG in the Kurdistan Region of Iraq (KRI) have completed their sentences and

left the juvenile detention facilities but have received limited access to post-release reintegration services. Families, including children, with a perceived affiliation to ISIL often struggle to return to their areas of origin either because they fail to receive security clearance from the relevant authorities, or because they face marginalization, rejection, and revenge attacks from the local community.

Children of foreign nationality who were recruited and used by ISIL have faced a similar fate to their Iraqi counterparts, with many held in high-level security detention facilities in Iraq. In recent years, however, some countries have brought home their nationals.

In other circumstances, the Government of Iraq and the Kurdistan Regional Government (KRG) have chosen not to detain CAAFAG and instead permitted them to return to their communities. Unlike some children whose association with ISIL is perceived as more voluntary,³ authorities have largely viewed children from Iraqi minority groups, like the Yezidi, who were targeted, abducted, and forced to fight for ISIL, as victims. However, although these children have been allowed to return home and to their families, they have received limited support and have faced many challenges reintegrating into their communities. The Yezidi Survivors Bill, adopted on March 1, 2021 by the Iraqi Council of Representatives, recognizes some of these shortcomings and aims to provide survivors from a few minority groups with reparations and reintegration assistance.

All children recruited and used by armed groups have equal rights and are entitled to recovery and reintegration support. International standards, including both hard and soft law, provide a robust framework for the treatment of CAAFAG in all contexts of conflict.

In 1994, Iraq ratified the UN Convention on the Rights of the Child (CRC),⁴ and in 2008, it acceded to the CRC's Optional Protocol on the involvement of children in armed conflict

² Statistics based on surveys conducted by a humanitarian organization. Watchlist email correspondence (name withheld), humanitarian organization, February 21, 2021.

³ Some children's association with ISIL is perceived as voluntary, despite, in some cases, living in a climate of extreme fear where they may have felt compelled to comply with the group's norms, or where financial or social pressures may have driven them to join the group.

⁴ OHCHR, "United Nations Treaty Bodies, UN Treaty Body Database," https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en (accessed February 10, 2021).

(OPAC).⁵ Under the CRC, the Government is required to “take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”⁶ In the event that a child is alleged to have committed a crime, the CRC allows for detention as a measure of last resort, for the shortest period of time, and for treatment in line with juvenile justice standards.⁷ Under OPAC, the Government is required to provide appropriate assistance for the physical and psychological recovery and the social reintegration of children who have been recruited or used in hostilities.⁸

To bring the Government and, in some cases, the KRG’s response in line with international child protection standards, Watchlist offers the following recommendations:

Recommendations

To the Government of Iraq

1. Prioritize and conclude negotiations with the UN to sign and implement an action plan to prevent the recruitment and use of children.
2. Develop and implement, possibly through an interdisciplinary taskforce or formal commission, including tribal and religious leaders, a national reintegration program for all CAAFAG, including those formerly associated with ISIL. The program should meet Minimum Standard 9 on Sexual and Gender-Based Violence (SGBV) and Minimum Standard 11 on CAAFAG outlined in the “Minimum Standards for Child Protection in Humanitarian Action”⁹ and should be tailored for the Iraqi context. The program could be linked to assistance provided to CAAFAG under the Yezidi Survivors Bill and other peacebuilding and socioeconomic recovery efforts.

3. Sign a handover protocol that facilitates the release of children detained for mere association with an armed group or force to child protection actors for reintegration. Disseminate the protocol widely among judges, prosecutors, and security forces and take steps to ensure its effective implementation.
4. Endorse and implement the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“Paris Principles”).
5. Take steps to ensure the swift and effective implementation of the Yezidi Survivors Bill, which provides reparations and reintegration support to some survivors of crimes by ISIL from minority communities.

To the Iraqi Federal and KRG Parliaments

1. Raise the minimum age of criminal responsibility to 14, in line with international children’s rights standards.
2. Amend counterterrorism laws to end the criminalization of mere association with an armed group, including those designated as terrorist, for children below the age of 18, in line with international children’s rights standards.
3. Amend the definition of terrorism to ensure its compatibility with the principles of legality, foreseeability, and specificity.
4. Criminalize the recruitment and use of children below the age of 18.
5. Adopt a comprehensive law on the rights of the child, including protections for all children formerly associated with armed forces and armed groups.

⁵ OHCHR, “Status of Ratification, Interactive Dashboard,” <https://indicators.ohchr.org/> (accessed February 10, 2021).

⁶ UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. res 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed October 4, 2020), arts. 1, 38(4).

⁷ CRC, arts. 37(b), 40.

⁸ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), adopted May 25, 2000, G.A. res 54/263, annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), entered into force February 12, 2002, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx> (accessed February 1, 2021), art. 6.3.

⁹ The Alliance for Child Protection in Humanitarian Action, “Minimum Standards for Child Protection in Humanitarian Action,” April 15, 2020, https://alliancecpa.org/en/CPMS_home (accessed March 5, 2021), pp. 139-146. *The Minimum standards outline a common, agreed framework for quality standards across child protection in humanitarian action.*

To the Iraqi Federal Ministries of Interior, Justice, and Labor and Social Affairs

1. Ensure that children who are associated with ISIL and accused of committing violent criminal acts are treated in line with international juvenile justice standards. This includes detaining children only as a measure of last resort and for the shortest appropriate period of time, prioritizing their reintegration into society, and ensuring the best interests of the child are the primary consideration.
2. Effectively implement the alternative sentencing framework outlined in the Juvenile Welfare Law by ensuring adequate space for all juveniles charged with more serious crimes during their association in the rehabilitation schools, taking into account measures to minimize the risk of COVID-19 transmission. Increase the provision of reintegration services, education and vocational training programs, and social workers to support detainees in these facilities. Consider alternatives to judicial proceedings and institutional care, such as community service and community-based supervision.
3. Provide education, vocational and skills training, mental health and psychosocial support, and other reintegration services to children in government custody. Ensure children can continue to receive support from trained social workers after their release.
4. Invest in programs for lawyers, judges, and security forces on international standards for the treatment of CAAFAG.
5. Allow unrestricted and unannounced access by independent monitors, such as the International Committee of the Red Cross (ICRC), human rights organizations, and the UN, including the United Nations Children's Fund (UNICEF), and the Office of the High Commissioner for Human Rights (OHCHR), to all government detention facilities where children may be held.

To the Iraqi Federal Ministry of Labor and Social Affairs

1. Strengthen and expand the technical capacity of actors implementing a national reintegration program.

This includes increasing formal mental health accreditation programs, bolstering comprehensive case management skills, and building awareness and training on reintegration programming.

To the Iraqi Federal Judicial Council

1. Pending changes in the law, issue a public instruction to all investigative judges, prosecutors, and law enforcement to cease the detention and prosecution of children for mere association with an armed group or force and to take steps to ensure individualized criminal responsibility for acts beyond mere association.
2. Order the release of children detained for alleged ISIL association, unless they are suspected of committing a violent offense.
3. Ensure that children who are associated with ISIL and accused of committing violent criminal acts are treated in line with international juvenile justice standards. This includes detaining children only as a measure of last resort and for the shortest appropriate period of time, prioritizing their reintegration into society, and ensuring the best interests of the child are the primary consideration.
4. Under no circumstances accept confessions obtained under duress except as evidence of torture or ill-treatment.
5. Ensure that all children in detention have access to new and replacement civil documents.

To International Donors

1. Publicly support a national reintegration program and provide long-term funding (ideally between three and five years) for its implementation, ensuring gender-responsiveness and including specialized mental health interventions. Refrain from introducing conditionality clauses in humanitarian funding agreements that could potentially cut off access to children in need or violate the fundamental humanitarian principles of humanity, neutrality, impartiality, and independence.

2. Help to invest, build, and expand the technical capacity of actors implementing the reintegration program, including through increasing formal mental health accreditation programs, bolstering comprehensive case management skills, and building awareness and training on reintegration programming.
3. Publicly support the signing of handover protocols and the immediate release of children who are not charged with violent offenses from detention, and their transfer to child protection authorities for family reunification and community reintegration.
4. Urge reforms to the juvenile justice system, in line with the recommendations outlined above, and in compliance with international standards. Consider withholding assistance where there is evidence of torture or ill-treatment of children in government custody.
5. Encourage the review of federal and regional legislation, including counterterrorism laws relating to CAAFAG, to bring them in line with international children's rights and juvenile justice standards. This includes efforts to raise the criminal age of responsibility, to end the criminalization of association for children below the age of 18, to criminalize the recruitment and use of children below the age of 18, and to adopt a comprehensive child rights law.
3. Support the Government in developing and establishing a national reintegration program for CAAFAG.
4. Help to strengthen and expand the technical capacity of actors implementing the reintegration program, including through bolstering comprehensive case management skills and building awareness and training on reintegration programming.
5. Support the review of federal and regional legislation, including counterterrorism laws relating to CAAFAG, to bring them in line with international children's rights and juvenile justice standards. This includes efforts to raise the criminal age of responsibility, to end the criminalization of association for children below the age of 18, to criminalize the recruitment and use of children below the age of 18, and to adopt a comprehensive child rights law.

To Foreign Governments with Child Nationals Accused of ISIL Affiliation

Under international law, states are required to treat children involved in armed conflict primarily as victims of serious violations, to prevent their recruitment, and to restrict their prosecution or punishment solely for their membership in an armed group, among various other commitments.¹⁰ In light of these obligations, foreign governments should:

To UNICEF and the UN Resident and Humanitarian Coordinator in Iraq

1. Prioritize and support negotiations with the Government to sign and implement the action plan to prevent the recruitment and use of children.
2. Work with the Government to develop and adopt handover protocols that facilitate the release of children detained for mere association with an armed group or force to child protection actors for reintegration.
1. Facilitate the return of child nationals accused solely of ISIL affiliation to their country of origin and ensure access to reintegration services, in line with the principles of non-refoulement and the best interests of the child.
2. In the exceptional circumstances when children are prosecuted for crimes committed during their association, ensure proceedings take place in line with international juvenile justice standards.

¹⁰ Refer to the section of this brief entitled "International Framework for the Treatment of CAAFAG" for further details on states' legal obligations regarding the treatment of CAAFAG.

Methodology and Scope of the Brief

To prepare this brief, Watchlist conducted a desk-based literature review and, between August 2020 and February 2021, interviewed a broad range of local and international actors working in the areas of human rights and child protection, as well as offering humanitarian and legal services in Iraq. Prior to each interview, Watchlist informed interviewees about the nature and purpose of the research. The names and specific affiliation of staff members of national and international organizations have been omitted to ensure their safety and security.

The brief primarily examines challenges facing children allegedly associated with ISIL because they comprise the overwhelming majority of children who have been detained for their association with an armed group in the recent conflict.¹¹ It is important to note, however, other armed groups such as the government-aligned Popular Mobilization Forces (PMF), Sunni tribal mobilization groups, the People's Defence Forces of the Kurdistan Workers' Party (HPG/PKK), the Sinjar Resistance Units, the Protection Force of Ezidkhan, the Peshmerga Zeravani, and Iraqi security forces have also reportedly recruited and used children.¹² Of these groups, only ISIL and the PMF have been listed in the UN Secretary-General's annual report to the Security Council on children and armed conflict. The recommendations provided apply to all children allegedly associated with armed groups and forces in Iraq.

The brief focuses on the current status of children formerly associated with ISIL in Baghdad-controlled Iraq, which holds a far greater number of CAAFAG in detention than the KRI.¹³ Although the KRG's counterterrorism laws allow life sentences for terrorism, in practice, children receive sentences ranging from one month to five years.¹⁴ Most children detained for their association with ISIL in the KRI have now served their sentences and left the juvenile detention facilities, albeit with limited access to post-release reintegration services.¹⁵ Conversely, in Iraq, the minimum sentence for children charged with association with ISIL is five to seven years,¹⁶ and most children are either still in detention or awaiting trial.¹⁷ Where relevant, the brief highlights circumstances and recommendations that also apply to the KRI.

¹¹ UN Security Council, Report of the Secretary-General on children and armed conflict ("Annual Report") (A/74/845-S/2020/525), June 9, 2020, <https://undocs.org/s/2020/525> (accessed February 8, 2021), para. 70.

¹² UN Security Council, Children and armed conflict in Iraq, Report of the Secretary-General ("Iraq Report") (S/2019/984), December 23, 2019, <https://undocs.org/s/2019/984> (accessed February 7, 2021), para. 25.

¹³ Note: In the KRI, the KRG has jurisdiction in the governorates of Dohuk, Erbil, and Sulaymaniyah and has passed and applied its own distinct laws since 1992.

¹⁴ Human Rights Watch, "Everyone Must Confess: Abuses against Children Suspected of ISIS Affiliation in Iraq" ("Everyone Must Confess"), March 6, 2019, <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq> (accessed January 29, 2021), p. 29.

¹⁵ Watchlist interview 1 (name and affiliation withheld), January 19, 2021; Watchlist interview (name and affiliation withheld), January 20, 2021.

¹⁶ Raya Jalabi, "Forgotten Victims: The Children of the Islamic State," *Reuters*, March 21, 2019, <https://www.reuters.com/investigates/special-report/iraq-islamicstate-children/> (accessed February 3, 2021).

¹⁷ Watchlist interview (name and affiliation withheld), February 7, 2021.

Background

Beginning in 2014, the armed group ISIL took control of large parts of Iraqi territory. The group was responsible for suicide attacks, mass executions, sexual violence, torture, forced religious conversion, the destruction of religious and architectural sites, and the illegal confiscation of property, among other grave human rights violations.¹⁸

Punishments for violating ISIL rules were brutal, including amputations, torture, and other cruel punishment, as well as various forms of execution, such as beheading, death by stoning, crucifixion, and immolations.¹⁹ Some of these acts may amount to war crimes, crimes against humanity, and genocide.²⁰ A humanitarian and protection crisis ensued, with millions of civilians displaced and facing limited access to basic services.²¹

Iraqi and Kurdish forces and an international coalition fought ISIL and recaptured most of the country by 2017. Forces combating ISIL have also been implicated in serious abuses.²² Despite Iraqi forces formally declaring victory over ISIL on December 9, 2017, the armed group continues to stage asymmetric attacks in Iraq, including assassinations and bombings targeting civilians, the burning of agricultural land, and the targeting of checkpoints of Iraqi security forces.²³

¹⁸ UN Security Council, Iraq Report (S/2019/984), December 23, 2019, para. 6; Human Rights Watch, "Everyone Must Confess," March 6, 2019, p. 9.

¹⁹ UN Security Council, Iraq Report (S/2019/984), December 23, 2019, para. 6.

²⁰ UN Security Council, Accountability for Crimes Committed by Da'esh/ISIL (S/2020/1107), November 11, 2020, para. 2.

²¹ UN Security Council, Iraq Report (S/2019/984), December 23, 2019, para. 8.

²² See, for example: Amnesty International, "At Any Cost: The Civilian Catastrophe in West Mosul, Iraq," July 11, 2017, <https://www.amnesty.org/en/documents/mde14/6610/2017/en/> (accessed February 17, 2021); Human Rights Watch, "Flawed Justice: Accountability for ISIS Crimes in Iraq" ("Flawed Justice"), December 5, 2017, <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq> (accessed February 1, 2021).

²³ Amnesty International, "Marked for Life: Displaced Iraqis in Cycle of Abuse and Stigmatization" ("Marked for Life"), March 17, 2020, <https://www.amnesty.org/en/documents/mde14/3318/2020/en/> (accessed February 3, 2021), p. 11.

Recruitment and Use of Children by ISIL

ISIL preyed on children, viewing them as lethal, loyal fighters crucial to the group's long-term success. The recruitment of children was central to the group's political, military, and ideological agenda. ISIL's personnel records indicate that up to 41 percent of at least one of its Syrian units was made up of children below the age of 18.²⁴

ISIL's recruitment tactics relied on force, such as through mass abductions of vulnerable populations, as well as ideological and manipulative methods that idealized the group and promised children power and economic support.²⁵ ISIL also recruited children from abroad, as well as the children of foreign fighters into its ranks.²⁶ As in other conflict contexts, some children joined ISIL because of financial incentives, family pressure, to escape family problems, or out of a desire to gain social status.²⁷ Research shows that ideology is rarely the primary motivating factor in a child's decision to join an armed group.²⁸

Many children experienced unspeakable trauma during their association. ISIL sent children to training centers where they were indoctrinated, sometimes drugged, and desensitized to extreme violence.²⁹ The UN reports that ISIL used most children in active combat and severely punished those who rebelled.³⁰ ISIL also used children, many of them girls, to carry out suicide attacks.³¹ The group glorified children committing executions in slick production videos promoted on ISIL social media and websites.³² A minority of the children were used in supporting roles, such as "manufacturing and planting improvised explosive devices, cooking, cleaning, transporting weapons or operating checkpoints."³³

²⁴ United Nations University, "Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict" ("Cradled by Conflict"), 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf (accessed February 1, 2021), p. 109.

²⁵ UN Security Council, Iraq Report (S/2019/984), December 23, 2019, paras. 28-29.

²⁶ Lizzie Dearden, "Isis training children of foreign fighters to become 'next generation' of terrorists," *The Independent*, July 30, 2016, <https://www.independent.co.uk/news/world/middle-east/isis-training-children-foreign-fighters-become-next-generation-terrorists-a7162911.html> (accessed February 9, 2021).

²⁷ Human Rights Watch, "Everyone Must Confess," March 6, 2019, pp. 9-10; UN Security Council, Iraq Report (S/2019/984), December 23, 2019, para. 30; John Horgan and Mia Bloom, "This Is How the Islamic State Manufactures Child Militants," *Vice News*, July 8, 2015, <https://www.vice.com/en/article/ev9nvj/this-is-how-the-islamic-state-manufactures-child-militants> (accessed February 9, 2021).

²⁸ United Nations University, "Cradled by Conflict," p. 17.

²⁹ UN Security Council, Iraq Report (S/2019/984), para. 29; Amnesty International, "Legacy of Terror: The Plight of Yazidi Child Survivors of ISIS" ("Legacy of Terror"), July 30, 2020, <https://www.amnesty.org/download/Documents/MDE1427592020ENGLISH.PDF> (accessed February 4, 2021), p. 14.

³⁰ UN Security Council, Iraq Report (S/2019/984), para. 31.

³¹ *Ibid.*, para. 34.

³² *Ibid.*, para. 29.

³³ *Ibid.*, para. 32.

Current Status of Children Formerly Associated with ISIL

The fall of ISIL in December 2017 did not mark the beginning of a formal reintegration process for the children in its ranks. Some children formerly associated with ISIL, including children of foreign nationality, were detained by Iraqi and Kurdish authorities for their association with the group, sometimes without committing a violent act.

Most of the children detained in the KRI have served their sentences and left the juvenile facilities but have had limited access to post-release reintegration services. CAAFAG associated with ISIL and held in detention in Baghdad-controlled facilities are currently serving sentences of five to 15 years. Other CAAFAG, particularly children from minority communities who authorities recognize as forcibly recruited by ISIL, have been allowed to return home but, to date, have also received limited support and faced many challenges reintegrating into their communities. The recently adopted Yezidi Survivors Bill aims to provide survivors from some minority groups with reparations and reintegration assistance.

Children Detained for Their Alleged Association with ISIL

The Government of Iraq and the KRG have detained a large number of children for their perceived association with ISIL.

Security forces often apprehend children based on “wanted lists”—names collected from other suspects through interrogation, reports from families in ISIL-

controlled areas, and information published by ISIL.³⁴ Some claim that the lists also include names submitted based on personal or local grievances, and not because of any actual involvement in ISIL, as well as the names of family members of alleged ISIL affiliates.³⁵ Even though the United States Defense Department estimates that between 3,000 and 5,000 ISIL fighters defended Mosul,³⁶ the wanted lists have grown to include approximately 100,000 names.³⁷ Some adults and children in custody may have been detained based on incorrect information,³⁸ mistaken identity, and information gathered from interrogations involving torture, and have minimal or no association with ISIL.³⁹

Once in the custody of security forces, children allegedly associated with ISIL are charged under the respective anti-terrorism law of either the Government of Iraq (“Federal Anti-Terrorism Law”) or the KRG (“KRI Anti-Terrorism Law”). The latter criminalizes membership in terrorist organizations,⁴⁰ while the Federal Anti-Terrorism Law does not explicitly prohibit membership or association.

³⁴ Human Rights Watch, “Everyone Must Confess,” March 6, 2019, p. 13; Amnesty International, “Marked for Life,” March 17, 2020, p. 6.

³⁵ “Iraq: Displacement, Detention of Suspected ‘ISIS families,’” Human Rights Watch news release, March 5, 2017, <https://www.hrw.org/news/2017/03/05/iraq-displacement-detention-suspected-isis-families> (accessed February 1, 2021); Amnesty International, “Marked for Life,” March 17, 2020, p. 6; Ben Taub, “Iraq’s Post-ISIL Campaign of Revenge,” *The New Yorker*, December 17, 2018 <https://www.newyorker.com/magazine/2018/12/24/iraqs-post-isis-campaign-of-revenge> (accessed February 6, 2021).

³⁶ Briefing by Peter Cook, Assistant to the Secretary of Defense for Public Affairs, Arlington, Virginia, C-SPAN, October 17, 2016, <https://www.c-span.org/video/?417070-1/peter-cook-briefs-reporters-military-operations-mosul> (accessed February 1, 2021).

³⁷ Ben Taub, “Iraq’s Post-ISIL Campaign of Revenge,” *The New Yorker*, December 17, 2018.

³⁸ Ibid.

³⁹ Human Rights Watch, “Everyone Must Confess,” March 6, 2019, p. 14.

⁴⁰ An Act for Antiterrorism in the Kurdistan Region, Iraq, Law No. 3, of 2006, <https://www.parliament.krd/english/parliament-activities/legislation/2006/> (accessed February 7, 2021), art. 3(7).

Both laws define terrorism broadly.⁴¹ The UN Human Rights Committee has expressed concern over the Federal Anti-Terrorism Law's broad definition of terrorism, which "is susceptible to wide interpretation," and has called for the Government to amend the definition to comply with international standards.⁴² In addition, OHCHR and the UN Assistance Mission for Iraq (UNAMI) have described both laws as "susceptible to subjective and overly discretionary interpretation."⁴³

Under the principle of individual criminal responsibility, international law recognizes that individuals should only be held criminally liable and punished for acts for which they possess some personal culpability.⁴⁴ Moreover, under the principle of legality, which states that no one shall be held guilty for an act or omission that was not a criminal offense at the time it was committed, acts must be based on sufficiently precise law to enable an individual to regulate his or her conduct accordingly.⁴⁵

In contradiction to these principles, under Article 4 of the Federal Anti-Terrorism Law, children are sometimes charged with what often amounts to mere association with ISIL, without regard for whether they actually committed a violent crime.⁴⁶ The law fails to make distinctions based on the nature of a child's association or whether he or she was involved in violence or played a lesser support role.⁴⁷ Judges can interpret association in such broad terms as to include providing basic support to ISIL in the form of cooking or selling vegetables to members of the group, manning check points, or participating in religious training.⁴⁸

Children's cases are overseen by juvenile court judges. Children most often face charges of association with ISIL, which carries a five- to seven-year sentence, and assisting ISIL in carrying out activities, which can lead to a maximum 15-year sentence.⁴⁹ For adults above the age of 18, the penalty for these crimes is death,⁵⁰ although in practice federal courts have at times imposed a range of sentences for terrorist offenses.⁵¹

⁴¹ Anti-Terrorism Law, Act No. 13 of 2005, November 7, 2005, <https://www.refworld.org/docid/5bd093414.html> (accessed February 3, 2021), art. 1. *The Federal Anti-Terrorism Law of Iraq defines terrorism as "every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and nation unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals."* The KRI Anti-Terrorism Law defines terrorism as "organized use of violence, or threatening or encouraging or glorifying the use of violence to achieve a criminal act either by an individual or groups by random for purposes of spreading terror, fear, chaos among the people to sabotage the general system or jeopardize peace and safety of society and the [Kurdish] Region or endanger the lives of individuals or their freedoms or security or holy places, and causing damage to the environment or natural resources or public utilities or public or private properties to achieve political, ideological, racist or ethnic aims."

⁴² UN Human Rights Committee, "Concluding observations on the fifth periodic report of Iraq" (CCPR/C/IRQ/CO/5), December 3, 2015, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/IRQ/CO/5&Lang=En (accessed February 3, 2021), paras. 9-10.

⁴³ UN Office of the High Commissioner for Human Rights (OHCHR), UN Assistance Mission for Iraq (UNAMI), "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" ("Human Rights in the Administration of Justice in Iraq"), January 2020, <https://reliefweb.int/report/iraq/human-rights-administration-justice-iraq-trials-under-anti-terrorism-laws-and> (accessed February 3, 2021), p. 5.

⁴⁴ See: International Committee of the Red Cross (ICRC), "IHL Database, Rule 102. Individual Criminal Responsibility," https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule102 (accessed February 7, 2021).

⁴⁵ ICRC, "General principles of international criminal law," March 2014, <https://www.icrc.org/en/document/general-principles-international-criminal-law-factsheet> (accessed February 25, 2021); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed February 21, 2021), art. 15; UN Human Rights Committee, General Comment No. 34 (2011) on article 19: freedom of opinion and expression (CCPR/C/GC/34), <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (accessed February 28, 2021), para. 25.

⁴⁶ OHCHR, UNAMI, "Human Rights in the Administration of Justice in Iraq," January 2020, pp. 9-10; Human Rights Watch, "Everyone Must Confess," March 6, 2019, p. 2.

⁴⁷ OHCHR, UNAMI, "Human Rights in the Administration of Justice in Iraq," January 2020, pp. iv-v, 10-11.

⁴⁸ Ibid., p. 10; Watchlist interview 3 (name and affiliation withheld), January 19, 2021.

⁴⁹ Raya Jalabi, "Forgotten Victims: The Children of the Islamic State," *Reuters*, March 21, 2019; Watchlist interview (name and affiliation withheld), February 7, 2021. Note: *The Juvenile Welfare Law reduces the death penalty under Article 4 of the Anti-Terrorism Law for committing, inciting, planning, financing, or assisting terrorists to commit crimes outlined in the law to a maximum sentence of 15 years in prison.*

⁵⁰ Anti-Terrorism Law, Act No. 13 of 2005, November 7, 2005, art. 4(1).

⁵¹ OHCHR, UNAMI, "Human Rights in the Administration of Justice in Iraq," January 2020, p. 10.

Children appear to have received court-appointed lawyers in the majority of their cases,⁵² but a report by OHCHR and UNAMI highlights a flawed judicial process with numerous fair standards violations.⁵³ Judges often rely upon confessions, as well as anonymous witness statements and security or intelligence reports.⁵⁴ Security officers have allegedly tortured children to coerce confessions, regardless of their actual involvement,⁵⁵ in clear violation of the Iraqi Constitution.⁵⁶ Human Rights Watch reports that Iraqi judges have ignored allegations of torture by ISIL suspects.⁵⁷

In his 2020 annual report on children and armed conflict, the UN Secretary-General documented 984 children (947 boys, 37 girls), some as young as 9, detained on national security-related charges, including for their actual or alleged association with armed groups, primarily ISIL.⁵⁸ Surveys conducted by a humanitarian organization found the number of minors incarcerated for involvement in ISIL and held in official prisons in Baghdad-controlled Iraq as of January 2021 was 2,294, with approximately 270 minors still awaiting trial.⁵⁹ Due to overcrowding, some children may also be held in informal detention facilities.⁶⁰

The influx of children detained for their alleged association to ISIL has overwhelmed the juvenile system in Baghdad-controlled Iraq.⁶¹ Once sentenced, authorities are supposed to transfer children below

the age of 18 to one of Iraq's post-sentencing facilities for juveniles, known as "rehabilitation schools," but the facilities are all over capacity as of this writing.⁶² As a result, many children are serving their sentences in pre-trial detention facilities that also house adults, without access to reintegration and social services.⁶³ One interviewee described one such facility as not having enough room for children to sleep and lacking in food, resources, and adequate sanitation.⁶⁴ Youth rehabilitation schools have faced similar challenges.⁶⁵ Overcrowding raises particular concerns in light of the COVID-19 outbreak. The Government has made some efforts to decongest prison facilities and has released a number of juveniles, sometimes including children detained for their alleged association with ISIL.⁶⁶

In the KRI, children detained for their alleged association with ISIL typically receive much shorter sentences, ranging from one month to five years,⁶⁷ and most of them have now been released.⁶⁸ As of January 2021, a humanitarian organization reports that 50 children remain in detention facilities in the KRI for their association with ISIL.⁶⁹ As a result, the detention facilities in the region are far less crowded.

Once children have completed their sentences, they have limited access to post-release services that can assist with their reintegration in both KRI and Baghdad-controlled

⁵² Ibid., p. 6.

⁵³ Ibid., pp. iv-v, 6-12.

⁵⁴ Ibid., p. 8; Watchlist interview 2 (name and affiliation withheld), January 19, 2021; Human Rights Watch, "Flawed Justice," December 5, 2017, p. 21.

⁵⁵ Human Rights Watch, "Everyone Must Confess," March 6, 2019, pp. 2, 17-19.

⁵⁶ Constitution of the Republic of Iraq, October 15, 2005, https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en (accessed February 2, 2021), art. 37(1)(c).

⁵⁷ Human Rights Watch, "Everyone Must Confess," March 6, 2019, pp. 5, 20.

⁵⁸ UN Security Council, Annual Report (A/74/845-S/2020/525), June 9, 2020, para. 70.

⁵⁹ Watchlist email correspondence (name withheld), humanitarian organization, February 21, 2021.

⁶⁰ Watchlist interview (name and affiliation withheld), February 7, 2021.

⁶¹ Watchlist interview (name and affiliation withheld), December 17, 2020.

⁶² Ibid.; Watchlist interview 2 (name and affiliation withheld), February 1, 2021; Watchlist interview (name and affiliation withheld), January 20, 2021.

⁶³ Watchlist interview 1 (name and affiliation withheld), January 19, 2021; Watchlist interview (name and affiliation withheld), January 20, 2021. *One interviewee noted that even though pre-trial facilities house both children and adults, often the groups are separated into different cells or buildings.*

⁶⁴ Watchlist interview 2 (name and affiliation withheld), February 1, 2021.

⁶⁵ "Iraq: Step Toward Justice for ISIS Child Suspects," Human Rights Watch press release, December 13, 2020, <https://www.hrw.org/news/2020/12/13/iraq-step-toward-justice-isis-child-suspects> (accessed February 6, 2021).

⁶⁶ Watchlist email correspondence (name and affiliation withheld), December 7, 2021.

⁶⁷ Human Rights Watch, "Everyone Must Confess," March 6, 2019, p. 29.

⁶⁸ Watchlist interview 1 (name and affiliation withheld), January 19, 2021; Watchlist interview (name and affiliation withheld), January 20, 2021.

⁶⁹ Watchlist email correspondence (name withheld), humanitarian organization, February 21, 2021.

Iraq.⁷⁰ Moreover, children detained by Kurdish authorities risk being re-arrested by Iraqi forces if they return to areas under Iraqi government control.⁷¹

The detention of children formerly associated with armed groups has a number of far-reaching consequences. Children sentenced for their association with ISIL face long-term stigma, hindering their ability to reintegrate into society and support themselves.⁷² Fearing retribution when they return to their communities of origin, these children may feel they have no choice but to live in camp settings, or to leave Iraq, possibly contributing to long-term separation of children from their families.⁷³

Moreover, allegations of torture and ill-treatment, poor conditions of detention, and the application of overly broad anti-terrorism legislation may feed grievances and further marginalize affected children and communities, undermining the long-term peace and security the Government seeks to establish.⁷⁴

Foreign Children Recruited and Used by ISIL

Thousands of children travelled from foreign countries to Iraq to join ISIL before and after the declaration of the Caliphate in June 2014. In addition, some of the children of foreign fighters joined the group's ranks.⁷⁵ An estimated 4,640 foreign minors were affiliated with ISIL in

Iraq and Syria.⁷⁶ Since the fall of the Caliphate, foreign ISIL-affiliates in Iraq have been held in displacement camps under detention-like conditions, or in formal detention facilities, where children often lack adequate access to health care, housing, education, and other services.⁷⁷

Foreign children in detention in Iraq are typically charged with illegal border crossing, and some are also charged with association or assistance to ISIL.⁷⁸ The penalty for illegally entering Iraq carries a maximum sentence of one year in detention.⁷⁹ Foreign children are held in separate, high-security facilities with limited access to reintegration services.⁸⁰

Often the ability of a child to return to his or her country of origin is contingent on the outcome of bilateral negotiations between the state where he or she is detained and his or her home state, sometimes with the support of the UN. With an overburdened juvenile justice system, Iraqi officials are keen to send children to their home countries and have engaged the relevant embassies.⁸¹

Many states have resisted bringing their nationals home because of concerns that these individuals may harbor extremist ideologies and could possibly carry out attacks at home.⁸² Nonetheless, over the past few years, the Government of Iraq's repatriation of children has gained momentum. In early 2020, the Foreign Ministry of Iraq stated it had repatriated 828 children born to members of ISIL to their home countries, including Azerbaijan, France, Germany,

⁷⁰ Watchlist interview (name and affiliation withheld), September 17, 2020; Watchlist interview 1 (name and affiliation withheld), January 19, 2021.

⁷¹ Human Rights Watch, "Everyone Must Confess," March 6, 2019, pp. 2, 39; International Organization for Migration Iraq, "Tribal Justice Mechanisms and Durable Solutions for Families with a Perceived Affiliation to ISIS" ("Tribal Justice Mechanisms"), 2020, on file at Watchlist, p. 23.

⁷² Human Rights Watch, "Everyone Must Confess," March 6, 2019, pp. 2, 38.

⁷³ Ibid., p. 40; International Organization for Migration Iraq, "Tribal Justice Mechanisms," 2020, p. 6.

⁷⁴ Human Rights Watch, "Everyone Must Confess," March 6, 2019, pp. 3, 40-41; Ben Taub, "Iraq's Post-ISIS Campaign of Revenge," *The New Yorker*, December 17, 2018; OHCHR, UNAMI, "Human Rights in the Administration of Justice in Iraq," January 2020, p. 14.

⁷⁵ Lizzie Dearden, "Isis training children of foreign fighters to become 'next generation' of terrorists," *The Independent*, July 30, 2016.

⁷⁶ International Centre for the Study of Radicalisation, "From Daesh to Diaspora: Tracing the Women and Minors of Islamic State" ("From Daesh to Diaspora"), 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf> (accessed February 9, 2020), p. 3.

⁷⁷ Raya Jalabi, "Forgotten Victims: The Children of the Islamic State," *Reuters*, March 21, 2019.

⁷⁸ Ibid.; Watchlist interview (name and affiliation withheld), September 15, 2020.

⁷⁹ Raya Jalabi, "Forgotten Victims: The Children of the Islamic State," *Reuters*, March 21, 2019.

⁸⁰ Watchlist interview (name and affiliation withheld), January 20, 2021.

⁸¹ Watchlist interview (name and affiliation withheld), September 15, 2020; Watchlist interview 1 (name and affiliation withheld), February 1, 2021.

⁸² Watchlist on Children and Armed Conflict, "Countering Terrorism and Violent Extremism: The Erosion of Children's Rights in Armed Conflict" ("Countering Terrorism and Violent Extremism"), January 2020, https://watchlist.org/wp-content/uploads/watchlist-policy-note_jan2020_lr.pdf (accessed February 9, 2021), p. 18.

Tajikistan, Turkey, and Russia, among others.⁸³ Many of the foreign children in government custody have returned to their countries of origin.⁸⁴ Some children are unable to return to their home countries because of risks they may face upon their return. Their fates remain uncertain.

Other Children Recruited and Used by ISIL

Some children, particularly among the Sunni Arab community, are at risk of detention because they are perceived to have joined ISIL in a more voluntary capacity,⁸⁵ despite the climate of extreme fear created in ISIL-controlled areas, as well as the financial and social pressures that might have driven their association.

There are, however, children from other religious and ethnic minority communities who authorities largely believe were coerced into joining ISIL. These children have been released to displacement camps or their communities of origin, often with little or no reintegration support.

For example, Iraqi children from the Yezidi community, who were targeted, abducted, and forced to fight for ISIL, have largely been viewed as victims of the conflict, although some members of these communities are still treated with suspicion.⁸⁶ Children from these groups suffered terrible abuses. They witnessed the slaughter of family members and were abducted and taken to ISIL training camps, where they were indoctrinated, forced to convert to Islam, and exposed to extreme violence.⁸⁷ Many were sent to bloody frontlines, sometimes in suicide belts.⁸⁸

After the fall of ISIL, Kurdish and Iraqi forces detained some Yezidi boys and youth allegedly associated with the armed group, but, after being identified as Yezidi, these children were released and returned to their communities.⁸⁹ However, many are reportedly afraid of returning to their homes, with some former ISIL fighters living openly in cities like Mosul and Tal Afar.⁹⁰ Many members of the Yezidi community currently reside in displacement camps and informal settlements in the KRI.

Yezidi child survivors who have returned to their communities face a number of physical and mental health conditions and lack access to education and civil documents, which are required in Iraq to receive benefits and exercise basic rights.⁹¹ Many reports detail the struggles these children face reintegrating into their communities: loneliness, confusion, violent outbursts, depression, anxiety, and post-traumatic stress disorder (PTSD), to name a few.⁹² Some have even tried to return to their captors.⁹³

A report by Amnesty International notes that the health and psychosocial services and programs currently available to Yezidi child survivors fall short of meeting their rights and needs, with many children receiving no support at all.⁹⁴ The Yezidi Survivors Bill, adopted on March 1, 2021 by the Iraqi Council of Representatives, recognizes some of these shortcomings and aims to provide survivors from a few minority groups, including the Yezidi, with reparations and reintegration assistance.⁹⁵

⁸³ Lawk Ghafuri, "Iraq has repatriated 828 children born to ISIS parents to countries of origin," *Rudaw*, March 4, 2020, <https://www.rudaw.net/english/middleeast/iraq/04032020> (accessed February 10, 2021).

⁸⁴ Watchlist interview 1 (name and affiliation withheld), February 1, 2020.

⁸⁵ Watchlist interview 1 (name and affiliation withheld), January 19, 2021.

⁸⁶ Watchlist interview (name and affiliation withheld), February 3, 2021.

⁸⁷ Kimberly Dozier, "They Were Children When They Were Kidnapped by ISIS and Forced to Fight. What Happens Now That They're Home?" ("They Were Children"), *Time*, May 23, 2019, <https://time.com/longform/isis-child-soldiers-yezidi/> (accessed February 10, 2021).

⁸⁸ Ibid.

⁸⁹ Amnesty International, "Legacy of Terror," July 30, 2020, p. 17; Watchlist interview (name and affiliation withheld), September 17, 2020.

⁹⁰ Kimberly Dozier, "They Were Children," *Time*, May 23, 2019.

⁹¹ Amnesty International, "Legacy of Terror," July 30, 2020, pp. 5, 18-33.

⁹² Ibid., p. 6; Kimberly Dozier, "They Were Children," *Time*, May 23, 2019.

⁹³ Kimberly Dozier, "They Were Children," *Time*, May 23, 2019.

⁹⁴ Amnesty International, "Legacy of Terror," July 30, 2020, p. 6.

⁹⁵ Dr. Ewelina U. Ochab, "Iraq Adopts New Law To Assist Survivors Of The Daesh Genocide," *Forbes*, March 4, 2021, <https://www.forbes.com/sites/ewelinaochab/2021/03/04/iraq-adopts-new-law-to-assist-survivors-of-the-daesh-genocide/?sh=580d0269156c> (accessed March 11, 2021).

Bringing the Response in Line with International Child Protection Standards

International Framework for the Treatment of CAAFAG

All children recruited and used by armed forces and armed groups have equal rights and are entitled to recovery and reintegration support. International standards, including both hard and soft law, provide a robust framework for the treatment of CAAFAG. In 1994, Iraq ratified the UN CRC,⁹⁶ and in 2008, it acceded to OPAC.⁹⁷ The principal obligations of the Government are as follows:

To Consider Children Involved in Armed Conflict Primarily as Victims of Serious Violations and to Prioritize Their Reintegration

The CRC defines a child as any person below the age of 18 years and requires states to “take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”⁹⁸ OPAC calls on states to provide appropriate assistance for the physical and psychological recovery and the social reintegration of children who have been recruited or used in hostilities.⁹⁹

A number of international guidelines provide further details on measures states can take to support children formerly associated with armed forces and armed groups. The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“Paris Principles”) are a nonbinding set of international guidelines, endorsed by over 100 countries, which outline principles relating to the protection of children from recruitment and use in armed conflict, their release, and their reintegration into civilian life.¹⁰⁰ The Paris Principles urge states to consider children who are accused of crimes during their association primarily as victims of violations of international law and not only as perpetrators.¹⁰¹ They state that children who have been associated with armed groups should not be prosecuted or punished solely for their membership in those groups.¹⁰² They call on states to carry out release and reintegration measures without conditions.¹⁰³ During release, children should be handed over to an independent civilian process, and the majority of children should be returned to their family and community, or a family and community environment, as soon as possible after their release.¹⁰⁴

⁹⁶ OHCHR, “United Nations Treaty Bodies, UN Treaty Body Database,” https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en (accessed February 10, 2021).

⁹⁷ OHCHR, “Status of Ratification, Interactive Dashboard,” <https://indicators.ohchr.org/> (accessed February 10, 2021).

⁹⁸ UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. res 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed October 4, 2020), arts. 1, 38(4).

⁹⁹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), adopted May 25, 2000, G.A. res 54/263, annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), entered into force February 12, 2002, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx> (accessed February 1, 2021), art. 6.3.

¹⁰⁰ UN Children’s Fund, “The Paris Principles. Principles and Guidelines on Children Associated with Armed Forces or Armed Groups” (“Paris Principles”), February 2007, <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf> (accessed February 2, 2021). *Iraq has not endorsed the Paris Principles.*

¹⁰¹ *Ibid.*, para. 3.6.

¹⁰² *Ibid.*, para. 8.7.

¹⁰³ *Ibid.*, para. 3.11.

¹⁰⁴ *Ibid.*, paras. 7.21, 7.45.

The 2016 Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context (“Neuchâtel Memorandum”) provides guidelines for how states can uphold the rights of children in terrorism-related cases. The memorandum was drafted under the auspices of the Global Counterterrorism Framework, with participation from practitioners and policy makers, including states, from a variety of disciplines. It calls for reintegration programs for children formerly associated with armed groups designated as terrorist who have been diverted from the judicial process or who have completed custodial sentences, using a multi-sector approach and seeking to restore links between children, their families, and their communities, where appropriate.¹⁰⁵

Since 1999, the UN Security Council has adopted a number of resolutions that call on UN Member States, the UN, and donors to ensure the reintegration of children recruited in violation of international law.¹⁰⁶ In its Resolution 2427, the UN Security Council stresses the need to establish standard operating procedures for the rapid handover of children associated with armed groups, including those designated as terrorist, to relevant civilian child protection actors.¹⁰⁷

To Prosecute Children Involved in Serious Crimes in Line with Juvenile Justice Standards and to Consider Alternatives to Detention

In the event that a child is alleged to have committed a crime, the CRC allows for detention as a measure of last resort, for the shortest period of time, and for treatment in line with juvenile justice standards.¹⁰⁸ The law does not allow exceptions based on national emergency or the seriousness of the offense. Wherever appropriate and desirable, the CRC calls for “measures for dealing with such children without resorting to judicial proceedings” and for states to make available alternatives to institutional care.¹⁰⁹

The Paris Principles similarly call for children accused of serious crimes to be treated in accordance with international law, “in a framework of restorative justice and social rehabilitation.”¹¹⁰ It also encourages alternatives to judicial proceedings wherever possible.¹¹¹

The Neuchâtel Memorandum calls on states to “address children alleged to be involved in terrorism-related activities in accordance with international law and in line with international juvenile justice standards.”¹¹² This includes applying the principle of individualization and proportionality in sentencing by considering the

¹⁰⁵ Global Counterterrorism Forum, “Initiative to Address the Life Cycle of Radicalization to Violence: Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context” (“Neuchâtel Memorandum”), <https://theiij.org/wp-content/uploads/English-Neucha--tel-Memorandum-on-Juvenile-Justice.pdf> (accessed February 2, 2021), Good Practice 11.

¹⁰⁶ UN Security Council, Resolution 1261 (1999), S/RES/1261 (1999) (August 30, 1999), [https://undocs.org/en/S/RES/1261\(1999\)](https://undocs.org/en/S/RES/1261(1999)) (accessed February 27, 2021), para. 15; UN Security Council, Resolution 1314 (2000), S/RES/1314 (2000) (August 11, 2000), [https://undocs.org/S/RES/1314\(2000\)](https://undocs.org/S/RES/1314(2000)) (accessed February 27, 2021), paras. 11, 13; UN Security Council, Resolution 1379 (2001), S/RES/1379 (2001) (November 20, 2001), [https://undocs.org/en/S/RES/1379\(2001\)](https://undocs.org/en/S/RES/1379(2001)) (accessed February 27, 2021), paras. 8(e), 11(c), 11(f), 12(a); UN Security Council, Resolution 1460 (2003), S/RES/1460 (2003) (January 30, 2003), [https://undocs.org/en/S/RES/1460\(2003\)](https://undocs.org/en/S/RES/1460(2003)) (accessed February 27, 2021), para. 13; UN Security Council, Resolution 1539 (2004), S/RES/1539 (2004) (April 22, 2004), [https://undocs.org/en/S/RES/1539\(2004\)](https://undocs.org/en/S/RES/1539(2004)) (accessed February 27, 2021), para. 8; UN Security Council, Resolution 1612 (2005), S/RES/1612 (2005) (July 26, 2005), [https://undocs.org/S/RES/1612\(2005\)](https://undocs.org/S/RES/1612(2005)) (accessed February 27, 2021), para. 17; UN Security Council, Resolution 1882 (2009), S/RES/1882 (2009) (August 4, 2009), [https://undocs.org/en/S/RES/1882\(2009\)](https://undocs.org/en/S/RES/1882(2009)) (accessed February 27, 2021), para. 13; UN Security Council, Resolution 1998 (2011), S/RES/1998 (2011) (July 12, 2011), [https://undocs.org/S/RES/1998\(2011\)](https://undocs.org/S/RES/1998(2011)) (accessed February 27, 2021), para. 18; UN Security Council, Resolution 2225 (2015), S/RES/2225 (2015) (June 18, 2015), [https://undocs.org/en/S/RES/2225\(2015\)](https://undocs.org/en/S/RES/2225(2015)) (accessed February 27, 2021), paras. 5-6, 9; UN Security Council, Resolution 2427 (2018), S/RES/2427 (2018) (July 9, 2018), [https://undocs.org/S/RES/2427\(2018\)](https://undocs.org/S/RES/2427(2018)) (accessed February 27, 2021), paras. 21, 24, 26, 28, 37.

¹⁰⁷ UN Security Council, Resolution 2427 (2018), S/RES/2427 (2018) (July 9, 2018), para. 19.

¹⁰⁸ CRC, arts. 37(b), 40.

¹⁰⁹ Ibid., arts. 40(3)(b), 40(4).

¹¹⁰ Paris Principles, art. 3.6.

¹¹¹ Ibid., art. 3.7.

¹¹² Neuchâtel Memorandum, Good Practice 1.

situation and needs of the child and the gravity of the crime.¹¹³ The memorandum stresses that specialized juvenile justice systems should have the primary and preferred jurisdiction for children charged with terrorism-related offenses.¹¹⁴ It also urges particular attention to alternatives to prosecution and for any justice action to aim for the reintegration of the child into society.¹¹⁵

In its Resolution 2225, the UN Security Council specifically encourages Member States to consider alternatives to detention that focus on the reintegration of children formerly associated with armed forces and groups, to use detention as a measure of last resort, and for the shortest time, and to avoid the use of pretrial detention for children.¹¹⁶

To Prohibit the Participation of Children under 18 in Active Hostilities

OPAC prohibits the forced recruitment or conscription of children under 18 by government forces¹¹⁷ and the recruitment and use of any children under 18 by armed groups.¹¹⁸ OPAC further prohibits the participation of any children under 18 in active hostilities.¹¹⁹ It directs state parties to take steps to prevent recruitment and use, including by criminalizing the practice.¹²⁰

Although Iraq is not a party to the Rome Statute of the International Criminal Court (ICC), the statute considers the conscription or enlistment of children under the age of 15 years, or their use to participate in active hostilities in international and non-international armed conflict, as war crimes.¹²¹

Relevant National Law for the Treatment of CAAFAG

Iraq's 1983 Juvenile Welfare Law provides some protections for children allegedly associated with armed groups. It establishes the minimum age of criminal responsibility at 9 years old.¹²² Upon arrest, the child should be transferred to the custody of juvenile police, who present the child before a judge or juvenile court.¹²³ Depending on the severity of the offense and age of the child, courts may choose from a range of alternative sentences.¹²⁴ In the event that a child is found to have committed a crime punishable by death or life imprisonment, such as those outlined under Article 4 of the Federal Anti-Terrorism Law, the court should send the child to one of the state's rehabilitation schools—whose purpose is to help the child rehabilitate and reintegrate into society through vocational training and education¹²⁵—for a period ranging from five to 15 years.¹²⁶

¹¹³ Ibid., Good Practice 9.

¹¹⁴ Ibid., Good Practice 1.

¹¹⁵ Ibid.

¹¹⁶ UN Security Council, Resolution 2225 (2015), S/RES/2225 (June 18, 2015), para. 6.

¹¹⁷ OPAC, art. 2.

¹¹⁸ Ibid., art. 4(1).

¹¹⁹ Ibid., arts. 1, 4(1).

¹²⁰ Ibid., art. 4(2).

¹²¹ Rome Statute of the International Criminal Court ("Rome Statute"), U.N. Doc. A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf (accessed February 10, 2021), art. 8(2)(b)(xxvi), 8(2)(e)(vii).

¹²² Juvenile Welfare Law No. 76 of 1983. Published in *The Official Gazette* No. 38, English language version available at: <http://gjpi.org/wp-content/uploads/juvenile-welfare-law-76-of-1983.pdf> (accessed February 3, 2021), art. 47(1).

¹²³ Ibid., art. 48.

¹²⁴ Ibid., arts. 72-78.

¹²⁵ Ibid., arts. 10(2)-(4).

¹²⁶ Ibid., arts. 76, 77(2).

The Iraqi Constitution prohibits psychological and physical torture and inhuman treatment, and stipulates that “any confession made under force, threat or torture shall not be relied on.”¹²⁷

The General Amnesty Law of Iraq, passed in August 2016, theoretically offers amnesty to any individual who joined ISIL, or other armed group characterized as “extremist,” against his or her will and did not commit any serious offense.¹²⁸ However, as several practitioners have observed, judges handling counterterrorism cases rarely apply this law.¹²⁹ When amnesty is granted, it often excludes children associated with ISIL.¹³⁰

In December 2017, Iraq finalized a national child protection policy, which includes a focus on preventing child recruitment and use and ensuring the release of children from armed groups and forces.¹³¹ It has not, however, adopted a federal child rights law.

In the KRI, the KRG has jurisdiction in the governorates of Dohuk, Erbil, and Sulaymaniyah and has passed and applied its own distinct laws since 1992.

In the KRI, the minimum age of criminal responsibility is 11 years old.¹³² Although the KRG’s counterterrorism laws allow life sentences for terrorism, in practice, children receive sentences ranging from one month to five years.¹³³ Most children detained for their association with ISIL in the KRI have now served their sentences and been released.¹³⁴ There is also no child rights law in the KRI.

Steps to Bring the Response to CAAFAG in Line with International Standards

In light of their international and domestic legal obligations, the Government of Iraq and, where relevant, the KRG, should take the actions outlined below.

The current negotiations between the Government and the UN for an action plan to prevent the recruitment and use of children by the PMF provide a strategic, timely opportunity for the Government and its partners to initiate some of these steps. The PMF, which formally integrated into the Iraqi security forces, have been listed in the Secretary-General’s annual reports on children and armed conflict for the recruitment and use of children.¹³⁵ Action plans are designed to outline concrete, time-bound steps for addressing grave violations. The current action plan opens the door for broader government commitments on the release and reintegration of all children formerly associated with armed forces and armed groups.

Adoption of a National Reintegration Program

The Paris Principles define reintegration as “the process through which children [formerly associated with armed forces and armed groups] transition into civil society and enter meaningful roles and identities as civilians who are accepted by their families and communities in a context of local and national reconciliation.”¹³⁶

¹²⁷ Constitution of the Republic of Iraq, October 15, 2005, art. 37(1)(c).

¹²⁸ General Amnesty Law no. 27/2016, provision 4(2). See also: Human Rights Watch, “Everyone Must Confess,” March 6, 2019, pp. 47-48.

¹²⁹ Watchlist interview (name and affiliation withheld), February 1, 2021; Human Rights Watch, “Flawed Justice,” December 5, 2017, pp. 5, 33-35.

¹³⁰ Watchlist interview (name and affiliation withheld), February 7, 2021.

¹³¹ UN Security Council, Iraq Report (S/2019/984), December 23, 2019, para. 85.

¹³² Coalition of NGOs in the Kurdistan Region, “Submission to the UN Universal Periodic Review,” October 2014, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1188&file=EnglishTranslation> (accessed February 11, 2021), p. 9.

¹³³ Human Rights Watch, “Everyone Must Confess,” March 6, 2019, p. 29.

¹³⁴ Watchlist interview 1 (name and affiliation withheld), January 19, 2021; Watchlist interview (name and affiliation withheld), January 20, 2021.

¹³⁵ UN Security Council, Annual Report (A/74/845-S/2020/525), June 9, 2020, para. 76, Annex I(B); UN Security Council, Report of the Secretary-General on children and armed conflict (A/73/907-S/2019/509), June 20, 2019, <https://undocs.org/en/A/73/907> (accessed February 28, 2021), Annex I(B); UN Security Council, Report of the Secretary-General on children and armed conflict (A/72/865-S/2018/465), May 16, 2018, <https://undocs.org/en/A/72/865> (accessed February 28, 2021), Annex I(B); UN Security Council, Report of the Secretary-General on children and armed conflict (A/72/361-S/2017/821), August 24, 2017, <https://undocs.org/A/72/361> (accessed February 28, 2021), Annex I(A).

¹³⁶ Paris Principles, para. 2.8.

Neither the Government nor the KRG currently has a policy or legal framework guiding the response to children formerly associated with armed forces and armed groups. To the extent that reintegration support is provided, it is largely led by humanitarian and protection actors, often on a limited and short-term basis.¹³⁷ Children rely heavily on family-based support, but family members in the current context often also face a number of challenges and struggle to meet their own needs.¹³⁸ They are also unlikely to possess the tools necessary to effectively respond to the trauma their children have experienced.

The situation requires a more comprehensive, inclusive, and long-term approach. The Government, with the support of local and international child protection actors, should develop and adopt a survivor-centered, gender-sensitive, community-based, long-term program for the reintegration of CAAFAG through comprehensive child protection case management systems and related services. Programming should include children detained by authorities for their alleged association to ISIL, as well as children formerly associated with armed groups who are now residing in displacement camps and other areas. Reintegration support could be linked to assistance provided to CAAFAG under the Yezidi Survivors Bill and other peacebuilding and socioeconomic recovery efforts.

The UN Secretary-General, the Security Council Working Group on Children and Armed Conflict (SCWG-CAAC), and the Government of Iraq have called for the establishment of such a program.¹³⁹ The UN has also expressed its commitment to supporting the Government

in this endeavor.¹⁴⁰ Failing to meet the needs of children formerly associated with armed groups may undermine efforts to consolidate peace, security, and stability in Iraq.

The Government should consider establishing an interdisciplinary taskforce, or formal commission, to develop the reintegration strategy. Relevant stakeholders may include tribal and religious leaders; psychologists and psychotherapists; physicians; social workers; humanitarian workers; teachers; specialists on CAAFAG and conflict-related sexual violence; UN agencies; local communities; and child and youth beneficiaries of the program.

Because of the highly sensitive and politicized nature of advocating and providing services to children formerly associated with armed groups, government leadership on this issue would help to mitigate the risks and stigma faced by local and international agencies working on reintegration, as well as to promote the sustainability of these programs.

The reintegration program should meet Minimum Standard 9 on SGBV and Minimum Standard 11 on CAAFAG outlined in the “Minimum Standards for Child Protection in Humanitarian Action”¹⁴¹ and should be tailored to the Iraqi context. In addition, some nongovernmental organizations (NGOs) and the UN have begun pilot projects to reintegrate children formerly associated with armed groups, which may offer important insights into the needs of these children.

¹³⁷ Watchlist interview (name and affiliation withheld), December 17, 2021; Watchlist interview 3 (name and affiliation withheld), January 19, 2021; Watchlist interview (name and affiliation withheld), February 3, 2021; Amnesty International, “Legacy of Terror,” July 30, 2020, pp. 25–26.

¹³⁸ Amnesty International, “Legacy of Terror,” July 30, 2020, p. 33; Seed Foundation, “Supporting the Reintegration and Recovery of Former Child Soldiers in the Kurdistan Region of Iraq,” January 2020, https://www.seedkurdistan.org/Downloads/Reports/201223-Supporting_the_Reintegration_and_Recovery_of_Former_Child_Soldiers_in_the_Kurdistan_Region_of_Iraq.pdf (accessed February 8, 2021), p. 11.

¹³⁹ UN Security Council, Annual Report (A/74/845–S/2020/525), June 9, 2020, para. 78; UN Security Council, Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Iraq (S/AC.51/2020/4), July 24, 2020, <https://www.undocs.org/S/AC.51/2020/4> (accessed February 7, 2021), para. 7(n), Annex, para. 16.

¹⁴⁰ UN Security Council, Annual Report (A/74/845–S/2020/525), June 9, 2020, para. 78.

¹⁴¹ The Alliance for Child Protection in Humanitarian Action, “Minimum Standards for Child Protection in Humanitarian Action,” April 15, 2020, https://alliancecpha.org/en/CPMS_home (accessed March 5, 2021), pp. 139–146. *The Minimum Standards outline a common, agreed-upon framework for quality standards across child protection in humanitarian action.*

Key Considerations for Comprehensive, Long-term Reintegration Programming*

Transit Centers. In countries such as Mali, Niger, Nigeria, and Somalia, children formerly associated with armed groups sometimes spend up to 90 days in transit centers prior to returning to their communities, providing children and communities time to prepare for their reintegration.¹⁴² During this period, children generally receive health and nutrition services, basic education, mental health and psychosocial support, and vocational training skills.¹⁴³ Once the period in the transit center is complete, and when it is safe to do so, civilian actors attempt to return the children to their families.¹⁴⁴ Facilitating a similar transition step in Iraq, prior to a child's return to the community, may strengthen reintegration outcomes.

Blended Programming. Given the high risk of stigma and physical danger faced by children associated with ISIL, reintegration programs must avoid singling out and identifying these children as former members of the armed group. Government and humanitarian actors may consider a blended programming approach that targets child survivors of conflict more generally, with special provisions for children formerly associated with armed groups. This approach helps to ensure that communities do not view reintegration programs as exclusively rewarding children associated with armed groups, but rather as also benefiting the community as a whole. This can be achieved by situating the program within comprehensive child protection case management systems and services. Given the risks faced by children formerly associated with ISIL, such programs may require targeted outreach within communities to help ensure their participation.

Gender-Sensitive Programming.¹⁴⁵ ISIL inflicted a wide range of abuses on girls, including enslavement, forced domestic labor, rape, and other forms of sexual violence. Each stage of the reintegration programming requires a gender analysis that ensures the needs of girls are also met, without causing harm and exacerbating stigma. Programming for girls associated with armed forces and armed groups (GAAFAG) should include close integration with the health system to ensure girls have immediate access to health services. It should also include tailored programming for pregnant GAAFAG, GAAFAG with children and who require childcare support, and forcibly married GAAFAG who are faced with the continued partnered relationship (legal or otherwise).

Family Services and Social Reintegration. Given the important role of family members and caregivers in assisting children with reintegration in these communities, several interviewees stressed the importance of programming that provides parents and caregivers tools to help their children and invests in social reintegration approaches.

Accelerated Learning. Many of these children missed years of school during their association. Reintegration interventions should expand and increase access to existing accelerated learning programs and ease administrative burdens to accessing these programs. Accelerated learning programs should also be gender-sensitive and adapted to meet the needs of GAAFAG with children. Schools provide an important therapeutic, protective, and preventive measure, and help to anchor children in their communities.

* While this brief does not intend to provide a reintegration roadmap, the research and interview responses offered some high-level programming insights that may be useful for consideration.

¹⁴² Watchlist on Children and Armed Conflict, "A Path to Reintegration: The Role of Handover Protocols in Protecting the Rights of Children Formerly Associated with Armed Forces or Armed Groups" ("A Path to Reintegration"), December 2020, https://watchlist.org/wp-content/uploads/2416-watchlist-policy-note-dec-2020_final.pdf (accessed February 11, 2021), pp. 17-18.

¹⁴³ Ibid., p. 17.

¹⁴⁴ Ibid.

¹⁴⁵ For further information on the reintegration of girls formerly associated with armed groups and forces, see: The Alliance for Child Protection in Humanitarian Action, et al., "Girls Associated with Armed Forces and Armed Groups: Lessons learnt and good practices on prevention of recruitment and use, release and reintegration," December 2020, https://alliancecpha.org/en/system/tdf/library/attachments/tn_gaafag_eng.pdf?file=1&type=node&id=41543 (accessed February 8, 2021).

continued: **Key Considerations for Comprehensive, Long-term Reintegration Programming**

Streamlined Access to New and Replacement Civil Documents. Individuals lost access to their civil documentation in the course of abduction by ISIL, when fleeing their homes, or because they were born in areas outside of Iraqi government control and Iraqi officials do not recognize civil documentation issued by ISIL.¹⁴⁶ These documents are critical for participating in civilian life and exercising basic human rights, such as accessing education and health care. There are a number of bureaucratic and security hurdles to replacing these documents.¹⁴⁷ Some local and international agencies have attempted to overcome these barriers by establishing mobile courts and mobile documentation teams—efforts that could be expanded in a more formal reintegration program.¹⁴⁸

Community Engagement. Experts note that reintegration success often depends on a community-led and implemented process, with support from external actors where needed.¹⁴⁹ This requires community sensitization and consultation in the early phases of the programming.¹⁵⁰ Educating and preparing communities for children's return can help to strengthen acceptance and resilience.¹⁵¹

To ensure the effectiveness of the reintegration programming, the Government should begin a parallel process of building and expanding the technical capacity of actors implementing the program.

One of the most crucial issues is the need to train additional mental health experts. Children formerly associated with armed groups need specialized trauma interventions to treat conditions like “post-traumatic stress disorder (PTSD), anxiety, depression, identity crises, sleep disorders, attention deficit hyperactivity disorder (ADHD) and obsessive-compulsive disorder (OCD).”¹⁵²

The field of mental health is still quite new in the region. Currently, there are limited university programs in Iraq for training in psychotherapy. Reports suggest that many of the current psychosocial services and programs on offer to child survivors of conflict rely on

inexperienced or insufficiently trained staff due to a shortage of mental health professionals.¹⁵³ In particular, there is a need for male, Arabic-speaking psychologists with roots in affected communities, because they may be more strongly positioned to engage children formerly associated with armed groups. To ensure quality programming, the Government should expand training in this area and invest in promoting professions in this field.

Greater investment is also needed to strengthen Iraq's broader child protection system. Experts recommend all programming to be implemented through or linked to existing child protection systems.¹⁵⁴ A detailed mapping that highlights gaps in the protection system may indicate important areas for investment. Interviewees identified at least two key areas for capacity-building. The first is bolstering comprehensive case management skills so service providers are better able to identify and

¹⁴⁶ Amnesty International, “Legacy of Terror,” July 30, 2020, p. 33.

¹⁴⁷ Ibid., p. 34.

¹⁴⁸ Ibid., pp. 34–35.

¹⁴⁹ Global Coalition for Reintegration of Child Soldiers (GCRCS), “Gaps and Needs for the Successful Reintegration of Children Associated with Armed Groups or Armed Forces” (“Gaps and Needs”), October 2020, <https://childrenandarmedconflict.un.org/wp-content/uploads/2020/12/GCR-Gaps-and-Needs-10.2020.pdf> (accessed February 8, 2021), p. 7.

¹⁵⁰ Ibid.

¹⁵¹ Watchlist on Children and Armed Conflict, “A Path to Reintegration,” December 2020, p. 18.

¹⁵² Amnesty International, “Legacy of Terror,” July 30, 2020, p. 23.

¹⁵³ Ibid., p. 25.

¹⁵⁴ GCRCS, “Gaps and Needs,” October 2020, p. 8.

support the needs of each child in the reintegration program. The second is building awareness and training on reintegration programming, as few actors on the ground have engaged in this type of work before.

An Alternative Approach to Children Detained Solely for Their Association with ISIL

As highlighted earlier in the policy brief, the juvenile justice system in Baghdad-controlled Iraq is currently overwhelmed with cases of children detained on terrorism charges. This is in part fueled by the overbroad Federal Anti-Terrorism Law that is susceptible to wide interpretation and effectively criminalizes association for children below the age of 18 who have not committed a violent crime.¹⁵⁵ Not only are some children still awaiting trial, but many find themselves in facilities not intended to house children, where they have limited access to much-needed reintegration services.¹⁵⁶ Some attempts have been made to advocate for the release of children facing lesser charges, but these efforts have largely taken place on a more individualized basis.¹⁵⁷ Most children detained for their association with ISIL in KRI have been released.¹⁵⁸

The Government should choose an alternative, rights-based approach to children charged solely for association with ISIL, absent any other serious crimes. While amending the Federal Anti-Terrorism Law to comply with international juvenile justice standards, the Government should sign a handover protocol—an agreement between a government and the UN to swiftly transfer children allegedly associated with armed groups to civilian child protection actors for reintegration.¹⁵⁹ The presence of a robust reintegration program will

help to support the release and transfer of CAAFAG in detention.¹⁶⁰ Governments have signed handover protocols in at least seven conflict-affected countries.¹⁶¹

Handover protocols typically include provisions on the treatment of children while in the custody of security forces and details about notification and handover procedures. They are an explicit recognition by states that children detained solely for their association with armed groups are not perpetrators, but primarily victims who require reintegration. It is, however, important to note that these agreements are not guarantees of immunity. If a child is suspected of a serious, internationally recognized crime—beyond mere association with an armed group—he or she may be prosecuted in line with international juvenile justice standards where the judge considers his or her recruitment a mitigating factor in the criminal proceedings.

Strengthening Juvenile Justice Standards for the Prosecution of More Serious Crimes

International standards stress that criminal responsibility related to children's participation in armed conflict lies primarily with the recruiter, not the child. There may be exceptional cases, however, where children formerly associated with armed groups may be charged with more serious crimes. In these cases, international law allows for detention as a measure of last resort, for the shortest period of time, and for prosecution in line with juvenile justice standards.¹⁶² It also encourages alternatives to judicial proceedings and institutional care.¹⁶³ Iraqi law emphasizes the importance of the juvenile system for rehabilitating and reintegrating the child into society.¹⁶⁴

¹⁵⁵ OHCHR, UNAMI, "Human Rights in the Administration of Justice in Iraq," January 2020, pp. 5, 9-11.

¹⁵⁶ Watchlist interview 1 (name and affiliation withheld), January 19, 2021; Watchlist interview (name and affiliation withheld), January 20, 2021.

¹⁵⁷ Watchlist interview (name and affiliation withheld), September 15, 2021; Watchlist interview 2 (name and affiliation withheld), January 26, 2021.

¹⁵⁸ Watchlist interview (name and affiliation withheld), January 20, 2021; Watchlist email correspondence (name withheld), humanitarian organization, February 21, 2021.

¹⁵⁹ For a more detailed discussion on handover protocols, see: Watchlist on Children and Armed Conflict, "A Path to Reintegration," December 2020.

¹⁶⁰ For further details on the impact of the availability of quality, civilian-run, reintegration programming in supporting advocacy for the release of CAAFAG from detention, see: Watchlist on Children and Armed Conflict, "A Path to Reintegration," December 2020, pp. 17-18.

¹⁶¹ Watchlist on Children and Armed Conflict, "A Path to Reintegration," December 2020, pp. 12-13.

¹⁶² CRC, arts. 37(b), 40.

¹⁶³ Ibid., arts. 40(3)(b), 40(4); Paris Principles, art. 3.7.

¹⁶⁴ Juvenile Welfare Law No. 76 of 1983, art. 10.

In the Iraqi context, strengthening juvenile justice standards requires adopting a fast-tracked process to minimize pre-trial detention and ensure timely prosecution. Given the current backlog of cases in Baghdad-controlled Iraq, the Government should consider options to bolster capacity, like mobile courts.

In addition, in light of the flaws in the Federal and KRI Anti-Terrorism Laws, judges should take steps to ensure individualized criminal responsibility for acts beyond mere association. Some efforts have been made to develop systems more in line with these standards, which should be replicated and expanded. Human Rights Watch has reported that a special committee of judges in Nineveh, working with a general prosecutor and social worker, took a more human rights-compliant approach to their terrorism-related cases.¹⁶⁵ This included the release of some children below the age of 18, under the Amnesty Law, for participating in ISIL training for between seven and 30 days before turning 18, without evidence that they had engaged in other ISIL activities.¹⁶⁶ In one case, the committee remarked that “taking a course without carrying out any terrorist activity cannot be considered affiliation.”¹⁶⁷

Moreover, given the Government’s heavy reliance on confessions as evidence, the courts should, under no circumstances, accept confessions obtained under duress except as evidence of torture or ill-treatment.

The Government should effectively implement the alternative sentencing framework outlined in the Juvenile Welfare Law by taking steps to improve and ensure

adequate space, services, and social workers for all juvenile offenders in the rehabilitation schools. Currently, the youth rehabilitation schools have about one social worker per 100 youth.¹⁶⁸ Moreover, the Government should ensure that children who have completed their sentences and have been released directly to communities continue to receive ongoing support from trained social workers to assist with their reintegration. The Government should consider alternatives to judicial proceedings and institutional care for children charged with crimes during their association, such as community service and community-based supervision.

Finally, the Government and other supporting actors should invest in programs for lawyers, judges, and security forces on international standards for the treatment of CAAFAG, including exploring alternatives to detention and reintegration pathways.

Strengthening the Legislative Framework for CAAFAG

The Government and KRG should take steps to strengthen the legislative framework for CAAFAG in line with international standards. This includes:

Raising the Minimum Age of Criminal Responsibility.

The 1983 Juvenile Welfare Law establishes the minimum age of criminal responsibility at 9 years old.¹⁶⁹ In the KRI, the minimum age of criminal responsibility is 11 years old.¹⁷⁰ Both authorities should raise the age of criminal responsibility to 14, in line with international standards.¹⁷¹ As recommended

¹⁶⁵ “Iraq: Step Toward Justice for ISIS Child Suspects,” Human Rights Watch press release, December 13, 2020.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Watchlist interview (name and affiliation withheld), January 20, 2021.

¹⁶⁹ Juvenile Welfare Law No. 76 of 1983, art. 47(1).

¹⁷⁰ Coalition of NGOs in the Kurdistan Region, “Submission to the UN Universal Periodic Review,” October 2014, p. 9.

¹⁷¹ UN Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system (CRC/C/GC/24), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en (accessed February 11, 2021), paras. 21-22. *The UN Committee on the Rights of Child has highlighted that age 14 is the most common age of criminal responsibility internationally. It also notes that at the ages of 12 and 13, children’s maturity and capacity for abstract reasoning are still evolving. They are, therefore, unlikely to understand the impact of their actions or to comprehend criminal proceedings.*

by the UN Committee on the Rights of the Child, children below the age of 14 should not be viewed as perpetrators and should instead be provided assistance by appropriate authorities.¹⁷² If there is no proof of a child's age, the child should be given the benefit of the doubt and not be held criminally responsible.¹⁷³

Strengthening Protections for Juveniles in the Federal Anti-Terrorism Law and the KRI Anti-Terrorism Law.

The Government and the KRG should strengthen protections for CAAFAG by explicitly ending the criminalization of mere association with armed groups, including those designated as terrorist, for children under the age of 18, as well as amending the definition of terrorism to ensure its compatibility with the principles of legality, foreseeability, and specificity.¹⁷⁴

Criminalizing the Recruitment and Use of Children.

Currently the recruitment and use of children below the age of 18 is not prohibited at the national and regional level in Iraq. Criminalizing recruitment helps to shift the responsibility of acts committed during the period of association, from children to the adults who recruited them in the first place. International bodies, such as the Special Court for Sierra Leone, have chosen

not to prosecute children involved in armed conflict, but rather to focus on the individuals who forced these children to commit crimes during the war.¹⁷⁵

Adopting a Child Rights Law. The Government should develop a comprehensive law on the rights of the child, including protections for children formerly associated with armed forces and armed groups.

Supporting Victims' Rights to Reparations

Under international human rights and humanitarian law, victims of serious violations have the right to adequate, effective, and prompt reparations in the form of restitution, reintegration, satisfaction, and guarantees of non-repetition.¹⁷⁶ The Iraqi Constitution guarantees "compensation to the families of the martyrs and the injured as a result of terrorist acts."¹⁷⁷ Some children forcibly recruited by ISIL may be entitled to reparations. The Government has taken an important first step in providing reparations to Yazidi, Turkmen, Christian, and Shabak survivors of some crimes committed by ISIL, through the adoption of the Yazidi Survivors Bill on March 1, 2021, and should ensure its swift and effective implementation.¹⁷⁸

¹⁷² Ibid., para. 23.

¹⁷³ Ibid., para. 24.

¹⁷⁴ See: ICRC, "General principles of international criminal law," March 2014, <https://www.icrc.org/en/document/general-principles-international-criminal-law-factsheet> (accessed February 25, 2021). *Under the principle of legality, no one may be convicted or punished for an act or omission that did not violate a penal law in existence at the time it was committed. The principle of foreseeability requires that an individual knows what facts will give rise to criminal proceedings and what penalties are associated with them. The principle of specificity requires that the definition of the proscribed act be sufficiently precise.*

¹⁷⁵ "Special Court will not indict children – prosecutor," *The New Humanitarian*, November 4, 2002 <https://www.thenewhumanitarian.org/report/35524/sierra-leone-special-court-will-not-indict-children-prosecutor#:~:text=The%20Special%20Court%20for%20Sierra,David%20Crane%20said%20on%20Friday.&text=Crane%2C%20it%20added%2C%20told%20them,against%20children%20as%20war%20crimes> (accessed February 11, 2021).

¹⁷⁶ *For international human rights law, see: UN General Assembly, Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/Res/60/147), December 16, 2005, <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx> (accessed February 4, 2011), Principle VII(11)(b). For international humanitarian law, see: ICRC, "IHL Database, Rule 150. Reparation," https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule150 (accessed February 4, 2021). See also: Amnesty International, "Legacy of Terror," July 30, 2020, pp. 47-48.*

¹⁷⁷ Constitution of the Republic of Iraq, October 15, 2005, art. 132(2).

¹⁷⁸ Dr. Ewelina U. Ochab, "Iraq Adopts New Law To Assist Survivors Of The Daesh Genocide," *Forbes*, March 4, 2021.

The Role of International Donors

As donors turn from providing emergency support to more development and recovery assistance, they can play an important role in building capacity to respond and assist CAAFAG, which will, in turn, contribute to breaking cycles of violence, reducing risks of re-recruitment and vulnerability, and promoting sustainable peace.

Core to this effort is long-term funding for robust reintegration programming, embedded in the strengthening of comprehensive child protection systems and services. Experts recommend funding commitments of between three and five years “to adequately address a child’s protection concerns and allow for consistent planning, human resourcing, implementation and monitoring.”¹⁷⁹ Short-term engagement risks causing more harm than good. Specialized trauma interventions, which are critical for positive outcomes, may require additional resources.

In addition, some donors have strict conditions aimed at preventing armed groups designated as terrorist from benefiting from their assistance.¹⁸⁰ In practice, these clauses can complicate funding programs for CAAFAG.¹⁸¹

Donors should refrain from introducing conditionality clauses in humanitarian funding agreements that could potentially cut off access to children in need or violate the fundamental humanitarian principles of humanity, neutrality, impartiality, and independence.

Donors can also play an important role in publicly supporting the signing of handover protocols, the immediate release of children in detention who are not charged with violent offenses, and their transfer to child protection authorities for family reunification and community reintegration. This could form part of broader efforts to strengthen the juvenile justice system and the overall legislative framework for CAAFAG, in line with the recommendations outlined in the preceding sections. Donors should consider withholding assistance where there is evidence of torture or ill-treatment of children in government custody.

¹⁷⁹ GCRCs, “Gaps and Needs,” October 2020, p. 28.

¹⁸⁰ Watchlist on Children and Armed Conflict, “Countering Terrorism and Violent Extremism,” January 2020, p. 21.

¹⁸¹ Ibid.

The Role of Foreign Governments with Child Nationals Accused of ISIL Affiliation

Foreign governments whose nationals are among the CAAFAG or otherwise affiliated, should accept responsibility for children who are their citizens, ensuring they are able to return to their country of origin and access reintegration services, in line with the principles of non-refoulement and the best interests of the child.

Under international law, states are required to treat children involved in armed conflict primarily as victims of serious violations, to prevent their recruitment, and to restrict their prosecution or punishment solely for their membership in an armed group, among various other commitments.¹⁸² The repatriation of these children is the only human rights-compliant response.

States should consider returning entire families to prevent separating children from their parents, unless it is not in the child's best interest. In the exceptional circumstances when children are prosecuted for crimes committed during their association, states must ensure proceedings take place in line with international juvenile justice standards.

¹⁸² For further details on states' legal obligations regarding the treatment of CAAFAG, refer to the section of this brief entitled "International Framework for the Treatment of CAAFAG."

Conclusion

The absence of an overarching government strategy or legal framework for reintegrating CAAFAG has either left these children in communities where they are largely unable to access much-needed support for their reintegration, or in overcrowded detention facilities, accused of association with ISIL, sometimes without evidence of having committed a violent crime.

As the Government of Iraq, with the support of international actors, takes steps for the country's long-term recovery, it should develop a rights-based strategy to address and reintegrate thousands of children associated with ISIL and other parties to the conflict. This plan is long overdue and particularly crucial in light of the pending return of more than 30,000 Iraqis, primarily women and children, from Al-Hol displacement camp, some of whom may be children formerly associated with ISIL.

International law provides a robust framework for the Government to strengthen its response to CAAFAG. In addition to developing and adopting a national reintegration program, the Government should sign a handover protocol for the release of children detained

solely for their association with ISIL; strengthen juvenile justice standards for the prosecution of CAAFAG suspected of committing more serious crimes; strengthen the legislative framework for CAAFAG; and, where relevant, support the right to reparations for children who suffered serious violations at the hands of ISIL.

International governments, including donors, can play an important role in building the capacity to respond and assist CAAFAG by supporting the aforementioned measures and providing long-term funding for reintegration programming. Foreign governments should facilitate the return of child nationals accused solely of ISIL affiliation to their country of origin and ensure access to reintegration services, in line with the principles of non-refoulement and the best interests of the child.

Watchlist on Children and Armed Conflict

919 2nd Avenue, Suite 200, New York, NY 10017 USA • Phone: 212.972.0695

Email: watchlist@watchlist.org • Website: www.watchlist.org