
Punished for Being Abused: The Unfair Prosecution of Children Affiliated with ISIS

by Mary Kate O'Connell

Since regaining control of their state from ISIS in 2017, Iraqi and Kurdistan Regional Government Authorities (KRG) have arrested and detained approximately 1,500 children for alleged ISIS affiliation.[1] Of the children detained, an estimated 185 have been convicted for terrorism and sentenced to prison in Iraq.[2]

Many of these children were not voluntary affiliates of ISIS and should not be imprisoned for serving as child soldiers. The Paris Principles and Guidelines on Children Associated with Armed Forces of Armed Groups ("Paris Principles") defines a child soldier as a person under 18 who has been recruited or used by an armed force or armed group in any capacity, including, but not limited to, children used as fighters, cooks, porters, spies or for sexual purposes.[3] Since 2014, ISIS has kidnapped, bought, and enslaved children to assist with terrorist operations.[4] ISIS has recruited the children using aggressive propaganda that persuades parents that giving their children to ISIS leads to wealth, honor, and prosperity for the family.[5] In some ISIS controlled areas of Syria, high school and university students were required to pledge allegiance to ISIS to graduate.[6] Once successfully recruited by ISIS, many of these children are placed into religious camps where they are indoctrinated with ISIS' beliefs and missions.[7] Recruited children over the age of ten are then placed into military training.[8] If any child tries to escape or dissent, they are often beaten or killed.[9] ISIS has the most widespread use of child soldiers in modern history and continues to use child soldiers to this day.[10]

KRG's criminalization of children for their involuntary service to ISIS as child soldiers violates international law.[11] Under the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups ("Paris Principles"), children who escape or are released from involvement with armed forces

retain their human rights as children and international law must be applied to any proceedings involving the children.[12] More specifically, under international law, the children may not be subjected to torture or cruel punishment, may not be sentenced to death nor life imprisonment without possibility of release, and may not be deprived of their liberty.[13] The Paris Principles also require that all appropriate action is taken to ensure family re-unification and the re-integration of the child into society.[14] The release process of a child from an armed group is crucial to the child's re-integration, and the child should not be detained or prohibited from receiving rehabilitative services.[15] The KRG is violating the Paris Principles by immediately detaining children released from ISIS control and using torture methods to elicit confessions of ISIS affiliations from children. The KRG has also not taken any necessary steps to assist in the rehabilitation or re-integration of child soldiers released from ISIS.[16]

Punishing child soldiers also violates the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.[17] While the UN Convention on the Rights of the Child outlines each child's juvenile justice rights, the 2000 Optional Protocol specifically addresses the issue of children involved in armed conflict.[18] Reaffirming the importance of protecting children's rights, the Protocol describes the harmful impact of armed conflict on children and prohibits the recruitment or participation of any person under the age of 18 in armed conflict.[19] Article 7 of the Optional Protocol specifically requires member states to assist in the rehabilitation and social reintegration of persons under 18 who were recruited and involved in armed conflict.[20] Iraq ratified the Optional Protocol in 2008 which means that the KRG's current detention and sentencing of ISIS child soldiers is in violation of international

law.[21]

As a signer of the Optional Protocol, Iraq should be held accountable for violating Article 7. While the KRG is a semi-autonomous region of Iraq, it is considered part of Iraq by the United Nations. Therefore, since the KRG has violated the 2000 Optional Protocol to the Convention on the Rights of the Child and Iraq is a signing member of this treatise, the UN Security Council should make efforts to intervene in the KRG's punishment and detainment of child soldiers of ISIS. Such efforts should include requiring the KRG to release child soldiers after questioning and to implement reunification plans between child soldiers and family members. Unfortunately, Iraq is not a state member of the International Criminal Court, which means that the ICC's ability to intervene in the KRG's punishment of child soldiers is limited.[22]

Given the recent actions of KRG towards child soldiers released from ISIS control, the international community can and should intervene under the 2000 Optional Protocol to prevent further punishment of child soldiers.[23] The UN Convention on the Rights of the Child requires member states to take corrective action to protect the best interests of children and to allow all children to enjoy basic human rights.[24] KRG is violating the basic human rights of ISIS child soldiers by preventing them from family reunification and using torture methods to elicit confessions. International law requires the reintegration and rehabilitation of child soldiers, and KRG is violating international law by instead detaining, convicting, and imprisoning child soldiers for their involuntary affiliation with ISIS.

1 Jo Becker, "Everyone Must Confess" Abuses against Children Suspected of ISIS Affiliation in Iraq, Human RightsWatch (Feb. 12, 2017), <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq#page>.

2 Id.

3 UNICEF, Child recruitment by armed forces or armed groups, (Mar. 22, 2011), https://www.unicef.org/protection/57929_58007.html.

4 Agnes Collet, ISIS and child soldiers: what future for the Islamic State?, HUMANIUM (Nov. 30, 2016), <https://www.humanium.org/en/isis-child-soldiers/>.

5 Id.

6 Id.

7 Kimberly Dozier, They Were Children When They Were Kidnapped By ISIS and Forced to Fight. What Happens Now That They're Home?, TIME (May 23, 2019) <https://time.com/long->

[form/isis-child-soldiers-yezidi/](https://time.com/long-form/isis-child-soldiers-yezidi/).

8 Id.

9 Erin McLaughlin, How ISIS recruits children, then kills them, CNN (Feb. 22, 2016), <https://www.cnn.com/2016/02/19/middle-east/isis-child-soldiers/index.html>.

10 Dozier, supra note 7.

11 UN Children and Armed Conflict, Ending the Use of Child Soldiers, (Feb 12 2017), <https://childrenandarmedconflict.un.org/2017/02/ending-the-use-of-child-soldiers/>.

12 UNICEF, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Feb. 2007).

13 Id.

14 Id.

15 Id.

16 Becker, supra note 1

17 UN Commission on Human Rights, 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res 54/263 (May 25, 2000).

18 UN Commission on Human Rights, Convention on the Rights of the Child, G.A. Res 74 (Mar. 7, 1990).

19 UN Commission on Human Rights, supra note 17.

20 Id.

21 Id.

22 Coalition for the International Criminal Court, Iraq.

23 UN Commission on Human Rights, supra note 17.

24 UN Commission on Human Rights, supra note 18.