



While detailed rules exist in international armed conflicts to regulate detention, their number is much more limited in non-international armed conflicts. There is thus a need to strengthen IHL protection for detainees in particular with regards to treatment and conditions of detention, protection of vulnerable individuals, grounds and procedures for internment and transfer of detainees from one authority to another.

How are persons treated when detained by non-State armed groups? By national or foreign authorities? How are children protected in detention? When does detention end? This highlight presents seven case studies covering recent armed conflicts. They illustrate the treatment of detainees in general, detention of children and women and the temporal scope of detention in particular.

## **I. Treatment of detainees**

- USA, *Al-Shimari v. CACI Premier Technology, Inc.* <sup>[1]</sup>, illustrates the acts of abuse and torture reportedly suffered by detainees of Abu Ghraib prison while they were interrogated by CACI, a private military and security company.
- Israel/Palestine, *Operation Protective Edge* <sup>[2]</sup> examines (apart from conduct of

hostilities issues) the situation of Palestinian detainees allegedly subjected to ill-treatment and torture by the IDF and of Palestinian “collaborators” allegedly detained and executed by Palestinian armed groups.

## **II. Detention of women and children**

- Central African Republic, Report of the UN Independent Expert, July 2016 <sup>[3]</sup>, shows how children are being detained in order to interrogate them and extract information on the Lord’s Resistance Army’s activities.
- U.S. *Jawad v. Gates* <sup>[4]</sup> illustrates the situation of a minor detained by Afghan and American forces, detention during which he was allegedly subjected to cruel and abusive treatment.
- Syria: Detention and Abuse of Female Activists <sup>[5]</sup> examines the abusive treatments female opposition activists as well as their female relatives and neighbours have been reportedly subjected to while in detention by Syrian military and pro-government forces.

## **III. Admissibility, legal basis of detention and applicable procedures**

- United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments) <sup>[6]</sup> examines the detention of Mr. Serdar Mohammed in Afghanistan after his capture by British armed forces. This case-study follows from the previous case United Kingdom, The Case of Serdar Mohammed (High Court Judgment) <sup>[7]</sup>.

## **IV. Temporal scope of detention**

- USA, Guantanamo, End of “Active Hostilities” in Afghanistan <sup>[8]</sup>, illustrates how the temporal scope of armed conflict has a consequential impact on detention.

## The Law and “A to Z” section of the Online casebook

Information on detention can also be found in the Law section of the online casebook under Non-international armed conflict <sup>[9]</sup>, Civilian population <sup>[10]</sup> and Combatants and POWs <sup>[11]</sup>. The A to Z section of the online casebook provides specific information on Detention <sup>[12]</sup>, Detainees <sup>[13]</sup>, Detaining powers <sup>[14]</sup>, Civilian internees <sup>[15]</sup>, Prisoners of war <sup>[16]</sup>, Access <sup>[17]</sup>, Humane treatment <sup>[18]</sup>, Accommodation <sup>[19]</sup>, Repatriation <sup>[20]</sup> and Central Tracing Agency <sup>[21]</sup>.

## To go further

- The issue of the International Review of the Red Cross on “Detention: Addressing the human cost” <sup>[22]</sup> is available. The article “Overcrowding: Nobody’s fault? When some struggle to survive waiting for everyone to take responsibility” <sup>[23]</sup> gives an insightful perspective on the problem of overcrowded detention facilities.
- On the topic of security detention, two articles also stand out. The first one “National Security and the right to liberty in armed conflict: The legality and limits of security detention in international humanitarian law” <sup>[24]</sup> examines more generally the legality and limits of security detention in IHL and the second one ““Restoring hope where all hope was lost”: Nelson Mandela, the ICRC and the protection of political detainees in apartheid South Africa” <sup>[25]</sup> analyzes the specific case of political detainees which are now more commonly known as “security detainees” during the apartheid in South Africa.
- For a more general approach to detention, the article “Current trends and practices in the use of imprisonment” <sup>[26]</sup> examines contemporary issues of concern in the use of detention, particularly conditions of detention.
- The previous highlight “Interplay between IHL and Human Rights in Armed Conflict (II): Detention” <sup>[27]</sup> illustrates how the interaction between these two bodies of law has been approached by several jurisprudence cases, most notably cases of the European Court of Human Rights.
- ICRC booklet on children and detention <sup>[28]</sup> provides further insight on the consequences of detention on children.

- The article “Strengthening IHL protecting persons deprived of their liberty in relation to armed conflict” <sup>[29]</sup> presents the key areas identified by the ICRC as in need for further development and the results of consultations conducted on how to address them.
  - The blog post "The 1918 Bern Agreements: repatriating prisoners in a total war" <sup>[30]</sup> offers an analysis of these agreements that led to a more humane treatment of POWs at a time the legal framework governing POWs was far less developed than it is today.
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**Source URL:** <https://casebook.icrc.org/highlight/detention-armed-conflict>

### Links

- [1] <https://casebook.icrc.org/case-study/usa-al-shimari-v-caci-premier-technology-inc>
- [2] <https://casebook.icrc.org/case-study/israelpalestine-operation-protective-edge-gaza-13-june-26-august-2014>
- [3] <https://casebook.icrc.org/case-study/central-african-republic-report-un-independent-expert-july-2016>
- [4] <https://casebook.icrc.org/case-study/usa-jawad-v-gates>
- [5] <https://casebook.icrc.org/case-study/syria-detention-and-abuse-female-activists>
- [6] <https://casebook.icrc.org/case-study/united-kingdom-case-serdar-mohammed-court-appeal-and-supreme-court-judgments>
- [7] <https://casebook.icrc.org/case-study/united-kingdom-case-serdar-mohammed-high-court-judgment>
- [8] <https://casebook.icrc.org/case-study/usa-guantanamo-end-active-hostilities-afghanistan>
- [9] <https://casebook.icrc.org/law/non-international-armed-conflict>
- [10] <https://casebook.icrc.org/law/civilian-population>
- [11] <https://casebook.icrc.org/law/combatants-and-pows>
- [12] <https://casebook.icrc.org/glossary/detention>
- [13] <https://casebook.icrc.org/glossary/detainees>
- [14] <https://casebook.icrc.org/glossary/detaining-power>
- [15] <https://casebook.icrc.org/glossary/civilian-internees>
- [16] <https://casebook.icrc.org/glossary/prisoners-war>
- [17] <https://casebook.icrc.org/glossary/access>
- [18] <https://casebook.icrc.org/glossary/humane-treatment>
- [19] <https://casebook.icrc.org/glossary/accommodation>
- [20] <https://casebook.icrc.org/glossary/repatriation>
- [21] <https://casebook.icrc.org/glossary/central-tracing-agency>
- [22] <https://www.icrc.org/en/international-review/detention-addressing-human-cost>
- [23] <https://www.icrc.org/en/international-review/article/overcrowding-nobodys-fault-when-some-struggle-survive-waiting-everyone>
- [24] <https://www.icrc.org/en/international-review/article/national-security-and-right-liberty-armed-conflict-legality->

and-limits

[25] <https://www.icrc.org/en/international-review/article/restoring-hope-where-all-hope-was-lost-nelson-mandela-icrc-and>

[26] <https://www.icrc.org/en/international-review/article/current-trends-and-practices-use-imprisonment>

[27] <https://casebook.icrc.org/highlight/interplay-between-ihl-and-human-rights-armed-conflict-ii-detention>

[28] <https://shop.icrc.org/les-enfants-et-la-detention-2517.html>

[29] <https://www.icrc.org/en/document/detention-non-international-armed-conflict-icrcs-work-strengthening-legal-protection-0>

[30] <http://blogs.icrc.org/law-and-policy/2018/03/29/1918-bern-agreements-repatriating-prisoners-of-war/>