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Training Workshop on Justice for Children in the context of Counter-terrorism in Indonesia:

Background Materials

Dear Participants,

We are very grateful that you have accepted our invitation to participate in this Training Workshop on Justice for Children in the context of Counter-terrorism in Indonesia.

In order to encourage fruitful exchanges, we invite you to do some preparation in advance:

- Please read the attached Concept Note, Agenda and the Bali Call for Action by way of introduction to the training.
- Please read the following Background Materials which will help you to prepare key points for interventions and debate based on your own experiences.
- Please complete the pre-training questionnaire.

Thank you.



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A SETTING THE SCENE – SESSION ONE

1.Context

The recruitment and exploitation of children by terrorist and violent extremist groups is an issue which has risen to international attention in recent years. Children are often specifically targeted by terrorist and violent extremist groups, sometimes for economic, political and propaganda advantage. Cheaper than adult members of the group, they are more easily coerced, controlled, and indoctrinated. They are also less likely than adults to fully comprehend the long-term consequences of risk-taking behaviour. The propaganda impact of showing children engaged in terrorist and violent extremist activities is powerful. It attracts global attention and also demonstrates the ruthlessness and state-building capacities of these groups.

The circumstances in which children are recruited and exploited by terrorist and violent extremist groups vary widely around the world and this phenomenon occurs in both conflict and non-conflict settings. Terrorist and violent extremist groups have encouraged children who are not living in conflict countries to incite, plan and carry out terrorist acts in their own country. Children can also find themselves caught up in armed conflict, where they have little choice but to associate themselves with a terrorist or violent extremist group. Recent examples include the large-scale and cross-border recruitment and exploitation of children by groups such as the Islamic State in Iraq and the Levant (ISIL), the Taliban and Boko Haram.¹

Other children have accompanied their parents to conflict zones, and an unknown number have been born to parents who are suspected “Foreign Terrorist Fighters” (FTF). The definition and scope of the term “Foreign Terrorist Fighter”² is controversial, but it has been commonly used to refer to individuals who have travelled from their home states to other States to participate in or support terrorist acts, including in the context of armed conflict.

Why do children become associated with these groups?

¹ See United Nations General Assembly and Security Council, *Report of the Secretary-General on children and armed conflict, 2020 (A/74/845–S/2020/525)*

² United Nations Security Council Resolution 2178, Adopted by the Security Council at its 7272nd meeting, on 24 September 2014 (S/RES/2178), para. 6. According to UNSC Resolution 2178 (2014), foreign terrorist fighters are “individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflicts.”



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Children become associated for a wide variety of reasons. Some are recruited using brutal and violent methods such as kidnapping. Others may join due to material inducements because they have no other choice to survive, for protection, or because they feel a responsibility to defend their families and communities.³ Peers and relatives can also have a strong influence on children's behaviour by serving as role models and research shows that children are particularly susceptible to peer influence, including pressure to engage in antisocial behaviours.⁴

Children, particularly in adolescence, struggle with their identity, what they want out of life, and where they belong. Terrorist and violent extremist groups can provide a ready-made community, identity, and the opportunity to be part of a cause that can be particularly attractive to young people.⁵ In addition, these groups can successfully perpetuate an idea that the world is divided into binary categories of "us versus them" which can strengthen a child's sense of belonging.

In addition to a need to belong, children have a desire to feel a sense of meaning in their lives. This underlying desire to matter in the world and feel respected is activated when a person feels humiliated or deprived, anticipates a loss of significance, or is reminded of her/his own mortality, feelings that often arise after trauma exposure. As part of their strategic communications aimed at recruiting children, numerous terrorist and violent extremist groups have exploited such feelings of humiliation and frustration and striven to portray their missions as providing a sense of significance.⁶

Children should be treated primarily as victims

Certain trajectories of children into armed and terrorist groups are manifestly coerced, often due to the brutal methods employed by these groups such as abduction, threats, and open use of force. Even recruitment processes that may appear *voluntary* often include elements of compulsion and/or coercion and the line between voluntary and forced processes is often blurred and superficial in practice.⁷ No child recruitment process can be regarded as truly voluntary owing to the forms of coercion and

³ For more information see UNODC (2019) *Prevention of Child Recruitment and Exploitation by Terrorist and Violent Extremist Groups: The Role of the Justice System: A Training Manual*, p.22

⁴ Ibid

⁵ See Rebecca Littman, "Children and Extreme Violence: Insights from social science on child trajectories in non-state armed groups", United Nations University, (2017). Cited in UNODC, *Rehabilitation and Reintegration of Child Victims of Recruitment and Exploitation by Terrorist and Violent Extremist Groups: A Training Manual* (Vienna, 2019).

⁶ Ibid

⁷ In its judgement to the Lubanga Dyilo case, the International Criminal Court agreed that the distinction between voluntary and forced recruitment is superficial in practice in the context of armed conflict, (*Situation in the Democratic Republic of the Congo, in the case of the Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, International Criminal Court (ICC), 14 March 2012, para. 612.) UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual* (Vienna 2019) p.15.



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influence used and because of the inherent power imbalance in favour of those perpetrating the exploitation. So even when children appear to share the motivations and intentions of the group, their higher vulnerability to psychological manipulation and lower perception of risk should be taken into account as influencing their capacity to consent.

During association with the groups they are subject to multiple and often extreme violence⁸ and for girls in particular, the prevalence of sexual and gender-based violence is a constant threat and reality.⁹ This has grave implications for children's development and for the development of the communities in which they live and can lead to a high risk of stigmatization and marginalization within their families and communities. It constitutes a serious form of violence against children and the children involved must be recognized and treated primarily as victims of crime, irrespective of the context and circumstances in which the recruitment and exploitation take place.

The situation in Indonesia

In Indonesia, there were several terrorist-related incidents involving children and families in May 2018, all in East Java. The 2018 incidents marked a new phase in terrorist activity because for the first time they were carried out by whole families – which means their tactics were founded on the recruitment and use of children.^{10 11} Aside from this, there have been a small number of children involved in such activity and as of July 2020, the National Counter-Terrorism Agency (BNPT) stated that 17 children had been involved as offenders in terrorist attacks in recent years.¹² They have been charged with offences such as bomb assembly, exploding pipe bombs, attacking a pastor, destruction of a church and involvement in preparation of a terrorist attack.

Another recent phenomenon in Indonesia is that families, including children, have been encouraged to travel from their home to other States in order to participate in or support terrorist activities. As of July 2020, it was estimated that there were around 500 children of Indonesia origin located in Syria, Iraq, Afghanistan and the Philippines.¹³ Furthermore, nearly 200 children have been repatriated back to

⁸ UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice Section* (Vienna, 2017) p.2.

⁹ *Ibid.*, p.15.

¹⁰ US Department of State, *Country Reports on Terrorism, Indonesia* (2018). Available at: <https://www.state.gov/reports/country-reports-on-terrorism-2018/#Indonesia>

¹¹ Channel News Asia, "Child suicide bombers, and the shelter rehabilitating them in Indonesia" 24th August 2019. <https://www.channelnewsasia.com/news/cnainsider/child-suicide-bombers-isis-terrorist-rehabilitate-indonesia-11838244>

¹² Figures provided to UNODC by the BNPT, August 2020

¹³ *Ibid*



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Indonesia by foreign governments, mostly from Turkey, but also from nations in East and Southeast Asia.¹⁴ Many of these children were very young. According to the NGO C-SAVE, 90 per cent of the child returnees who were sent to the Handayani Centre for rehabilitation during 2017, were under 12 years old and 10 per cent were aged from 13 to 18 years old.¹⁵

Commentators have referred to different ‘push’ and ‘pull’ factors for child association with these groups in Indonesia:

- Poverty and disillusionment with societal corruption and inequality plays a role¹⁶
- Children can be recruited through in-person ties and in traditional settings such as educational institutions¹⁷ and study circles.¹⁸
- The role of the family can be prominent.¹⁹
- Recruitment can also take place through social media and followed up by in-person attendance at lectures or educational events.²⁰

2.Challenges for the justice system

When national law so requires, children above the minimum age of criminal responsibility (MACR) may be held accountable for offences committed while associated with terrorist and violent extremist groups; in Indonesia the MACR is 12 years old. This is permitted as long as the rights and safeguards provided by the international standards on justice for children are fully respected and applied in all settings. Above all the justice process should have the child’s rehabilitation and reintegration at the centre of all decisions and actions. Putting this into practice has created some challenges for justice systems in different countries and contexts. These challenges are explored below.

- *Heightened risk of violence and stigmatization for children while in contact with the justice system.*

The pervasive fear of terrorist activity can mean that these children are treated first of all as exceptional and problematic offenders, and secondly as children who have been

¹⁴ Ibid

¹⁵ ICRC (2020) International Review of the Red Cross, *Interview with Mira Kusumarini*, IRRIC No.911, June 2020

¹⁶ Idris, I. (2018). *Youth vulnerability to violent extremist groups in the Indo-Pacific*. (GSDRC Helpdesk Research Report 1438). Birmingham, UK: GSDRC, University of Birmingham. Available at:

<https://gsdrc.org/wp-content/uploads/2018/10/1438-Youth-Vulnerability-to-Violent-Extremist-Groups-in-the-Indo-Pacific.pdf>

¹⁷ RSIS, 24 August 2020, Commentary on Pro-IS Home-based schooling in Indonesia. Available at: <https://www.rsis.edu.sg/rsis-publication/icpvtr/pro-is-home-based-schooling-in-indonesia/#.X1X8jC2ZM0p>

¹⁸ Julie Chernov Hwang & Kirsten E. Schulze (2018) *Why They Join: Pathways into Indonesian Jihadist Organizations*, *Terrorism and Political Violence*, 30:6, 911-932.

¹⁹ Julie Chernov Hwang & Kirsten E. Schulze (2018) *Why They Join: Pathways into Indonesian Jihadist Organizations*, *Terrorism and Political Violence*, 30:6, 911-932, p.18.

²⁰ Counter Extremism Project (2020) *Indonesia: Extremism & Counter-Extremism*



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victims of serious violence. The stigma associated with terrorism and violent extremism can expose them to punitive and harsh approaches. They are often seen to be less deserving of minimum standards regarding their treatment within the justice system, than children charged with other offences. Justice professionals can find it challenging to rebut these punitive attitudes and fears.

- *Counter-terrorism laws are frequently silent on the treatment of children which can create uncertainty about the correct applicable laws, procedures, institutions and authorities.*

In light of the serious nature of terrorism-related offences, many States have introduced specific provisions in their national legislation to deal with terrorism. Such laws often do not refer to children at all and this can create ambiguity and uncertainty about the correct applicable laws to apply. Justice professionals may be confronted with technical difficulties in determining the legal status, applicable laws, procedures, institutions and authorities to deal with a child alleged offender.

- *Child-specific legal safeguards are not always applied.*

There is a widely held – and mistaken – perception that a specialized justice system for children will be too lenient and let a child off too lightly. When counter-terrorism law provisions are applied, they can impact on different aspects of the justice process for children - for example:

- on arrest for a terrorism-related offence, counter-terrorism law in many States allows children to be held for periods of detention far longer than those established by international standards;
- diversion is used infrequently for such offences;
- children are placed in pre-trial detention as a measure of first, rather than last resort;
- children are tried in adult, military or special terrorist courts that lack specialized authorities and procedures;
- children are held in detention alongside adults and in very poor conditions;
- there is overreliance on deprivation of liberty as a sanction; and
- inadequate attention is paid to rehabilitation and to social reintegration.

Children's rights can be severely compromised when they are investigated, prosecuted and adjudicated in ordinary criminal justice systems especially when adult courts, special counter-terrorism courts or military courts have been granted jurisdiction over terrorism-related offences. Children can be at risk of re-victimisation during such justice proceedings.



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- *Many of these children have challenging rehabilitation and reintegration needs because of the violence and exploitation they have experienced.*

States must rehabilitate these children to prevent them from re-offending and to reintegrate them back into society after the conclusion of their justice cases. Effective rehabilitation and reintegration processes will serve to mitigate the impact of victimization children have experienced during their association with terrorist and violent extremist groups, but it is also crucial to ensure that they do not re-offend and can return safely to their family and community life. The rehabilitation of these children can prove extremely complex and require long term engagement and support

They have frequently experienced traumatic levels of violence that impact severely on their emotional development, social functioning and academic performance. They experience public fear, stigma and social exclusion arising from their association with these groups, as well as difficulties in accessing the services they need. They may have lost or have been separated from family members, and the bond to their communities may be broken. They may espouse an extremist ideology that offers acceptance, a positive identity and respond to a sense of injustice.

The question of how to integrate a reintegration approach throughout the justice process is thus a crucial one. In addition, justice professionals will have to determine which rehabilitation and reintegration interventions are most appropriate and most effective to address the child's specific situation.

- *Child returnees*

In recent years, thousands of children have been recruited across borders and travelled by themselves to join terrorist groups. Others have accompanied their parents to conflict zones, and an unknown number have been born to parents who are suspected "Foreign Terrorist Fighters" (FTF). The definition and scope of the term "Foreign Terrorist Fighter"²¹ is controversial, but it has been commonly used to refer to individuals who have travelled from their home states to other States to participate in or support terrorist acts, including in the context of armed conflict.

Children who have been victims of recruitment by terrorist and violent extremist groups in this way often have a different cultural, ethnic or linguistic background from nationals

²¹ United Nations Security Council Resolution 2178, Adopted by the Security Council at its 7272nd meeting, on 24 September 2014 (S/RES/2178), para. 6. According to UNSC Resolution 2178 (2014), foreign terrorist fighters are "individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflicts."



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of the country they find themselves in. They may find themselves in refugee camps without access to education and healthcare.²² They may be travelling without their parents, with other children, or completely alone. They are especially vulnerable to violence, including smuggling, trafficking and re-recruitment.

Several obstacles impede their ability to return home, relocate, or seek refugee protection. Many of them lack a valid birth certificate or registration. Some of them were born in territory under the control of terrorist and violent extremist groups. Others are unable to establish paternity or family links, particularly when their parents have died or are in detention. Others lack travel documents and are unable to travel or to seek support and protection.²³ Being denied citizenship can have a profound impact on these child victims and their ability to affirm their rights. In particular, the repatriation of children associated with FTF is quite complicated in the absence of proof of nationality or citizenship, or travel documents.

States that have ratified the Optional Protocol to the CRC on the involvement of children in armed conflict, including Indonesia, have an obligation to ensure the demobilisation of children recruited by armed groups and to assure these children “all appropriate assistance for their physical and psychological recovery and their social reintegration.” (Article 6 (3)). This is reinforced with a more general obligation under the CRC to guarantee support to all child victims of neglect, exploitation, abuse and armed conflict.²⁴ Access to support for rehabilitation is key to the recovery of these children and their families.

States have primary responsibility for their own nationals and have an obligation to ensure the best interests of the child are prioritized, not least through the safe repatriation of child nationals and provision of reintegration assistance such as family reunification, medical care and psychological and social support.

In 2019, the Secretary-General of the United Nations published a set of “Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of

²² See for example the Statement by Mr. Paulo Sérgio Pinheiro, Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic at the 41st Session of the UN Human Rights Council, 2 July 2019. Available at:

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24773&LangID=E>

²³ OSCE Office for Democratic Institutions and Human Rights. *Guidelines for addressing the threats and challenges of 'Foreign Terrorist Fighters' within a human rights framework*, (2018). Also, RAN, *Responses to returnees : Foreign terrorist fighters and their families*, (2017).

²⁴ Article 39 of the CRC.



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Women and Children with Links to UN Listed Terrorist Groups”,²⁵ in recognition of the challenges arising from the phenomenon of children affected by the FTF phenomenon. The specific principles regarding children are as follows:

- **The best interests of the child must be given primary consideration** in all actions concerning them, including in relation to maintaining family unity. Member States, with United Nations support, should implement Best Interest Assessment/Best Interest Determination (BIA/BID) processes with key safeguards in place, to determine whether repatriation or other actions are in the best interests of the child. Member States should seek the free and informed consent of parents before separating children for repatriation, unless separation is decided to be in the child’s best interests.
- **Alternative care arrangements should be explored** for situations in which children cannot remain with their parents or where it is not in the best interest of the child to remain with his or her primary care givers. Family-based interim care arrangements should be prioritized, followed by community-based interim care arrangements.
- **Children linked with United Nations listed terrorist groups should only be detained as a measure of last resort and for the shortest appropriate period of time.** Alternatives to detention for children should be prioritized. Children should be detained separately from adults unless otherwise in their best interests and to prevent family separation.
- **Rehabilitation and reintegration** of children linked with United Nations listed terrorist groups must be prioritized, in line with the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. This includes access to age and gender appropriate services, including mental health and psychosocial support, education and legal assistance.
- **Member States must respect the privacy and confidentiality of children with links to United Nations listed terrorist groups.**
- **Member States should prevent the further stigmatization of children with links to United Nations listed terrorist group where possible.** In the absence of criminal evidence, Children should not be placed on watch lists or in other databases based on family affiliation or alleged affiliation with an armed group.

²⁵ United Nations, *Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with Links to UN Listed Terrorist Groups*, April 2019. Available at: https://www.un.org/counterterrorism/ctitf/sites/www.un.org/counterterrorism/ctitf/files/Key%20Principles%20-%20April%202019_0.pdf



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National security and the rights of the child

Ensuring strong and effective counter-terrorism law, policy and strategies and implementing the rights of the child in conflict with the law are complementary objectives. There is strong convergence between them that can result in sustainable and long-term peace and security at a community level as well as globally.

On the one hand, justice responses that do not comply with international standards can act as a catalyst for recruitment to terrorist or violent extremist groups and fuel commonly held narratives that authorities are corrupt and illegitimate. Children who are fearful of harsh treatment from the justice system may be reluctant to seek help and support with disengagement from terrorist and violent extremist groups and with their rehabilitation and reintegration. Justice responses that do not address the root causes of a child's offending behaviour and seek to punish rather than rehabilitate and reintegrate a child back into society may reinforce their adherence to violent extremist groups and ideologies and may also result in further violent offending not connected with terrorism.

Compliance with the rights of the child, on the other hand, can favour counter-terrorism objectives by providing children with incentives to disengage from terrorist and violent extremist groups. In addition, children's beliefs, opinions and personalities are evolving and shifting and at a stage of development where they can be informed and influenced by rehabilitative and educational measures. Justice responses that target children's rehabilitation and reintegration will be more likely to address the root causes of their offending whether that be by providing them with education and vocational training that can help them to support their families economically or by supporting girls who have been sexually abused with counselling and reintegration into their communities, should they want this and should it be feasible given the context.

Children who have been recruited and exploited by terrorist and violent extremist groups have experienced serious forms of violence and highly dangerous situations. When they are rehabilitated in a way that takes into account the context in which their victimization occurred and the impact that it has had on them, then it is more likely to be effective and successful. The long-term consequences of effective rehabilitation and reintegration is that they are far less likely to re-offend and more likely to disengage and assume a constructive role in society.

2. A Framework for Action

The following are components of a framework for action that can support positive outcomes for children associated with terrorist and violent extremist groups.



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- *Minimum age of criminal responsibility*

Before any arrest or prosecution, the authorities must ensure that a child has reached the minimum age of criminal responsibility (MACR) set by national law. Children under the MACR do not have the emotional, mental and intellectual capacity to assume criminal responsibility. They can never be formally charged and held criminally liable. Their behaviour should instead be addressed through protection mechanisms.

The most common MACR internationally is 14 years.²⁶ In General Comment No. 24 (2019), the CRC Committee recommends that States increase their MACR to at least 14 years of age²⁷ and refers to documented evidence in the fields of child development and neuroscience that, under this age, children are unlikely to understand the impact of their actions or to comprehend criminal proceedings. It should not be lowered for serious offences, including terrorism-related offences. The CRC Committee also recommends a higher MACR of 15 or 16 years old, given evidence that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making and the ability to control impulses.

The MACR in Indonesia is 12 years. Article 21 of Law No. 11/2012 on the Juvenile Justice System²⁸ states that a child under 12 years of age should be returned to his or her parents or guardian or be placed in an education, guidance or counselling programme for a maximum of six months. The CRC Committee has noted concerns that 12 years is “very low” and recommended that it be raised to 14 years.²⁹

UNICEF estimates that around 17 per cent of children under 18 in Indonesia do not have a birth certificate.³⁰ This can create difficulties for justice professionals who need to determine if a child is over the MACR, or under 18. They may rely on physical appearance as a means of determining the age of a child in the absence of identity documentation and do not always follow the principle that where there is doubt about a child’s age, there should be a presumption that they are under 18 years old. Difficulties in establishing the age of a child can have serious consequences for a child who has been recruited and exploited by terrorist and violent extremist groups and can mean that they are at risk of being treated as adults in criminal proceedings.

²⁶ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the justice system*, 18 September 2019 (CRC/C/GC/24) para 21.

²⁷ *Ibid.*, para 22.

²⁸ The Juvenile Justice System Act formally came into force on 31 July 2014.

²⁹ UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Indonesia*, 13 June 2014, CRC/C/IDN/CO/3-4, paras 77 and 78.

³⁰ UNICEF Indonesia Child Protection profile, available at: <https://www.unicef.org/indonesia/child-protection>



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At the other end of the spectrum, the CRC Committee has commended State Parties that allow the application of the justice system for children to persons aged 18 and older.³¹ Article 20 of the Law No. 11/2012 on the Juvenile Justice System permits young people aged between 18 and 21 years old to be tried by the juvenile court. In some cases, time will have passed between the alleged offence and when the person comes into contact with the justice system. The specialized child justice system should still apply to young people who committed an offence when they were still children.

- *Prosecution as a measure of last resort*

Children should only be prosecuted as a measure of last resort. The CRC affirms that States must put in place measures for dealing with children without resorting to judicial proceedings, whenever this is appropriate and providing that human rights and legal safeguards are fully respected.³² This obligation is reinforced in other international standards, such as the UN Guidelines on the Role of Prosecutors³³ which call upon prosecutors to give due consideration to waiving prosecution, to discontinuing proceedings conditionally or unconditionally, or to diverting cases – in particular where children charged with minor offences and first-time offenders are involved – and to use their best efforts to prosecute action against children only to the extent strictly necessary.

In many countries, there are a whole range of factors that must be taken into account by the prosecutor when deciding whether or not to prepare an indictment and to file the case in court: for example, does the event constitute an offence? is there sufficient evidence? is it in the public interest to proceed?

According to Law No. 8/1981 on Criminal Procedure, prosecutors in Indonesia have the power to assess the evidence, bring bills of indictment and bring actions before the court. They also have the power under article 14 (h) to “close a case in the interest of law.” In addition, Law No.16/2004 on Prosecution states that a case may be closed by the Attorney General if it is in the “public interest” meaning in the interests of citizens, the nation and/or the interests of the wider community.³⁴ Regarding the “interest of law” aspect, this could include careful weighing of:

- All the available evidence and the likelihood of conviction;

³¹ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the justice system*, 18 September 2019 (CRC/C/GC/24) para 32.

³² Article 40(3)(b) of the CRC.

³³ Articles 18 and 19 of the United Nations Guidelines on the Role of Prosecutors (also known as the “Havana Guidelines”) were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990.

³⁴ Article 35 of Law No.16/2004 on Prosecution.



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- The seriousness of the crime, the interests of safety and of crime prevention and the interests of the victim;
- The best interests of the child and whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending; and,
- The victim status of a child who has been recruited and exploited by a terrorist or violent extremist group particularly in terms of the degree to which they were coerced into the offending behaviour.

Furthermore, there is a possibility that a child who has been recruited and exploited by a terrorist or violent extremist group has also been a victim of trafficking. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,³⁵ was ratified by Indonesia in 2009. It includes child recruitment in the definition of trafficking and clarifies that a child's consent is considered to be irrelevant where recruitment and exploitation has taken place.³⁶

Many children have been trafficked for the purposes of exploitation by terrorist and violent extremist groups; since association with a terrorist or violent extremist group is an inevitable consequence of being trafficked into the group, children should not therefore be prosecuted for this offence. In cases where violence committed against a child by terrorist and violent extremist groups qualifies as the crime of trafficking in persons, the child should be treated, and afforded protection, as a victim of trafficking in persons. Victims of trafficking cannot be punished for offences directly connected or related to the trafficking situation that they have experienced.³⁷ They cannot be punished regardless of the role of the child in the offence, where the offence was committed and irrespective of the stage of criminal proceedings, or the charges brought forward against the perpetrators. Furthermore, they are entitled as victims of trafficking to support with their physical, psychological and social recovery.³⁸

In the context of children affected by the foreign fighter phenomenon who have returned to Indonesia, they should always be viewed primarily as victims, especially

³⁵ General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

³⁶ Ibid., Article 3(a).

³⁷ For more on this point see UNODC, *Handbook on Children Recruited and Exploited by terrorist and Violence Extremist Groups: The Role of the Justice System*, (UNODC: Vienna, 2017), p.76.

³⁸ General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, Article 6.



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when they were recruited and exploited by terrorist and violent extremist groups.³⁹ The emphasis should therefore be on their rehabilitation and reintegration and alternatives to prosecution should be used. Prosecution of children who are over the minimum age of criminal responsibility should remain an option in appropriate cases and only when strictly necessary.

States should refrain from charging children who have been recruited and exploited by terrorist and violent extremist groups with offences of association with a terrorist group, given the lack of options available to them.⁴⁰ There are significant risks of an unsafe prosecution because of the violent and coercive circumstances in which the child came to be associated with the group in the first place. Due to their vulnerability to recruitment, because their recruitment is not voluntary and because of the “supporting” roles they play within the groups, children can be disproportionately affected by such provisions and they should not be charged with such offences.

It must be made clear that not resorting to formal judicial proceedings does not mean that a child victim is left with no support. Child victims of crime have specific rights and rehabilitative services should be made available to provide tailored and effective services to support the child’s social reintegration.

- *Specialized justice system for children*

Please note this is covered in more detail below in Section B.

A specialized justice system for children encompasses laws, standards, policies, procedures, mechanisms, institutions and bodies that are specifically applicable to children in conflict with the law who are over the age of criminal responsibility.⁴¹ It works to ensure the well-being of children and requires them to be treated, not only in a fair and child-sensitive way, but also in a way that promotes their reintegration into society. It should be engaged from the moment of first contact with a child until all involvement with the system is concluded.

All children over the minimum age of criminal responsibility and under the age of 18 must be dealt with within a specialized system irrespective of the severity of the offence that a child is charged with. No exceptions to this should be permitted

³⁹ See Security Council resolution 2427 (2018), para. 20; Guiding principle 31 of the Security Council Counter-Terrorism Committee’s guiding principles on foreign terrorist fighters which recommends that Member States “consider appropriate administrative measures and/or rehabilitation and reintegration programmes as alternatives to prosecution in appropriate cases.”; and Paris Principles 3.6 and 3.7.

⁴⁰ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the justice system*, 18 September 2019 (CRC/C/GC/24), para 101.

⁴¹ Article 40 (3) of the CRC.



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according to international law, even for the most serious offences. A specialized system should be the primary jurisdiction for children investigated and/or charged with terrorism-related offences.

Law No.11/2012 on the Juvenile Justice System establishes specialized procedures, mechanisms, institutions and bodies that are specifically applicable to children in conflict with the law who are over the age of criminal responsibility. The Commentary to Law No.11/2012 on the Juvenile Justice System states that: *“Given specific characteristics of children and the need to protect them properly, cases involving children in contact with the law must be heard by juvenile courts that form part of public court system, and all of the processes involved – arrest, detainment, trial and rehabilitation – must be carried out by special officers who understand the problem faced by the children.”* However, there is a need for guidelines or protocols which clarify that the specialized procedures, mechanisms, institutions and bodies as set out in Law No.11/2012 on the Juvenile Justice System, are applicable to all children in conflict with the law who are over the minimum age of criminal responsibility, including children who are prosecuted for terrorism-related offences.

- *Alternatives to formal judicial proceedings (diversion)*

Please note this is covered in more detail below in Section C.

States should seek to promote measures for dealing with children in conflict with the law without resorting to formal judicial proceedings, whenever appropriate and desirable and providing that human rights and legal safeguards are fully respected.⁴² The CRC Committee emphasises that authorities in the justice system “should continuously explore the possibilities of avoiding a court process or conviction, through diversion and other measures. In other words, diversion options should be offered from the earliest point of contact, before a trial commences, and be available throughout the proceedings.”⁴³ Diversion should be the preferred manner of dealing with children in the majority of cases.⁴⁴

⁴² Article 40(3)(b) of the CRC. Diversionary measures are also referred to in Rule 11 of the Beijing Rules (United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), adopted by the General Assembly on 29 November 1985 (A/RES/40/33)); United Nations Economic and Social Council, *Guidelines for Action on Children in the Criminal Justice System resolution 1997/30*, 21 July 1997, paras. 15 and 42; and, the United Nations General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)*, adopted by the General Assembly on 14 December 1990 (A/RES/45/110), rule 2.5.

⁴³ *General Comment No. 24 (2019) on children’s rights in the justice system*, 18 September 2019 (CRC/C/GC/24), para 72.

⁴⁴ *Ibid.*, para 16.



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This is because the evidence from many countries is that successful rehabilitation of children in conflict with the law involves providing them with alternative pathways and viewpoints.⁴⁵ This is achieved by giving them the opportunity to build skills to re-enter education or the workplace and to build relationships with family and the community.

- *Deprivation of liberty as a measure of last resort*

Depriving a child of liberty⁴⁶ should be a measure of last resort that is used for the shortest appropriate period of time.⁴⁷ This is because detention has such harmful effects on children and can hinder rehabilitation. According to research conducted for the UN Global Study on Children Deprived of their Liberty, detention is inherently distressing, has an adverse impact on physical and mental health, often exacerbated by poor treatment and unsatisfactory conditions, and often compounds trauma.⁴⁸ This is particularly the case when children are suspected of terrorism-related offences, and can be at significant risk of victimization, abuse, mistreatment and torture from other children as well as staff. Their high needs for rehabilitation and reintegration are further threatened by the disruption to their education and family and community ties.

The principle of a 'measure of last resort' in Article 37(b) CRC requires that justice professionals (including the police, prosecutors, judges and prison administrators) examine whether effective non-custodial solutions are available for each individual child and expressly prioritize the use of such measures to ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time.⁴⁹

Police detention and pretrial detention should not be used except in the most serious cases, and even then only after non-custodial solutions have been carefully considered. In relation to pre-trial detention, this should only be used primarily for ensuring a child's attendance at court and if the child poses an immediate danger to others. It should be subject to regular review and its duration limited by law.⁵⁰ On

⁴⁵ Office of the SRSG on Violence against Children (2020) *Solutions for Children Previously Affiliated With Extremist Groups: An Evidence Base to Inform Repatriation, Rehabilitation and Reintegration*.

⁴⁶ In the context of administration of justice, deprivation of liberty includes police custody, pre-trial detention and post-trial detention facilities as per Rule 11 (b) United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA Res. 45/113 of 2 April 1991

⁴⁷ Article 37(b) of the CRC. This principle is also clearly articulated in the United Nations 'Beijing Rules' (1985, rules 13.1 and 13.2), United Nations 'Havana Rules' (1990, rule 17) and the United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the justice system*, 18 September 2019 (CRC/C/GC/24) paras. 85–88. It is also acknowledged in the United Nations Sustainable Development Goals (Goal 16, indicator 16.3.2).

⁴⁸ Manfred Nowak, *United Nations Global Study on Children Deprived of Liberty*, (November, 2019), p. 178.

⁴⁹ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the justice system*, 18 September 2019 (CRC/C/GC/24) para 73

⁵⁰ *Ibid*



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sentencing a child after conviction, the sanction should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances of the child and taking into account considerations of the need for public safety. A strictly punitive approach is not in accordance with article 40 (1) of the CRC.

- *Rehabilitation and reintegration as a primary objective of the justice system*

A child associated with terrorist and violent extremist groups, or linked with the FTF phenomenon is likely to need access to a wide range of different rehabilitation and reintegration services and programmes in order to recover from the harm they have experienced. They may require psycho-social support, help in building employable skills, specialist medical care (including to deal with issues such as disability, anxiety, depression and post-traumatic stress disorders and sexual and gender-based violence), education, extracurricular activities and legal assistance.⁵¹ As well as alternative or interim care and support with reintegrating with extended family members and peers, they may require long-term follow up and monitoring. Children often need to reintegrate into their communities slowly and under close supervision, usually with mechanisms to facilitate continuity of care and support over the medium to long term.⁵²

Assessment processes at different stages of the justice process are vital to determine the most appropriate rehabilitation and reintegration programmes for an individual child and to determine risks from a security perspective. They can help with:

- Understanding a child's background, characteristics and needs and understanding how they are likely to impact the rehabilitation and reintegration process;
- Evaluating a child's vulnerabilities and risks in respect of the rehabilitation and reintegration process;
- Assessing the most appropriate care, services and rehabilitation and reintegration programmes; and
- Measuring a child's progress with their rehabilitation and reintegration.

⁵¹ Office of the SRSG on Violence against Children (2020) *Solutions for Children Previously Affiliated With Extremist Groups: An Evidence Base to Inform Repatriation, Rehabilitation and Reintegration*.

⁵² Key Principles for the Protection, Repatriation, Prosecution, Rehabilitation and Reintegration of Women and Children with links to UN Listed Terrorist Groups, UN Secretary-General (2019).



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B THE SPECIALIZED JUSTICE SYSTEM FOR CHILDREN – SESSION TWO

1. Why is a specialised justice system for children needed in a counter-terrorism context?

- *Children have the right to a specialized system*

Due to their age and different levels of maturity, the CRC encourages the creation of a specialised system for children in conflict with the law which has the objectives of preserving public safety, holding a child accountable for their offending behaviour and promoting their reintegration back into society.⁵³

- *Children are an inherently vulnerable group in the justice system*

International human rights standards recognise children as an inherently vulnerable group in the context of justice proceedings; this vulnerability derives from their age, maturity and evolving capacities and because they “*differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach.*”⁵⁴

Neuroscientific research corroborates that there are peak changes in brain development across childhood and adolescence with important implications for how they assess risk and regulate their behaviour. The prefrontal cortex, which is responsible for decision-making, judgement, impulse control and cognitive control, is among the last parts of the brain to mature and is not fully developed until at least the age of 20. In contrast, areas such as the amygdala, an area of the brain responsible for linking stress and fear, and the meso-limbic system, responsible for reward and emotional processing, develop rapidly during early adolescence. So, during adolescence there is an underlying susceptibility to respond to immediate rewards whilst not at the same time fully considering any long-term costs and benefits.

These characteristics and common behaviours in the adolescent period mean that children are more susceptible to being victims of recruitment and exploitation by terrorist and violent extremist groups. A specialized justice system with its emphasis on the best interests of the child can effectively integrate these issues and support the

⁵³ Article 40 (3) states: “*States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.*”

⁵⁴ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the justice system*, 18 September 2019 (CRC/C/GC/24), para 2.



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rehabilitation and reintegration of a child who has allegedly committed an offence and who, in the first place, has also been a victim of recruitment and exploitation.⁵⁵

- *Children need child-sensitive justice procedures*

In general, children are not equipped to understand criminal justice procedures in the same way that adults may be able to. They can have short attention spans, a limited vocabulary and lack the ability to relate events in a chronological order.

Children who have been recruited and exploited by terrorist and violent extremist groups face additional pressures. They may be fearful of repercussions for them or their families of disclosing certain information to justice professionals or in a courtroom, particularly if it relates to their involvement with terrorist or violent extremist groups. They may be experiencing overwhelming feelings of shame, fear, distress or guilt arising from their experiences. Many children may simply not understand the complexity or seriousness of the situation they find themselves in and be puzzled by terminology and the procedures being followed. Children who have experienced adverse life conditions such as extreme violence are can have specific language and communication difficulties that makes understanding and participating in justice processes very challenging.

So a further important reason for using a specialized justice system for children is to ensure that justice procedures are specifically adapted to children's circumstances, capacities and needs so they can effectively participate and understand the discussions and decisions being made.

A specialized justice system for children has a dual role of preserving public safety whilst also respecting, protecting and fulfilling the rights of the child.⁵⁶ It ensures rehabilitation and reintegration of a child by addressing the root causes of offending and thereby reduces the risks of re-offending. This duality of objectives is critically important especially in counter-terrorism cases given that justice systems for children must also ensure security interests. In practice, there is no conflict between the two objectives and indeed they strengthen and mutually support each other.

A specialized system for children should not be perceived as a "soft" or lenient option that protects children but not society. This is a misconception, as a specialized system promotes responses to offending that preserve public safety, help the child assume a constructive role in society, address their offending behaviour in a manner that is

⁵⁵ UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual* (Vienna 2019) p 54.

⁵⁶ For more information on this point see Chapter 3 of [UNODC Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups](#)(Vienna, 2017).



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appropriate to their age, maturity and development and encourage a process of behavioural change by helping the child or young person to feel accountable for his or her actions.

2. Key components of a specialized justice system for children

In the General Comment No. 24 (2019) on children's rights in the child justice system,⁵⁷ the CRC Committee⁵⁸ recommends:

- *Child-sensitive institutions*

Child-sensitive institutions such as specialized units within the police, judiciary, the court system, the prosecution, probation services and for legal representatives should be established. Courts for children should be established either as separate units entirely or as part of existing courts. Where this is not practical, then specialized judicial officers should hear children's cases.⁵⁹

- *Specialization of professionals*

All those working with children in conflict with the law, including prosecutors, lawyers, judges, the police, the probation service, prison service and social services should be specially selected and receive regular, ongoing specialized training focused on the rights of children.⁶⁰ They should also have expertise on the specific risks of secondary victimization within the justice system, and have child-sensitive attitudes and communication skills.

- *Enhanced procedural safeguards*

That the following procedural safeguards are in place:

- The right to be presumed innocent until proven guilty;
- The right to have the matter determined without delay by a competent, independent and impartial tribunal;
- The right not to be compelled to give testimony or confess guilt, and to appeal
- The right to an interpreter at all stages of the process;
- The right to be informed promptly and directly of the charges against him/her, if appropriate through his/her parents;
- The right to a fair trial in the presence of his/her parents unless this is not in the child's best interests taking into account his/her age or situation;

⁵⁷ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the justice system*, 18 September 2019 (CRC/C/GC/24).

⁵⁸ The Committee on the Rights of the Child is a body of 18 independent experts that monitor and report on the implementation of the CRC.

⁵⁹ General Comment No. 24, paras 106 and 107.

⁶⁰ *Ibid*, paras 39 and 112.



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- The right to have his/her privacy fully respected at all stages of proceedings: the need to protect children from the harm caused by undue publicity and the process of labelling is also required by Rule 8 of the Beijing Rules which states that, “in principle, no information that may lead to the identification of a young person accused or convicted shall be published”;
- The right to effective participation in proceedings;
- The right to legal representation that is available freely where children cannot afford to employ private legal representatives;
- Right for girls to be separated from boys and girls and boys to be separated from adults if deprived of liberty;
- Detention used only as a measure of last resort and for the shortest appropriate period of time;
- An absolute prohibition on the use of torture cruel, inhuman or degrading treatment or punishment; and
- Whenever appropriate and desirable, children should be dealt with without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.⁶¹

- *Laws, standards and policies*

These should be tailored to meet the needs and rights of children and conform with international standards on justice for children.

- *Multi-disciplinary working*

It is beyond the capacity, skill-set, or mandate of any one sector or agency to take sole responsibility for the design and delivery of comprehensive prevention, rehabilitation and reintegration strategies and justice responses for children. The diversity and seriousness of the harms associated with this serious form of violence demand the design and implementation of a coordinated and multidisciplinary response that involves the social protection sector, health services, the education sector, law enforcement, and civil society. It is not always the case that professionals from these sectors are accustomed to working together – particularly on challenges as complex as the phenomenon of violence against children in the context of counter-terrorism. This is why mechanisms to promote a multidisciplinary approach play such an important role including effective coordination and provision of training.

3. Law and policy overview for Indonesia

The national legal framework for the issue of children associated with terrorist or violent extremist groups is comprised of different laws covering child protection, justice

⁶¹ Ibid, paras 38 to 71.



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for children, counter-terrorism, counter-trafficking and victims and witnesses. The following is an overview of some of the key provisions of relevance:

- *Law No. 35/2014 on Child Protection*
 - A child is defined as a person under 18 years old⁶²
 - Child recruitment “for military and/or other purposes” is criminalized.⁶³
 - Provides, in general terms, for special protection to be afforded to 15 specific categories of children⁶⁴ including children who are in emergency situations, in conflict with the law, are exploited economically and/or sexually, are trafficked, are victims of violence, are victims of terrorist networks and are victims of stigmatization relating to their parents’ status. The special protection they are entitled to, is defined as an entitlement to prompt treatment, physical, psychological and social rehabilitation and protection as well as assistance in court processes.⁶⁵ Article 69 (b) specifies further that children who are victims of terrorism networks should receive education about “ideology and nationalist values” as well as counselling and social rehabilitation and assistance.
 - Includes specific provisions regarding the rights of children in conflict with the law. Arrest, detention and prosecution must be measures of last resort and every child is entitled to protection from abuse, torture or inhuman punishment under the law.⁶⁶ Children suspected of committing criminal offences are entitled to legal and other assistance⁶⁷ and if deprived of their liberty they are entitled to humane treatment, separation from adults, to receive legal aid and to be given a fair trial in a children’s court.⁶⁸

- *Law No. 11/2012 on the Juvenile Justice System*
 - Sets the minimum age of criminal responsibility at 12 years old
 - Encourages the use of diversion.
 - Provides that a child in conflict with the law must receive legal assistance, be accompanied by parents or trusted adults, and not have his or her identity published.

⁶² Article 1 of Law No. 35/2014 on Child Protection.

⁶³ *Ibid.*, Article 87.

⁶⁴ *Ibid.*, Article 59 (2)

⁶⁵ *Ibid.*, Articles 59 (A), 60, 64 and 69.

⁶⁶ *Ibid.*, Article 16. See also Article 66 of Act No. 39/1999 on Human Rights which states that every child has the right not to be subjected to oppression, torture or inhumane legal penalty. The Act also prohibits the use of the death penalty for minors and notes that every child deprived of freedom has the right to ongoing legal aid at every stage of judicial proceedings.

⁶⁷ Article 18 of Law No. 35/2014 on Child Protection.

⁶⁸ *Ibid.*, Article 17



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- If a child is sentenced to detention, he or she must be kept separate from adults and has the right to be free from torture, inhumane and degrading treatment and receive health care and recreational activity.
- *Law No. 5/2018 on the Eradication of Criminal Acts of Terrorism.*⁶⁹
- Contains reference to victims who are defined as: “a person who experiences a physical, mental suffering, and/or economic damages which are caused by a criminal act of terrorism.”⁷⁰ They are to be defined as victims by investigators in the course of a criminal investigation process. Once victims are identified, the state is obligated to provide them with medical assistance, psychosocial and psychological rehabilitation, and compensation, including for families in the event of death.⁷¹ Victims may also seek restitution from the perpetrator(s), where feasible.
- It criminalizes the following⁷²:
 - Planning and organizing terrorism acts (Article 15)
 - Preparation of terrorism acts (Article 17)
 - Assisting a terrorism act (Article 15)
 - Receiving training (Article 12)
 - Travelling to a foreign country for terrorism purposes, including trafficking (Article 15)
 - Recruiting for terrorism purposes, including recruitment of children (Article 12)
 - Public incitement to conduct terrorism acts and glorifying terrorism acts (article 13).
- Law No. 5/2018 supplements existing criminal law, most of which is contained in the Indonesian Criminal Code (*Kitab Undang-undang Hukum Pidana*, or KUHP) and Code of Criminal Procedure (*Kitab Undang-undang Hukum Acara Pidana*, or KUHAP).⁷³ It also supplements Law No.11/2012 on the Juvenile Justice System.
- It provides a number of additional powers that are not available in cases governed by the KUHAP nor by Law No.11/2012. For example, it allows for the arrest and detention of suspects for longer periods than is permitted for those accused of most other crimes; allows types of evidence to be adduced in terrorism cases that are not always permitted in trials for other offences; and permits the tapping and interception of communications relating to terrorism.

⁶⁹ Government of the Republic of Indonesia, Amendment of the Law Concerning the Eradication of Criminal Acts of Terrorism (Law No. 5/2018), available at: https://www.greengazette.id/documents/lembaran-negara-92-2018_20180622-LNI-00092

⁷⁰ Article 5, Translation from <http://icjr.or.id/wp-content/uploads/2018/11/ICLU-3-2018.pdf>

⁷¹ Article 35 (b) and article 36

⁷² ICJR (2018) Indonesia’s Legal Framework on Terrorism

⁷³ It should be noted that the Criminal Procedural Code is undergoing revision.



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- It extends the deployment of the military in counterterrorism operations.
- Contains two specific references to children. Article 16A stipulates that “In cases of terrorism crimes committed by children, the punishment that will be used to charge them will be adjusted according to law on child crime prosecution.”⁷⁴ Furthermore, the grave nature of recruitment and exploitation of children by terrorist and violent extremist groups is highlighted by the fact that committing a terrorist act “by involving a child” increases any sentence given by a third in Indonesian law.⁷⁵

C ALTERNATIVES TO JUDICIAL PROCEEDINGS – SESSION THREE

1. International standards

The Committee on the Rights of the Child defines alternatives to judicial proceedings as: “measures for referring children away from the judicial system, at any time prior to or during the relevant proceedings..... [authorities in the justice system, especially the public prosecutor] “should continuously explore the possibilities of avoiding a court process or conviction, through diversion and other measures. In other words, diversion options should be offered from the earliest point of contact, before a trial commences, and be available throughout the proceedings.”⁷⁶

Given the serious threat that terrorism poses to national security, many justice professionals consider that alternatives to judicial proceedings are not suitable as a response to children suspected of terrorist-related offences. However, there are no limitations under international law to the use of these alternatives which can be applied when children are suspected of terrorist-related offences as much as for other serious offences. Furthermore, the use of alternatives such as diversionary measures is well-elaborated in Law No. 11/2012 including article 10 that provides for a child to be placed in an LPKS for a maximum of three months in certain circumstances in order to participate in education or training.⁷⁷

⁷⁴ Translation from

https://www.hrw.org/sites/default/files/supporting_resources/indonesia_counterterrorism_bill_2017_0.pdf

⁷⁵ Article 16A of Law No. 5/2018 on the Eradication of Criminal Acts of Terrorism.

⁷⁶ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the justice system*, 18 September 2019 (CRC/C/GC/24), para 8

⁷⁷ Article 10 (2) (d). The circumstances in which this provision can be used are elaborated in Directorate General of Corrections, Circular Letter No. PAS6. PK.01.05.02 – 573 YEAR 2014 on General Guidelines for Preparing Correctional Research Recommendations. They include:

“1) In the event of a victim, there is peace with the victim stated in writing
2) The condition of the parent / guardian is considered unable to foster, guide and supervise the child.
3) The readiness and willingness of educational institutions or LPKS to be strengthened by a recommendation letter from the institution



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The use of diversion measures for terrorism-related offences⁷⁸

ADVANTAGES OF DIVERSION MEASURES	PUTTING IT INTO PRACTICE
<p>International human rights law states that as far as possible, children should be dealt with outside of the formal criminal justice system, so it is a legal imperative to consider diversionary measures. (Articles 37 and 40(3)(b) of CRC)</p>	<p>This does not mean that diversion should occur in all cases, but it does mean that it should be considered as an option.</p>
<p>In many countries, the numbers of children being charged with terrorism-related offences is increasing owing in part to the expanded use of preparatory offences and offences of association and support. Many of these children are first-time offenders.</p>	<p>When children are first-time offenders, or have committed crimes where the harm has not yet occurred, diversion can be an effective and appropriate response.</p>
<p>Children who have committed offences for terrorist and violent extremist groups have, by definition, attributes of both a victim and an alleged offender.</p>	<p>Diversion measures can ensure better access to the rehabilitation and reintegration services that these children need.</p>
<p>Diversion measures address the factors directly associated with offending and are therefore likely to reduce the problem of re-offending and reduce the risk to society.</p>	<p>Diversion measures can include counselling, vocational training to increase employment prospects, access to education, restorative justice and engagement in specific programmes to address aspects of</p>

4) Education or training held by educational institutions or LPKS is considered according to the needs of the child and can change his/her behaviour for the better.

7) The condition of the child is considered capable of participating in activities organized by educational institutions or LPKS.

8) Parents/Guardians and Clients are willing to comply with the conditions for treatment and supervision by Probation Officer of Parole and Probation Centre.”

⁷⁸ Table taken from UNODC (2019) *Justice for Children in the Context of Counter-Terrorism: A Training Manual*, p.78



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	<p>violence relevant to the offence. The child must actively participate in these measures and in doing so takes full responsibility for their offending and plays an active role in their rehabilitation.</p>
<p>Diversion measures are often implemented more rapidly than formal court procedures.</p>	<p>Children have a different perception of time than adults and having a rapid response to their offending behaviour can help them to understand better the direct relationship between their offending and society's response to it.</p>
<p>Diversion measures can include mechanisms of supervision and therefore respond to public safety concerns.</p>	<p>Such mechanisms could be close supervision by a social worker or probation officer who meets regularly with the child to discuss and monitor progress and compliance with the diversion programme.</p>
<p>Children who are processed through the formal justice system for terrorism-related offences are exposed to myriad harms – the use of diversion can avoid exposing children to these harms while ensuring accountability and public safety.</p>	<p>Such harms include:</p> <ul style="list-style-type: none"> • Stigmatization within a child's family and community; • Adopting and internalising a 'deviant' identity generated by the justice system's response - this can compound a child's belief that they are "other" and in opposition to authority which may already be firmly part of his or her adherence to violent extremism; • Having a criminal record for a serious offence can harm a child's future employment; and, • Creating disincentives for children seeking to disengage from a terrorist or violent extremist group. It can also create disincentives for family, peers and



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	<p>other community members to cooperate with law enforcement officials and to seek their assistance regarding a child they are concerned about.</p> <p>There are specific harms that children are exposed to when they are deprived of their liberty:</p> <ul style="list-style-type: none"> • A possible hardening of ideological beliefs (even amongst low-level offenders); • Re-recruitment by terrorist and violent extremist groups; • Association with other detainees with serious criminal histories; • Exposure to violence and abuse; • Some children may seek to influence others to support violent extremist ideology whilst in detention; and • Detention can disrupt the positive support networks that children need to rehabilitate including family and social relationships, and education and work prospects. 	
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When diversion is used, then utmost care must be taken to protect the child’s human rights and legal safeguards. Before diversion can be applied, the following assessment needs to be made⁷⁹:

- Is there compelling evidence that the child has committed the offence?
- Has the child admitted to committing the offence freely and voluntarily and will this admission not be used against the child in any subsequent legal proceeding;

⁷⁹ General Comment No. 24 (2019) on children’s rights in the justice system, 18 September 2019 (CRC/C/GC/24), para 18. See also, UNODC (2019) *Justice for Children in the Context of Counter-Terrorism: A Training Manual*, p.78



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- Is diversion a proportionate response to the circumstances and gravity of the offence taking in to account the nature of the sanction a court is likely to impose, the interests of the victims, public safety and public interest in justice?
- Does the child consent to participate in a diversionary measure? To ensure that consent is given freely, the child must be given adequate information on the nature and duration of the measure and consequences for failure to participate. They should have access to legal advice before making a decision. A child's parents or guardian may also need to provide their consent.

An assessment should also take in to account the child's age, character and background, including any victimization experienced as a result of recruitment and exploitation by terrorist or violent extremist groups. This will help the competent authority to evaluate whether or not diversion is a proportionate and effective response and, if so, which diversion measures are most appropriate to ensure a child's rehabilitation and reintegration and to prevent the risk of re-offending.

If a decision is made to divert a child from formal judicial proceedings, then the next step is to select the most appropriate and effective diversionary measure. Diversionary measures can be broad in scope and ideally practitioners will have a wide range of appropriate options available to them to ensure an individualized approach, including a simple caution or warning, an apology to the victim/survivor, payment for damage done, or referral to more structured diversion programmes. When selecting the most appropriate response, practitioners will need to consider which intervention is most likely to meet the needs of that individual child, contribute positively to the child's development, encourage them to take responsibility for the harm caused by their actions and reintegrate them back into the community.

Practitioners will also need to assess which intervention is proportionate to the offence admitted to bearing in mind it should not be more severe or restrictive than any sanction a court would give. Where possible, diversionary measures should seek to deal with the child's behaviour in a constructive way and aim to involve and strengthen a child's support networks including their family and community as this has been demonstrated in many settings to reduce the risk of reoffending. Finally, the intensity of a diversion programme, meaning the frequency and duration of programme activities, can also be adapted according to the nature of the offence and the level of risk of reoffending.

2. National law and policy



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Chapter II of the Law No. 11/2012 on the Juvenile Justice System provides extensive provision for diversion of children in conflict with the law.⁸⁰ “Diversion” is defined in article 1(7) to “mean a process of diverting cases involving juveniles away from the criminal justice system so that the matter can be resolved out of court.” The intention of the use of diversion is to:

- a) Achieve an amicable settlement as between the victim and the child;
- b) Ensure the settlement of cases involving children out of court;
- c) Prevent children being deprived of their liberty;
- d) Encourage the public to participate; and
- e) To inculcate a sense of responsibility in the child.⁸¹

Diversion can take place during investigation, prosecution and during examination at the district court. It is initiated when the offence carries a prison term of less than seven years and the offence is not repeated (article 7(1)). In addition, police, prosecutors and judges have to take into account the following:

- Category of the offence;
- Age of the child;
- Findings of the social enquiry report prepared by the parole board; and
- Support from the child's family and environment.

The diversion process is based on negotiation and consensus reached between the child and his or her parents/guardian, the victim and/or his or her parents/guardian, Probation Officers, and social workers.⁸² The child must agree to participate in diversion as well as the victim; where there is no direct victim to provide consent, then diversion can still be used and agreement is reached between the investigator, the child and his or her family, the Probation Officer and possibly a community leader.⁸³ The following issues should be taken into account during the diversion process:

- a. The interests of the victim;
- b. the welfare and responsibility of the child;
- c. the avoidance of stigmatization;
- d. preventing retaliation;
- e. ensuring social harmony; and
- f. considerations of propriety, morality and public order.⁸⁴

⁸⁰ Other key documents include Decree No. PER-006/A/J.A/04/2015 regarding Guidelines on the Implementation of Diversion at the Prosecution Level; Decree No. Pol.TR/1124/XI/2006 jo. No. Pol. TR/359/DIT.I/VI/2008 regarding Guidelines on Dealing with Children in Conflict with the Law; and Supreme Court Decree No. 4/2014 regarding Guidelines on the Implementation of Diversion in Juvenile Justice System.

⁸¹ Article 6 of the Law No. 11/2012 on the Juvenile Justice System.

⁸² Article 8 of the Law No. 11/2012 on the Juvenile Justice System.

⁸³ Idem, Article 9 (2)

⁸⁴ Idem., Article 8 (3)



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There are several types of diversionary measures established under Law No. 11/2012, such as

- Compensation if there are victims;
- Medical and psychosocial rehabilitation;
- Return of the child to the parents/guardian;
- Participation in an education or training course provided by an educational institute or social welfare institution (LPKS) for approximately 3 months; and
- Community service (for approximately three months in victimless cases).⁸⁵

Once the parties agree on the type of diversion, they make a written agreement and submit it to the local court for confirmation by the Probation Officer; the agreement is then disseminated to the relevant stakeholders (police officers, prosecutor, the judges, and community counsellor).⁸⁶ Children who comply with their diversion agreement do not have a criminal record. The case is transferred back to the justice system if no diversion agreement is made or if the diversion agreement is not adhered to.⁸⁷ Strict time-limits are imposed on the process.⁸⁸

Law No. 11/2012 on the Juvenile Justice System also provides for the possibility of imprisonment and fine for law enforcement officers who deliberately fail to carry out their duties, including failure to make due efforts for diversion.⁸⁹ Judges were originally included in this provision, but this was annulled after a decision made by the Constitutional Court.⁹⁰ Article 68(2) of Law No. 11/2012 underlines the need for coordination between social workers and probation officers.

An analysis of the use of diversion for children in Indonesia was conducted in 2015 and found that the following were some of the factors for why it is not used more widely⁹¹:

- Lack of knowledge by law enforcement officers
- Lack of cooperation between key stakeholders
- Negative public perceptions
- A culture of 'retribution' amongst law enforcement officers
- Lack of commitment, infrastructure and budgeting
- Lack of awareness of role of probation officers and overall lack of probation officers

⁸⁵ Idem., Article 11

⁸⁶ Article 12 of the Law No. 11/2012 on the Juvenile Justice System.

⁸⁷ Idem., Article 13

⁸⁸ Idem., Articles 42 and 52

⁸⁹ Idem., Article 96-101

⁹⁰ Constitutional Court decision No. 110/PUU-X/2012.

⁹¹ Raoul Wallenberg Institute (RWI), *A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States*, RWI 2015, pp. 64 and 65.



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- Lack of data regarding children in conflict with the law.

There are a number of issues affecting the use of diversion in terrorism-related cases:

- Uncertainty about whether diversion can be used in cases with no identifiable 'victim' although the law is clear that consent to diversion is not required when the offence committed has no victim⁹² and in 'victimless' cases the diversion agreement is instead "between the investigator, perpetrator, and/or the family, parole officer, and possible involvement of a community leader".⁹³
- Uncertainty about whether diversion can be used for offences which carry a prison term of more than 7 years in the Penal Code given that the commentary to Article 9 (1) Law No. 11/2012 on the Juvenile Justice System states that "Diversion is not intended to be applied in the case of serious offenses, such as murder, rape, drug dealing, or terrorism, which carry prison terms of more than 7 (seven) years." It should be noted that Supreme Court Decree No. 4/2014⁹⁴ provides an element of discretion for judges (but not the police or prosecutor) to apply diversion in cases where the sentence would be over 7 years, providing the child is simultaneously charged with a crime of less than 7 years. An assessment conducted by Bappenas in 2020 concludes that the reform of diversion "must start by evaluating the use of a seven-year sanction ceiling as a diversion requirement."⁹⁵

⁹² Article 9 (2) (c) Law No. 11/2012 on the Juvenile Justice System

⁹³ Idem., Article 10 (2)

⁹⁴ Supreme Court Decree No. 4/2014 regarding Guidelines on the Implementation of Diversion in Juvenile Justice System.

⁹⁵ Bappenas, PUSKAPA and UNICEF (2020) *A Second Chance in Life: Restoring Opportunities for Children in the Juvenile Justice System in Indonesia, Executive Summary*



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D NON-CUSTODIAL SOLUTIONS FOR CHILDREN – SESSION FOUR

When children are not eligible for alternatives to judicial proceedings, it is vitally important that non-custodial solutions are widely available for justice officials when making decisions about the use of pre-trial detention and when sentencing.

The Beijing Rules⁹⁶ and the Committee on the Rights of the Child⁹⁷ highlight that States should offer an effective package of non-custodial measures to avoid the use of **pre-trial detention**, such as supervision, intensive care or placement with a family or in an educational setting or home. These measures can provide oversight of the child during the pre-trial period to ensure public security along with other more restrictive measures that should be used proportionately such as: curfew, agreement not to contact any victim, removal of passports, reporting regularly at police stations, electronic monitoring and placement in the care of a trustworthy person who undertakes to ensure the child's presence at judicial hearings. Bail and other forms of conditional release should be accompanied by measures to support and supervise the child during this period.

Under Article 32 of Law No. 11/2012 on the Juvenile Justice System, a child may be detained pre-trial only if they are over 14 years old and they are charged with an offence that carries a sentence of 7 years or more. Article 32 does not permit pre-trial detention if there is a guarantee from parents/guardian or an institution that the child will not escape, remove or destroy evidence, and/or reoffend. A child can be detained for a maximum of 25 days during investigation.⁹⁸ It should be noted that under Law No. 5/2018 on the Eradication of Criminal Acts of Terrorism, the periods of time in detention are considerably longer. Police may detain terrorist suspects without charge for up to 21 days for an initial examination,⁹⁹ while prosecutors can extend pre-trial detention up to 240 or 290 days for a formal investigation.¹⁰⁰

Research was conducted between 2016 and 2018 in DKI Jakarta, which found that 93.75 per cent of children were placed in pre-trial detention and in some cases for periods of time that breached Law No. 11/2012,¹⁰¹ which strongly suggests that pre-

⁹⁶ Rule 13.2

⁹⁷ United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the justice system*, 18 September 2019 (CRC/C/GC/24), para 86

⁹⁸ Articles 33 and 34 of Law No. 11/2012 on the Juvenile Justice System. During trial at district court, a child may be detained for 25 days, in the High Court for 25 days and in the Supreme Court for 35 days (Articles 35,37 and 38).

⁹⁹ Article 28 of Amendment to Anti-Terrorism Law (Law No. 5/2018)..

¹⁰⁰ *Ibid.*, Article 25.

¹⁰¹ Institute for Criminal Justice Reform, *Children Threatened with Incarceration: A Portrait of the Implementation of the JJ Law in 2018* (Research on Judicial Decisions re: Juvenile Cases in DKI Jakarta 2018) Jakarta, November 20, 2019.



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trial detention is not being used as a measure of last resort in most instances.¹⁰² A Bappenas assessment conducted in 2020 found that in only a small portion of the cases reviewed for the assessment (2 per cent) were children placed under curfew at home.¹⁰³ Once in pre-trial detention, children in Indonesia do not always have access to education and are not properly classified by age or conviction category.¹⁰⁴ The result is that children as young as 12 can be grouped with young people aged 18.¹⁰⁵

If convicted of terrorism-related offences, children should only be deprived of their liberty as a measure of last resort¹⁰⁶. The Beijing Rules state that:

- Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the minimum possible;¹⁰⁷
- Deprivation of personal liberty shall not be imposed unless the child is convicted of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;¹⁰⁸
- Capital punishment shall never be imposed for any crime committed by children; and,¹⁰⁹
- Children shall not be subject to corporal punishment.¹¹⁰

A wide range of flexible community-based sanctions should be made available to courts. These can help to reduce the risk of re-offending by providing greater opportunities for a child's rehabilitation and reintegration whilst having a less intrusive impact than detention on the positive and constructive aspects of a child's life such as their relationships with family and friends and access to education and vocational training. As well as directly addressing the causes of terrorism-related offences

¹⁰² Overseas Development Institute, *The political economy of pre-trial detention: Indonesia case study*, September 2016, p.16.

¹⁰³ Bappenas, PUSKAPA and UNICEF (2020) *A Second Chance in Life: Restoring Opportunities for Children in the Juvenile Justice System in Indonesia, Executive Summary*.

¹⁰⁴ Sewu, Lindawaty S. and Nuraeny, Henny and Permanasari, Ai and Sirait Yohanes Hermanto (2018) *The Development of Doctrine Parens Patriae in Indonesia's Juvenile Justice System*. International Review of Management and Business Research, 7 (2). pp. 449-459.

¹⁰⁵ Overseas Development Institute, *The political economy of pre-trial detention: Indonesia case study*, September 2016, p.16.

¹⁰⁶ For more information see UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual* (Vienna 2019).

¹⁰⁷ Rule 17.1(b) Beijing Rules (United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), adopted by the General Assembly on 29 November 1985 (A/RES/40/33)).

¹⁰⁸ Rule 17.1 (c) Beijing Rules (United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), adopted by the General Assembly on 29 November 1985 (A/RES/40/33)).

¹⁰⁹ Rule 17.2 Beijing Rules (United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), adopted by the General Assembly on 29 November 1985 (A/RES/40/33)).

¹¹⁰ Rule 17.3 Beijing Rules (United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), adopted by the General Assembly on 29 November 1985 (A/RES/40/33)).



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behaviour and promoting a child's rehabilitation, community-based options can also provide substantial monitoring of a child's actions and behaviour to allay fears around public security. Examples include:

- Imposing conditions on a child such as an obligation to report to a particular person, often a probation officer or police officer, at a particular time or to attend a particular place such as school. If the child breaks the condition, then he or she will be referred back to the court.
- Community-service orders whereby a child undertakes unpaid work that is beneficial to the community.
- Intervention or treatment orders specifically focused on disengagement from violence.
- Curfew orders can help to monitor a child's activities and prevent re-offending without recourse to imprisonment.
- Prohibiting the child from contacting certain people with whom the child has committed offences or who are generally regarded as contributing to the child's offending behaviour and restricting or prohibiting use of the internet.
- Suspended sentences with conditions attached can be a useful means of monitoring. Provided that the child does not commit a further offence and complies with any conditions attached to the suspended sentence, the custodial part of the sentence will not take effect. However, if there is a breach of the conditions or the child commits a further offence, the custodial part of the sentence will then be activated.

Law No. 11/2012 on the Juvenile Justice System provides for a range of different sentencing options differentiated by age:

- A child under the age of 14 years old can only receive so-called "actions,"¹¹¹ which include: "returning him or her to the custody of his or her parents; placing him or her in the custody of a designated person; placing him or her in a mental hospital; treatment in a Social Welfare Institution; requiring the juvenile to participate in formal education and/or training run by a state or private institution; revocation of the juvenile's driving license, and/or repairing any damage caused by the offense." A child can only be treated in a social welfare institution for a maximum of one year. Similarly, participation in formal education and/or training by a state or private institution and revocation of driver's license can only be imposed for one year.¹¹²
- A child over 14 years old may receive Primary Punishment¹¹³ (*Pidana Pokok*) which consists of: a warning; conditional punishment: training, community

¹¹¹ Article 69 (2) of Law No. 11/2012 on the Juvenile Justice System.

¹¹² *Ibid.*, Article 82 (2).

¹¹³ *Ibid.*, Article 71 (1).



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service or supervision; vocational training; institutional guidance; and, imprisonment in a juvenile detention centre (LPKA).

States are prohibited from imposing the death penalty and life imprisonment without the possibility of release to those who were under 18 at the commission of the offence. This is the case even if the defendant turns 18 before the trial is conducted or the sentence is imposed.¹¹⁴ This is reflected in the law in Indonesia which prohibits the death penalty and use of life imprisonment in Article 3 (f) of Law No. 11/2012 on the Juvenile Justice System and in Article 19 of Law No. 5/2018 on Eradication of Criminal Acts of Terrorism. A sentence cannot be more than half that imposed on an adult for the same offence.¹¹⁵ If the crime carries a life sentence or the death penalty, then the maximum sentence that can be imposed is ten years.¹¹⁶

Imprisonment can only be imposed if the child has committed a serious offence¹¹⁷ and is only to be used as a measure of last resort.¹¹⁸ There has been a 100 per cent conviction rate for children prosecuted for terrorism-related offences in recent years and all of them have been sentenced to imprisonment in “Juvenile Special Rehabilitation Facilities” (LPKAs). Despite the extensive provision in the law for alternatives to imprisonment for children over 14 years old who have been convicted of offences carrying a possible sentence of more than seven years, these alternatives are not being used in terrorism-related cases.

E SOCIAL INQUIRY REPORTS – SESSION FIVE

The Law No. 11/2012 on the Juvenile Justice System makes provision for social inquiry reports, to be conducted by a Probation Officer (*Pembimbing Masyarakat*) at the following stages:

- i. During the investigation¹¹⁹: The investigator should seek the advice of a Probation Officer as soon as possible after the offence has been reported.¹²⁰ They are responsible for providing a social report on the child’s background which should be submitted to the investigator within 72 hours. When necessary, the investigator can also seek the advice of educationalists, psychologists, psychiatrists, religious authorities and social workers.¹²¹

¹¹⁴ See specifically Article 6 (5) of the United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999 17 (ICCPR) and Article 37(a) CRC.

¹¹⁵ Article 79 (2) of Law No. 11/2012 on the Juvenile Justice System.

¹¹⁶ *Ibid.*, Article 81 (6).

¹¹⁷ Article 79 (1) of Law No. 11/2012 on the Juvenile Justice System.

¹¹⁸ *Ibid.*, Article 81 (5).

¹¹⁹ *Ibid.*, article 28.

¹²⁰ Article 27 of Law No. 11/2012 on the Juvenile Justice System

¹²¹ *Ibid.*, article 28.



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- ii. When an Investigator, Public Prosecutor and/or Judge is making a decision regarding diversion.¹²²
- iii. When a decision is being made regarding pre-trial detention.¹²³
- iv. During the investigation.
- v. It forms part of the dossier transferred by the investigator to the prosecutor.¹²⁴
- vi. It forms part of the dossier transferred by the prosecutor to the court.¹²⁵
- vii. It is part of the basis for examination at the Court, in addition to indictment.¹²⁶
- viii. It is part of the information used in sentencing.¹²⁷

Reports are also prepared when a child first arrives in detention facilities (LPKAs) to support the rehabilitation and reintegration of these children.

Social inquiry reports therefore play a very important part at every stage of the justice process. However, the only reference to the content of such reports is made in article 57 (2) of the Law No. 11/2012 on the Juvenile Justice System which suggests they should contain background information about the child, the offence, the situation of the victim, any reports from diversion proceedings and conclusions and recommendations. The following is a list of over-arching factors that could be taken into account and adapted according to the specific needs and purposes of a social inquiry report:

- Strengths and protective factors in a child's life, such as their capacities and positive elements of their environment.
- The means by which the child was recruited to a terrorist or violent extremist group and an analysis of decisive "push factors" and "pull factors";
- The role of family relationships in the child's life with particular emphasis on the role of the family in the recruitment process and the identification of positive relationships that are conducive to reintegration and the child's wellbeing. Situations where the families are also facing stigma or fear and require adequate support should be highlighted;
- The child's age, level of education, employment status, health status including any stress related to trauma and level of physical, psychological and social development;
- The experiences the child had within the terrorist or violent extremist group in terms of violence and exploitation they experienced and whether they were in relationships of submission or control with other members of the group; and

¹²² Article 9 (1) c of Law No. 11/2012 on the Juvenile Justice System.

¹²³ Ibid., articles 34 and 35.

¹²⁴ Ibid., article 29 (4).

¹²⁵ Ibid., article 42 (4).

¹²⁶ Ibid., article 57 (1).

¹²⁷ Ibid., article 60 (3).



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- Risks for the child's safety, with particular emphasis on: re-recruitment in detention or elsewhere; retaliation from other members of the groups; secondary victimization within the justice system; and ostracization and marginalization by his or her community.

It should be noted that children may have experienced severe trauma prior to their contact with the justice system arising from their involvement with terrorist and violent extremist groups – girls may have experienced sexual violence and the physical, mental and social repercussions that include being ostracised by their families and communities. The trained staff responsible for the assessment should be aware of these risks and of the need for specific individualised responses to ensure their rehabilitation, including the need to build back their relationships with families and communities and to develop a sense of optimism for their future.



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E REHABILITATION AND REINTEGRATION – SESSION SIX

1. Rehabilitation and reintegration as a primary objective

The promotion of rehabilitation and reintegration should be a primary objective throughout the justice process. While we often talk about the two concepts of rehabilitation and reintegration together, it is important to understand that they refer to separate facets of a child's process towards recovery:

The “rehabilitation” of child victims of recruitment and exploitation by terrorist and violent extremist groups includes: medical and psychological care, legal and social services and interventions that can prevent re-offending when dealing with children who are in conflict with the law, for example, programmes that directly address a child's lack of education or vocational training.

“Reintegration” refers to the safe process through which a child victim and/or a child who has been in conflict with the law transitions back into the community, recovers physically and psychologically and acquires attitudes and behaviours conducive to assuming a constructive role in society.

There is wide variance in how children experience recruitment and exploitation. Yet there are some challenges for effective rehabilitation and reintegration which are commonplace in different contexts. These challenges should be recognized and taken into account, where relevant, when planning for individualized assistance to a child in the justice system:

- *Experience of violence*

Exposure to violence, including violence in the justice system, has a severe impact on children's physical and mental well-being and can result in high rates of post-traumatic stress disorder, depression and other psychological disorders as well as substance dependency as a coping mechanism.

- *The impact of believing violence is legitimate*

Many children involved in terrorism-related offending will need support with disengaging from violence. This can often be achieved through rehabilitation programmes that dismantle harmful narratives around violence as a legitimate means to achieve political goals. Such programmes need to be introduced in a way that is sensitive to the risk of further labelling and stigmatising a child.

- *The impact of deprivation of liberty*



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Children suspected or convicted of terrorism-related offences can be held for unusually long periods of time often in solitary confinement; they are at risk of violence, re-recruitment and association with other detainees with serious criminal histories. Detention in itself disrupts the positive support networks that children need to rehabilitate including family and social relationships, and education and work prospects.

- *Stigma and exclusion*

The label of 'terrorist offender' can be very powerful and lead to automatic assumptions about the child as a threat to security and to stigmatization and marginalization by their families and communities. The community may also feel that measures to rehabilitate and reintegrate a child on release from detention gives them unfair advantages and privileges in comparison to other children from the community.

Effective rehabilitation and reintegration processes will serve to mitigate the impact of victimization children have experienced during their association with terrorist and violent extremist groups, but it is also crucial to ensure that they do not re-offend and can return safely to their family and community life. Nonetheless, the rehabilitation of these children can prove extremely complex and require long term engagement and support since they have frequently experienced traumatic levels of violence that impact severely on their emotional development, social functioning and academic performance.

The following are some of the different actions that can be undertaken at different stages of the process, to promote a child's rehabilitation and reintegration.

Pre-Trial:

- Ensure that a child is treated with dignity and respect during arrest and interview
- Ensure that deprivation of liberty is a measure of last resort and used for the shortest appropriate period of time
- Use alternatives to judicial proceedings, such as diversionary measures
- community-based alternatives to pre-trial detention

During Trial and Sentencing

- Ensure a child's identity is not revealed by the media during hearings
- Provide a child with access to a lawyer when questioned in court
- Promote trial by a tribunal or judicial body that follows procedures specifically applicable to children.
- Take in to account social inquiry reports when sentencing



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- Ensure that deprivation of liberty is a measure of last resort and used for the shortest appropriate period of time

2. Rehabilitation when deprived of liberty

Deprivation of liberty has very serious consequences for a child's rehabilitation and reintegration.¹²⁸ Article 37 of the CRC therefore imposes very strict limitations on its use, stating that it is to be used only as a measure of last resort and for the shortest period of time.

Children who are viewed as threats to national security can be especially vulnerable to violence by their peers, by staff and by adult detainees. There is often an assumption that these children have assimilated an ideology and represent a risk so should be subject to targeted measures such as placement in solitary confinement cells; grouping together in special wings or facilities under strict security regimes; and being deprived of rehabilitation programmes such as access to vocational training and education. They can be subject to close monitoring of their correspondence and contacts visits for intelligence and security purposes which may unnecessarily undermine their right to privacy.

Regardless of the offence, these children have the same rights, aside from the right to liberty, as children living normal lives outside. Above all, **the explicit objective of detaining children suspected or convicted of terrorist-related offences should be to contribute to their rehabilitation and to ensure their reintegration back into society on completion of their sentence.**

The use of the word rehabilitation in the present context may perhaps lead to some confusion. When referring to the rehabilitation of victims of crime, the word generally refers to interventions to support the victims, help them mitigate the personal impact of their victimization, deal with stress related to trauma, and help them resume a normal life.

When dealing with offenders, rehabilitation refers more specifically to a variety of interventions aimed at promoting desistance from crime and the restoration of an offender to the status of a law-abiding person. In the case of many child victims of recruitment and exploitation by terrorist and violent extremist groups, their victimization led to or was followed by engagement in various forms of crimes, some of them terrorist crimes. In such instances, it is evident that rehabilitation interventions,

¹²⁸ See for example, *Report of the Independent Expert leading the global study on children deprived of liberty*, Manfred Nowak, submitted pursuant to General Assembly resolution 72/245, 11th July 2019.



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as long as they are guided by a consideration of the best interests of the child, aim to achieve both sets of goals – that is **victim support and crime desistance**.

International standards promote a holistic approach to rehabilitation which addresses both the practical and emotional needs of the child. The Beijing Rules (Rule 13) state that children in detention shall receive “care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality.”¹²⁹ Rehabilitation will work most effectively in detention settings which are small enough for individual treatment to be provided, where children feel safe and secure, where adequate medical care is provided and where it is easy for children to be integrated into the social and cultural life of the community where the facility is located. Institutions should:

- encourage contact with family and other social networks to support children;
- provide children with opportunities to obtain life skills through educational, vocational, cultural and recreational activities; and
- promote services to help with their transition back into society.

The individual needs of children should be addressed such as mental health and developmental issues, recovery from gender-based violence, substance abuse, job placement and family counselling. Satisfactory conditions of detention are a prerequisite to rehabilitation, including but not limited to: sleeping and living space; adequate clothing; food; hygiene and sanitary conditions; educational opportunities; and appropriately trained staff. Another over-looked aspect of their rehabilitation is that children should have the right to complain without fear of reprisal and should be given assistance on how to complain.

Specific issues affecting children in detention on terrorist-related charges include:

Dispersal or separation

Practice differs on whether children who are detained on terrorist-related offences are dispersed in the normal way amongst other children in detention or whether the nature of their offence and behaviour is such that they are held separately in order to avoid the risk of ‘contagion’ of an assumed violent extremist ideology. If they are held separately then there is a risk that they may be held in isolation where there are low numbers of children in detention for terrorist-related offending. Such isolation might amount to de facto solitary confinement. The internationally accepted definition of

¹²⁹ UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”) : resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/33



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solitary confinement is: “confinement of prisoners for 22 hours or more a day without meaningful human contact.”¹³⁰ It is expressly prohibited for children to be placed in solitary confinement. Given that many children in detention for terrorist-related offending have been victims of high levels of abuse and violence arising from their recruitment and exploitation by terrorist and violent extremist groups, solitary confinement must be avoided in all circumstances to ensure there is no secondary victimisation.

Children should not be automatically separated according to the type of offence they have been charged but rather on the basis of individualised risk assessments regarding the use of violence. The risk of ‘radicalisation’ of others should be carefully weighed against the risk that separation enhances their stigmatisation in and outside of the facility, heightens feelings of discrimination and marginalisation and can fuel narratives of ‘them’ and ‘us’.

Individual assessment

Children in detention for terrorist-related offending should benefit from individualized programmes to support their rehabilitation, in the same way as other children deprived of their liberty. Such interventions might include educational programmes, vocational training, psychosocial counselling, religious mentoring, arts, sports and recreational activities and engagement with family and the wider community. They need to be informed by the intake assessment and any further individual assessments which set out the underlying issues behind the child’s offending and their interest and involvement in terrorism and violent extremism, any past offending, their behaviour whilst in detention, their individual strengths and protective factors in their lives and ambitions for the future and their pathway away from offending. To be effective these programmes should be planned and delivered through collaboration with different agencies as much as possible such as psychologists, mental health professionals, doctors, social workers, police and teachers.

Rehabilitation programmes

Many children convicted of terrorism-related offences will need direct support with disengaging from violence and often this can be achieved through rehabilitation programmes that dismantle harmful narratives around violence as a legitimate means to achieve significance and political goals. Such programmes need to be introduced in a way that is sensitive to the risk of labelling and stigmatising a child. This is not a proposal for a ‘de-radicalization’ programme. The concept of ‘de-radicalization’ is

¹³⁰ Rule 44, UN Standard Minimum Rules on the Treatment of Prisons (2015 Rev) (‘Nelson Mandela Rules’)



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contested¹³¹, the term itself lacks clear definition, and there is no consensus on what it looks like nor how it can be successful. UNODC suggests instead to refer to “disengagement from violence” rather than “deradicalization”.

Some experts have argued that disengagement from violence is a sufficient goal of rehabilitation programmes, particularly when children are involved.¹³² According to some researchers, one major impetus for children to be involved with terrorist and violent extremist groups is the ‘quest for significance’,¹³³ namely, the universal need to be someone and to be respected by others, cultural ideologies touting violence as a means to significance, and social networks supporting such ideologies. The recommendation is that disengagement from violence can be achieved through programmes that provide children with alternative routes to significance that rival the appeal of violence. Such programmes include education, vocational and psychosocial support as well as concerted interventions to reintegrate in to social networks on release. Where children have been exposed to manipulated religious education then this will also need to be challenged. Such programmes should be introduced in a way that is sensitive to the risk of labelling and stigmatising a child.

The following are some approaches that have proven useful in different contexts:¹³⁴

- Encouraging critical thinking and problem solving can help children to understand the way that they have been manipulated and to pull back from it.¹³⁵
- Sport, which is rule based and promotes trust and camaraderie, can be an excellent tool.¹³⁶
- Involving former terrorists and violent extremists who have moved away from violence to talk about their experiences in a credible and inspiring way.
- Widening children’s social network to replace the often very close bonds they have formed as a part of a terrorist or violent extremist group.
- Acknowledging that children recruited and exploited by terrorist and violent extremist groups may have been in positions of significant responsibility,

¹³¹ For further discussion on this see John G. Horgan and Mary Beth Altier, The Future of Terrorist De-radicalization Programs, *Georgetown Journal of International Affairs* 13, no. 2 (Summer/Fall 2012): 83–90.

¹³² John Horgan, *Walking Away from Terrorism: Accounts of disengagement from radical and extremist movements*, (Routledge, 2009).

¹³³ Kruglanski AW, Gelfand MJ, Bélanger JJ, Sheveland A, Hetiarachchi M, Gunaratna R. The psychology of radicalization and deradicalization: how significance quest impacts violent extremism. *Polit Psychol.* (2014) 35:69–93. 10.1111/pops.12163

¹³⁴ These approaches are explored in more detail in the *UNODC Training Manual on Rehabilitation and Reintegration of Child Victims of Recruitment and Exploitation by Terrorist and Violent Extremist Groups* (Vienna, 2019).

¹³⁵This is explored in N Benotman and N Malik, “The Children of the Islamic State”, 2016 Quilliam 21 3.

¹³⁶ Global Center on Cooperative Security & Hedayah, “Thinking Outside the Box: Exploring the Critical Roles of Sports, Arts, and Culture in Preventing Violent Extremism” (Global Center on Cooperative Security, 2015). See also the use of cricket in Sri Lanka, Reuters “Cricket helps heal Sri Lanka’s ex-child soldiers,” (Reuters, 23 March 2010), available at: <https://www.reuters.com/article/us-srilanka-cricket-children/cricket-helps-heal-sri-lankas-ex-child-soldiers-idUSTRE62M1H120100323>.



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despite their young age. Rehabilitation programmes should recognise children's skills in terms of leadership and strategic planning and re-deploy them to develop children's own mechanisms for conflict resolution and planning their future.

3. National law and policy for children deprived of their liberty

Children convicted of terrorism-related offences usually start their sentences in the LPKA Jakarta. In line with Law No. 11/2012, they have the right to be provided with instruction, guidance, supervision, education and training. A Probation Officer is responsible for conducting an assessment and preparing a report to identify the preferable rehabilitation programmes and to supervise their implementation. According to government regulation No. 31/1999 on Coaching and Assisting Inmates, the rehabilitation programme for children consists of three stages: *early* which includes an observation period; *advanced* which includes a coaching programme; and *final* which includes plans for reintegration.

Children undertake rehabilitation programmes which include elements such as character building, pursuing independence, counselling, fostering their interests and encouraging talents including IT skills. Although Indonesia has not ratified the United Nations Optional Protocol to the Convention against Torture, it does have an independent monitoring and inspection mechanism for children in detention which includes the KPAI, the National Commission, the National Commission on Violence against Women and the Victim and Witness Protection Agency.

Targets are set in the LPKAs for children to engage with nationalist-oriented activities such as singing the national anthem. However, there is no specific rehabilitation programming that aims to challenge the beliefs behind a child's terrorism-related offence, for example, that violence is a legitimate means to challenge unfairness in the world.

Many children convicted of terrorism-related offences will need direct support with disengaging from violence and often this can be achieved through rehabilitation programmes that dismantle harmful narratives around violence as a legitimate means to achieve significance and political goals. Such programmes need to be introduced in a way that is sensitive to the risk of labelling and stigmatising a child.

4. Social reintegration



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The primary objectives of reintegration programmes¹³⁷ are to provide children with the assistance and supervision they need to assume a constructive role in society, to help them overcome the effects of victimization by terrorist and violent extremist groups and to desist from further offending. Their return to the community can represent an abrupt shift in relationships, behavioural patterns, and expectations, and often involves the reshaping of their identity, world view, and beliefs. In many instances, a child's desensitization to violence as a result of their association with a terrorist and violent extremist group, their continuing exposure to violence, and their propensity to engage in violent behaviour sets them apart from other children and the rest of the community. Reintegration policies and practice need to reflect these issues to ensure re-offending and/or re-recruitment are prevented.

For children who have been detained, effective post-release interventions usually involve three phases: institutional or pre-release planning and services; re-entry preparation; and community-based services upon release from the institution.

Planning

Planning for the release of the child from detention includes assessing the public safety risk posed by the child, developing a post-release plan prior to his or her release that will reduce the risk of reoffending and providing concrete support to the child by working with families, employers and community organizations.¹³⁸ Such plan should be based on an assessment that will:

- evaluate a child's level of health and physical, psychological and social development;
- assess the impact of trauma on the child;
- assess both the risks represented by the child in terms of public security as well as the risks faced by the child;
- investigate readiness of family and of the community to accept the child; and,
- identify the most appropriate course of action in her or his best interests.

Assessment should be conducted by a multi-agency team including teachers, psychologists, healthcare professionals including experts in sexual violence, law enforcement, probation and detention facility employees. Confidentiality must be maintained throughout the assessment period to assure the child's safety and privacy. There should be regular communication and exchange of information whilst planning for successful reintegration between the relevant agencies involved. Any change in

¹³⁷ See the UNODC *Training Manual on Rehabilitation and Reintegration of Child Victims of Recruitment and Exploitation by Terrorist and Violent Extremist Groups* (Vienna, 2019).

¹³⁸ UNODC, *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, (Vienna, 2017), p. 89.



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circumstances or significant events, especially pertaining to risk of harm to others or to the child's safety, must be communicated within the network as soon as is practical.

Re-entry preparation

As children are approaching release, a range of actors that will play a role in their successful reintegration should meet to explore the child's risks and needs and to make arrangements regarding:

- education, training and employment
- ongoing interventions regarding disengaging from violence
- suitable accommodation on release
- contact with families (where relevant)
- health and mental health provision
- support with substance dependency
- provision of support for dealing with finances
- managing any identified risk of retaliation from groups or individuals
- managing any risk of serious harm to others
- planning for transfer to adult prisons if needed.

Many reintegrating children are discriminated against because of their association with terrorist or violent extremist groups. Tackling this discrimination as far as possible before they return home is vital to ensure their successful reintegration. This means working with different agencies and the families and communities that the child is returning to. It is also important to work with the child to facilitate their transition and to help them recognise that their previous role and identity may have to change.

Safe Release

The third phase often involves a mix of assistance and surveillance or monitoring. The first few months after children are released from institutional care are absolutely critical, particularly for children who can expect to face a negative community response and exclusion. If this is coupled with isolation and economic marginalization, children may be susceptible to re-recruitment and exploitation as they look for community, recognition and meaning.¹³⁹ They should be provided with sustained and practical support during the period of transition by professionals such as social workers or probation officers. In some jurisdictions, children can be released early on conditions such as ongoing contact with a probation officer, abiding by a curfew or limitations on travel. These can be a useful means of supporting a child as well as actively managing the risk that they may re-offend.

¹³⁹ For an overview of drivers of violent extremism that need to be addressed see UNDP, *Preventing Violent Extremism Through Promoting Inclusive Development, Tolerance and Respect for Diversity*, (United Nations Development Programme: New York, 2016), p.18.



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Continuity and coordination between these three phases is crucial for the effectiveness of the reintegration support.

Comprehensive reintegration programs are multifaceted and require intense collaboration and information sharing between all stakeholders. In practice, however, this often proves to be a major challenge. Stakeholders may have conflicting interests and competing ideas about what needs to be done and how, and it may be a challenge to get all relevant parties engaged and willing to collaborate. To facilitate and coordinate this process, it may be useful to formalize stakeholder responsibilities and identify which actors assume primary responsibility and coordination for the intervention.

National law and policy

Reintegration is coordinated by BNPT, in partnership with local government, who provides children with funds for travel and for establishing small businesses. The NGO YPP also has a specific MoU with the Directorate General on Corrections in relation to rehabilitation and reintegration. Prior to COVID-related restrictions, they would provide children with mentorship through regular visits. In relation to reintegration, they make contact with families and relevant local NGOs who can support the child on their return home. They also facilitate parole hearings and support children in accessing employment, education and vocational training on release. They stress the importance of this commenting that many of the children who leave detention are of working age and are more likely to be re-recruited by a terrorist or violent extremist group if they have financial problems.

These are very promising actions, however, the approach to reintegration is not standardized and there is no clear continuum of integrated services for children in LPKAs from rehabilitation through to reintegration at the provincial and district level.

Key aspects of rehabilitation and reintegration programmes¹⁴⁰:

Relevant: The programme is designed to respond to the actual needs and challenges of

Children and to the needs and expectations of the communities they are (re-)entering.

Rights-based: The programme strictly adheres to the principle of the best interests of the child and upholds the child's rights.

Child-sensitive: The programme's interventions, procedures, activities and staff take into

¹⁴⁰ See the UNODC *Training Manual on Rehabilitation and Reintegration of Child Victims of Recruitment and Exploitation by Terrorist and Violent Extremist Groups* (Vienna, 2019).



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account the personal characteristics of children (including age and stage of development)

as well as their circumstances (including basic needs and impact of violence on children's development).

Gender-sensitive: The programme is sensitive to the different nature of the girl's victimization and is responsive to the girl's specific needs and circumstances.

Strength-based: The programme builds on children's strengths and resilience, enhances

their self-confidence and self-agency, and promotes their capacity to protect their own integrity and construct a positive life.

Safety-oriented: The programme ensures the safety of children and works to prevent the further victimization of children, their stigmatization and exclusion, as well as their potential re-recruitment by terrorist and violent extremist groups.

Informed by the views of children: Children have a voice and participate in programming

decisions. Girls' participation in programme development and implementation incorporates their views with respect to reintegration into family, community and economic and political life.

Evidence-based: Programmes should strive to be based on relevant information and include mechanisms for monitoring and evaluation.

F CHILD-SENSITIVE COMMUNICATION – SESSION SEVEN

It is not unusual for children associated with terrorist and violent extremist groups to find it difficult to communicate with the adults involved in justice proceedings, to mistrust justice authorities, particularly the police, to lack basic information and understanding about procedures and to face discrimination because of the nature of the offence they are charged with.

Children have the right to participate at all stages of justice proceedings. But this is not possible unless justice professionals communicate with them in a child-sensitive manner – this is one of the most important factors in supporting a child's right to participate in proceedings and it can transform a child's experience of the justice system and strengthen the integrity of the whole process. Without this, there is a risk of secondary victimization and inadequate quality of evidence obtained in the investigation phase of proceedings.

Children can have short attention spans and limited vocabulary and ability to relate events in a chronological order. They may be fearful of the repercussions for them or



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their families of disclosing certain information, and be experiencing overwhelming feelings of shame, distress or guilt. Many children wish to please adults in authority by saying things which they feel are expected of them, or they may have been brought up to listen to adults but not to speak to them. They may have been trained by a terrorist group to withhold information from law enforcement officials. They may simply not understand the complexity of the legal issues and be puzzled by terminology.

To address all of these issues, communication with children associated with terrorist and violent extremist groups needs to be child-sensitive. Taking a child-sensitive approach means assessing and taking into account many factors including: a child's age, gender, religion, physical and/or mental disability, level of understanding and education, developmental stage, emotional state, culture and the support available to the child. It means not re-victimizing a child by reinforcing any abusive experiences he or she may have experienced as part of a terrorist or violent extremist group. It also means recognizing that the child may be acting under coercion and fear of reprisals and that repeated interviewing with leading questions can induce a child to comply with the questioner and affect free and unprompted recall of the event.

There are also some practical issues that must be complied with:

- The child has the right to be accompanied by a support person, including during interviews¹⁴¹;
- A child is given the information they need, in a way they can understand¹⁴²;
- Simple language that is comprehensible to the child is used and interpretation is available for children who need it¹⁴³;
- They are listened to actively with patience, understanding and rapport established¹⁴⁴;
- Privacy and confidentiality of the child is strictly observed and maintained¹⁴⁵;
- Any questions are clear and unambiguous beginning with who, what, and where, and the child is asked about one event at a time¹⁴⁶;
- The number of interviews is limited, to reduce the potential of secondary victimization and re-traumatization.

¹⁴¹ Strategy VIII, paragraph 24 (e) of the UN Model Strategies on VAC. Note that there are exceptions to this if the support person is the alleged perpetrator and where it is not in the best interests of the child (paragraph 24 (e) (i) and (ii)).

¹⁴² United Nations Office on Drugs and Crime, *Justice for Children in the Context of Counter-Terrorism: A Training Manual*, (Vienna, 2019), p. 66.

¹⁴³ Strategy VIII, paragraph 24 (f) of the UN Model Strategies on VAC.

¹⁴⁴ United Nations Office on Drugs and Crime, *Justice in the Context of Counter-Terrorism: A Training Manual*, (Vienna, 2019), p. 66.

¹⁴⁵ Strategy VIII, paragraph 24 (g) of the UN Model Strategies on VAC.

¹⁴⁶ United Nations Office on Drugs and Crime, *Justice in the Context of Counter-Terrorism: A Training Manual*, (Vienna, 2019), p. 66.



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- Children are given regular breaks during interview and court processes¹⁴⁷;
- The child is treated with humanity and respect for the inherent dignity of the human person.¹⁴⁸

Justice professionals also have to understand and adapt to the characteristics of the child, and be sensitive and responsive to cultural, gender and developmental needs.¹⁴⁹ For example, there may be stigma attached to referring to sex and reproductive parts of the body, due to cultural norms; girls may wish to speak with a justice professional of the same sex, especially if they have experienced sexual abuse and exploitation; and justice professionals may need to adjust and adapt their verbal and non-verbal communication to the developmental stage and maturity of the child, especially with regards to younger children who may struggle with concepts of time, space and measurements and in shaping clear narratives.¹⁵⁰

Furthermore, great care needs to be taken when communicating with older children “who may be more sensitive to being patronized or ‘talked down to.’”¹⁵¹ Where a child has a physical or mental disability, it is important for the justice professional to have special training in communicating with a child living with disabilities, to ensure that they are able to communicate their narrative effectively and comfortably.¹⁵²

G MULTI-DISCIPLINARY RESPONSES – SESSION EIGHT

Multi-disciplinary responses are essential and can:

- prevent unnecessary, harmful, and repetitive interviewing of a child by different agencies thereby reducing the risk of secondary victimization;
- help to guarantee that a child gets full access to the services or assistance they require;
- deepen understanding of a child’s background and circumstances thereby leading to proportionate responses to a child’s offending behaviour;
- improve the strength of evidence gathered;
- facilitate transmission of relevant information and encourage better continuity of care throughout the justice process.

¹⁴⁷ Strategy VIII, paragraph 24 (i) of the UN Model Strategies on VAC.

¹⁴⁸ Convention on the Rights of the Child (1989), article 37(c).

¹⁴⁹ United Nations Office on Drugs and Crime (UNODC) and United Nations Children’s Fund (UNICEF), *Training Programme on the Treatment of Child Victims and Witnesses of Crime for Prosecutors and Judges*, (Vienna, 2015), p. 61.

¹⁵⁰ *Ibid.*, p. 61.

¹⁵¹ United Nations Children’s Fund (UNICEF), *Guidelines on Child-Friendly Legal Aid*, (UNICEF Europe and Central Asia Regional Office (ECARO), October 2018), p. 21.

¹⁵² Gerison Lansdown, *Every Child’s Right to be Heard: A Resource Guide on the UN Committee on the Rights of the Child General Comment No. 12*, (UNICEF and Save the Children: London, 2011), p. 26.



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There are a number of different institutions that have the mandate and are held accountable for the design, management and delivery of prevention, rehabilitation and reintegration and justice strategies for children who have been associated with terrorist and violent extremist groups or who are linked with the foreign terrorist fighter phenomenon. These include the BNPT, Ministry of Foreign Affairs, BAPPENAS, Ministry of Women's Empowerment and Child Protection, Ministry of Social Affairs, Ministry for Law and Human Rights, Ministry of Education and Cultural Affairs, Ministry of Home Affairs, Ministry of Religious Affairs, Ministry of Health, the Witness and Victim Protection Agency, the KPAI, the National Commission for Human Rights and the National Commission for Violence against Women. There are also many actors engaged in implementation of Law No. 11/2012 including the police, prosecution, courts, corrections, probation officers, defence lawyers, the Ministry of Social Affairs, Ministry of Law and Human Rights, MoWECP, KPAI and civil society organisations.

Regulation No.8/2017 on Coordination, Monitoring, and Evaluation of the Juvenile Justice System provides a framework which mandates the MoWECP to coordinate implementation and regulation at the national level. The KPAI has a complaint mechanism and also conducts regular evaluations of the justice system. An important aspect of the RAN-PE is that it aims to establish an elaborate coordination mechanism among different ministries, agencies and civil society organisations that are responsible for its implementation. In total, the National Action Plan will coordinate the efforts across 36 ministries, institutions, and civil society organizations. Working groups comprising government bodies¹⁵³ will be established and the aim is that they meet every three months to assess progress and to resolve obstacles in implementation of the RAN-PE.

Inter-sectoral coordination mechanisms specifically for children in the context of counter-terrorism will help to strengthen integrated delivery across government and ensure consistency and accountability in decision-making. This requires: clear objectives; focal points at national, regional and local levels; clear allocation of roles and responsibilities between different agencies involved; involves civil society organisations; protocols for information-sharing regarding children; has a shared approach towards assessing children's risks and needs; supports clear case-management; and rigorously monitors and evaluates progress made.

¹⁵³ Including Ministry of Foreign Affairs; Ministry of Internal Affairs; Ministry of Justice and Human Rights; Ministry of Communication and Information; Ministry of PPN / Bappenas; Ministry of Religion; Ministry of Social Affairs; Ministry of Education and Culture; Attorney General's Office; Police; Indonesian Armed Forces/TNI; State Intelligence Agency; and the Indonesian Financial Transaction Reports and Analysis Centre (PPATK.)



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H ANNEXES

1. TERMINOLOGY USED

TERM	DEFINITION
Child sensitive	Denotes an approach that takes into consideration the child’s right to protection and individual needs and views in accordance with the age and maturity of the child.
Children	Human beings under the age of 18 years, in accordance with article 1 of the Convention on the Rights of the Child.
Children “associated” with terrorist and violent extremist groups	The term “associated” derives from the “Principles and Guidelines on Children Associated with Armed Forces or Armed Groups” (2007) known as the “Paris Principles” and is also used in Security Council Resolution 2396 (2017). It is intended to be neutral, and does not entail criminal liability for these children.
Children accused of infringing the penal law	Children who have been charged with a criminal offence but have not yet been tried before a court.
Children alleged as having infringed the penal law	Children who are under investigation on suspicion of having committed a criminal offence.
Counter-terrorism	Actions and activities to prevent, deter, disrupt terrorist acts and weaken their organizations, and networks.
Crime prevention	Refers to strategies and measures that seek to reduce the risk of crimes occurring and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence the multiple causes of crime.
Deprivation of liberty	Means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority, (United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 11 (b)).
Exploitation	This refers to the use of the child in work or other activities for the benefit of others and to the detriment of the child’s physical



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	<p>or mental health, development and education. Exploitation includes, but is not limited to, sexual exploitation, forced labour or services, including the commission of crime, slavery or practices similar to slavery. The term indicates that advantage is being taken of the child's lack of power and status.</p>
Child justice system	<p>A specialized system of laws, policies, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as, having infringed penal law. This approach is recognized in article 40 of the CRC, the core justice for children provision.</p>
Protective environment	<p>An environment conducive to ensuring, to the maximum extent possible, the survival and development of the child, including physical, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity.</p>
Radicalization	<p>The use of the term radicalization entails a number of issues of definitional clarity and tends to over-emphasize the role of ideology in the process of becoming involved in violence. When referring to children, we consider that this term could undermine the understanding of recruitment as a criminal offence, by shifting the blame on the victim of recruitment (the child) rather than the perpetrator.</p> <p>In addition, focusing on radicalization can limit the understanding of "recruitment processes", that have multiple root factors, beyond ideology. In the case of children, ideological adherence to violent extremism appears to be more often the outcome, rather than the cause of association with the groups. Finally, in the context of rehabilitation and reintegration programmes, over-emphasis on ideology may lead to underestimating the consequences of violence and trauma on anti-social and aggressive behaviour, leading to ineffective, if not damaging, approaches. In this framework, UNODC suggests to refer to "disengagement from violence" rather than "deradicalization".</p>
Recruitment	<p>Compulsory, forced and voluntary conscription or enlistment of children into any kind of armed force, armed group or terrorist or violent extremist group.</p>
Rehabilitation	<p>This term is used to indicate medical and psychological care and required legal and social services to be provided to children in order to recover from physical and psychological harm. According to the Convention on the Rights of the Child (article</p>



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	39), such recovery services should be provided to child victims of neglect, exploitation and abuse. The Optional Protocol on the Involvement of Children in Armed Conflict (Article 6-7) also calls on States to provide assistance to victims of child recruitment for the purposes of their rehabilitation.
Reintegration	Refers to the safe process through which a child transitions back into the community, achieves physical and psychological recovery and acquires attitudes and behaviours conducive to him or her assuming a constructive role in society. Such reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child
Release	“Includes the process of formal and controlled disarmament and demobilization of children from an armed force or armed group as well as the informal ways in which children leave by escaping, being captured or by any other means. It implies a disassociation from the armed force or armed group and the beginning of the transition from military to civilian life. Release can take place during a situation of armed conflict; it is not dependent on the temporary or permanent cessation of hostilities. Release is not dependent on children having weapons to forfeit.” (Principles And Guidelines On Children Associated With Armed Forces Or Armed Group, Principle 2.6)
Secondary victimization	Victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.
Social inclusion	The act of making all groups of people within a society feel valued and important.
Terrorism	There is currently no universally accepted, comprehensive definition of “terrorism”. International counter-terrorism instruments, most of them ratified by Indonesia, define certain acts of terrorism, such as hijacking civilian airplanes, hostage taking, explosive attacks.
Terrorist groups	“Terrorist group” encompasses at least the entities designated by the Security Council on the ISIL (Da’esh) and Al-Qaida Sanctions List.
Violent Extremism	The United Nations refers to “terrorism and violent extremism as and when conducive to terrorism” or “terrorism and violent extremism conducive to terrorism”.



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Youth	For the purpose of this workshop, “youth” is defined according to the definition used by the United Nations Department of Economic and Social Affairs (UNDESA) as “those persons between the ages of 15 and 24 years.” It is however important to note that, differently from the term “children” as defined in article 1 of the Convention on the Rights of the Child (CRC), there is no internationally agreed upon definition of the term “youth”. For that reason, it is preferable to use the term children when referring to individuals between 15 and 18 years of age for the specific rights and safeguards they are entitled to under international law.

2. FURTHER READING AND RESOURCES

Key International and National Standards on Justice for Children

International Human Rights Law

United Nations General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

United Nations General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, adopted by the General Assembly on 25 May 2000 (A/RES/54/263)

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

United Nations General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, adopted by the General Assembly on 16 March 2001 (A/RES/54/263)

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

United Nations Human Rights Council, *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: resolution*, adopted by the Human Rights Council, 14 July 2011, (A/HRC/RES/17/18)

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCRC.aspx>



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United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)*, adopted by the General Assembly on 29 November 1985 (A/RES/40/33)

<https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

United Nations General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, adopted by the General Assembly on 14 December 1990 (A/RES/45/110)

<https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

United Nations General Assembly, *United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*, adopted by the General Assembly on 14 December 1990 (A/RES/45/112)

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>

United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)*, adopted by the General Assembly on 14 December 1990 (A/RES/45/113)

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/JuvenilesDeprivedOfLiberty.aspx>

United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)*, adopted by the General Assembly on 16 March 2011 (A/RES/65/229)

https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

United Nations General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, adopted by the General Assembly on 28 March 2013 (A/RES/67/187)

<https://digitallibrary.un.org/record/748365?ln=en>

United Nations General Assembly, *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, adopted by the General Assembly on 26 January 2015, (A/RES/69/194)



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<https://digitallibrary.un.org/record/780633?ln=en>

United Nations *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* ECOSOC Resolution 2005/20 of 22 July 2005

<https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

United Nations *Guidelines for Action on Children in the Criminal Justice System*, ECOSOC Resolution 1997/30, 1997

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>

Guidance Note of the Secretary-General: UN Approach to Justice for Children, September 2008

https://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf

United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the justice system*, 18 September 2019 (CRC/C/GC/24)

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en

United Nations Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13.

https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf

United Nations Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en

United Nations Committee on the Rights of the Child (CRC), *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en

Key National Standards on Justice for Children

Constitution of the Republic of Indonesia (last amended 2002), 1945



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Law No. 8/1981 on Criminal Procedure

Law No.39/1999 on Human Rights

Law No.16/2011 on Legal Aid

Law No.11/2012 on the Juvenile Justice System

Law No. 35/2014 on Child Protection

Law No. 5/2018 on the Eradication of Criminal Acts of Terrorism

Decree No. PER-006/A/J.A/04/2015 regarding Guidelines on the Implementation of Diversion at the Prosecution Level

Decree No. Pol.TR/1124/XI/2006 jo. No. Pol. TR/359/DIT.I/VI/2008 regarding Guidelines on Dealing with Children in Conflict with the Law

Supreme Court Decree No. 4/2014 regarding Guidelines on the Implementation of Diversion in Juvenile Justice System.

Guidance and Tools

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