



**UNODC**

United Nations Office on Drugs and Crime

**Handbook on Children  
Recruited and Exploited  
by Terrorist and Violent  
Extremist Groups:  
The Role of the Justice System**





UNITED NATIONS OFFICE ON DRUGS AND CRIME  
Vienna

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UNITED NATIONS  
Vienna, 2017

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Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

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## Acknowledgements

The preparation of this Handbook was made possible by the cooperative efforts and invaluable contributions of several individuals and Governments.

The United Nations Office on Drugs and Crime (UNODC) wishes to extend its gratitude to the Member States who contributed to the consultation process. UNODC is grateful to the Chairs of the regional groups for identifying experts to participate in the expert group meeting on the treatment by the justice system of children recruited and exploited by terrorist and violent extremist groups, held in Vienna from 13 to 15 December 2016.

UNODC is grateful to the participants of the expert group meeting for their extensive contributions. In particular, UNODC is most thankful to Carolyn Hamilton for her invaluable background research and substantive input. The experts who attended the meeting were Mahmood Fadhil Masyab Al Bayati, Abdelaziz Ahmed Abdalla Alhajri, Jamie Bell, Abderezak Bensalem, Sofiane Bessadok, Hanae Boughdad, Haffide Boulakras, James Cooke, Valerio de Divitiis, Swen Dornig, Hamza Essaid, Abdoul Kassim Fomba, Imma Guerras Delgado, Carolyn Hamilton, Ibrahim Jean Etienne, Rose Marie Kerkor, Kai Li, Carlos Magadán Martínez, Angela McCabe, Rolando Melo Latorre, Tim Molyneux, Naïma Müller, Rose Oka Oji, Siobhan O’Neil, Reynante Orceo, Alexandra Ott Müller, Daniel Palmer, Stephen Ramwell, Guenther Sablattinig, Ibrahim Sesay, Dmitry Titov and Renate Winter. The following UNODC staff members contributed to the meeting: Aldo Lale-Demoz, Valérie Lebaux, George Puthuppally, Ulrich Garms, Alexandra Martins, Anna Giudice and Giulia Melotti.

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UNODC is grateful to the following individuals for their comments on and contributions to the drafting of the Handbook: Renate Winter, Stephan Husy, Naïma Müller, Imma Guerras-Delgado, Alexandra Ott Müller, Merel Molenkamp, Irina Scheitz, Jessika Soors, Abdoul Kassim Fomba, Rose Marie Kerkor, James Cooke, Tim Molyneux, Aimee Comrie, Panagiotis Papadimitriou, Anna Giudice, Dayan Farias Picon, Rouzbeh Moradi and Rohan Sinha.

UNODC is most grateful to the Governments of Austria, Canada, Denmark and Switzerland for providing the funding to enable the development, translation into Arabic and French, reproduction and dissemination of this Handbook.





## Introduction

In the past few years, the international community has been increasingly confronted with the recruitment and exploitation of children by terrorist and violent extremist groups. Numerous reports have shed some light on the extent of this disturbing phenomenon.

Estimates indicate that, since 2009, about 8,000 children have been recruited and used by Boko Haram in Nigeria.<sup>1</sup> According to a report of the United Nations High Commissioner for Human Rights, some boys have been forced to attack their own families to demonstrate loyalty to Boko Haram, while girls have been forced to marry, clean, cook and carry equipment and weapons. The Office of the United Nations High Commissioner for Human Rights received consistent reports that some boys and girls were increasingly being used as human shields and to detonate bombs. In May 2015, for example, a girl about 12 years old was used to detonate a bomb at a bus station in Damaturu, Yobe State, killing seven people. Similar incidents were reported in Cameroon and the Niger. During attacks by Boko Haram, abducted boys were used to identify those who refused to join the group, as well as unmarried women and girls.<sup>2</sup>

In 2015 alone, the United Nations verified 274 cases of children having been recruited by Islamic State in Iraq and the Levant (ISIL) in the Syrian Arab Republic. The United Nations verified the existence of centres in rural Aleppo, Dayr al-Zawr and rural Raqqah that provided military training to at least 124 boys between 10 and 15 years of age. Verification of the use of children as foreign fighters has increased significantly, with 18 cases involving children as young as 7 years of age. The use of children as child executioners was reported and appeared in video footage. In Iraq, in two incidents in June and September 2015, more than 1,000 children were reportedly abducted by ISIL from Mosul district.<sup>3</sup> While the lack of access to areas in conflict undercuts the possibility to gather precise data, it is known that recruited children were used to act as spies and scouts, to transport military supplies and equipment, to conduct patrols, to man checkpoints, to videotape attacks for propaganda purposes and to plant explosive devices, as well as to actively engage in attacks or combat situations.<sup>4</sup>

These figures are likely to be significant underestimates because of the limited opportunities to gain access and monitor violations against children. Child recruitment is also perpetrated by Al-Shabaab in Kenya and Somalia,<sup>5</sup> by the Movement for Unity and Jihad in West Africa, Ansar Eddine and Al-Qaida in the Islamic Maghreb in Mali and neighbouring countries and by the Abu Sayyaf Group in the Philippines,<sup>6</sup> to name a few.

Owing to the expanding reach and propaganda of terrorist and violent extremist groups, child recruitment and exploitation are in no way limited to conflict-ridden areas. More and more children are travelling from their State of residence to areas controlled by terrorist and violent extremist groups, in order to join them. They may travel with their families or by themselves, and obtaining comprehensive data on their participation in hostilities is often difficult. In the case of ISIL, for instance, information often becomes available only after the children's death, when they are eulogized as martyrs and their country of origin is revealed.<sup>7</sup> Data collected for more than one year, during the period 2015-2016, concerned 89 children who died in hostilities. They included not only nationals of Iraq and the Syrian Arab Republic, but also nationals of Australia, France, Lebanon, Libya, Morocco, Nigeria, Saudi Arabia,

<sup>1</sup> Report of the Secretary-General on children and armed conflict in Nigeria (S/2017/304), paras. 29 and 30.

<sup>2</sup> Report of the United Nations High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries (A/HRC/30/67), para. 44.

<sup>3</sup> Children and armed conflict: report of the Secretary-General (A/70/836-S/2016/360), paras. 65, 149 and 150.

<sup>4</sup> Report of the Secretary-General on children and armed conflict in Iraq (S/2015/852), para. 29.

<sup>5</sup> A/70/836-S/2016/360, para. 118.

<sup>6</sup> Report of the Secretary-General on children and armed conflict in the Philippines (S/2017/294).

<sup>7</sup> Mia Bloom, John Horgan and Charlie Winter, "Depictions of children and youth in the Islamic State's martyrdom propaganda 2015-2016", *CTC Sentinel* (February 2016).

the Sudan, Tajikistan, Tunisia, the United Kingdom of Great Britain and Northern Ireland, and Yemen. These figures do not include children taken to ISIL territory by their families.

Finally, children may also be recruited to support the groups, or even carry out attacks, in countries that are not experiencing armed conflict.

### A priority on the international agenda

Children who have been recruited and exploited by terrorist and violent extremist groups are victims of violence at multiple levels. They are often victims of extreme violence during their association with the group; which includes ferocious recruitment methods, enslavement, sexual exploitation, exposure to constant fear, indoctrination and psychological pressure. They are often injured or killed in combat. At the same time, because of their young age and psychological malleability, such children may become particularly dangerous instruments of the groups that recruited them, as the children may be used for committing criminal offences, including, in certain cases, acts of terrorism, war crimes or crimes against humanity.

Regardless of the variations of the phenomenon, according to the international legal framework, the recruitment and exploitation of children by terrorist and violent extremist groups are to be considered a serious form of violence against children.

While the nature and gravity of violence against those children may vary from case to case, the short- and long-term implications for both children and society as a whole are severe. The consequences of violence can be devastating. Above all, it can result in early death. But even those children who survive that ordeal must cope with terrible physical and emotional scars. Indeed, violence places at risk not only their health, but also their ability to learn and grow into adults who can create sound families and communities. Furthermore, those children's association with the groups entails stigmatization and a high risk of becoming victims of violence perpetrated by communities, law enforcement and military forces and others following the children's return, demobilization or apprehension.

This phenomenon and its consequences have become a key concern to States and society as a whole and the need to address the phenomenon through coordinated efforts has been internationally recognized as a priority. States have the primary responsibility to take all measures to prevent and counter terrorism. At the same time, States hold the primary responsibility for protecting children from violence, including serious forms of violence such as recruitment and exploitation by terrorist and violent extremist groups.

The need to promote the safety of children is recognized in the Sustainable Development Agenda as a precondition of global development. Target 16.2 of the Sustainable Development Goals (General Assembly resolution 70/1), which calls for putting an end to all forms of violence against children, including the abuse and exploitation of and trafficking in children, serves as a reminder of the crucial role played by children in the creation of peace, justice and robust institutions.

## A. Challenges

### Old and new challenges

The use of children in hostilities is not a new phenomenon. Nearly 20 years ago, the report of the expert of the Secretary-General on the impact of armed conflict on children, known as the Machel Report,<sup>8</sup> brought to international attention the extent and consequences of recruitment and use of children by armed forces and armed groups. Even today, the recruitment of children largely takes place in situations of conflict, though terrorist and violent extremist groups are by no means the only ones perpetrating such grave violations against children.

The involvement of terrorist and violent extremist groups entails numerous new challenges for States. First, prevention has become particularly complex, as evidenced by the innovative methods of propaganda and recruitment employed specifically by such groups. This is a primary concern to efforts to effectively tackle a security threat while, at the same time, limiting the victimization of such children.

Secondly, because of their association with terrorism-related activities, which are classified in international and national law as serious offences, an increasing number of children come into contact with national authorities, in particular with justice authorities. In this context, the questions range from the applicable international legal framework to the legal status of the children and the competent authorities and procedures to deal with them. Such children are commonly regarded as a security risk and subsequently exposed to further violations of their rights.

Finally, there is a lack of understanding regarding the rehabilitation and reintegration measures that can be effective in addressing the particular stigma associated with terrorism, while taking into account the extreme violence that has always characterized recruitment and exploitation of children. Also in this context, a key challenge is how to build upon the lessons learned from the reintegration of children who have been used in conflict situations and also address the specific issues related to terrorism.

The underlying concern, which is at the core of the present publication, is how States can preserve public safety and, at the same time, effectively protect the rights of the child.

### The role of the justice system

In order to tackle the very complex and multifaceted phenomenon of children recruited and exploited by terrorist and violent extremist groups, it is essential to count on the coordinated efforts of a variety of actors and institutions, from different systems. Even if the justice system is not the only system that has responsibilities in protecting children, its role is crucial.

The justice system is not only essential for ending impunity and ensuring accountability mechanisms, but also instrumental in promoting preventive measures to counter violence against children. While it is important to note that not all children recruited and exploited by terrorist and violent extremist groups are in contact with the justice system, often actors working within that system are the first ones to have contact with those children. For this reason, they have an undeniable responsibility to protect, respect and fulfil children's rights, to prevent revictimization and to take action to ensure that other systems (i.e. child protection, health and education) provide suitable responses.

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<sup>8</sup> Note by the Secretary-General transmitting the report on the impact of armed conflict on children (A/51/306 and Add.1).

## B. The Handbook

### Objective

This Handbook was developed with a view to providing coherent and consistent guidance to national authorities on the treatment of children recruited and exploited by terrorist and violent extremist groups, with emphasis on the role of the justice system.

### The role of the United Nations Office on Drugs and Crime

Based on its long-standing expertise in the areas of violence against children and counter-terrorism and prompted by an increasing number of requests for technical assistance, the United Nations Office on Drugs and Crime (UNODC) has been supporting Member States in their efforts to provide effective responses to the complex challenges associated with children recruited and exploited by terrorist and violent extremist groups.

The work of UNODC in the areas of violence against children and counter-terrorism has been aimed at ensuring that children recruited and exploited by terrorist and violent extremist groups are better protected from violence and are treated in accordance with international law. In particular, UNODC has made efforts to strengthen the capacity of justice systems to achieve this aim, also in cooperation with relevant institutions and actors from other systems. It recognizes that it is the duty of States to protect members of society, in particular children, from the threats associated with terrorism and violent extremism, in accordance with international law, and standards and norms relating to child rights.

UNODC has the mandate to support Member States in ensuring that children are better served and protected by justice systems.<sup>9</sup> UNODC aims to ensure the full application of international standards and norms regarding children in contact with the justice system, whether as alleged offenders, victims or witnesses. In line with the 2008 guidance note of the Secretary-General on the United Nations approach to justice for children,<sup>10</sup> UNODC works to ensure that the protection of children is integrated in broader rule of law reform and that children have access to fair, transparent and child-sensitive justice systems through which their rights can be enforced and protected.

In addition, with the adoption by the General Assembly of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (resolution 69/194, annex), UNODC has received the mandate to assist Member States in implementing measures aimed at preventing and responding to violence against children in the field of crime prevention and criminal justice. In particular, it is stated in the Model Strategies and Practical Measures that the risk of violence associated with trafficking in children and various forms of exploitation by criminal groups should be addressed by specific prevention measures, including measures to prevent the recruitment, use and victimization of children by criminal groups, terrorist entities or violent extremist groups (Assembly resolution 69/194, annex, para. 15 (a)).

In the United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288), UNODC is mandated to provide to States, upon request, assistance in developing and maintaining effective and rule of law-based criminal justice systems. In particular, in its most recent resolution on the United Nations Global Counter-Terrorism Strategy Review (resolution 70/291), the Assembly

<sup>9</sup> The mandate and role of UNODC in providing assistance in the area of justice for children has been reaffirmed throughout the years in resolutions of the General Assembly (in particular, resolutions 62/158, 63/241, 65/213 and 69/194), the Economic and Social Council (in particular, resolutions 2007/23 and 2009/26) and the Human Rights Council (in particular, resolutions 7/29, 10/2 and 18/12).

<sup>10</sup> Available at [www.unodc.org/](http://www.unodc.org/).

reiterated that, given their potential status as victims of terrorism and of other violations of international law, every child alleged as, accused of or recognized as having infringed the law, as well as child victims and witnesses of crimes, should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child<sup>11</sup> and urged Member States to take relevant measures to effectively reintegrate children formerly associated with armed groups, including terrorist groups. Moreover, the Plan of Action to Prevent Violent Extremism<sup>12</sup> highlights the importance of preventing the radicalization of young persons, including children, and their recruitment by violent extremist groups, including terrorist groups. In the Plan of Action, (para. 52 (f)), the Secretary-General recommended that Member States ensure that a portion of all funds dedicated to addressing violent extremism are committed to projects that address young people's specific needs.

The Economic and Social Council, in its resolution 2016/18 on mainstreaming holistic approaches in youth crime prevention requested UNODC, in view of its specific mandates in crime prevention and criminal justice and in terrorism prevention, to continue its work on the prevention of the recruitment and exploitation of children and youth by any violent criminal group or terrorist group. The Council, in its resolution 2017/17, recommended to the General Assembly the adoption of a draft resolution on technical assistance for implementing the international conventions and protocols related to counter-terrorism. In that draft resolution, the Assembly would request UNODC, through its Global Programme on Violence against Children, to continue to support requesting Member States, in accordance with relevant national legislation, in ensuring that children alleged to have, accused of having or recognized as having infringed the law, particularly those who are deprived of their liberty, as well as child victims and witnesses of crime, are treated in a manner that observes their rights and respects their dignity in accordance with applicable international law, in particular according to the obligations under the Convention on the Rights of the Child, and that relevant measures are taken to effectively reintegrate children formerly associated with armed groups and terrorist groups.

## Multidisciplinary field of work

The development of the present Handbook required multidisciplinary expertise to tackle issues ranging from counter-terrorism to child rights and violence against children, as well as an understanding of the complex international legal framework that should be taken into account.

The elaboration of the Handbook was informed by three key objectives: (a) preventing the recruitment of children by terrorist and violent extremist groups; (b) identifying effective justice responses to children recruited and exploited by such groups, whether they are in contact with the justice system as victims, witnesses or alleged offenders; and (c) promoting the rehabilitation and reintegration of those children.

The analysis and case studies presented are based on the following sources:

- International legal instruments that are relevant to the issue of children recruited and exploited by terrorist and violent extremist groups. These are to be found mainly in: international human rights law; international instruments related to terrorism; international humanitarian law; international criminal law; and international instruments related to organized crime;
- National legislation of selected countries relevant to child rights, including the juvenile justice framework, as well as to counter-terrorism, and their interaction;

<sup>11</sup> United Nations, *Treaty Series*, vol. 1577, No. 27531.

<sup>12</sup> A/70/674.

- Promising policies and practices related to prevention; justice measures for child victims; justice measures for children alleged to have committed offences; reintegration programmes; and monitoring and evaluation mechanisms.

The validation of the information collected and of the UNODC approach was pursued through two consultation processes. The first one took place in December 2016, when an expert group meeting was held in Vienna and a consultation was carried out with over 30 experts in the areas of counter-terrorism and child rights, from all regions. The experts contributed views and comments on three discussion papers outlining the key aspects to be addressed in the Handbook. A second consultation process with selected experts followed the expert group meeting.

This Handbook targets primarily law- and policymakers and is intended to provide overall guidance on the implementation of the multilayered international legal framework and on the design of coherent, comprehensive and effective policies for the prevention and treatment of children recruited and exploited by terrorist and violent extremist groups. At the same time, the Handbook is addressed to practitioners dealing directly with those children, mainly justice professionals, not only in the areas of child rights and counter-terrorism, but also in the areas of law enforcement and child protection, as well as civil society actors.

## Structure of the Handbook

The Handbook contains four chapters. Chapters I-IV combine legal guidance on the relevant international legal framework with operational guidance aimed at identifying effective approaches in the different areas of intervention, overcoming practical challenges and fostering the identification and promotion of lessons learned. The case studies featured in each chapter are particularly relevant, as they provide further insight on the adaptation of general recommendations to specific national and local contexts.

Chapter I is on the prevention of child recruitment by terrorist and violent extremist groups. Following an analysis of the key motivations and methods of the groups to recruit children, the chapter focuses on the need to design and implement comprehensive prevention measures aimed at addressing violence against children in general, recruitment in particular and the role of the justice systems in such policies.

Chapter II focuses on children recruited and exploited by terrorist and violent extremist groups, in particular their treatment as victims. The chapter deals with the recognition of their status as victims; safeguards aimed at fostering participation of children in criminal proceedings while preserving their safety; and their right to reparations.

The subject of chapter III is the treatment of children who have been recruited and exploited by terrorist and violent extremist groups and who come in contact with the justice system for allegedly having committed terrorism-related offences. The chapter focuses on issues regarding the legal status of those children, the competent authorities and procedures to deal with them, and minimum guarantees that should inform all stages of justice proceedings.

The final chapter addresses the need to support the rehabilitation and reintegration of children in different contexts. Taking into account the diversity of the phenomenon, the chapter provides overall guidance on child-sensitive reintegration measures, focusing on issues such as the demobilization and release of children; cross-border situations; and the reintegration of children who come in contact with the justice system.

## C. Terminology

The guidance provided by the present publication touches upon politically sensitive issues often associated with definitional issues that are especially controversial. It is therefore necessary to indicate at the outset what is meant by certain terms that repeatedly appear in the publication. For the purposes of this publication:

(a) “Children” means human beings under the age of 18 years, in accordance with article 1 of the Convention on the Rights of the Child. Policy documents in the area of prevention of violent extremism often deal with “youth”. The present publication, given its focus on the role of the justice system, focuses on the treatment of “children”, which is a term with a precise legal meaning and related legal framework in international law and most Member States’ legislation;

(b) “Recruitment” refers to compulsory, forced and voluntary conscription or enlistment of children into any kind of armed force, armed group or terrorist or violent extremist group;

(c) “Exploitation” of a child 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 or mental health, development and education. Exploitation includes, but is not limited to, the exploitation of the prostitution of others or other forms of 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.

In the United Nations Global Counter-Terrorism Strategy Review (General Assembly resolution 70/291), there are references to “terrorism and violent extremism as and when conducive to terrorism” or “terrorism and violent extremism conducive to terrorism”. In line with that resolution, the terms “violent extremist” and “violent extremism” in this Handbook should always be regarded as referring to “violent extremism as and when conducive to terrorism”.

In the Plan of Action to Prevent Violent Extremism, it is stated right at the outset that the Plan of Action considers and addresses violent extremism “as, and when, conducive to terrorism”. Violent extremism is a diverse phenomenon, without clear definition. It is neither new nor exclusive to any region, nationality or system of belief. Nevertheless, in recent years, terrorist groups such as Islamic State in Iraq and the Levant (ISIL), Al-Qaida and Boko Haram have “shaped our image of violent extremism and the debate on how to address this threat”<sup>13</sup>

There is currently no universally accepted, comprehensive definition of “terrorism” or “terrorist group”. As noted in the Plan of Action, definitions of “terrorism” and “violent extremism” are the prerogative of Member States and must be consistent with their obligations under international law, in particular international human rights law. Just as the General Assembly has taken a practical approach to counter-terrorism through the adoption by consensus of the United Nations Global Counter-Terrorism Strategy, the Plan of Action pursues a practical approach to preventing violent extremism, without venturing to address questions of definition.<sup>14</sup>

In the present Handbook, the term “terrorist group” encompasses at least the entities designated by the Security Council on the ISIL (Da’esh) and Al-Qaida Sanctions List and the Taliban sanctions list, as well as Al-Shabaab. It may also include other groups that resort to acts proscribed by the universal counter-terrorism conventions and protocols, as well as groups designated as terrorist groups at the national or regional level.

<sup>13</sup> A/70/674, para. 2.

<sup>14</sup> *Ibid.*, para. 5.

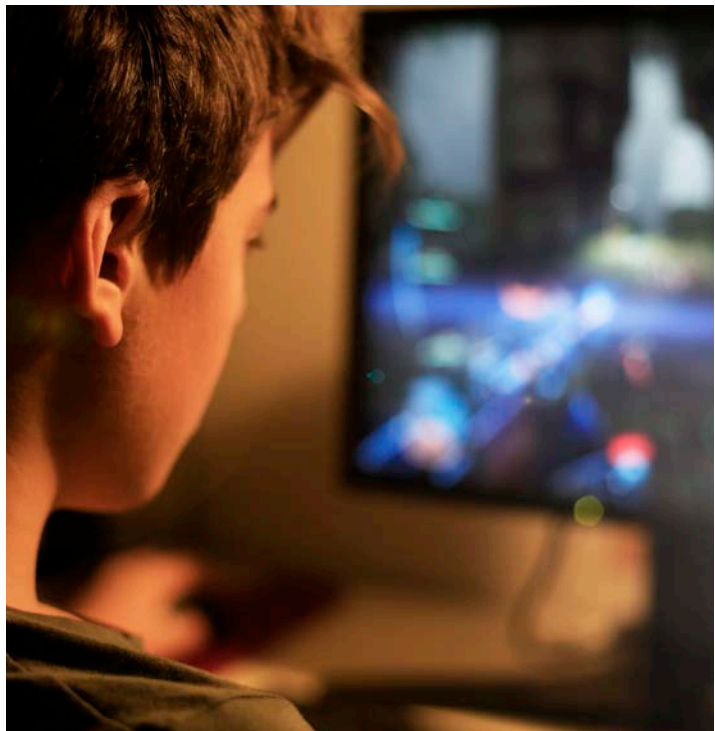






## Chapter 1

Strategies for preventing recruitment of children by terrorist and violent extremist groups



## A. Recruitment and exploitation of children

Recruitment of children by terrorist and violent extremist groups is taking place in countries throughout the world, in situations of armed conflict and in the absence of armed conflict. Regardless of the conditions in which it takes place, the recruitment usually leads to exploitation and victimization of children.

While the recruitment of children by armed groups has a long history, the recruitment of children by terrorist and violent extremist groups is a more recent phenomenon and has undergone notable developments in the past decade. The section below presents an analysis of the reasons for and methods of child recruitment.

### 1. Why are children recruited?

The reasons for the recruitment of children by terrorist and violent extremist groups are complex and multifaceted, and they may vary depending on the situation. It also appears that children are not merely recruited alongside adults, but are specifically targeted, as the use of children provides various advantages to the groups.

#### Visibility and propaganda

Terrorist and violent extremist groups are prominently exploiting children to boost their visibility, notable examples being the propaganda of Boko Haram and ISIL. The analysis of a six-month data set of ISIL propaganda revealed a total of 254 events that included images of children; 38 per cent of the images were of children engaged in acts of violence or being exposed and normalized to violence. The images are used to shock the public and, at the same time, to show the power and ruthlessness of the group.<sup>15</sup>

#### Demography

The demographic shift in poor countries, in part due to the spread of HIV/AIDS, has led to an increase in the percentage of children vis-à-vis the overall population, making this age group most available for recruitment and abduction. For instance, in each of the countries affected by the Boko Haram crisis, children constitute over 50 per cent, and in certain cases 60 per cent, of the overall population.<sup>16</sup>

#### Community expectations

There are circumstances in which armed groups, including terrorist or violent extremist groups, are perceived by a community as a defence against the threat of violence from a different group or from the State. In such circumstances, family and communities may expect and push children to join the ranks of the group.<sup>17</sup> However, where a non-State armed group is unpopular among the population or the group does not have wide geographical support, adults may be difficult to recruit to the cause. In such cases, recruiting children proves easier for the groups and guarantees the possibility of continuing to expand their power base despite the decreasing support.<sup>18</sup>

<sup>15</sup> Quilliam Foundation, *The Children of the Islamic State* (2016), p. 18.

<sup>16</sup> United Nations Department of Economic and Social Affairs, Population Division, *World Population Prospects: The 2017 Revision—Key Findings and Advance Tables*, (ESA/P/WP/248).

<sup>17</sup> Office of the Special Representative of the Secretary-General on Children in Armed Conflict, “Root causes for child recruitment”, available at <https://childrenandarmedconflict.un.org/effects-of-conflict/root-causes-of-child-soldiering/>.

<sup>18</sup> P. W. Singer, *Children at War* (Berkeley and Los Angeles, University of California Press, 2006), p. 54.

### Economic considerations and effectiveness

When recruiting children, terrorist and violent extremist groups, as well as armed groups in general, benefit from notable economic advantages. Whether they are used in support roles or as combatants, children are usually paid less (if at all) and require less food to survive. In parallel, the evolution of warfare and in particular the prevalence of small arms have reduced the effectiveness gap between a child and an adult. Not only is the trade in small arms poorly regulated, but the use of small arms is especially easy, making them more accessible to children.<sup>19</sup> While power and control over weapons used to be in the hands of older members of society, children are no longer constrained by the age groupings that limited who could participate in warfare.<sup>20</sup> Accordingly, children remain less expensive than adult combatants, but not necessarily less effective when used to carry out violence.

### Control

Children are more easily intimidated and far easier to control, both physically and mentally, than adults. Children are more inclined to quickly show loyalty to authority figures and are especially susceptible to following beliefs and behaviours of those they love and respect, an element that is especially relevant when families are involved in the recruitment process. The groups, who strive to ensure their future survival, may see the use of children as an “investment in the future generation”.<sup>21</sup>

### Tactical advantages

Children, particularly girls, are increasingly being used as spies, for delivering messages, carrying materials and undertaking suicide attacks.<sup>22</sup> The reasons for this are often pragmatic: children have less understanding of the risk they face and therefore display less anxiety. They are also more likely to do as they are ordered, and they generally benefit from the advantage of arousing less suspicion, which can be a crucial asset, for instance in getting closer to targets.

## 2. How are children recruited?

While terrorist and violent extremist groups continue to recruit children according to methods that have been used by armed groups recruiting child soldiers, they have also been increasingly turning to innovative and refined techniques. The practices employed may vary according to a number of factors, including the situation of the group and that of the child.

Forced recruitment continues to be prevalent. However, some children may appear to “voluntarily” join terrorist and violent extremist groups. The Special Representative of the Secretary-General for Children and Armed Conflict has made it clear that recruitment processes are often characterized by elements of both compulsion and voluntariness,<sup>23</sup> rendering such distinctions extremely difficult. Recruitment should never be regarded as truly voluntary but is dictated by a number of factors, such as trying to survive, or escaping poverty, insecurity, marginalization or discrimination. The International

<sup>19</sup> *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World* (United Nations publication E.09.XX.2), p. 9. [https://www.unicef.org/publications/index\\_49985.html](https://www.unicef.org/publications/index_49985.html)

<sup>20</sup> Singer, *Children at War*, p. 49.

<sup>21</sup> *The Children of the Islamic State*, p. 27.

<sup>22</sup> “Children and armed conflict: report of the Secretary-General” (A/70/836-S/2016/360); United States Institute of Peace, “Charting a new course, thought for action kit: women preventing violent extremism” (Washington, D. C., 2015); Naureen Chowdhury Fink, Sara Zeigerand and Rafia Bhula, eds., *A Man’s World? Exploring the Roles of Women in Countering Terrorism and Violent Extremism* (Abu Dhabi, 2016).

<sup>23</sup> *Submission of the Observations of the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict pursuant to Rule 103 of the Rules of Procedure and Evidence*, judicial document No. ICC-01/04-01/06-1229 (2008), annex A, para. 13.

Criminal Court has agreed that the line between voluntary and forced recruitment is not only legally irrelevant but practically superficial in the context of children in armed conflict.<sup>24</sup>

### Forcible recruitment

Terrorist and violent extremist groups primarily engage in forced and often brutal recruitment of large numbers of children. Children may be kidnapped, abducted, coerced through threats or purchased from traffickers. Children living in poverty, without parental care, and street children are particularly vulnerable to forcible recruitment campaigns.

### Recruitment through ties between the group and community leadership

Sometimes communities support an armed group listed as a terrorist group because the group is perceived as defending the community against threats from other armed groups; in such a situation, families and community leaders may encourage children to join the armed group.

### Economic enticement

In some instances, the groups may offer payment, food, accommodation and protection, encouraging loyalty.

### Transnational recruitment

The transnational nature of terrorism and violent extremism has favoured the emergence of transnational recruitment and the involvement of children in the phenomenon of foreign terrorist fighters.<sup>25</sup> Some children crossing borders to join a terrorist group do so on their own, some travel with their parents or grown-up relatives, while others are forcefully abducted and subsequently cross borders as part of their engagement in violent extremist groups.

Some groups have devised comprehensive recruitment strategies that include a variety of recruitment methods that are applied in different situations.

### Use of schools

Certain terrorist and violent extremist groups enjoy territorial control over specific areas. Their authority may extend to schools, which then are used as a forum in which children are indoctrinated, encouraging “buy-in” and identification with the group.

### Propaganda

Groups develop precise propaganda strategies aimed at highlighting the advantages of joining the group or at triggering empathy. Joining a group may be portrayed as offering status and prestige, smart uniforms and weapons. The experience is shown as an opportunity for power, especially to children without educational opportunities or employment. ISIL also often focuses on “victimhood”, using images that show the “crimes of the enemy”, with a view to triggering anger and eliciting empathy with those injured or killed and creating a desire to carry out revenge.<sup>26</sup> Groups also use communication material to spread their message. Cartoons and computer games and other interactive media appearing

<sup>24</sup> International Criminal Court case of *The Prosecutor v. Thomas Lubanga Dyilo*, judgment of 14 March 2012, para. 612.

<sup>25</sup> The Security Council, in its resolution 2178 (2014), decided that all States should ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and penalize their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories 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.

<sup>26</sup> Charlie Winter, *The Virtual “Caliphate”: Understanding Islamic State’s Propaganda Strategy*, (London, Quilliam Foundation, 2015).

on the Internet have been designed to appeal to children in particular.<sup>27</sup> Often colourful content is integrated within material that glorifies terrorist acts, including suicide attacks.

### Online recruitment

The use of online communication is a relatively new means of disseminating terrorist and violent extremist propaganda. It expands the reach of the group's message and gets through to potential recruits throughout the world. As active Internet users, children are at particular risk. Specific websites advertise the existence of the groups and, in many instances, multiple sites in different languages include different messages tailored to specific audiences.<sup>28</sup> Social media platforms, including email, chat rooms, e-groups, message boards, video recordings and applications are especially popular recruitment tools<sup>29</sup> that can also facilitate tailored approaches. One of the methods, which can be defined as "grooming", is based on the perpetrator learning about the individual's interests in order to tailor the approach and build up a relationship of trust. A second technique replicates "targeted advertising": by tracking the online behaviour of Internet users, a group can identify those vulnerable to its propaganda and tailor the narrative to suit its target audience.<sup>30</sup>

## 3. Roles assumed by children

When children are recruited by terrorist or violent extremist groups, they carry out a variety of roles within or for the groups. Crucially, the manner in which a child is recruited does not necessarily determine the type of role he or she will play, which can vary considerably depending on the situation and on the personal circumstances of the child. What remains persistent is the causal link between the recruitment process and the subsequent exploitation of the child, which can assume various forms.

Some children are used in hostilities such as front-line fighting, carrying out executions of hostages or prisoners or carrying out terrorist attacks, including as suicide bombers. Others have support roles as messengers, porters, smugglers or spies, or they are, in effect, treated as slaves and systematically subjected to sexual abuse and exploitation.

Currently, the use of children to carry out terrorist attacks is garnering international attention, both in situations of conflict and in times of peace. In 2015, a 14-year-old British national and an 18-year-old Australian national were arrested, tried and sentenced in their respective home countries for planning a terrorist attack on Anzac Day (a public holiday in countries such as Australia and New Zealand).

<sup>27</sup> Gabriel Weimann, "Online terrorists prey on the vulnerable: websites target marginalized women and youth, recruiting for suicide missions", 5 March 2008. Available at <http://yaleglobal.yale.edu/content/online-terrorists-prey-vulnerable>.

<sup>28</sup> Thomas Koruth Samuel, "The lure of youth into terrorism", in *SEARCCCT Selection of Articles*, vol. 2 (Kuala Lumpur, South-East Asia Regional Centre for Counter-Terrorism, 2011).

<sup>29</sup> Kate Ferguson, "Countering violent extremism through media and communication strategies: a review evidence" (2016), p. 15.

<sup>30</sup> Gabriel Weimann, "The emerging role of social media in the recruitment of foreign fighters", in *Foreign Fighters under International Law and Beyond*, Andrea de Guttry, Francesca Capone, Christophe Paulussen, eds. (The Hague, T.M.C. Asser Press, 2016), p. 83.

### Recruitment patterns

The following recruitment patterns are not specific to online recruitment, but they can be effectively replicated in that context (note that considerable variance exists within the proposed models):<sup>a</sup>

(a) *"The Net"*: violent extremist and terrorist groups disseminate undifferentiated propaganda, such as video clips or messages, to a target population deemed homogeneous and receptive to the propaganda;

(b) *"The funnel"*: entails an incremental approach, to target specific individuals considered ready for recruitment, using psychological techniques to increase commitment and dedication. Even targeted children who resist complete recruitment may develop positive outlooks on the group's activities;

(c) *"Infection"*: when the target population is difficult to reach, an "agent" can be inserted to pursue recruitment from within, employing direct and personal appeals. The social bonds between the recruiter and the targets may be strengthened by appealing to grievances, such as marginalization or social frustration.

<sup>a</sup> Scott Gerwehr and Sara Daly, "Al-Qaida: terrorist selection and recruitment" (Santa Monica, California, RAND Corporation, 2006), pp. 76-80.

A significant number of ISIL operations directly involve children. Children are recruited to carry out suicide bombings. Boko Haram relies heavily on the use of children as suicide bombers—in a 2017 study conducted by the United Nations Children’s Fund (UNICEF) study, it was called a defining feature of that conflict.<sup>31</sup>

Boko Haram has recruited and used boys and girls for active hostilities, according to testimonies received by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Some boys were forced to attack their own families to demonstrate loyalty to Boko Haram, while girls were forced to marry, clean, cook and carry equipment and weapons. OHCHR received consistent reports that boys and girls were increasingly being used as human shields and to detonate bombs. In May 2015, for example, a girl who was about 12 years old was used to detonate a bomb at a bus station in Damaturu, Yobe State, killing seven people. Similar incidents were reported in Cameroon and the Niger. During attacks by Boko Haram, abducted boys were used to identify those who refused to join the group, as well as unmarried women and girls.<sup>32</sup>

#### 4. Recruitment and exploitation of girls

While all children can become victims of recruitment and exploitation by terrorist or violent extremist groups, the scale of recruitment of girls in the contemporary context of terrorism has become a matter of particular concern. In addition, the paths leading girls to such groups often remain invisible. It is therefore of crucial importance to identify factors contributing to the recruitment of girls, different recruitment patterns and preferred forms of exploitation.

There are a number of reasons why girls are favoured targets of recruitment. One reason is visibility: attacks by girls, especially young girls, have a greater propaganda value, as they tend to garner more media attention than attacks by their male counterparts. As terrorist groups’ communication strategies show, the recruitment of girls contributes to the “normalization” of the groups, increases the groups’ attractiveness for future recruits and demonstrates the groups’ State-building capacity. Another reason is effectiveness, as girls do not conform to traditional security profiles and they tend to raise less suspicion and thus have an increased likelihood of successfully carrying out attacks or support roles.<sup>33</sup> Moreover, different “push factors” and “pull factors” may apply to girls. Girls may be induced to “fall in love” with a member of a group through the social media; or they may seek an escape from structural violence or family pressure at home by getting married to a terrorist fighter.

In addition to using the usual recruitment methods, organizations such as ISIL appear to be directing propaganda messages at women and girls, whom they address as “sisters of the Islamic State”, writing manifestos and publications for them and promoting women’s voices within recruitment strategies.<sup>34</sup> There are also dedicated online chat boards and messages for and by women involved in recruitment processes.<sup>35</sup> Girls who have been sexually abused by armed forces or members of a terrorist or violent extremist group may feel that they have no other choice and that they have been dishonoured and their reputation has been ruined and, for those reasons, they cannot go home.

<sup>31</sup> UNICEF report entitled “Silent shame: bringing out the voices of children caught in the Lake Chad crisis”. Available at [www.unicef.org/](http://www.unicef.org/).

<sup>32</sup> Report of the United Nations High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries (A/HRC/30/67), para. 44.

<sup>33</sup> Mia Bloom, “Bombshells: women and terror”, *Gender Issues*, vol. 28, Nos. 1 and 2 (2011), pp.1-21.

<sup>34</sup> Erin Saltman and Melanie Smith, “Till martyrdom do us part: gender and the ISIS phenomenon” (London, Institute for Strategic Dialogue, 2011).

<sup>35</sup> Weimann, “Online terrorists prey on the vulnerable”.

Contrary to general belief, girls are also increasingly being exploited to carry out active roles. One notable example is the increased exploitation of girls in suicide attacks;<sup>36</sup> some reports indicate that girls accounted for three quarters of suicide attacks carried out by children for Boko Haram between January 2014 and February 2016.<sup>37</sup> In addition, terrorist and violent extremist groups continue to use the traditional forms of violence perpetrated against girls in situations of conflict. In some cases, the majority of girls are subjected to sexual abuse or slavery or are sold as sexual slaves.<sup>38</sup> Sexual violence as a terrorist tactic has been explicitly condemned in Security Council resolutions in which the Council has expressed deep concerns about the fact that acts of sexual and gender-based violence are used as an instrument to increase the terrorist groups' power through supporting financing, recruitment and the destruction of communities.



### Good practices involving women and countering violent extremism

The Global Counterterrorism Forum issued a non-binding document on good practices that focused on gender aspects in the context of countering violent extremism,<sup>a</sup> in an effort to counter the fact that gender mainstreaming is often overlooked despite its importance, given the significant roles of women and girls in this area.

One of the recommendations of the Forum was to ensure that efforts to counter violent extremism contribute to reducing women's and girls' involvement in violent extremism, including by identifying gender dynamics in radicalization leading to terrorism and preventing such radicalization among women and girls.

<sup>a</sup> "Good Practices on Women and Countering Violent Extremism". Available at [www.thegctf.org/](http://www.thegctf.org/).



### Checklist for practitioners: key elements

- Terrorist and violent extremist groups target children for recruitment because children's involvement brings a number of comparative advantages: for example, children cost less, they can be strategically effective and they have a special propaganda value.
- Children are recruited forcibly, through family members and community leaders, through propaganda, transnationally, on the Internet, through schools or as a result of pressure from their families and/or communities. Regardless of the method used, however, no recruitment process can ever be regarded as truly voluntary.
- Children are exploited to perform support roles and active roles as fighters in armed conflict or perpetrators of terrorist attacks. All these roles generally entail being subjected to various forms of violence.
- Girls are increasingly being recruited, and their trajectories (i.e. the paths leading to their recruitment) may be different from those of boys in terms of the recruitment processes, the forms of exploitation and the advantages perceived by the recruiting groups.

<sup>36</sup> "Charting a new course: thought for action kit"; Fink, Zeiger and Bhula, *A Man's World?*

<sup>37</sup> UNICEF, "Beyond Chibok" (2016).

<sup>38</sup> Human Rights Watch, "Iraq: ISIS escapees describe systematic rape—Yezidis survivors in need of urgent care", 14 April 2015 (available at [www.hrw.org/](http://www.hrw.org/)); and United Nations Assistance Mission for Iraq and OHCHR, "Report on the protection of civilians in armed conflict in Iraq: 6 July-10 September 2014" (Baghdad, 2014).

## B. Adopting a holistic approach: preventing violence against children

The recruitment and use of children by terrorist and violent extremist groups constitute serious forms of violence against children. Exposure to violence is, in general, a predictor of impaired personal, intellectual and social development and even future involvement in criminal activity. Therefore, the consequences of violence include not only considerable harm to the individual child, but also high costs for society as a whole.

Although violence can take on many different forms, those forms are often interconnected. While specific phenomena, such as recruitment and exploitation of children, require tailored approaches, prevention measures can only be effective if they are rooted in a comprehensive strategy to prevent violence in general and if they can mobilize different State and non-State actors, including various types of professionals, civil society and community-based organizations.

The need for a comprehensive approach to preventing violence against children is also recognized in Goals 5, 8, 11, 16 and 17 of the Sustainable Development Goals, which, as mentioned in the Introduction, call for putting an end to, among other things, all forms of violence against children, in order to promote global development. Despite the efforts undertaken by different countries to address this phenomenon, violence still affects children everywhere in the world.

### 1. Prohibition of violence against children in the international legal framework

The international legal framework guarantees children broad protection from serious forms of violence, including recruitment and exploitation of children by terrorist and violent extremist groups. The present section outlines relevant legal provisions that define violence against children and the duty of States to take all necessary measure to protect children from violence.

#### *Convention on the Rights of the Child*

Article 19 of the Convention on the Rights of the Child provides a broad definition of “violence against children”, which, as underlined by the Committee on the Rights of the Child (the body of independent experts monitoring the implementation of the Convention by its States parties), includes both non-physical and non-intentional forms of harm.<sup>39</sup>

Accordingly, Governments are required to undertake all possible measures to prevent and prohibit violence against children.

The exploitation of children is addressed in article 32 of the Convention, which calls on States parties to recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. In article 34, States parties are called on to undertake to protect the child from all forms of sexual exploitation and sexual abuse and States parties are required to take all appropriate measures to prevent, among other things: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in unlawful sexual practices; and (c) the exploitative use of children in pornographic materials. However, the term exploitation is considered to be broader, as article 36 requires States parties to protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.

<sup>39</sup> General comment No. 13 (2011) on the right of the child to freedom from all forms of violence (*Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 41 (A/67/41)*, annex V).





### Convention on the Rights of the Child:<sup>a</sup> article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

<sup>a</sup>United Nations, *Treaty Series*, vol. 1577, No. 27531.

### *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,<sup>40</sup> links exploitation of children, which invariably constitutes a form of violence, directly to their recruitment and other acts of trafficking. In article 3 of the Trafficking in Persons Protocol, it is stated that exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs and that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation should be considered “trafficking in persons”.

When committed against adults, trafficking also requires the “means” element—the threat of use of force or of other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. The presence of this element is not required in the case of trafficking in children. However, more often than not, armed and terrorist groups use such methods to bring children under their control.

Since, according to the Trafficking in Persons Protocol, there is no requirement to establish the “means” element in the case of trafficking in children, the consent of the child is always considered irrelevant. Where there are indications of exploitation and trafficking involving a child, it is understood that the child victim was not free to make informed and clear choices regarding, for instance, any available opportunity to escape the trafficker or find other options. In article 9, States parties are required to adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, which leads to trafficking. And in article 6, each State party is required to take into account the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children.

<sup>40</sup> United Nations, *Treaty Series*, vol. 2237, No. 39574.

According to the Special Rapporteur on trafficking in persons, especially women and children,<sup>41</sup> Trafficking for any illicit purpose includes—but is not limited to—trafficking in adults and children for sexual purposes, for labour exploitation, for exploitative adoption and for participation in armed conflicts; trafficking in women, men and children for forced labour and other forms of exploitation, such as exploitation in criminal or illicit activities, or forced and organized begging; trafficking in women and girls for forced and servile marriages, sexual exploitation and forced labour, including domestic servitude; and trafficking in persons for the removal of organs. In certain regions, trafficked children, like trafficked adults, are often obliged or induced by their traffickers and exploiters to commit crimes.<sup>42</sup>

### *United Nations Global Counter-Terrorism Strategy*

While violence against children is generally not the object of the international legal framework related to countering terrorism, on the occasion of the fifth biennial review of the United Nations Global Counter-Terrorism Strategy (resolution 60/288), the General Assembly addressed this phenomenon in the framework of terrorism. In its resolution 70/291, the Assembly strongly condemned the systematic recruitment and use of children to perpetrate terrorist attacks, as well as the violations and abuses committed by terrorist groups against children, and noted that such violations and abuses may amount to war crimes.

### *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*

The General Assembly, in its resolution 69/194, strongly condemned all acts of violence against children, reaffirmed the duty of the State to protect children from all forms of violence in both public and private settings and adopted the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice. Part one of the Model Strategies and Practical Measures, annexed to that resolution, contains sections on ensuring the prohibition by law of all forms of violence against children and on implementing comprehensive prevention programmes. In the section on implementing comprehensive prevention programmes, it is stated that criminal justice agencies, working together with, as appropriate, child protection, social welfare, health and education agencies and civil society organizations, should develop effective violence prevention programmes as part of both broader crime prevention programmes and initiatives to build a protective environment for children.

## **2. Measures to prevent violence against children**

There are a number of challenges associated with the development and implementation of policies to protect children from violence. One of them is related to the fact that violence might be socially tolerated and, in some instances, it might be perceived as a private matter, which might lead to underreporting. Reporting of cases of violence can also be undermined by lack of trust towards public institutions and, in particular, first responders.

From the point of view of policymaking, initiatives to prevent violence are difficult to measure in terms of their impact, which may lead to less confidence in their effectiveness and fewer resources being allocated to them.

<sup>41</sup> A/HRC/29/38, para. 52.

<sup>42</sup> Ibid., para. 20.

Prevention of violence against children largely rests on primary interventions of support to the families and the communities, which favour positive parenting, social cohesion and healthy socialization processes, as well as appropriate education, welfare and public health policies. While in-depth appreciation of all these areas of intervention is beyond the scope of this Handbook, the present section outlines some measures that could be taken by the justice system to enhance its capacity to contribute to effectively preventing and responding to violence against children. (For a more detailed approach to strategies and practical measures to prevent violence against children, see the UNODC booklet entitled “Elimination of violence against children”).

### Prohibition by law of all forms of violence against children, with a view to countering cultural acceptance and insufficient reporting of such violence

While not all forms of violence necessarily require criminalization, clear prohibition of all forms of violence against children sets the boundaries and empowers authorities to respond effectively to this phenomenon. It also supports the mobilization of civil society, non-governmental organizations and communities in rejecting practices that entail violence. Recruitment and exploitation of children are especially serious forms of violence that require criminalization (for further analysis, see section C.2 of this chapter).

### Awareness-raising campaigns and media involvement, with a view to countering cultural acceptance of violence against children and punitive approaches

Promotion of child rights begins at the grass-roots level. Awareness-raising campaigns can pursue the twofold objective of educating the public on what constitutes violence against children and fostering a better understanding of child rights. They can also encourage the empowerment of children as right holders. In order to be effective, awareness-raising campaigns require the involvement of various actors, including educational institutions, non-governmental organizations and the private sector.

Involvement of the media is also essential, not only in terms of reaching a broad target audience, but also to ensure that children who are victims of violence are not exposed and stigmatized. The development of ethical guidelines for media outlets to allow for child-friendly coverage and protection of children’s privacy is an important component of prevention strategies.

### Establishing detection and reporting mechanisms, with a view to countering invisibility, punitive approaches and disconnected intervention

In order to improve detection and reporting of violence against children, child-friendly procedures and complaint and counselling mechanisms should be established. They should be easily accessible to children, as well as to their families and other support persons, and should include measures to protect against reprisal those who report such violence (especially children).

Reporting incidents of violence should be required for certain groups of professionals (in the health, education and welfare sectors) who are regularly in contact with children, and those



#### Key challenges

- Cultural acceptance of violence leading to underreporting
- Limited options available to children, or distrust in public institutions, contributing to making violence against children an “invisible phenomenon”
- Punitive approaches to children in vulnerable situations, such as criminalization of status offences, contributing to stigmatization rather than support
- Disconnected interventions
- Lack of financial and human resources
- Concerns over effectiveness and lack of monitoring of programmes

professionals, as well as law enforcement officers, should be trained to identify and recognize risk factors and address them in a child-friendly manner.

### Training of criminal justice professionals, with a view to countering punitive approaches and invisibility

Criminal justice professionals require specialized knowledge on the rights of children, expertise on violence against children and specific risks of secondary victimization within the justice system, risk factors and vulnerabilities, child-friendly attitudes and communication skills.

The availability and effectiveness of capacity-building are based on the allocation of sufficient resources. The establishment of specialized units can improve expertise, clarify focal points, facilitate coordination with other actors responsible for the protection and support of children and enhance cost-effectiveness.

### Intersectoral cooperation, with a view to countering invisibility and disconnected intervention

The responsibility to create a protective environment for children is distributed among various actors, most notably the justice system and the child protection, health, education and social service sectors. Whenever these services do not work together coherently, detection and intervention efforts to prevent violence against children are undermined. Rapid and effective coordination mechanisms in the different sectors are crucial when threats to the safety of the child are especially serious, as in the case of recruitment and exploitation by terrorist and violent extremist groups, as they improve the identification of the threat and facilitate the provision of swift responses.

Crucial steps for the improvement of coordination mechanisms are shown in figure I.

**Figure I. Crucial steps for the improvement of coordination mechanisms**



<sup>a</sup> Including in the areas of criminal justice, child protection, social welfare, health and education.

### Data collection and monitoring, with a view to countering invisibility, ineffectiveness and disconnected intervention

Precise information is crucial to the development of evidence-based policies and particularly relevant in tackling submersed phenomena such as violence against children. In order to obtain precise information, research and systematic data collection, analysis and dissemination should be promoted.

One of the main challenges in tackling recruitment and exploitation by terrorist and violent extremist groups is that the processes and methods used are especially difficult to trace. Practitioners have also encountered multiple challenges in the determination of vulnerability factors. However, exposure to other forms of violence, including abuse and neglect, could enhance vulnerability. Early detection and

identification of cases of violence against children would provide opportunities for: (a) improving evidence-based understanding of the phenomenon; and (b) strengthening early intervention and supporting effective prevention.



### Checklist for practitioners: key elements

- The international legal framework guarantees broad protection of children against all forms of violence.
- Recruitment and exploitation of children by terrorist and violent extremist groups are particularly serious forms of violence and require tailored prevention measures.
- Prevention measures addressing violence against children need to focus on improving detection and reporting, ensuring child-friendly approaches and promoting intersectoral cooperation.

## C. Preventing recruitment of children by terrorist and violent extremist groups

The international community has increasingly recognized the need to focus on prevention of terrorism and violent extremism. Prevention of child recruitment by terrorist and violent extremist groups requires a paradigm shift in policy design, focusing on early intervention rather than responses.

The Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context,<sup>43</sup> made available by the Global Counterterrorism Forum, testifies to the relevance of this shift in approach. Under good practice 3 of the Memorandum, it is stated that efforts and resources should be invested in understanding the conditions conducive to and effectively addressing the recruitment of children, and their potential “radicalization to violence”.

It is important to stress that the implementation of prevention measures should rest on a comprehensive legal and policy framework, compliant with the obligations stemming from international law. In particular, specific measures aimed at preventing recruitment should not be adopted in isolation, but rather in the broader framework of policies to prevent violence against children. Prevention of recruitment of children by terrorist and violent extremist groups is a complex endeavour, especially considering the innovative recruitment methods used by such groups. In order to maximize its effectiveness, such prevention requires the integration of specialized approaches (including those grouped under “prevention of violent extremism”), lessons learned from other areas of preventive work and a comprehensive structure of intervention.

The following section presents an analysis of the key provisions related to child recruitment in the international legal framework, in order to provide overall guidance on prevention strategies. In particular, the recommendations focus on two crucial responsibilities of Member States:

<sup>43</sup> Available from <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>.

- (a) Ensuring a wide-ranging prohibition of child recruitment;
- (b) Designing and implementing comprehensive prevention strategies that are tailored to the national context and do not contribute to further marginalization and discrimination of disenfranchised groups.

## 1. Prohibition of child recruitment in the international legal framework

Child recruitment is prohibited by international law. Such prohibition finds its roots in the codification of international humanitarian law, which regulates the conduct of parties in armed conflict. Relevant international law has evolved over time, progressively ensuring a comprehensive prohibition of recruitment of all children under the age of 18 by non-State actors. The international legal framework related to terrorism requires States to prohibit all recruitment of persons for terrorist groups.

International provisions go beyond mere prohibition; they call for Governments to take an active role in prevention of recruitment. Considering the extreme forms of violence and exploitation that can result from such recruitment, engaging in prevention is part of each State's duty to provide a protective environment for children.

### Prohibition of recruitment of children

#### *Convention on the Rights of the Child and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*

The Convention on the Rights of the Child tackles only the recruitment of children by State armed forces. While the Convention does not prohibit recruitment of children between 15 and 18 years of age, it includes (in article 38) a specific obligation to give preference to older children in this age group.



#### **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>a</sup>**

##### *Article 4*

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article shall not affect the legal status of any party to an armed conflict.

<sup>a</sup> United Nations, *Treaty Series*, vol. 2173, No. 27531.

This provision reflects that of article 77, paragraph 2, of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).<sup>44</sup>

The formulation of article 38 of the Convention on the Rights of the Child, however, presents two considerable limitations. First, it prohibits recruitment only by States parties and not by armed groups. Second, the setting of the age limit at 15 is inconsistent with the other provisions in the Convention (e.g. in article 1), which apply to every human being under 18 years of age. International pressure to raise the minimum age of recruitment resulted in the subsequent adoption of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.<sup>45</sup>

The Optional Protocol, adopted in 2000, prohibits the compulsory recruitment of children under the age of 18 into the armed forces of States parties (article 2), requires States parties to raise the minimum age for voluntary recruitment from 15, and obliges States parties to take all feasible measures to ensure that persons under the age of 18 do not take a direct part in hostilities (article 1).

The particular importance of the Optional Protocol is that it establishes stricter prohibitions with regard to non-State armed groups. Article 4 provides a blanket prohibition of the recruitment and use of children by non-State armed groups in hostilities, regardless of whether or not they are recruited voluntarily or compulsorily, or take a direct part in hostilities. States parties are required to take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

### *Worst Forms of Child Labour Convention, 1999 (No. 182), of the International Labour Organization*

According to the Worst Forms of Child Labour Convention, 1999 (No. 182), of the International Labour Organization,<sup>46</sup> forced or compulsory recruitment of children for use in armed conflict is one of the “worst forms of child labour” (article 3). States parties are required to take immediate steps to secure the prohibition and elimination of those worst forms of child labour as a matter of urgency (article 1). In Worst Forms of Child Labour Recommendation, 1999 (No. 190), of the International Labour Organization, it is recommended that all forms of slavery or practices similar to slavery, including forced or compulsory recruitment of children for use in armed conflict, should be a criminal offence.

### *Universal legal framework against terrorism*

The universal conventions and protocols against terrorism do not specifically address the question of children recruited and used by terrorist groups. They do, however, make clear that the obligation to criminalize and prosecute acts of terrorism concerns not only the immediate perpetrators, but also those who use others by organizing and directing the commission of terrorist acts.<sup>47</sup>

The Security Council has dealt with the issue of recruitment in its resolutions. In its resolution 1373 (2001), the Council, acting under Chapter VII of the Charter of the United Nations (thus making the resolution binding on all Member States), decided that all States should refrain from providing any form of support to entities or persons involved in terrorist acts, including by suppressing the recruitment of members of terrorist groups. In 2014, the Council acknowledged for the first time the challenge posed by the recruitment of children by terrorist groups. In its resolution 2178 (2014), the

<sup>44</sup> United Nations, *Treaty Series*, vol. 1125, No. 17512.

<sup>45</sup> *Ibid.*, vol. 2173, No. 27531.

<sup>46</sup> *Ibid.*, vol. 2133, No. 37245.

<sup>47</sup> See, for example, art. 2, para. 3 (b), of the International Convention for the Suppression of Terrorist Bombings (United Nations, *Treaty Series*, vol. 2149, No. 37517).

Council called upon all Member States to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, including children.

In addition, Security Council resolutions have often emphasized the need to tackle terrorism by focusing on prevention measures. In its resolution 1624 (2005), the Council recognized the importance of States acting in cooperation with one another to prevent terrorists from exploiting sophisticated technology, communications and resources to incite support for criminal acts. In its resolution 2178 (2014), the Council underscored that countering violent extremism, which can be conducive to terrorism, including preventing radicalization, recruitment and mobilization of individuals into terrorist groups and becoming foreign terrorist fighters, is an essential element of addressing the threat to international peace and security posed by foreign terrorist fighters. As mentioned in chapter I, section B.1, above, the General Assembly, in its resolution 70/291, strongly condemned the systematic recruitment and use of children to perpetrate terrorist attacks, as well as the violations and abuses committed by terrorist groups against children.

### *Security Council resolutions on children in conflict*

Over the years, the Security Council has adopted a series of resolutions condemning the recruitment and use of children in hostilities. In its resolution 1314 (2000), the Council reaffirmed its strong condemnation of the deliberate targeting of children in situations of armed conflict and the harmful and widespread impact of armed conflict on children, as well as the long-term consequences that that had for durable peace, security and development. In addition, pursuant to Council resolution 1612 (2005), a Working Group on Children and Armed Conflict and a monitoring and reporting mechanism on grave violations against children in situations of armed conflict were established, to monitor and report on violations of child rights, in particular on the six grave violations against children during times of conflict, which include killing and maiming, the recruitment and use of children by parties to armed conflict, rape and other forms of sexual violence, abduction, attacks against schools or hospitals, and denial of humanitarian access by parties to armed conflict (see Council resolution 1882 (2009), para. 1).

### *Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*

The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups were adopted at the International Conference on Children involved in Armed Forces and Armed Groups: Free Children from War, held in Paris in February 2007. The Paris Principles reflect the strong commitment of States to end recruitment of children and their use in hostilities by both armed forces and armed groups. The Paris Principles repeatedly draw attention to the specific situation of girls, whose experiences of recruitment may vary with respect to boys and whose circumstances are often overlooked (para. 4.0). Furthermore, they underline the particular danger of re-recruitment and include guidance on its prevention (paras. 7.57 and 7.58). In addition, States are called upon to investigate and prosecute those persons who have unlawfully recruited or used children in armed conflict, to bring an end to the culture of impunity against perpetrators (para. 8.1).

### *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*

The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice include a section on implementing comprehensive prevention programmes to prevent violence against children. In that section it is stated that the risk of violence associated with trafficking in children and various forms of exploitation by



criminal groups should be addressed by specific prevention measures, including measures to prevent the recruitment, use and victimization of children by criminal groups, terrorist entities or violent extremist groups (para. 15 (a)).

## Prohibition of recruitment of children under 15 years of age

### *International humanitarian law*

Specific provisions of international humanitarian law address the recruitment and use of children in hostilities. Protocol I to the Geneva Conventions prohibits recruitment of children under 15 years of age by State armed forces, as well as their participation in hostilities, in situations of international armed conflict (article 77, para. 2). The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)<sup>48</sup> explicitly prohibits recruitment of children under the age of 15 by non-State armed groups, in situations of non-international armed conflict (article 4, para. 3).

Protocol I and Protocol II to the Geneva Conventions both provide that if children under the age of 15 take a direct part in hostilities, the protective provisions relating to children under those protocols shall continue to apply. The provisions in article 4 of Protocol II are regarded as customary international law.<sup>49</sup>

### *Rome Statute of the International Criminal Court*

According to the Rome Statute of the International Criminal Court,<sup>50</sup> conscripting or enlisting children under the age of 15 into the armed forces or armed groups or using them to participate actively in hostilities constitutes a war crime, regardless of whether the conflict is of an international or non-international nature (article 8, para. 2 (b) (xxvi) and (e) (vii)). With the entry into force of the Rome Statute and the establishment of the International Criminal Court in 2002, the prohibition of recruitment of children under 15 years of age has acquired an international criminal law enforcement mechanism.

## 2. Recommendations for effective approaches to prevention

The implementation of comprehensive prevention measures is often complex, demanding the cooperation of very different bodies and institutions. In the past few years, a number of countries have developed new prevention strategies aimed at stemming the spread of terrorism and violent extremism. Special emphasis is generally placed on children and youth as a specific target group. Evidence of the success and evaluations of such prevention strategies are still very limited, and the identification of promising practices is further complicated by the different contexts.

Accordingly, the recommendations in the present section are not intended to be comprehensive, and they will require considerable adaptation, taking into account priorities at the national level. The recommendations include some key elements to ensure effective protection of children's rights and to promote innovative and comprehensive approaches to the specific methods of recruitment employed by terrorist and violent extremist groups. Furthermore, selected case studies have been included to show the different contexts of the general guidelines at the national and local levels. In addition, a number of lessons learned have been included, as they could prove effective for practitioners in similar situations.

This section also highlights how, in order to enhance effectiveness, strategies for the prevention of violent extremism should integrate a wider range of measures to prevent crime in general and to

<sup>48</sup> United Nations, *Treaty Series*, vol. 1125, No. 17513.

<sup>49</sup> Report of the Secretary-General on the establishment of a Special Court for Sierra Leone (S/2000/915).

<sup>50</sup> United Nations, *Treaty Series*, vol. 2187, No. 38544.

promote a protective environment for children. It is therefore strongly advised that the recommendations in the present section should be considered and implemented in conjunction with those presented in section B.2 of this chapter, which outlines key elements of effective prevention of violence against children.



### Key challenges

- *Stigmatization*: practices such as “selective engagement” are based on the assumption that certain individuals or groups are especially at risk of recruitment. These methods are particularly concerning from a human rights perspective, as they tend to enhance discrimination and stigmatization of minority, ethnic, religious and indigenous groups.<sup>a</sup>
- *Community support for terrorist and violent extremist groups*.
- *Children’s propensity to risk*: children, especially adolescents, appear to engage in risky behaviours more easily.<sup>b</sup> Heavy involvement<sup>c</sup> of children in terrorist and violent extremist groups in part reflects that tendency.
- *Cross-border movement*: measures to prevent transnational travel to join terrorist and violent extremist groups may disproportionately affect freedom of movement of citizens.
- *Regulation of online content*: challenges are related to the identification of violent extremist content, and to the dissemination of valid alternatives.
- *Leaving girls behind*: strategies and policies targeting terrorism and violent extremism are often a male-dominated enterprise, both led by and addressed to men and boys, often overlooking the growing role of girls.
- *Limited resources*.

<sup>a</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/31/65), para. 37.

<sup>b</sup> Agnieszka Tymula and others, “Adolescents’ risk-taking behavior is driven by tolerance to ambiguity”, *Proceedings of the National Academy of Sciences of the United States of America*, vol. 109, No. 2 (2012).

<sup>c</sup> Kumar Ramakrishna, “Understanding youth radicalization in the age of ISIS: a psychosocial analysis” (2016).

### Full-fledged prohibition of child recruitment

States parties to the international instruments mentioned in the previous section are required to prohibit recruitment of children. In particular, domestic legislation criminalizing child recruitment provides the foundation for a comprehensive approach in terms of prevention, prosecution and responses to recruitment.

One of the key challenges related to preventing child recruitment is that social and cultural norms can contribute to considering and treating children as adults. While the international legal framework defines all individuals under 18 years of age as children, children under 18 are often allowed to vote, get married and own property. This means that they can easily be treated as adults in their communities. Furthermore, as noted in the previous section, the Rome Statute uses the age of 15 (as opposed to 18) as the threshold for declaring the conscription or enlisting of children into armed forces or armed groups to be a war crime. These discrepancies can enhance the perceived legitimacy of recruitment of children.

Another problem is that joining such groups is often perceived as a voluntary choice, and the blame is placed primarily on the child. This leads to the focus of public intervention shifting to the child, rather

than being on the groups perpetrating the recruitment. In addition, it can also lead to further stigmatization and, as a consequence, underreporting of recruitment cases (for fear of retaliation or punishment).

Clear prohibition of recruitment opposes social tolerance for such practices and creates the boundaries for stronger investment in prevention and protective measures for children. In addition, it fosters the establishment of mechanisms for holding accountable those responsible for related violations. In terms of operational guidance, the prohibition of child recruitment may be ensured by:

(a) *Eliminating limitations related to age.* In accordance with the international legal framework, prohibition of recruitment should be extended to all children under 18 years of age. This is in line with the existing international consensus that childhood is entitled to special care and assistance (see article 25, paragraph 2, of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)) and the preamble to the Convention on the Rights of the Child);



### Case study: How criminalization of recruitment as a war crime has supported the international prosecution of perpetrators

In the first indictment before the International Criminal Court in 2005, the case of *The Prosecutor v. Joseph Kony and Others*, Joseph Kony, the leader of the Lord's Resistance Army, was charged with 21 counts of war crimes, including forced enlisting of children. The African Union, as well as various Governments, has officially designated the Lord's Resistance Army as a terrorist group. Mr. Kony has been designated by the United States of America as a Specially Designated Global Terrorist.

In the first International Criminal Court trial, *The Prosecutor v. Thomas Lubanga Dyilo*, Mr. Lubanga was found guilty on charges of enlisting and conscripting children under the age of 15 and sentenced to 14 years of imprisonment. Ongoing proceedings before the International Criminal Court are to determine the most adequate reparations for the children recruited by Mr. Lubanga's armed group.

In 2015, the International Criminal Court Prosecutor was considering charging Boko Haram leaders with counts of war crimes, including recruitment and use of children under the age of 15 years to participate in hostilities.<sup>a</sup> The case is currently at the preliminary examination stage.

<sup>a</sup> International Criminal Court, Office of the Prosecutor, Report on Preliminary Examination Activities 2015, para. 203.

(b) *Eliminating distinction on the basis of consent.* The different recruitment methods and varied profiles of the children involved demonstrate that, in practice, it is extremely difficult to identify fully voluntary recruitment processes. Furthermore, it would be very complicated from a legal point of view to assess whether the child had the capacity to provide informed consent. Indeed, considering the power imbalance between children and terrorist and violent extremist groups, which enjoy an organized structure with shared criminal objectives, the capacity of the child to provide consent should always be regarded as hindered. In addition, given the extent of the prohibition of child recruitment, the distinction between voluntary and forced recruitment becomes legally irrelevant. Finally, the primary objective of prohibiting child recruitment is to support accountability of the perpetrators, and not to establish the degree of responsibility of children. In consideration of the serious forms of violence and exploitation of

children that originate from such practice, targeting children for the purpose of recruitment should always be prohibited, regardless of the attitudes of the child towards the group;

(c) *Recognizing all roles played by children.* Recruitment should not be considered as a violation not only when it leads to the use of children in hostilities, but also when it leads to the exploitation of children in support roles;

(d) *Ensuring prohibition of recruitment by any group.* Recruitment of children by any non-State criminal or armed group should be clearly prohibited. Terrorist and violent extremist groups are merely one type of entity that is recruiting and exploiting children, exposing children to the same forms of exploitation and danger as other criminal groups and, in many instances, as armed groups. More specifically, criminalization of child recruitment in national law<sup>51</sup> is instrumental to establishing accountability of perpetrators. Prosecution and sanctions should reflect the serious nature of recruitment of children, taking into account both the potential consequences on the child's life and the threats posed to the security of the community. At the same time, appropriate criminalization facilitates access to justice for child victims of recruitment (see chapter II below).

Finally, enlistment of children into States' armed forces is also especially problematic, even when voluntary. When children are exposed to risks by public institutions, the claim that they require special protection and tailored measures is inevitably undermined, and recruitment by any other group becomes legitimized.

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An example of a definition of recruitment:

Elimination of distinction on the basis of age, consent, role and the type of group involved can be achieved through an appropriate definition of recruitment.

The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (also known as the Paris Principles) define recruitment of child soldiers as compulsory, forced and voluntary conscription or enlistment of children into any kind of armed force or armed group.

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### Child-sensitive approach

Prevention policies and programmes involving children should always adopt a child-sensitive approach. This means that the specificities of this age group should be considered at the policy design stage, as well as at the intervention stage.

First, policymakers and practitioners should ensure that children can participate in the development of specific programmes and should ask for their opinions and involvement and make sure that their voices are heard. In cases of intervention involving a child, however, the determination of the child's best interests will guide the selection of the most appropriate measures, as well as their implementation.

Psychological and behavioural characteristics also play a role. While contextual and individual factors may help to provide an understanding of why children are attracted to terrorist and violent extremist groups,<sup>52</sup> neuroscience, psychology and behavioural sciences may also provide relevant insight. Decision-making processes, in fact, largely depend on a series of psychosocial capacities, such as impulse control abilities, delay of gratification and resistance to peer pressure. Research

<sup>51</sup> Specific forms of criminalization will depend on the domestic legal framework. In certain cases, recruitment of children will constitute an offence per se; in other cases, it may be introduced as an aggravating circumstance to the existing offence of recruitment. It is important that, when criminalizing recruitment, the guidance offered on how to define the offence and comply with the international legal framework is taken into account.

<sup>52</sup> While children are internationally defined as individuals below 18 years of age, there is no internationally agreed upon definition of youth. The United Nations, for statistical purposes, defines "youth", as persons between the ages of 15 and 24 years, without prejudice to other definitions by Member States. It is crucial to emphasize that the age groups defined as "children" and "youth" often overlap.

shows that such capacities reside in areas of the brain whose development is not completed by adolescence but continues through the third decade of life.<sup>53</sup> These elements deeply influence adolescents' behaviour and are especially relevant to the design of appropriate prevention policies.



### Case study: Focus on child rights to prevent violent extremism—the Viennese Network

The Viennese Network was founded in 2014 with the objective of protecting children and youth from recruitment by terrorist and violent extremist groups and from generalized marginalization. The Network is part of a comprehensive strategy put in place by the city of Vienna to prevent the spread of violent extremism, addressed as a multifaceted phenomenon that includes racism, anti-Semitism, sexism (and disregard for women's rights), homophobia and anti-democratic tendencies.

The existence of a broad strategy guarantees a cross-sectoral approach, as well as substantial political and administrative support. At the same time, as the focus is on children and youth, the Vienna Children's and Youth Ombuds-Office, a pre-existing independent body charged with promoting the rights of children, serves as the Network's central coordination office.

In the past few years, the Network has shared a number of "lessons learned" in the area of prevention of violent extremism, including the following:

- The reasons why children and youth join terrorist and violent extremist groups are individual and should be identified on a case-by-case basis. However, experience has shown that neglect, abuse, violence, marginalization and discrimination play a considerable role in many cases. The perception of injustice is especially strong for children and can lead to a rejection of societal rules. Effective approaches entail focusing on the prevention of child rights violations and violence.
- Strengthening options available to children, promoting critical thinking and tolerance of diversity and resolving conflict have proved effective in building resilience.
- Specialization of human resources is crucial. It is widely recognized that a security approach is not sufficient to effectively counter terrorism, but preventive action also requires appropriate resources to be effective. The Network focuses on providing training to professionals (such as social workers, child protection officers, police officers and teachers) not only on different forms of extremism, but also on socialization and life opportunities for children.
- Prevention of violent extremism is a sensitive issue, attracting the work of multiple stakeholders. Coordination is especially difficult because of data protection limitations, as well as budget and time constraints. Stand-alone interventions may prove to be ineffective and in certain cases harmful. Investing in a system of information exchange and collaboration is paramount.
- In order to prevent re-recruitment, it is especially crucial to focus on rehabilitating and reintegrating individuals who have been in contact with the justice system, especially as their number rises as a consequence of stricter counter-terrorism legislation.

<sup>53</sup> Sara B. Johnson, Robert W. Blum and Jay N. Giedd, "Adolescent maturity and the brain: the promise and pitfalls of neuroscience research in adolescent health policy", *Journal of Adolescent Health*, vol. 45, No. 3 (2009).

### Context matters: a brief analysis of “push factors” and “pull factors”

Understanding the motivations of the child in the recruitment process is especially important in designing appropriate prevention measures.<sup>54</sup> In order to analyse the situation of child soldiers, conditions under which children join such groups have been divided into two categories of drivers, “push factors” and “pull factors”. That analysis remains equally relevant to the understanding of children recruited by terrorist and violent extremist groups. In the Secretary-General’s Plan of Action to Prevent Violent Extremism, emphasis is on the need to analyse these drivers to understand patterns and the motivations of individuals joining groups.<sup>55</sup>

“Push factors” can be defined as negative circumstances that the child tries to escape by joining the group, while the “pull factors” represent the positive incentives, attracting the children to join the groups. Examples of “push factors”<sup>56</sup> include the following:

- *Poverty, marginalization, discrimination and a weakened social structure.* These are crucial factors since special risk groups, such as street children, the rural poor, refugee children and internally displaced children may be particularly vulnerable to recruitment.
- *Lack of protection, disruptive social contexts and experience of violence.* Children who are left without parents or families to look after them are more vulnerable, especially in conflict areas. At the same time, parents are often coerced into handing over their children; in other instances, parents may “volunteer” their children for ideological reasons or material benefits. Children who have experienced violence, trauma and loss or who have been displaced from their communities also tend to be more vulnerable to recruitment by violent extremist groups.
- *Lack of a feeling of autonomy and identity.* Children who feel disenfranchised and without any real opportunities to achieve social success and those who may be searching for answers to the meaning of life may in their personal search for identity be attracted by violent extremist groups.
- *The notion of injustice (whether real or perceived), including because of disappointment with democratic processes, widespread corruption, police violence, and perceived or real discrimination.*
- *Lack of education and employment opportunities.* These represent crucial factors that may drive a child to seek opportunities within the groups.

It is important to underline that “push factors” do not represent a direct causal link,<sup>57</sup> and careful analysis should precede their identification with risk factors for recruitment. In order to strengthen prevention measures tackling “push factors” directly, it is essential to invest in effective child protection and welfare systems, education and measures to promote development and reduce social exclusion. In that regard, policies and programmes designed to address child labour can be especially helpful.<sup>58</sup> While such measures are beyond the scope of the present Handbook, it is of crucial importance to recall their significance in reducing child recruitment rates by addressing the root causes. Examples of “pull factors” include the following:

- *Propaganda and indoctrination.* These have been extensively used to draw children into terrorist and violent extremist groups, often including messages that associate social status and prestige with membership in the groups. Honour and prestige motives have also been particularly relevant in the recruitment of suicide bombers.

<sup>54</sup> Daya Somasundaram, “Child soldiers: understanding the context”, *British Medical Journal*, vol. 324, No. 7348 (2002), pp. 1268-1271.

<sup>55</sup> While the Plan of Action does not address only children, it repeatedly highlights how children and youth are especially vulnerable to recruitment by terrorist and violent extremist groups (Plan of Action to Prevent Violent Extremism: report of the Secretary-General (A/70/674), para. 23).

<sup>56</sup> See also “Plan of Action to Prevent Violent Extremism: report of the Secretary-General” (A/70/674), paras. 25-26.

<sup>57</sup> Michael G. Wessells, *Child Soldiers: From Violence to Protection* (Cambridge, Massachusetts, Harvard University Press, 2006), p. 46.

<sup>58</sup> UNICEF, “Child labour and UNICEF in action: children at the centre” (2014).

- *Revenge and indirect identification with victims of violence.* These may trigger anger and desire to avenge the “enemy”. The diffusion of graphic images of armed conflict spread awareness of the suffering of civilians and combatants and may affect the psychological well-being of individuals outside conflict zones.<sup>59</sup>
- *Previous involvement in the justice system.* For children and young people, this has also proved to have a correlation with recruitment into terrorist groups. Joining a terrorist or violent extremist group may be viewed as being “redemptive” or legitimizing the commission of criminal offences. In either case, it may contribute to a sense of meaning, while offering the same as gang membership: power, violence, adventure and a strong identity.<sup>60</sup>
- *Material inducements.* These are also used as positive incentives to attract new recruits.

Prevention measures to address “pull factors” require multiple approaches. They should focus on promotion of alternative narratives, but should also include support to families and communities to foster inclusion, as well investment in educational and employment opportunities.

### Support to families and inclusive communities

Families are particularly important in the prevention of child recruitment. Families can be the first to detect risks, and they can provide the necessary support to children, strengthening resilience. Different services may prove useful in supporting families. Family counselling, for instance, focuses on assisting the parents, helping them to maintain contact with their children. Experience shows that counselling should not “instruct” the parents to challenge the beliefs of the child, but rather help them to avoid being judgmental in their attitudes and promote open and healthy communication.<sup>61</sup> Hotlines can help respond to crises in a timely way and are an example of multi-agency engagement, as different actors may be called upon to respond according to the level of risk. Transparency about the functioning of the hotlines, in particular the rules of confidentiality and the possible intervention of law enforcement, is especially important. All interventions involving the families will require a solid basis of trust, which requires consistency, clarity and respect for privacy and family life.

Local approaches to prevention are also important when they involve communities (i.e. groups larger than the family unit). Engagement of members of the community is becoming increasingly relevant to efforts to counter violent extremist and terrorist narratives, which have tended to promote polarization by using an “us versus them” discourse. Resilience and inclusiveness can be strengthened through a variety of measures, such as: promoting dialogue, and appropriate representation of minorities; supporting local actors (involvement of teachers may be especially significant) in conducting activities that strengthen the active participation of citizens; promoting education and employment opportunities; and empowering women as agents of change within the communities.

<sup>59</sup> Samuel, “The lure of youth into terrorism”, pp. 109-113.

<sup>60</sup> Rajan Basra, Peter R. Neumann and Claudia Brunner, “Criminal pasts, terrorist futures: European jihadists and the new crime-terror nexus” (London, ICSR, 2016).

<sup>61</sup> European Commission, Radicalisation Awareness Network, “RAN Policy Paper: developing a local prevent framework and guiding principles” (November 2016).



### Engaging the community to strengthen resilience—excerpts from the study “We Hope and We Fight: Youth, Communities and Violence in Mali”<sup>a</sup>

#### Key findings:

- Community support for armed groups encourages youth to engage in violence out of a sense of duty or quest for respect.
- Youth cite experience with injustice—including abuses and corruption—as motivators for joining anti-government armed groups.
- Many youth in armed groups and non-violent youth have high, but fragile, expectations for the peace process.

#### Recommendations:

- *Focus on preventing violence and strengthening protective factors at the community level, rather than seeking to identify and target at-risk youth.* The study entitled “We Hope and We Fight: Youth, Communities and Violence in Mali” did not identify specific attributes that put some individual youth at higher risk of participating in violence. In fact, many youth in armed groups described deep social ties to others in their communities, which suggests that they are not particularly marginalized. Therefore, government and civil society actors should ensure that an approach involving the entire community guides their interventions to prevent further violence.
- *Facilitate improved local governance through better service delivery and inclusive community- government decision-making.* Because perceptions of exclusion have contributed to community support of armed groups, improving governance processes and outcomes should be a key long-term priority for the government and local and international civil society actors.
- *Identify and facilitate opportunities for youth to achieve status without engaging in armed groups.* The findings of the study indicate that youth need non-violent ways to gain status and recognition in their communities.

<sup>a</sup>The study, which was published in July 2017 (available at [www.mercycorps.org/](http://www.mercycorps.org/)), is based on qualitative research and direct interviews. While all respondents are over 18 years of age, they include previous members of groups that are listed as terrorist organizations (such as the Movement for Unity and Jihad in West Africa or Al-Qaida in the Islamic Maghreb). The recommendations are relevant to broader prevention strategies.

### Tailored messaging

Prevention of child recruitment by terrorist and violent extremist groups has focused on disseminating tailored messages directed at potential targets, often defined as counter-narratives. Such messages can be categorized as composing a spectrum, responding to broader or more specific objectives.

Evidence shows that different factors can improve the effectiveness of messaging. Those factors include:

- (a) Involving the target groups when tailoring the messages;
- (b) Focusing on rapid responses;
- (c) Investing in sustained rather than sporadic campaigns;
- (d) Producing emotional content rather than focusing exclusively on evidence;
- (e) Strengthening the link between online and offline initiatives.<sup>62</sup>

It is also important to ensure that such prevention campaigns include a gender perspective.

<sup>62</sup> European Commission, Radicalisation Awareness Network, “RAN Issue Paper: counter narratives and alternative narratives” (October 2015).





### Case study: The counter-messaging spectrum<sup>a</sup>

- *Strategic communications.* These indirectly challenge terrorist and violent extremist narratives by setting out government policies and correcting misinformation;
- *Alternative narratives.* Such narratives provide testimonies or stories that emphasize the importance of social values such as tolerance and democracy;
- *Counter-narratives.* Such narratives directly discredit, deconstruct or challenge terrorist and violent extremist messages and content.

<sup>a</sup> European Commission, Radicalisation Awareness Network, “RAN Issue Paper: counter narratives and alternative narratives” (October 2015).

### Online intervention

Prevention measures that focus on online content usually have a twofold objective. One possible approach focuses on the identification and removal of content that can be used for the purposes of child recruitment. Such strategies require partnership with Internet providers and social media platforms and have been employed for removal of child pornography and hate speech.<sup>63</sup> However, such strategies must follow precise guidelines and be specifically targeted, as the identified content is often not illegal. According to the Human Rights Committee, any measure taken to prevent or remove messages communicated through the Internet or other forms of technology constitute an interference with the right to freedom of expression and must be justified.<sup>64</sup>

At the same time, online strategies have focused on the dissemination of alternative and counter-narratives. Thanks to the cooperation of social media platforms and online service providers, mechanisms can be put in place so that individuals who may be seeking terrorist and violent extremist content are redirected towards media providing messages countering the propaganda of terrorist and violent extremist groups.



### Case study: Cooperation with service providers for the diffusion of alternative narratives—Google’s Redirect Method

Google’s technology subsidiary Jigsaw has launched an innovative counter-narrative blueprint known as the Redirect Method ([www.redirectmethod.org](http://www.redirectmethod.org)), which operates by displaying advertisements that link to YouTube playlists in Arabic or English that subtly counter ISIL propaganda when certain pro-ISIL keywords are typed into Google search.

The 116 videos used include depictions of ISIL being defeated by other troops, what life is like in ISIL territory (for example, seemingly endless queues to receive food) and how ISIL ideology is in contradiction with Islam.

<sup>63</sup> Rachel Briggs and Tanya Silverman, “Western foreign fighters innovations in responding to the threat” (London, Institute for Strategic Dialogue, 2014), p. 22.

<sup>64</sup> Human Rights Committee, general comment No. 34 (2011) on art. 19: freedoms of opinion and expression, para. 46, cited in “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” (A/HRC/31/65, para. 40).

Although many countries have lower rates of Internet access and literacy, children in those countries may still be subject to terrorist and violent extremist propaganda through other means, such as radios, newspapers and public rallies. Moreover, evidence of recruitment processes shows that, while terrorist groups may be very active online, such contact does not completely replace recruitment through human interaction. It is thus important that counter-narrative strategies are advanced not only online but also offline.

### Cross-border cooperation to prevent travel

Prevention measures include timely identification of individuals, including children, who are crossing national borders to join terrorist and violent extremist groups. Effective cross-border cooperation between law enforcement agencies entails: appropriate databases and tracing systems (such as databases and systems for tracing lost or stolen documents, stolen motor vehicles, DNA and fingerprints; and mechanisms for tracing weapons); focal points and communication mechanisms across borders; and systems of notification to alert authorities worldwide to possible terrorist threats, such as the colour-coded system operationalized by the International Criminal Police Organization.<sup>65</sup>

Cooperation between law enforcement agencies and financial institutions can be particularly helpful in identifying “red-flag” financial activities.<sup>66</sup> Those forms of cooperation, however, should be based on respect for personal liberties, privacy and data protection requirements.

### Protective role of family law

When children are in immediate danger of becoming involved in terrorist and violent extremist groups, family law can be used for the prevention of their recruitment. However, these measures often entail the removal of the child from his or her family and connections and, consequently, have considerable potential for secondary victimization. They should be adopted only in exceptional cases, with appropriate justification that takes into account the child’s best interests.



#### Case study: Family courts’ role in preventing recruitment and travel—a study involving the High Court Family Division in the United Kingdom of Great Britain and Northern Ireland

In the United Kingdom of Great Britain and Northern Ireland, the Children Act of 1989, as well as common law, enshrines the duty of the State to protect children. Section 1(3) of the Children Act specifically provides that in child protection cases, the best interests of the child are to be treated as the paramount concern. The High Court Family Division is the specialist division dealing with civil cases relating to children. Here judges are able to exercise their inherent jurisdiction to make the child a ward of court, meaning that the Court assumes parental responsibility. As it removes the rights of a parent to make decisions about his or her child, such power is to be used only when strictly necessary for the protection of the child.

The use made of the inherent jurisdiction to prevent recruitment is illustrated by the case of *Re M* in 2015.<sup>67</sup> The parents of four children, all of whom were British citizens, aged

<sup>65</sup> For further details, see INTERPOL, “Best practices in combating terrorism” (2016), pp. 7 and 8.

<sup>66</sup> Tom Keatinge, “Identifying foreign terrorist fighters: the role of public-private partnership, information sharing and financial intelligence” international centre for counter-terrorism” (The Hague, International Centre for Counter-Terrorism, 2015), p. 37.

from 20 months to 7 years, left home abruptly. The police and the counter-terrorism unit believed the parents intended to join ISIL. The High Court made the children wards of court and ordered their return from Turkey because the use of jurisdiction in cases where the risk of harm to the child was of the type that would engage article 2 or 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms—the risk to life or risk of degrading or inhuman treatment—was clearly unproblematic. In exercising its jurisdiction, the Court noted that it had always been the principle of the Court not to risk the incurring of damage to children that it could not repair, but rather to prevent the damage done.<sup>b</sup>

In other cases, the Court has made the child a ward of court and issued a passport seizure order, to prevent children from leaving the country.<sup>c</sup>

<sup>a</sup>Royal Courts of Justice, [2015] EWHC 1433 (Fam).

<sup>b</sup>*Wellesey v. Duke of Beaufort* (1827) 2 Russ 1, at 18 per Eldon LC.

<sup>c</sup>See *London Borough of Tower Hamlets v. M* [2015] EWHC 869 (Fam); and *Re Z* [2015] EWHC 2350 (Fam) and *Brighton and Hove City Council v. Y* [2015] EWHC 2099.

### Building a multi-agency approach

In view of the complexity of child recruitment by terrorist and violent extremist groups, a multi-agency approach is especially relevant. The creation and management of coordination mechanisms will be more effective if the following are taken into account:<sup>67</sup>

- (a) Priority should be given to building partnerships at the local level, as a thorough understanding of the local situation is instrumental to tailored intervention;
- (b) Existing partnerships are particularly relevant, although additional guidelines and training may be necessary;
- (c) Involvement of civil society is conducive to stronger relationships of trust with the communities;
- (d) Clear guidelines on information-sharing, including with regard to consent, should be developed, as they will improve reciprocity;
- (e) The involvement of experts and the development of needs assessment tools are especially important when dealing with children;
- (f) A case manager should be appointed, using different criteria such as the level of risk of a specific situation, but also taking into account the level of relationship developed with the beneficiary.

Multi-agency interventions combine different types of relevant expertise, and at the same time rely on different types of incentive for the target groups.

### Monitoring, evaluation and follow-up

Monitoring and evaluation of prevention measures are especially important in the case of measures dealing with recruitment by terrorist and violent extremist groups. Recent developments show that comprehensive evaluations of the effectiveness of such measures are still insufficient. Different interventions will require specific criteria for measuring effectiveness. Accurate monitoring and evaluation are essential to ensure long-term support of promising programmes.

<sup>67</sup> The positive elements were featured in European Commission, Radicalisation Awareness Network, “Ex post paper: handbook on how to set up a multi-agency structure that includes the health and social care sectors?” (May 2016).

### Importance of respecting children’s rights, including in the context of tertiary prevention

Tertiary prevention is the term used to describe approaches to the prevention of reoffending by children who have already been in contact with the justice system as alleged offenders. Whether children have come in conflict with the law as a result of their involvement with terrorist or violent extremist groups or as a result of having committed ordinary offences, effectively supporting their rehabilitation and social reintegration is essential to preventing their recruitment. (For further guidance on rehabilitation and reintegration of children in contact with the justice system, see chapter IV below.)



#### Checklist for practitioners: key elements

- The international legal framework prohibits recruitment of children and calls on States to do the same.
- For the prohibition of recruitment of children by terrorist and violent extremist groups to be effective, “recruitment of children” should be defined in national law as: concerning all children under the age of 18; including “compulsory” as well as “voluntary” processes; including children recruited for active or support roles; and including recruitment by armed forces or any non-State criminal or armed group.
- States bear the primary responsibility to protect children from recruitment by terrorist and violent extremist groups.
- While prevention of child recruitment by terrorist and violent extremist groups require specialized approaches (including strategies for the prevention of violent extremism), these should be integrated into broader crime prevention policies and programmes to protect children from violence and policies and programmes on the prevention of violence against children. Inclusive initiatives are more likely to avoid having discriminatory or stigmatizing effects on the children.
- Prevention policies and programmes should focus on different areas of intervention, but they should all be based on a child-sensitive approach, which entails active participation of children, and careful determination of their best interests.





## Chapter 2

Child victims of  
recruitment and exploitation:  
their treatment in  
the justice system



## A. Recognizing as victims children recruited and exploited by terrorist and violent extremist groups

Terrorist and violent extremist groups are responsible for major violations of children's rights. While the nature and extent of such violations vary considerably from one group to another, there is evidence that groups such as Boko Haram, Al-Shabaab and ISIL have, in situations of armed conflict, perpetrated the following grave violations that affect children: the recruitment and use of children, sexual violence against children, the killing and maiming of children, denying access to humanitarian support, attacks on schools and/or hospitals and attacks or threats of attacks against protected personnel, and the abduction of children.<sup>68</sup>

In addition, in situations not involving armed conflict, children recruited and exploited by terrorist groups are victims of violence, which is prohibited by the Convention on the Rights of the Child, and in many cases those children subsequently become victims of trafficking in persons and forced labour, as well as victims of offences under other criminal laws.

Children recruited and exploited by terrorist and violent extremist groups may also have been involved in the commission of very serious offences. Their status as victims under international law has to be taken into account in assessing whether they can and should be held accountable for the commission of offences. However, recognition of their victim status does not exclude criminal liability and other forms of accountability of children alleged to have committed terrorist offences. The treatment of children as alleged offenders, including the relationship between victim status and criminal liability, is the subject of chapter III of this Handbook.

Children recruited and exploited by terrorist and violent extremist groups, who are victims of crime or violence, will primarily require assistance, support and appropriate care to begin their journey towards reintegration (see chapter IV below). Those children are mainly supported by providers of humanitarian assistance, providers of child protection, health practitioners and professionals in the education sector. Yet their initial contact may take place with law enforcement, security or military personnel, who require specific skills to properly deal with those children.

When children are recognized as victims and witnesses to terrorism-related offences, they may enter in contact with the justice system in order to take part in criminal proceedings against alleged terrorists or to seek redress or reparation. In such situations, recognizing their specific rights and applying tailored guidance for their treatment are crucial obligations of domestic justice systems (see sections B and C of this chapter).

Recognizing the victim status of children associated with armed groups is also important because it provides acknowledgement that they have suffered a wrong and, as discussed in more detail below, it may entitle them to reparation, compensation and/or victim support services.

### 1. International legal framework

The present section provides a broad outline of the key violations of international law that children recruited and exploited by terrorist and violent extremist groups are at risk of experiencing.

<sup>68</sup> Children and armed conflict: report of the Secretary-General (A/70/836-S/2016/360), paras. 1 and 119 and annex I.



### *Convention on the Rights of the Child*

International law, in particular article 19 of the Convention on the Rights of the Child, prohibits all forms of violence against children, including: physical or mental violence; intentional and non-intentional harm; and neglect (see chapter I, section B, above).

States parties to the Convention have agreed to take steps to promote the physical and psychological recovery and social reintegration of child victims and witnesses. This obligation stems from article 39 of the Convention and applies to assistance and support measures in general and to the conduct of criminal proceedings in particular. Child witnesses are considered, in a general sense, to be victims of the crime they have witnessed, even though they may not have this technical legal status in legal proceedings. Therefore, both child victims and child witnesses in contact with the justice system benefit from the protection provided in article 39 of the Convention. In addition, article 38 requires States parties to take all feasible measures to ensure protection of children who are affected by armed conflict.

Children recruited and exploited by terrorist and violent extremist groups may also be victims of violations of two optional protocols to the Convention on the Rights of the Child:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, article 4 of which provides a blanket prohibition of the recruitment and use of children by non-State armed groups in hostilities (see chapter I, section B.1, above);

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;<sup>69</sup> this Optional Protocol criminalizes actions relating to the sale of children, child prostitution and child pornography. While these actions amount primarily to various forms of sexual exploitation of children, this Optional Protocol also addresses the sale of children for other purposes, including forced labour.

### *United Nations Global Counter Terrorism Strategy*

The General Assembly, in its resolution 70/291, on the United Nations Global Counter-Terrorism Strategy Review, strongly condemned the systematic recruitment and use of children to perpetrate terrorist attacks. The Assembly reiterated that, given their potential status as victims of terrorism as well as of other violations of international law, every child alleged as, accused of or recognized as having infringed the law, particularly those who are deprived of their liberty, as well as child victims and witnesses of crimes, should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child.

### *International law regarding trafficking in persons and child labour*

In article 5, the Trafficking in Persons Protocol obliges each State party to adopt measures to criminalize “trafficking in persons”, which is defined in subparagraph (a) of article 3 as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other



#### **Convention on the Rights of the Child: article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

<sup>69</sup> United Nations, *Treaty Series*, vol. 2171, No. 27531.

forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. In subparagraph (c) of article 3, it is stated that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of that article. In subparagraph (d) of article 3 of the Protocol (as in the Convention on the Rights of the Child), a child is defined as any person under 18 years of age. Thus, whether a child who has been involved with a violent extremist group is to be considered a victim of trafficking in persons, with the special safeguards and rights that this may provide to the child, depends on whether the extremist group has committed an act (in the form of recruitment, transportation, transfer, harbouring or receipt of a child) for the purpose of exploitation. In the definition of “trafficking in persons” provided in article 3, subparagraph (a), of the Trafficking in Persons Protocol, it is stated that exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Many States have recognized emerging forms of trafficking-related exploitation that go beyond those listed in the Protocol, including for instance, the use of children in armed conflict or exploitation in form of criminal activities.<sup>70</sup>

Children recruited and exploited by terrorist groups will in most cases also be victims of a violation of the Worst Forms of Child Labour Convention, 1999 (No. 182), of the International Labour Organization. In article 3 of the Convention, it is stated that, for the purposes of the Convention, the term “the worst forms of child labour” comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. The work referred to in subparagraph (d) certainly includes work furthering the activities of a terrorist group.

The Security Council, in its resolution 2331 (2016), highlighted the very close relationship between trafficking in persons, child recruitment by armed groups and child exploitation by terrorist groups. In that resolution, the Council condemned all violations and abuses against children in armed conflict and noted in particular that the recruitment and use of children in violation of applicable international law by parties to armed conflict could be associated with trafficking in persons. The Council affirmed that victims of trafficking in persons in all its forms, and of sexual violence, committed by terrorist groups should be classified as victims of terrorism, with the purpose of rendering them eligible for official support, recognition and redress available to victims of terrorism, so that they can have access to national relief and reparation programmes, which should contribute to lifting the sociocultural stigma attached to this category of crime and facilitate rehabilitation and reintegration efforts; thus, the Council extended the benefits provided to victims of terrorism to victims of trafficking and sexual violence committed by terrorist groups.

### *International humanitarian law*

As mentioned in chapter I, section C, above, article 4, paragraph 3, of Protocol II to the Geneva Conventions prohibits recruitment of children under the age of 15 by non-State armed groups. Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of

<sup>70</sup> See UNODC, *The Concept of “Exploitation” in the Trafficking in Persons Protocol* (Vienna, 2015).

children in armed conflict expands this prohibition to include the recruitment and use of children under the age of 18 by non-State armed groups in hostilities.

The monitoring and reporting mechanism on grave violations against children in situations of armed conflict, which was established pursuant to Security Council resolution 1612 (2005), addresses six grave violations against children in armed conflict. In its resolution 1379 (2001), the Council called upon the Secretary-General to attach to his annual report on children and armed conflict a list of parties to armed conflict that recruited or used children in violation of the international obligations applicable to them or in situations on the Council's agenda. In its resolution 1882 (2009), the Council added to the list those parties to armed conflict that engaged in the killing and maiming of children and/or rape and other forms of sexual violence against children in situations of armed conflict; and pursuant to Council resolution 1998 (2011), parties engaging in attacks on schools and/or hospitals were added to the list. In addition, pursuant to article 35 of the Convention on the Rights of the Child, the abduction of children was included as a criterion for listing; and pursuant to article 23 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,<sup>71</sup> the denial of humanitarian access to children was also included as a criterion.

### *International criminal law*

In the Rome Statute of the International Criminal Court, the definition of “war crimes” includes conscripting or enlisting (i.e. recruiting) children under the age of 15 into an armed group or their use in hostilities (article 8, para. 2, subparas. (b) (xxvi) and (e) (vii)). The definition of “war crimes” also includes committing rape, sexual slavery, enforced prostitution and forced pregnancy (article 8, para. 2, subparas. (b) (xxii) and (e) (vi)).

In addition, in the Rome Statute, the definition of “crimes against humanity” includes rape, sexual slavery, enforced prostitution and forced pregnancy when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack (article 7, para. 1 (g)).

## **2. Ensuring respect of the rights of children as victims**

According to the provisions of the international legal framework, children recruited and exploited by terrorist and violent extremist groups are victims of multiple violations of their rights. Yet the full application of their rights as victims is often curtailed in practice. Accordingly, the present section provides guidance related to two key aspects. The first one is related to child-sensitive age assessment<sup>72</sup> and the second one is related to the recognition of the legal status (as victims) of children recruited and exploited by terrorist and violent extremist groups. These two elements constitute the fundamental preconditions for the enjoyment of all the rights of child victims, which are analysed further in the remaining sections of the present chapter.

### **Child-sensitive age assessment**

Particularly in States with low birth registration, the determination of the correct age of a child may pose a challenge to authorities. When children are not recognized as such because of difficulties related to age assessment, they may face very serious consequences. Children without documents to prove their age, for instance, are more vulnerable to being treated as adults rather than children in criminal proceedings and when seeking international protection as asylum seekers.

<sup>71</sup> United Nations, *Treaty Series*, vol. 75, No. 973.

<sup>72</sup> The need for child-sensitive age assessment procedures in the context of terrorism is recognized in the UNODC Counter-Terrorism Legal Training Curriculum (see *Module 4: Human Rights and Criminal Justice Responses to Terrorism*, p. 60).

When assessing the age of a child, authorities must take into consideration all the information available. Alternative approaches, such as interviews and attempts to gather documentary evidence, may be the preferred option. Medical and physical age assessment methods, such as examining bone X-rays, measuring height or checking for signs of the onset of puberty, should be used only as a last resort in cases where there is reason to doubt the age of the child and where every other approach has failed. Whenever such methods are employed, they should be carried out only by medical practitioners, and a written record of the age assessment procedure must be kept, a copy of which must be made available to the child.

The dignity of the child must be respected at all times. Therefore, the least invasive method of age assessment must be used in order to comply with international human rights standards. An age assessment procedure should be gender-appropriate and multidisciplinary and should be carried out by independent professionals with appropriate expertise in and familiarity with the child's ethnic and cultural background. Physical, developmental, psychological, environmental and cultural factors must be considered. It is important to recognize that the assessment of a child's age is not an exact science. It is a process within which there will always be an inherent margin of error, and a child's exact age cannot be established through medical or other physical examinations.<sup>73</sup>

In case of doubt, pending a conclusive determination of age by a judge or competent authority, public officials must treat the young person as a child if he or she claims to or appears to be younger than 18. Where an age assessment fails to determine the age of a person beyond reasonable doubt, the person must be regarded as a child. In cases where there is doubt about whether an alleged offender is a child or an adult (i.e. under or over the age of 18), the alleged offender must be considered a child and his or her case must fall within the scope of juvenile justice law.<sup>74</sup>

### Recognizing as victims children recruited and exploited by terrorist and violent extremist groups

Children recruited and exploited by terrorist and violent extremist groups will often face increased challenges upon returning home because their communities are likely to view them as suspicious or even dangerous. In view of their association with terrorist and violent extremist groups, such children are primarily suspected of being perpetrators (or potential perpetrators) of terrorist offences rather than victims.

Acknowledgment of the victim status of such children is a precondition for them having access to their rights as victims of crime, including the right to reparations and rehabilitation measures, and may assist them in their efforts to achieve reconciliation with their communities. Different situations might lead to the recognition of the child as being a victim of different types of crime. For example, in certain contexts, acts committed against children by terrorist and violent extremist groups may qualify as the crime of trafficking in persons.

<sup>73</sup> Terry Smith and Laura Brownlees, "Age assessment: a literature review and annotated bibliography" (New York, UNICEF, 2011). Available at [www.unicef.org/protection/Age\\_Assessment\\_Practices\\_2010.pdf](http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf).

<sup>74</sup> See UNODC, *Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary* (Vienna, 2013). Available at [www.unodc.org/](http://www.unodc.org/).



### **Definition of “trafficking in persons” according to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**

In article 3 of the Trafficking in Persons Protocol, it is stated that:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under 18 years of age.

Thus, according to the Protocol, the recruitment, transportation, transfer, harbouring or receipt of a child (i.e. a person under 18 years of age) for the purpose of exploitation is considered “trafficking in persons”.

Concerning the intended exploitation of children, this can take several forms. In addition to more classic forms of exploitation such as sexual exploitation and forced labour, terrorist groups can force children to be involved in criminal activities as perpetrators or accomplices or in support roles (such as cooks, messengers and lookouts). For example, the recently reported use of children in suicide bomb attacks in Nigeria could be considered a form of exploitation of children and thus trafficking in persons.<sup>75</sup> These forms of exploitation could be treated as a manifestation of forced labour or services or even be covered by specific criminal provisions in countries that have enacted legislation criminalizing trafficking for the purpose of exploitation in criminal activities.<sup>76</sup>

In cases of trafficking in children by terrorist and violent extremist groups, the trafficked children should be treated and afforded protection as victims of trafficking in persons. An important element of the victim protection framework is non-punishment of victims of trafficking for offences they have committed as a result of their trafficking experience (see chapter III below).

The Security Council, in its resolution 2331 (2016), called upon Member States to ensure that victims are treated as victims of crime and in line with domestic legislation not penalized or stigmatized

<sup>75</sup> Report of the Secretary-General on children and armed conflict in Nigeria (S/2017/304); and UNICEF, “Use of children as ‘human bombs’ rising in north east Nigeria”, press release, updated 22 August 2017. Available at [www.unicef.org/media/media\\_100686.html](http://www.unicef.org/media/media_100686.html).

<sup>76</sup> See, for example, Morocco, art. 448.1, para. 3, of the Penal Code, as amended by Law No. 27-14 relating to trafficking in persons.

for their involvement in any unlawful activities in which they have been compelled to engage. In the same resolution, the Council affirmed that victims of trafficking in persons in all its forms, as well as victims of sexual violence, committed by terrorist groups should be classified as victims of terrorism in order to render them eligible for official support, recognition and redress available to victims of terrorism, in the form of access to national relief and reparations programmes, thereby contributing to efforts aimed at lifting the sociocultural stigma attached to that category of crime and facilitating rehabilitation and reintegration efforts.

In the same resolution, the Security Council emphasized that survivors of trafficking in persons should benefit from relief and recovery programmes, including health care, psychosocial care, safe shelter livelihood support and legal aid and that services should include provision for women with children born as a result of wartime rape, as well as men and boys who may have been victims of sexual violence in conflict, including when it is associated with trafficking in persons in armed conflict.

Regardless of the crime committed against a child by a terrorist or violent extremist group, it is important for all involved, not only government authorities but also communities and families, to be mindful of the need for, and proactively foster, recognizing as victims, in particular as victims of terrorism, all children recruited and exploited by terrorist groups. Every reparation programme for victims of terrorism should consider this dimension and provide adequate redress for the affected children (see section C.2 of the present chapter).



### Checklist for practitioners: key elements

- Under international law, the recruitment and exploitation of children by terrorist and violent extremist groups constitute multiple violations of their rights.
- The international legal framework strongly prohibits violence against children, as well as their exploitation for illicit activities and armed conflict, enslavement and sexual abuse.
- When dealing with child victims of violence and crime, professionals should be mindful of those children's specific rights and trained to provide appropriate assistance.
- Medical age assessment should be used as a measure of last resort, where there is reasonable doubt about a person's age and where other approaches have failed to establish the person's age. It should be conducted without any delay, using the least invasive method, by independent professionals with appropriate expertise. Where uncertainty persists regarding whether a person is under the age of 18, the person should be treated as a child. The same applies to cases where there is doubt about a child being under the minimum age of criminal responsibility.

## B. Protecting child victims and witnesses during investigations and trials

Traditionally, the criminal justice system is more focused on the relation between the State and the accused than on the role of victims. The issue of the role and rights of victims and their participation in the proceedings is especially delicate when the victims are children. Child victims and witnesses often take part in criminal proceedings in which the defendants are adults, a situation that can lead to the children being subjected to lengthy and sometimes hostile questioning or direct confrontation with the alleged perpetrators. Such practices contribute to secondary victimization as a result of the children coming in contact with the justice system. Secondary victimization is victimization that occurs not as a direct result of the criminal act causing harm to the victim but through the response of institutions and individuals to the victim.<sup>77</sup>

As mentioned earlier, children recruited and exploited by terrorist and violent extremist groups are especially likely to experience the health and psychosocial consequences of extreme violence. They also have a particularly high risk of experiencing retaliation. Therefore, while their right to participate in criminal proceedings should be protected, practitioners need to take measures to prevent their exposure to further violence in the course of the criminal proceedings.

Justice professionals face numerous challenges during direct interaction with children. Establishing open channels of communication with children and gaining their trust requires the use of an approach that is different from the one used in dealing with adults. Inappropriate attitudes can easily lead to blockages. Children who have suffered violence, for example, may be prone to having feelings of mistrust, isolation, or lack of confidence towards authorities.

This heightened vulnerability of child victims of violence may be exacerbated by a number of factors that often affect victims of terrorist crimes:

- (a) Acts of terrorism may be offences that occur on a large scale, may involve multiple perpetrators and victims and may result in mass physical and psychological injury. Authorities may therefore have difficulties in giving attention to individual victims;
- (b) There is a risk that authorities may perceive primarily the political dimension of acts of terrorism and neglect the impact on and needs of the individual victims;
- (c) Finally, victims and survivors of terrorist acts may be particularly exposed to intimidation and retaliation. As noted in the Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, this risk requires specific legal and policy protections for victims participating in the criminal justice process, including as witnesses.<sup>78</sup>

The section below provides guidance on how to ensure that the participation in criminal proceedings of children who have been recruited by terrorist and violent extremist groups takes into account their needs, in particular their safety, and at the same time minimizes any further hardship. It includes a discussion of the rights of child victims and witnesses in the international legal framework and suggests a number of strategies to promote their appropriate treatment.

<sup>77</sup> Recommendation Rec (2006) 8 of the Committee of Ministers to member States on assistance to crime victims, adopted by the Committee of Ministers of the Council of Europe on 14 June 2006.

<sup>78</sup> Global Counterterrorism Forum, "Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings", Good Practice 6. Available at <https://toolkit.thegctf.org/document-sets/madrid-memorandum>.

Child victims and witnesses may also take part in, or seek redress through, non-judicial processes. While such processes may be more accessible to children in certain contexts or constitute a more appropriate forum for children's participation, specific measures to ensure their adaptation to the rights and needs of the child should be in place (see chapter IV, section B, below).



### Key challenges

- Enhanced risks of victimization and retaliation by terrorist and violent extremist groups
- Resistance of the child and mistrust of public authorities
- Inability of the child to recall events in detail and chronological order
- Intimidating attitudes of practitioners and disregard of child-appropriate language
- Biological, personal or loyalty relationship between the child and the accused
- Insufficient coordination leading to repeated interviewing of children
- Lack of mechanisms to ensure that information is provided to the child concerning his or her rights procedures and requirements
- Delays in the proceedings
- Lack of an environment such as an interview room or court setting adapted to the needs of the child
- Lack of coordination with child protection and welfare actors to ensure appropriate supervision and assistance when dealing with child victims

## 1. Standards and norms related to the rights of child victims and witnesses

Providing assistance to child victims and witnesses throughout justice proceedings means respecting and putting into practice their specific safeguards. These have mostly been developed within international normative instruments that are not legally binding. In particular, it is important to take into account provisions contained in the following legal instruments: the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex); the Guidelines for Action on Children in the Criminal Justice System (Council resolution 1997/30, annex); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex);<sup>79</sup> and the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (Assembly resolution 69/194, annex).

<sup>79</sup> Other guidance, including, for example, the International Association of Prosecutors Model Guidelines for the Effective Prosecution of Crimes against Children, also instructs those within the justice system on how to work in a child-friendly manner with children who are in contact with the criminal law system as victims and/or witnesses.





### *International standards and norms related to the rights of victims*

The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime clarify the key principles for the treatment of child victims in the framework of justice processes. In particular, they reiterate the universal validity of the right to non-discrimination and the right to be treated with dignity and compassion.<sup>80</sup> The latter entails adapting procedures to a child individual needs.

The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime also highlight two key components of the principle concerning the best interests of the child:

- (a) The decisions taken should ensure protection of the child;
- (b) Public actors are responsible for taking actions that favour the healthy development and rehabilitation of children.

The connection between the right to participation and the right to be informed is also stressed in the Guidelines (paras. 19 and 20). In order to take an active part in the justice proceedings, child victims and witnesses should, from the beginning, be promptly and adequately informed of the rules of the justice process, the support services available and the progress of the case.

Furthermore, different rights of child victims and witnesses are especially important in terms of the protection and security they offer. These include:

- (a) *The right to privacy (the Guidelines, paras. 26-28)*. This establishes the need to protect relevant information relating to a child's involvement in the justice process, including from the press;
- (b) *The right to safety (paras. 32-34)*. This provides for a variety of measures to ensure protection of the child, including obligations to report risks or instances of harm, prior, during, and after the justice process;
- (c) *The right to special preventive measures (paras. 38-39)*. This recognizes the need for special strategies for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.

In addition, the Guidelines highlight the right of children to access effective assistance (paras. 22-25) at all stages, as well as the right of child victims to receive reparation (paras. 35-37) (see also section C below).

The United Nations Model Strategies on Violence against Children stress the need to take appropriate measures against the alleged perpetrators; this is part of the justice system's responsibility to protect the child victim, and it includes empowering authorities:

- (a) To initiate investigations in cases of violence against children, regardless of whether an official complaint has been filed (para. 22 (a));
- (b) To issue relevant protection measures to ensure the safety of the child (para. 20);
- (c) To duly inform the child and his or her family whenever a decision is taken related to the alleged perpetrator or perpetrators (para. 22 (h));
- (d) To ensure that the sentencing of perpetrators reflects the serious nature of violence against children (para. 27).

### **Excerpts from the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime**

#### *V. The right to be treated with dignity and compassion*

...

11. Every child should be treated as an individual with his or her individual needs, wishes and feelings.

...

14. All interactions described in these Guidelines should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understands.

<sup>80</sup> Convention on the Rights of the Child, art. 39; Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, paras. 8 (a) and 10-14; and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 4.

### *International criminal law*

The Rome Statute includes provisions for the participation of victims and witnesses in international criminal proceedings. In article 68, on protection of the victims and witnesses and their participation in the proceedings, it is stated that appropriate measures must be taken to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, having due regard to all relevant factors, including the nature of the crime, in particular where the crime involves sexual or gender violence or violence against children. The article establishes the possibility of holding closed proceedings, allowing the presentation of evidence by electronic means or withholding evidence that may expose witnesses to grave endangerment (submitting a summary of the evidence instead).

## 2. Promoting safe participation of child victims and witnesses in criminal proceedings

For children to take part and benefit from justice proceedings, a delicate balance between their right to be protected and the right to participation must be achieved. The recommendations presented below contain practical measures for the effective implementation of the international legal framework outlined above, taking into account the specific situation and risks faced by children who have been recruited and exploited by terrorist and violent extremist groups.

### Participation of children

According to international law, limiting the chances of a child to participate in the justice process solely on the basis of age is a form of discrimination. Accordingly, domestic legislations should refrain from precluding testimony by children under a determined age threshold, and justice professionals should treat children as capable and reliable witnesses. According to UNODC, good practice in this respect includes presuming the child's competency to testify, irrespective of his or her age, and keeping his or her age and maturity as factors to be taken into account in the assessment of his or her testimony.<sup>81</sup>



### **Case study: AM (Afghanistan) vs. Secretary of State for the Home Department—adapting judicial proceedings to the needs of a child formerly associated with the Taliban**

In 2012, AM, an Afghan boy born in 1998, travelled from Afghanistan to Europe and claimed asylum in the United Kingdom of Great Britain and Northern Ireland on the grounds that, if he returned, he would be persecuted by both the Afghan police and the Taliban. His asylum application stated that his father was a member of the Taliban and that AM had grown up in a Taliban camp until his father was killed and AM was captured by the Afghan security services and hospitalized. Taliban members then forcibly removed him to a training camp, from which he escaped and made his way to Europe. His initial application for asylum was denied for various reasons, one of them being that the first instance judge had found that AM's statements were not credible, due to vagueness and inconsistencies.

<sup>81</sup>UNODC, *Handbook for Professionals and Policymakers on Justice in matters involving child victims and witnesses of crime* (2009), page 25.

However, the Court of Appeal ruled that the first instance court proceedings were neither fair nor just, as AM was a vulnerable party with needs that had not been addressed. The Court of Appeal found that, in assessing AM's testimony, the first instance judge did not properly consider the impact of AM's age, vulnerability and the evidence of a significant learning disability contained in a report on the appellant's ability to participate effectively and fairly in the asylum process and the appeal.<sup>a</sup> The Court of Appeal pointed out that the proceedings in AM's case should have been carried out in accordance with the Practice Direction for Child, Vulnerable Adult and Sensitive Witnesses.<sup>b</sup>

The Court of Appeal made the following recommendations for the questioning of AM:

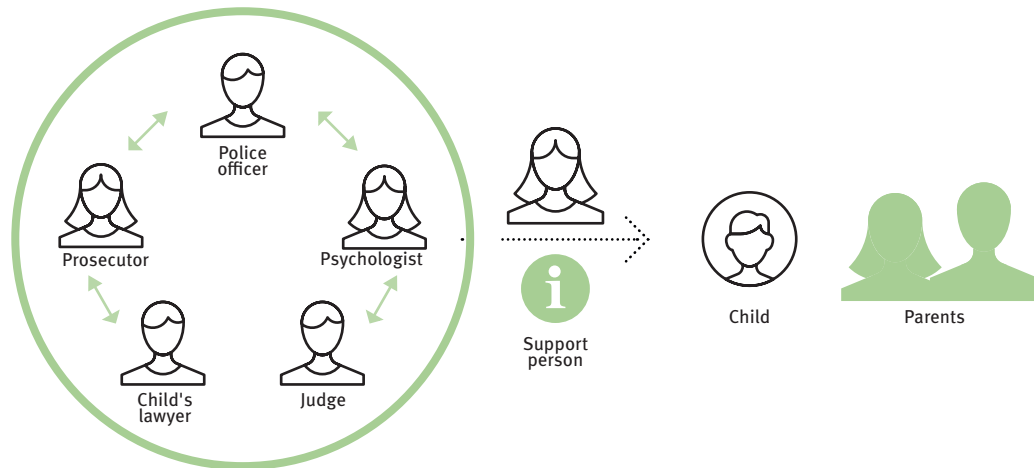
- Informal court dress for advocates and judge
- Informal venue for the hearing
- Informal seating arrangements (i.e. round tables or other seating that appears less confrontational and less adversarial)
- Exclusion of members of the public when AM gives evidence
- Restriction of people present in the courtroom when AM gives evidence, to legal representatives, the judge, the court clerk and, where he requests one, a person nominated to personally support him
- Questions asked by both parties to be open-ended where possible and broken down so that each question is simple and self-contained
- Points to be raised during cross-examination to be identified by the judge

<sup>a</sup> *AM (Afghanistan) vs. Secretary of State for the Home Department*, Court of Appeal (27/09/2017).

<sup>b</sup> *Practice Direction First Tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses*, Tribunals Judiciary (30/10/2008).

At the same time, this should not justify treating children like adults. On the contrary, comprehensive action can be taken to ensure that all stages of the proceedings are adapted to children's needs, starting with coordination mechanisms to appropriately convey information. A support person (usually a professional) chosen at the beginning of the process can help the child by being a source of information and avoiding situations where the child may receive overlapping or confusing messages. Furthermore, practical solutions, such as testimonial aids, or modifications to the court environment, can be especially helpful in improving the child's experience and reducing the potential for secondary victimization (see the box below on adapting investigations and court proceedings to child victims and witnesses in Canada).

**Figure II. Provision of information by professionals: coordinated support model**



Source: European Union Agency for Fundamental Rights, *Child-friendly Justice: Perspectives and Experiences of Professionals on Children's Participation in Civil and Criminal Judicial Proceedings in 10 EU Member States* (Vienna, 2015), p. 44.

Finally, appropriate consideration should be given to the hardship and risks faced by children who have been associated with a terrorist group. In certain cases, exemptions can be granted to children when their testimony could have an impact on their safety or development. These exceptions have already been included in the national legislation of various countries.<sup>82</sup>



### Case study: Adapting investigations and court proceedings to child victims and witnesses in Canada<sup>81</sup>

In Canada, the Criminal Code recognizes the possibility to use testimonial aids to facilitate the experience for child victims and witnesses. These include:

- Support person
- Witness screen
- Close-circuit television
- Publication ban
- Exclusion of the public from the courtroom
- Video-recorded evidence

Since 2006, amendments introduced by “Bill C-2, An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act”, testimonial aids have made mandatory rather than discretionary. In addition, the Canada Evidence Act now presumes children under 14 years of age to be capable of testifying, although they are not heard under oath, but rather following a promise to tell the truth. Finally, it is possible to hold hearings involving children in child-friendly courts (such and youth and family courts) rather than in adult courts.

<sup>81</sup> Melissa Northcott, “Facilitating testimony for child victims and witnesses”, *Victims of Crime Research Digest*, No. 2 (2009).

<sup>82</sup> *Handbook for Professionals and Policymakers*, p. 10.

## Safety measures

When the child takes an active part in the investigation and judicial proceedings, ensuring his or her safety is a primary responsibility of the entire justice system. Measures adopted should guarantee that the proceedings themselves do not create the conditions to endanger the child. Children should always be provided the chance to express their fears and concerns related to safety.

In this context, the rules concerning the privacy of children should be especially strict. Rules of confidentiality should be applied to any information that could lead to the identification of the child, and disclosure of information should be restricted.

The public and media should also be excluded from the courtroom whenever the child's testimony is presented. Avoiding direct confrontation between the child and the alleged perpetrator is also crucial at every stage of the proceedings, including during investigation.



### Case study: Protecting the privacy of victims of terrorism in Spain<sup>a</sup>

The obligation to protect the right to personal privacy and protect victims against intrusive media coverage, which can lead to secondary victimization, is equally important in the context of victims of terrorism.

Spain has implemented a comprehensive package of legal measures to ensure a victim-sensitive approach to rights concerning victim's data. They include:

- Media coverage that uses images of victims of terrorism for derogatory, degrading or sensationalist purposes is illicit.
- Institutions responsible for ensuring that audiovisual media comply with legal requirements have a duty to adopt appropriate measures to guarantee that victims of terrorism are treated according to constitutional principles and values.
- Cessation and rectification actions are available and supported by sanctions.
- Principles on the protection of data, including images, of victims of terrorism must be safeguarded.

<sup>a</sup>For further discussion of the practice with regard to this matter in Spain and several other countries, see UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (Vienna, 2015), available at [www.unodc.org/](http://www.unodc.org/)

Professionals should be particularly vigilant for risks of harm and retaliation, and mandatory reporting of instances or likelihood of harm should be extended to include all professionals in contact with the child (see also chapter I above). A high degree of cooperation between different actors is especially desirable to ensure that reports of such risks are dealt with in an effective and swift manner, especially when the danger comes from someone with easy access to the child (such as a family member). Such rules remain significant also in the context of child returnees. Children who are returnees are vulnerable to stigma. Moreover, professionals have highlighted the capacity of groups with which children were associated to continue threatening the children or their families, even from a distance, following the children's return.

Finally, when the safety of children is threatened, justice practitioners have the opportunity to take different actions. In these instances, measures that target the alleged perpetrator, such as restraining orders, pretrial detention and house arrest, should in principle be preferred to measures targeting the child, such as temporary removal of the child from his or her home. In particular, child victims and witnesses should not be treated as guilty parties, and any disruption to their lives should be reduced to a minimum.

### Communication and interviews with child victims and witnesses

While interviews with child victims and witnesses are a crucial component of their right to be heard, they can be especially stressful, in particular for children who have witnessed or suffered extreme violence. In such cases, inappropriate interview methods are particularly likely to lead to secondary victimization and to yield inaccurate, vague or otherwise useless statements.

In addition, children who have been associated with terrorist and violent extremist groups may face considerable fear of retaliation. Practitioners report cases of children who have been instructed to avoid cooperation with the authorities. A number of measures can contribute to adapting communication to the child's needs and, at the same time, obtaining more truthful information. In the case of children, the relevant actors should carefully coordinate their efforts in order to limit the number of interviews. During a criminal investigation, potential witnesses to a terrorism-related offence are subjected to repeated interviews by a number of different bodies and agencies. Multiple interviews not only cause harm to children, but may also cause them to change or retract evidence because they feel intimidated or are unable to face going through another interview. This can easily lead to allegations by the prosecution that a child's evidence is tainted and unreliable. In addition, repeated interviewing can cause psychological harm to children, as they are asked to repeat their traumatic experiences to different individuals whom they may be meeting for the very first time.

Regardless of the urgency of the investigation or the seriousness of the offence, it is crucial to ensure that children are not subjected to any form of intimidation, coercion or pressure. Specialized guidance on the conduct of interviews with children should be adopted, and practitioners should be trained accordingly. Some of the key elements of guidelines for interviewing and questions children are shown in table 1.

The need to prevent the possibility of any form of intimidation being exercised directly by the alleged perpetrators is especially important for children who have been associated with terrorist or other armed groups. It should be kept in mind that, when children were under the control of the group, they were integrated into its hierarchical structure, and they may still feel strong fear of, as well as loyalty towards, authority figures within the group.

### Delays

Delayed proceedings are especially problematic for children. They entail longer periods of anxiety in connection with testifying, appearing in court, and lasting uncertainties regarding the destiny of the perpetrators. Just as taking part in the justice process can be a validating experience for the child and can support his or her sense of justice, delays can cause further disruption in the child's life.

Moreover, children generally find it difficult to remember a chronological event in sufficient detail (such as the date and the time of an incident or who was present at different moments during the incident) to satisfy the evidential burden in a criminal trial. This difficulty is easily aggravated during the period between the incident they have witnessed and the trial. In cases involving war crimes, the child may have been a victim to, or witnessed, an event many years before the trial.

**Table 1. Guidelines for interviewing and questioning children**

|                                |  |
|--------------------------------|--|
| <b>General rules</b>           | Children should be provided relevant information on their rights, the conduct of criminal proceedings and their role, as well as the developments of and outcomes of the proceedings.  |
|                                | Interviews with children should always be conducted by skilled, trained professionals, in a thorough and sensitive manner. Professionals interviewing children who have been associated with terrorist and violent extremist groups should have specific knowledge of the impact of extreme violence and trauma on children's behaviour and development. |
|                                | Interviewers should avoid a generalized approach to children and adapt each interview to the level of development, needs and situation of the individual child.  |
|                                | Children should always be interviewed in the presence of a support person. This person should be selected in the initial stages of the proceedings and accompany the child throughout the justice process.   |
|                                | Specialized counter-terrorism investigations often require cooperation among different sectors. However, limiting the number of persons in the room is conducive to a more child-sensitive environment and contributes to preventing intimidation.   |
| <b>Prior to the interview</b>  | Video recording can be especially helpful to minimize the number of interviews and, at the same time, to ensure that the conduct of the interview respects the right of children to be treated with dignity and compassion.  |
|                                | The environment of the interview should be adapted to the child. Interviews with children can take place in special rooms, even during court proceedings, and be transmitted via video link in the courtroom.  |
|                                | Any contact between the child and the alleged perpetrators should be carefully avoided, including while waiting for the interviews and during court proceedings.   |
| <b>During the interview</b>    | Questions should be carefully prepared, and interviewers may want to coordinate with the support person on the appropriate way to address the child.   |
|                                | Children and their parents should be provided with the appropriate information and give their informed consent to the conduct of the interview.  |
|                                | Interviews should be carefully structured. In this context, the key phases usually include: rapport-building; asking questions; and closing the interview.   |
|                                | The ground rules of the interview process should be explained. Children should understand that there is no "right" or "wrong" answer and should be encouraged to ask for clarifications when necessary. The safety concerns of the child should be addressed.  |
|                                | Leading questions should be avoided, and free narrative accounts should be encouraged, prior to asking for clarification when necessary.   |
| <b>Following the interview</b> | Questioning should not go on for too long, and appropriate breaks should be ensured.   |
|                                | Before closing the interview, the child should be read a summary of his or her statement and provided with an opportunity to add further elements.   |
|                                | Possible follow-up should be discussed, and relevant information should be provided on services available to the child and to the parents or legal guardians.  |
|                                | The measures that will be adopted to ensure the safety of the child should be explained.   |
|                                | The rules of confidentiality should be repeated.   |
|                                | The child should be thanked for his or her cooperation.  |

Note: For further explanation of the key elements outlined in the table, see UNODC, *Handbook for Professionals and Policymakers on Justice Matters Involving Child Victims and Witnesses of Crime* (2009); and "United Nations Guidelines on Justice in Matters involving child victims and witnesses of crime: online training". Available at [www.unodc.org/justice-child-victims/login/welcome.jsp](http://www.unodc.org/justice-child-victims/login/welcome.jsp).



### Case study: Preventing the intimidation of children—a study involving the International Criminal Court case of *The Prosecutor v. Thomas Lubanga Dyilo*

In January 2009, the first witness in the case of *The Prosecutor v. Thomas Lubanga Dyilo*—a former child soldier given the pseudonym Dieumerci—was called to the stand. Dieumerci testified that when he was in the fifth grade, he, along with other schoolchildren, were kidnapped by soldiers and taken to a military camp. As the hearing progressed, Dieumerci became frightened and eventually recanted his testimony entirely. Two weeks later, Dieumerci took the stand again and repeated his initial testimony, explaining that, the first time he gave evidence before the court, a lot of things went through his mind; in particular, he felt threatened and scared by the presence of the defendant, his former recruiter and commander, in the courtroom. When called a second time, Dieumerci gave evidence from behind a screen. The defendant was no longer able to make eye contact or to intimidate the witness.<sup>a</sup>

<sup>a</sup> C. Hamilton and L. Dutordoir, “Children and justice during and in the aftermath of armed conflict”, Working Paper No. 3 (September 2011), p. 16.

Therefore, mechanisms should be put in place to ensure that the testimony of the child is collected as soon as possible. These can include: video recording of police interviews; laws and regulations requiring the avoidance of undue delays in criminal cases involving children, including through the adoption of a specific timeline; and the requirement that hearings involving children are scheduled as a priority.

### Balancing the rights of the child victim and the rights of the accused

In adopting measures to protect child witnesses, criminal justice authorities have to be mindful of the safeguards protecting the accused person’s right to a fair trial.<sup>83</sup> In this regard, it is very important to clearly distinguish between those measures that limit only the public nature of the proceedings (e.g. closed hearings and the use of pseudonyms in public versions of documents relating to the trial) and those that limit the accused person’s ability to challenge the evidence provided by the child witness (e.g. non-disclosure of the witness’s identity to the accused and limits on cross-examination).

With respect to the right to a public hearing, in article 14, paragraph 1, of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), it is stated that the press and the public may be excluded from all or part of a trial when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. These grounds apply to the protection of child witnesses. Article 14, paragraph 1, also allows any judgment rendered in a criminal case or in a suit at law to be made public except where it is in the interest of juvenile persons to do otherwise.

The accused person’s right to a fair trial will be more gravely affected where witness protection measures limit his ability to challenge the evidence against him. In article 14, paragraph 3 (b) and (e), of the International Covenant, it is stated that everyone charged with a criminal offence should have certain minimum guarantees, including: to have adequate time and facilities for the preparation of his defence and to examine, or have examined, the witnesses against him. It is not enough for an accused

<sup>83</sup> More analysis and further references on fair trial issues in relation to witness protection measures can be found in Module 4 of the UNODC Counter-Terrorism Legal Training Curriculum, *Human Rights and Criminal Justice Responses to Terrorism*. Available at [www.unodc.org/](http://www.unodc.org/).



person to learn on the day of the trial hearing the identity of the witnesses against him. Effective preparation for cross-examination of the prosecution witnesses takes time: the sooner an accused knows the identity of the witnesses against him, the better his chances of identifying information that undermines their credibility.

A range of different measures can be adopted to protect the child witness against the impact of direct confrontation with his former exploiter. Those measures include the use of screens in the courtroom to shield the witness, the use of video link or asking questions through the judge. Prosecutors and judges must be very careful in assessing and balancing the need to protect child witnesses and the rights of defendants accused of terrorism-related offences, which can carry severe sentences. Where a child witness cannot be adequately protected without gross unfairness to the accused person, the only solution may be not to use the child's testimony.

Witness protection experts have an important role to play in advising law enforcement officers, prosecutors and judges on these measures.

### International cooperation regarding child victims and witnesses<sup>84</sup>

In view of the transnational nature of the activities of most contemporary terrorist groups, the need for international cooperation in criminal matters is likely to arise when justice authorities deal with a case involving a child recruited by a terrorist group, whether as victim, witness or alleged offender. The United Nations counter-terrorism conventions and protocols, as well as binding Security Council resolutions, require States to cooperate in bringing to justice those responsible for acts of terrorism.<sup>85</sup>

In seeking and providing police cooperation or mutual legal assistance in matters relating to children, authorities in both requesting and requested States need to take into account the procedural safeguards and good practices identified above. For instance:

(a) *Requesting and providing information, or copies of official records, regarding a child.* Authorities of both the requesting State and the requested State need to take into account heightened privacy requirements in dealing with information about children. Clear communication of legal standards and expectations between the requesting and requested authorities are key to successful cooperation and protection of the child's rights;

(b) *Requesting mutual legal assistance to interview a child witness.* The requesting State should ensure that any interview by the authorities of the requested State is carried out in accordance with the essential requirements of proceedings in matters affecting children in contact with the law (see table 1). This is necessary both in the interests of the child and to ensure that any statement obtained can subsequently be used in any proceedings. The requested State has the responsibility to ensure that the essential elements of its law regarding proceedings in matters affecting children in contact with the law are respected. The authorities of the requesting State and the requested State should give a full and transparent clarification of their respective requirements well in advance of the interview, also in the interest of limiting the number of interviews. Perhaps most importantly, the competent authorities should be particularly scrupulous in assessing whether obtaining the child's statement is actually necessary for the investigation or the court case.

<sup>84</sup> The present section applies general legal standards and good practice principles regarding mutual legal assistance as set forth in, for example, the UNODC *Manual on Mutual Legal Assistance and Extradition* ([www.unodc.org/](http://www.unodc.org/)) to the specific requirements of justice proceedings involving children.

<sup>85</sup> For example, art. 10, para. 1, of the International Convention for the Suppression of Terrorist Bombings (United Nations, *Treaty Series*, vol. 2149, No. 37517) requires States parties to afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of terrorist bombing attacks. The same obligation, to afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, is also required of all States by the Security Council in its resolution 1373 (2001).



### Checklist for practitioners: key elements

- Child victims and witnesses enjoy the same procedural safeguards throughout justice proceedings.
- A careful assessment of the individual circumstances of the case and of the child should be undertaken to decide on the appropriate degree and form of the child's participation.
- A variety of mechanisms can be put in place to adapt the investigation and court proceedings to the needs of the child and improve his or her experience of justice.
- Professionals dealing with children should strive to coordinate to limit the number of interviews and should receive specific training on child-sensitive communication.
- When adopting measures to guarantee the safety of the child, preference should be given to measures addressing the alleged perpetrator's ability to harm or threaten the child, rather than removing the child from his or her environment, whenever possible.
- When adopting witness protection measures affecting an accused person's right to a fair trial, careful consideration must be given to balancing child protection needs and defence procedural safeguards.
- Safeguards should be equally applied when requesting or providing police-to-police cooperation and mutual legal assistance in matters affecting child victims and witnesses.

### For further guidance on the treatment of child victims and witnesses during the justice process

- *Handbook for Professionals and Policymakers on Justice Matters Involving Child Victims and Witnesses of Crime* (2009)
- UNODC and UNICEF, "Online training on the United Nations Guidelines on Justice in Matters involving child victims and witnesses of crime" (available at [www.unodc.org/justice-child-victims/login/welcome.jsp](http://www.unodc.org/justice-child-victims/login/welcome.jsp))

## C. The right of child victims to reparation

Regardless whether reparations are awarded at the individual or collective level, they should seek to contribute towards restoring social peace for the community. Providing comprehensive redress to victims requires time, resources, coordination, expertise and political will.<sup>86</sup> Reparation programmes are therefore often faced with a wide range of challenges.

Experience shows that timeliness of reparations cannot be taken for granted, regardless of what approach is taken. It is not atypical for countries facing a history of massive human rights violations to take some time to implement administrative reparations because they are often a complex policy matter that is usually politically and economically charged.

While court-ordered reparations may be subject to less political pressure, they are not necessarily able to provide more timely redress, given how long complex legal proceedings to adjudicate mass atrocities may take. In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, the International Criminal Court intends to provide reparations to former child soldiers from a conflict that took place during the period 2002-2003. However, the implementation of symbolic reparations was authorized only in October 2016, followed by an authorization of collective service-based reparation awards in April 2017,

<sup>86</sup> For a comprehensive overview of the opportunities and challenges of reparations, see the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/69/518).

and the Court's final decision on reparations is still outstanding. In the meantime, almost 15 years later, the former child soldiers have grown into (young) adults without having received the much needed support to redress the harm they have suffered, in addition to support for their rehabilitation.

Despite all the complexities, it is therefore of great importance to ensure that reparations are timely. The longer the delay between the violation that gave rise to the harm that the reparations scheme seeks to redress, the more difficult it will become to achieve effective redress, in particular if the victims are children. If necessary, urgent interim measures will need to be taken.

In addition, particular attention should be paid to specific forms of violence and their consequences. Sexual violence and gender-based violence, in particular, not only affect the victims in numerous ways, but also have a considerable impact on their willingness to come forward.

While reparation can take the form of monetary compensation, the concept of reparation is in no way limited to this form of redress. In the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex), it is stated that reparation includes the following forms:

- (a) *Restitution* (e.g. release from detention or custody, return home and restoration of property and enjoyment of human rights);
- (b) *Compensation* (e.g. economic compensation for physical harm or material or moral damages);
- (c) *Rehabilitation* (e.g. medical and psychological care and legal and social services);
- (d) *Satisfaction* (e.g. measures to end violations, public acknowledgement of the truth, identification and recovery of the disappeared, apology by the perpetrator and judicial sanctions against the perpetrator);
- (e) *Guarantees of non-repetition* (e.g. strengthening of the rule of law, mechanisms for preventing and monitoring conflict, and law reform).

In the case of children harmed as a result of recruitment and exploitation by terrorist and violent extremist groups, some of these forms of reparation are especially relevant: reparation for the purposes of physical and psychological rehabilitation; satisfaction, for instance, in the form of efforts to bring to justice those who recruited and exploited the children; and measures aimed at non-repetition (i.e. safeguarding the children from re-recruitment and new exploitation).

The following section focuses on analysing the key elements that can make the implementation of reparations more tailored to the needs of victims, in particular the needs of children recruited and exploited by terrorist and violent extremist groups.



### Key challenges

- Obtaining political support
- Observing the principle of “do no harm”: reparations should seek to avoid creating further stigma and pain, including by being mindful of potential jealousies of “non-victims”
- Ensuring adequate funding
- Ensuring fair, comprehensive and transparent victim identification and participation
- Addressing in a fair manner the needs of a large number of victims, who often suffer as a result of a broad range of violations and abuses, and creating a scheme that deals adequately and fairly with the scope and range of victimization
- Guaranteeing access to reparations for all victims without any discrimination, regardless of age, gender, the type of harm suffered and other disparities
- Implementation: sometimes victims will be accorded the right to reparations (e.g. in form of a court decision) but may not be able to exercise this right
- Delays in the attribution of reparations

## 1. Sources of the right of child victims to reparation

The international legal framework provides guidance on the rights of victims, including child victims, to reparations. The present section outlines the crucial elements to determine what constitutes reparations, and who is entitled to them, according to international law.

### *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*

One key source for the principles underlying reparations are the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which requires States that have not already done so to ensure that their domestic law is consistent with their international legal obligations by making available adequate, effective, prompt and appropriate remedies to victims, including reparation, and to ensure that their domestic law provides at least the same level of protection for victims as that required by their international obligations (General Assembly resolution 60/147, annex, para. 2 (c) and (d)).

### *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*

The Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime recognize the necessity to ensure that child victims of crime obtain reparations and that procedures for obtaining and enforcing reparations are readily accessible and child-sensitive. The purpose of reparations is to acknowledge the suffering and harm to victims and to provide compensation, restitution and redress for that harm, with the aim of returning child victims to their previous condition to the maximum extent possible. In addition, the Guidelines indicate that reparations for child victims should address costs of social and educational reintegration, medical treatment, mental health care and legal services (Economic and Social Council resolution 2005/20, annex, paras. 35-37), thus emphasizing the connection between reparations and the reintegration process.

### *Worst Forms of Child Labour Convention, 1999 (No. 182), of the International Labour Organization*

Under article 7 of the Worst Forms of Child Labour Convention, 1999 (No. 182), member States of the International Labour Organization (ILO) are obliged: to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; to ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; and to identify and reach out to children at special risk. As noted above in section A.1 of this chapter, the term “the worst forms of child labour” includes the recruitment of a child for use in armed conflict and the use of a child for illicit activities.

### *International framework related to terrorism*

There is growing recognition that victims of terrorism should be accorded the right to reparations. In the plan of action of the United Nations Global Counter-Terrorism Strategy, Member States stressed the need to promote and protect the rights of victims of terrorism and identified dehumanization of victims of terrorism in all its forms and manifestations as one of the conditions conducive to the spread of terrorism. In addition, Member States resolved to consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives (General Assembly resolution 60/288, annex).

The General Assembly, in its resolution 70/91 on the United Nations Global Counter-Terrorism Strategy Review deeply deplored the suffering caused by terrorism to the victims of terrorism in all its forms and manifestations and to their families and encouraged Member States to provide them with proper support and assistance while taking into account, inter alia, when appropriate, considerations regarding remembrance, dignity, respect, justice and truth, in accordance with international law.

### *International legal framework related to the responsibility to provide reparations*

In the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Serious Violations of Humanitarian Law, it is stated that the party responsible for the violation is also the one primarily responsible for providing reparation and that the State should provide reparation to victims for acts that can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a party other than the State is found liable for reparation to a victim (as is the case when a child is a victim of recruitment and exploitation by a terrorist or violent extremist group), that party has the primary responsibility for providing reparation to the victim.

With regard to victims of terrorism,<sup>87</sup> in the International Convention for the Suppression of the Financing of Terrorism<sup>88</sup> it is stated that States parties should consider setting up mechanisms whereby funds forfeited from terrorist groups or financiers can be used to compensate the victims of terrorism (article 8). However, should that party be unable to provide the reparation, the State may be secondarily responsible for providing reparation, pursuant to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has argued that, because the perpetrator of a terrorist act (if he or

<sup>87</sup> See UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (Vienna, 2015), available at [www.unodc.org/](http://www.unodc.org/).

<sup>88</sup> United Nations, *Treaty Series*, vol. 2178, No. 38349.



she has not been killed or evaded capture) will usually be sentenced to a long term of imprisonment, he or she is unlikely to ever be in a position to compensate the victims. Thus, a victim-centred approach does not permit reliance on an indigent, deceased or untraceable individual such as the perpetrator to provide reparation for death or serious injury resulting from a terrorist act. Many States have voluntarily accepted an international law obligation to establish schemes to provide State-funded compensation to the victims of all violent terrorist acts resulting in death or serious physical or psychological injury.<sup>89</sup>

### Recognition of States' responsibility to provide reparations at the regional level

- In the Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism, it is stated that when compensation for victims of terrorist acts is not available from other sources, in particular through the confiscation of the property of the perpetrators, organizers and sponsors of terrorist acts, the State on the territory of which the terrorist act happened must contribute to the compensation of victims for direct physical or psychological harm, irrespective of their nationality.
- In the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, adopted by the African Commission on Human and Peoples' Rights, it is stated that States shall provide full and effective reparation to individuals who have suffered physical or other damage or who have suffered violations of their human rights as a result of an act of terrorism. To facilitate this responsibility, States are encouraged to establish, in accordance with regional and international human rights standards, a funding mechanism to compensate victims of terrorist acts.

As noted above, under article 7 of the Worst Forms of Child Labour Convention, 1999 (No. 182), ILO member States are obliged: to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour (which, according to article 3, include the use of children for illicit activities and the forced or compulsory recruitment of children for use in armed conflict) and for their rehabilitation and social integration; and to ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour.

The United Nations has established an online Victims of Terrorism Support Portal, which contains a directory of organizations supporting victims of terrorism, where the contact details for organizations at the national level that may provide reparations to victims of terrorism can be found.

#### For further guidance on the right of victims of terrorism to reparation

- *The Criminal Justice Response to Support Victims of Acts of Terrorism, revised edition (2012)*
- *UNODC, Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework (Vienna, 2015), available at [www.unodc.org/](http://www.unodc.org/)*

The Rome Statute of the International Criminal Court accords victims the right to participate in trial; it has also led to the establishment of the Trust Fund for Victims to provide victims with assistance in the form of physical and psychological rehabilitation and material support. Furthermore, pursuant to article 75 of the Rome Statute, system of reparations has been created for cases in which

<sup>89</sup> A/HRC/20/14, paras. 56 and 57.

the Court has found the perpetrator guilty. The Court may award reparations on an individual basis and/or a collective basis, whichever is, in its view, the most appropriate for the victims in a particular case; the reparations may include monetary compensation, return of property, rehabilitation, medical support, victim service centres or symbolic measures, such as apologies or memorials. Thus, the Court seeks not only to bring criminals to justice but also to help victims rebuild their lives.

In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, the International Criminal Court is currently determining the reparations that the victims of Mr. Lubanga, former child soldiers in the militia he lead, are entitled to. In Uganda, the Trust Fund for Victims has been providing assistance to children recruited and exploited by the Lord's Resistance Army, an armed group designated as a terrorist group by Uganda, and the United States of America, as well as the African Union.<sup>90</sup>

## 2. Providing reparations to children recruited and exploited by terrorist and violent extremist groups

The present section takes into account that, while reparations can be provided in different forms and through different mechanisms, their effectiveness in terms of supporting the child victim during the reintegration process will be determined by their responsiveness to the specific needs of the victims. Therefore, a number of measures should be taken to foster the participation of child victims and to take into account the specific consequences of different forms of violence.

### Judicial reparations and administrative reparations

Reparation programmes vary widely, in substance and in terms of their procedures. Reparations may be ordered by a court as part of judicial proceedings. Reparation schemes may also be created through legislative or administrative programmes (so-called administrative reparations).

According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and International Humanitarian Law, a person is to be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted (para. 9). Thus, acquiring the status of victim (and with that status, the right to reparations) does not depend on the identification and conviction of the perpetrator.

Reparations may be called for in peace agreements, in the recommendations of truth commissions, through the advocacy of civil society and victims groups, or as part of government initiatives to provide justice. Reparation schemes may also be prompted by a major terrorist attack. After the attacks of 11 September 2001, for instance, the United States Congress enacted a statute creating a victim compensation fund responsible for making the decisions on how much compensation each family of a victim of those attacks would receive.

Reparations may be provided to victims on an individual basis or on a collective basis. Furthermore, reparations can be material or symbolic. In Sierra Leone, for instance, pursuant to a recommendation in the 2004 report of the Truth and Reconciliation Commission, President Ernest Bai Koroma issued a formal apology to women victims of the armed conflict in that country.

In fact, which approach to reparations is the most appropriate in cases involving reparation for harm suffered by children associated with terrorist and violent extremist groups will depend on the context in which the groups' violations have occurred. Reparation policies implemented in response to periods of massive and systematic violations of human rights or international humanitarian law will be different from court-ordered reparations in cases following the criminal conviction of an individual

<sup>90</sup> See, for example, the Fall 2010 Programme Progress Report of the Trust Fund for Victims, "Learning from the TFV's second mandate: from implementing rehabilitation assistance to reparations".

perpetrator or victim compensation schemes established at the national level for victims of crimes in general or for victims of one particular terrorist event.

In countries emerging from conflict in which terrorist and violent extremist groups have played a role and where a larger administrative reparation scheme is envisaged, it may make sense to include in the broader reparation scheme reparations for children who are victims as a result of their recruitment by those groups. In a situation where there have not been large-scale violations that call for a reparation scheme at the national level and where there are only a few cases of children affected by their involvement with terrorist and violent extremist groups, however, a more individualized approach may be more appropriate.

Finally, ongoing court proceedings may provide an appropriate opportunity to obtain reparations. For instance, in 2011, a Colombian court examining the criminal responsibility of a paramilitary commander for the forced recruitment of 309 children and youth ordered, among other measures (including compensation), the implementation of a psychosocial rehabilitation programme with continued and personalized therapy for all 309 victims and encouraged the victims to take part in defining the parameters of the programme. The court also ordered physical care to be provided through the public health-care system to any victims in need of such care.<sup>91</sup>

### Victim-centred reparation proceedings and awards

Reparations must be victim-centred to be effective. Moreover, reparation programmes must ensure that all victims, regardless of what form of harm they have suffered, are treated with humanity and respect for their dignity and human rights, avoiding any further harm and trauma. Their right to a remedy and reparation should be fulfilled without discrimination on the basis of sex, gender identity, ethnicity, race, age, political affiliation, class, marital status, sexual orientation, nationality, religion and disability, or any other status.

Moreover, victims should be able to participate in the programme at all stages of the reparation process. Experience has shown that reparation programmes that give victims a voice in a consultative process are most effective because that ensures that the programmes are based on a solid understanding of what forms of reparation are most important to victims and respond best to their needs.

### A child-sensitive approach to reparations

Child victims often experience difficulties in accessing reparation schemes. Children who have suffered harm as a result of a crime, including a terrorist offence, have a right to reparations just as adults do.<sup>92</sup>

It is therefore important to ensure that those who develop and administer reparation schemes are mindful of the fact that:

- (a) Children may be among the victims;
- (b) Steps should be taken to effectively provide children with access to reparations;
- (c) Both the reparation proceedings and the design of reparation awards should reflect the particular needs and vulnerabilities of child victims, including by taking their views into account during the reparation process.

In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, the Appeals Chamber of the International Criminal Court developed some general principles applicable to cases involving child victims that may provide some guidance on what considerations should be applied when developing child-sensitive

<sup>91</sup> Colombia, Tribunal Superior del Distrito Judicial de Bogotá, *Sala de Justicia y Paz v. Fredy Rendón Herrera*, 16 December 2011.

<sup>92</sup> On the difficulties that children may experience in accessing reparations, see Dyan Mazurana and Khristopher Carlson, *Children and Reparations: Past Lessons and New Directions*, Innocenti Working Paper No. 2010-08 (Florence, Italy, UNICEF Innocenti Research Centre, 2010).



reparations (see the box below), including the importance of having the child's best interests as a key consideration underlying any reparation programme for children. This includes the right of child victims to express their views and to have them taken into account in the course of the reparation proceedings and the right to legal representation, where relevant.

### The symbolic dimension of reparations

A very important aspect of reparations, one that distinguishes them from development initiatives or rehabilitation or reintegration programmes, is that reparations are awarded in specific recognition of victims and their victimization. This is particularly clear in the case of court-ordered reparations, but it also applies to administrative reparations.

In other words, a victim eligible to receive reparations is not merely a recipient of some form of aid, but rather a right holder who is entitled to redress in acknowledgement of the wrongful harm inflicted on him or her.

### Addressing the gender dimension of reparations

Reparations seek to redress harm that has been experienced by the victim. Accordingly, it is important to bear in mind that each victim has his or her own individual experience of harm and corresponding needs. Accordingly, the gender dimension involved in the experience of harm should receive appropriate consideration. Reparation programmes should be designed to adequately respond to differences in experience of harm and need for redress. For instance, reparation programmes should account for the specific situation of girls returning with young babies from terrorist and violent extremist groups.

Furthermore, traditional gender roles may affect how far girls and boys are able to express themselves and will be able to come forward in reparation proceedings. Unfortunately, girls' access to reparations may often be limited by a wide range of factors, including customary rules, patriarchy in clan structures, a gender bias in the judicial system and gender-specific lack of resources and support to successfully claim reparations.



#### On the importance of acknowledgement and recognition<sup>a</sup>

Essentially, reparation measures constitute a message to victims from the rest of society, recognizing that victims belong in the community and expressing solidarity in the face of unjust suffering. In order for this message to be perceived by victims as honest, it must be coherent with the other messages that are directed to victims, through actions such as criminal justice and also in other contexts of daily discourse.

This is why it is so important for reparation processes to be transparent to society as a whole. Information and outreach campaigns should be used to educate the general public about the violations committed and the harm and suffering inflicted on victims, and the processes of truth-seeking, justice and reparation need to be reinforced in the public consciousness.

<sup>a</sup> Cristián Correa, Julie Guillerot and Lisa Magarrell, "Reparations and victim participation: a look at the Truth Commission experience", in *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, Carla Ferstman, Mariana Goetz and Alan Stephens, eds. (Martinus Nijhoff Publishers, 2009).

To overcome these obstacles and to make reparations equally accessible and responsive to all, reparation programmes should be based on a gender-inclusive approach, in terms of both the procedures and the design of reparation awards. It is important to provide both male and female victims the possibility to voice their needs and concerns in the reparation process through meaningful participation and consultation. In the case of child victims, where appropriate, their parents or their guardians should be involved.

Making reparations gender-sensitive may also imply taking into account pre-existing gender relations with a view to not reinforcing any pre-existing patterns of gender-based discrimination, but rather striving for transformative change.<sup>93</sup> Rather than merely aiming at restoring the status quo ante, reparations may aim to be transformative.<sup>94</sup>



### Case study: The Trust Fund for Victims, a programme for girls abducted by the Lord's Resistance Army in northern Uganda who gave birth while in captivity

Since 2008, the Trust Fund for Victims through an implementing partner in northern Uganda, has been providing assistance to girls abducted by the Lord's Resistance Army and then subjected to sexual violence. The project combined an accelerated learning programme with infant day care to help the young mothers to catch up with their peers at school and to develop a bond with their babies, whom they often viewed as a source of stigma and an economic burden. Many of these young mothers and their babies were rejected by their parents, making it difficult to facilitate their reintegration. The following is an excerpt from a programme progress report prepared in 2011 by the Trust Fund:

As they tend to their babies in the centre's day care, the young mothers learn that they are not alone and that their babies can be a source not of stigma and economic burden, but of pride. Several months into the school year, the girls begin to carry their children in public while wearing their school uniforms. This is a public statement that being a student and a mother is not a source of shame: rather, it is a sign of remarkable achievement.<sup>a</sup>

<sup>a</sup> K. Kalla and P. Dixon, "Reviewing rehabilitation assistance and preparing for delivering reparations" (2011). Available at [www.trustfundforvictims.org/](http://www.trustfundforvictims.org/).

### Considerations with regard to reparations for sexual and gender-based violence

Using reparations to harm arising from sexual violence, which affects primarily girls but also boys who have been involved with violent extremist groups, may be a particularly sensitive matter.

In 2014, the Secretary-General issued a guidance note on reparations for conflict-related sexual violence, which provides relevant advice and leadership on how to best respond to this challenge. In the guidance note, the Secretary-General:

<sup>93</sup> See, for example, the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparations, a civil society declaration by women's rights groups, issued in 2007.

<sup>94</sup> In its decision on reparation principles in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, the first case to go into the reparation phase, the International Criminal Court found that reparations are not limited to restitution, compensation and rehabilitation. Other types of reparations, for instance those with a symbolic, preventive or transformative value, may also be appropriate (see *The Prosecutor v. Thomas Lubanga Dyilo*, Order for Reparations (amended), document ICC-01/04-01/06-3129-AnxA, judgment of 3 March 2015, available at [www.icc-cpi.int](http://www.icc-cpi.int)).

(a) Called for putting in place adequate procedural rules for proceedings involving reparation for harm resulting from sexual violence;

(b) Stated that sexual violence should be redressed through different forms of reparation and that individual and collective reparations should reinforce each other;

(c) Stressed that it might be necessary to make available urgent interim reparations to address immediate needs and avoid irreparable harm because providing comprehensive redress to victims required time, resources, coordination, expertise and political will;

(d) Stressed that victims of conflict-related sexual violence often faced serious mental and physical health problems as a consequence of the crimes committed against them and often did not have access to health services.



### Case study: Recognizing victimization of children born as a result of rape—the Reparations Plan in Peru

Children born to victims of rape are often stigmatized and excluded by families and communities because they are a living reminder of the violence that their mothers experienced while they were with violent extremist or terrorist groups. Such children may suffer grave consequences such as infanticide, abandonment, trafficking, statelessness, confusion over identity and discrimination in accessing family land and inheritance.

In Peru, the Reparations Plan that was developed in the context of the conflict with the Shining Path (Programa Integral de Reparaciones en Perú, Ley 28592, articles 2-6) recognized children born of rape as a distinct category of beneficiary. It is stated in the Plan that such children should be entitled to economic compensation up to the age of 18 and should be eligible for preferential access to education services.



### Checklist for practitioners: key elements

- Reparations include a variety of measures, may be ordered by judicial bodies or be part of administrative programmes and may be awarded on an individual or collective basis.
- In order to respect the rights of victims, reparations should avoid further victimization and foster victims' participation. This requires particular attention in the case of child victims.
- Sexual violence and its consequences should be duly acknowledged and recognized through reparation programmes.
- Reparations play an important role in the recognition of child victims as right holders.



## Chapter 3

### Justice for children accused of terrorism-related offences



## A. Specialized juvenile justice system

The present chapter deals with the situation of children who are alleged as, accused of or recognized as having committed terrorism-related offences and their treatment by the justice system. This is a particularly important issue relating to the objective of this Handbook. There is currently a lack of comprehensive guidance on how to deal with children who may have committed terrorism-related offences. Effectively addressing the problem requires both a good understanding of how to address terrorist offences and a profound knowledge of juvenile justice and applicable juvenile justice standards. This chapter tries to bring these two dimensions together.

Acts of terrorism pose one of the most serious threats to international peace and security (see General Assembly resolution 60/288, on the United Nations Global Counter-Terrorism Strategy), and States have the primary responsibility to protect society from the danger associated with the activities of terrorist and violent extremist groups. To do so, all States should ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and should also ensure that, in addition to any other measures against them, the punishment duly reflects the seriousness of such terrorist acts (Security Council resolution 1373 (2001), para. 2 (e)). Criminal justice responses to terrorism are a key component of national counter-terrorism strategies and have been developed to reflect the specificities and the seriousness of terrorism-related offences. At the same time, States are obligated to have adequate legal, institutional and operational frameworks to respect, protect and fulfil children's rights in the administration of justice.

The international legal instruments against terrorism do not specifically address issues relating to children recruited and exploited by terrorist and violent extremist groups. However, the recent increase in the number of children associated with terrorist and violent extremist groups and in the number of children who end up being dealt with by the justice system for having allegedly committed terrorism-related offences has resulted in a situation where, in many countries, justice professionals face difficulties in determining the applicable legal framework for cases where children are involved with terrorist and violent extremist groups.

One of the common challenges faced by justice professionals is the determination of the legal status of the child. On the one hand, it is widely acknowledged that the recruitment of children, regardless of the circumstances and methods employed, constitutes a violation of international law and leads to violence and exploitation. On the other hand, because of the tactics utilized by terrorist and violent extremist groups, children may become the perpetrators of criminal offences that range from petty offences to serious terrorist attacks. A number of questions arise:

(a) Should the recruitment of a child by a terrorist or violent extremist group determine that the legal status of the child is that of a victim? And if so, would the child's victim status exonerate the child from being held criminally liable for the commission of terrorism-related offences?

(b) In addition to being considered a victim, is it possible to hold the child accountable for the terrorism-related offence that he or she has allegedly committed? Can a child be a victim and a perpetrator at the same time?

(c) How should children be treated when in contact with the justice system?

(d) Which authorities have the competence to deal with such children?

(e) What procedures should be applied?

When children are involved with terrorist and violent extremist groups, public attention frequently focuses on the indoctrination process and the so-called "radicalization" process and the dangers they entail in terms of future violence. Such children are often regarded as belonging to a special category of offenders, and specialized procedures and measures are adopted to recognize the particular

seriousness of terrorist acts. This often leads to the adoption of a punitive approach with no consideration of child rights, which, in turn, results in lasting consequences for the development of the child and has a negative impact on his or her opportunities for social reintegration.

The present chapter focuses on providing legal and operational guidance on how the justice process can be conducted with a view to effectively preserving public safety, while respecting the rights of the alleged child offender who was recruited by a terrorist or violent extremist group.

## 1. International legal framework applicable to children alleged as and accused of having committed a terrorism-related offence

The international legal framework provides clear and detailed guidance on the appropriate treatment of children alleged as, accused of or recognized as having infringed the penal law. The offences include terrorism-related offences as defined by national law. Compliance of national legal and policy frameworks with international normative instruments responds to commitments assumed by States and sets the boundaries to both preserve public safety and promote, respect and fulfil child rights.

The present section addresses issues involving the competent authorities and criminal liability of children based on: (a) the international legal framework related to juvenile justice; (b) the international legal framework related to counter-terrorism; (c) international humanitarian law; and (d) international criminal law.

### International legal framework related to juvenile justice<sup>95</sup>

The Convention on the Rights of the Child is the primary international legally binding instrument to define the key principles applicable to the treatment of children in general, and specifically when they are alleged as, accused of or recognized as having infringed the penal law. Indeed, the following four principles must be applied at all times, including throughout justice proceedings: (a) non-discrimination; (b) the best interests of the child; (c) the child's right to survival and development; and (d) the right to be heard (articles 2, 3, 6 and 12). Moreover, articles 37 and 40 of the Convention include a number of obligations specifically pertaining to the situation of children alleged to have committed offences. These provisions fully apply regardless of the type or seriousness of the offence, and they are non-derogable in times of conflict or national emergency.<sup>96</sup>

It is important to note at the outset that not all children *de jure* can be considered to have the capacity to commit crimes. According to article 40, paragraph 3 (a) of the Convention on the Rights of the Child, States parties are required to establish a minimum age below which children are presumed not to have the capacity to infringe the penal law. Consequently, any child under that age, which is established by domestic law, cannot be held criminally liable. The Convention itself does not establish the minimum age at which children should be regarded as having criminal responsibility. However, in the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (para. 30), Member States are

<sup>95</sup> The two most important legally binding instruments related to juvenile justice are the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Additional standards and norms concerning juvenile justice are also analysed, as they provide further details on the provisions of the Convention on the Rights of the Child in the area of juvenile justice. These are complemented by the United Nations standards and norms in juvenile justice: the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (General Assembly resolution 45/112, annex); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (Assembly resolution 40/33, annex); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Assembly resolution 45/113, annex); and the Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex).

<sup>96</sup> Only arts. 10, 13 and 15 of the Convention are subject to exceptions on the basis of national security interest.

encouraged not to set the minimum age of criminal responsibility at too low an age level, and reference is made to the recommendations of the Committee on the Rights of the Child to increase the lower minimum age of criminal responsibility without exception to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.<sup>97</sup>

In article 40, paragraph 1, of the Convention on the Rights of the Child, it is stated that States parties recognize that every child has the right to be treated in a manner consistent with the child's sense of dignity and worth, which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. Therefore, the primary purpose of any action taken against a child in contact with the justice system as an alleged offender must be the rehabilitation and reintegration of the child rather than punishment.<sup>98</sup>

Children are also provided with additional procedural guarantees by the Convention on the Rights of the Child. In particular, article 40, paragraph 2, of the Convention sets out the procedural rights of a child who is alleged as, accused of or recognized as having infringed the penal law, which apply from the first moment that a child is apprehended until the end of the criminal process and, if the child is detained, up until the child reaches the age of 18. These provisions should be applied in all cases, also including in cases where a child is charged with an offence related to terrorism or violent extremism.

Article 40, paragraph 2 (b) (iii), of the Convention requires children to be tried by a competent, independent and impartial authority, tribunal or judicial body. In addition, the Convention calls for the establishment of specific laws, procedures, authorities and institutions to deal with these children. Gravity of the offence provides no exception to this rule.

### International legal framework related to counter-terrorism

Universal counter-terrorism conventions and protocols set out specific acts, which States are obliged to criminalize and prosecute. These include terrorist bombings; hostage-taking; crimes against internationally protected persons; offences linked to civil aviation, ships and fixed platforms; offences linked to dangerous materials (including nuclear materials); and the financing of terrorism. In addition, the Security Council, in its resolution 2178 (2014), decided that all States should ensure that their domestic laws are able to make sure that individuals who engage in cross-border travel for the purpose of the perpetration, planning or preparation of or participation in terrorist acts, or the providing or receiving of terrorist training, are prosecuted and penalized in a manner reflecting the seriousness of the criminal offence.

Furthermore, the Security Council, in its resolution 1373 (2001), decided that all States should take the necessary steps to prevent the commission of terrorist acts and should ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, that such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts. The requirement to adopt penalties reflecting the gravity of terrorism-related crimes is also enshrined in the universal counter-terrorism instruments.<sup>99</sup> States are required to make punishable different forms of participation in terrorist acts: complicity, planning and directing, aiding and abetting, and participation in a joint enterprise. However, there is no requirement in

<sup>97</sup> See also General comment No. 10 (2007) on children's rights in juvenile justice (*Official Records of the General Assembly, Sixty-third Session, Supplement No. 41 (A/63/41), annex IV*), para. 30.

<sup>98</sup> This is in line with rule 26.1 of the Beijing Rules.

<sup>99</sup> See, for example, subpara. (b) of art. 4 of the International Convention for the Suppression of Terrorist Bombings (*United Nations, Treaty Series*, vol. 2149, No. 37517).



the universal counter-terrorism instruments to criminalize association with or membership in a terrorist group.<sup>100</sup>

The international legal framework on terrorism does not specifically address the question of children recruited and exploited by terrorist groups or violent extremist groups as alleged perpetrators. In its resolution 1624 (2005), however, the Security Council obliged States to ensure that any measures taken to combat terrorism comply with all their obligations under international law and to adopt such measures in accordance with international law, in particular international human rights law, refugee law and humanitarian law. And, pursuant to article 14 of the Convention for the Suppression of Terrorist Bombings, individuals alleged as, accused of or recognized as having committed a terrorism-related offence are to be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

In its resolution 70/291 on the United Nations Global Counter-Terrorism Strategy Review, the General Assembly reiterated that, given his or her potential status as a victim of terrorism as well as of other violations of international law, every child alleged as, accused of or recognized as having committed terrorist acts should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child.

The counter-terrorism conventions and protocols and Security Council resolutions are silent on whether States should establish specialized investigation and prosecution services, or specialized courts to deal with terrorism cases. The advantages of establishing specialized investigatory, prosecution and judicial bodies to deal with terrorism-related offences, as well as of the related specialization of criminal justice professionals, have been stated very clearly.<sup>101</sup> However, there is no obligation under international law to assign exclusive competence for cases involving terrorism to specialized institutions and procedures.

### International humanitarian law

International humanitarian law does not contain any provision related to the criminal liability of children or to their treatment by domestic justice systems. However, the applicable provisions of international humanitarian law relating to criminal proceedings can be especially relevant in the context of conflict, including in relation to terrorist acts.

Assuming that violence is a constitutive part of conflict, international humanitarian law makes a distinction between permissible acts of violence and non-permissible acts of violence. It also prescribes the prosecution of perpetrators of acts of violence. In the broadest terms, direct attacks against civilians are prohibited unless and for such time as the civilians take a direct part in hostilities. Conversely, violence against members of the opposing party to the conflict is permissible, as long as they are engaged in hostilities (i.e. they are not placed hors de combat) and unless it violates a particular rule concerning the means or methods used (for example, where they are perfidious or involve unnecessary pain and suffering).

International humanitarian law prohibits acts or threats of violence the primary purpose of which is to spread terror among the civilian population (article 51, para. 2, of Protocol I to the Geneva Conventions) and acts of terror against the civilian population (article 4, para. 2 (d), and article 13, para. 2, of Protocol II to the Geneva Conventions). Equally prohibited are the killing, torture and

<sup>100</sup> At the regional level, the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism requires member States to criminalize participating in an association or group for the purpose of terrorism.

<sup>101</sup> See, inter alia, the Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses, in particular Good Practice 1.

outrages against human dignity of persons not or no longer taking part in hostilities.<sup>102</sup> Such acts may amount to war crimes and should be prosecuted. In contrast, in international armed conflicts, combatants enjoy immunity from prosecution for lawful acts of war. In non-international armed conflicts, participation in hostilities can be subject to national criminal laws and criminal punishment, including for national security offences and under counter-terrorism legislation. However, Protocol II (which is applicable to non-international armed conflicts) encourages authorities to grant amnesty at the end of hostilities to those who have participated in the armed conflict or those deprived of their liberty for reasons related to the armed conflict (article 6, para. 5).

The Paris Principles state that children who have been associated with armed forces or armed groups should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership in those forces or groups (para. 8.7). In addition, they provide that children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law, not only as perpetrators. Accordingly, they should be treated with rehabilitation in mind and alternatives to judicial proceedings should be sought wherever possible (paras. 3.6 and 3.7), with the consequence that justice measures should be seen as a measure of last resort.<sup>103</sup> In addition, it is reaffirmed that children accused of crimes under international or national law allegedly committed while associated with armed forces or armed groups are entitled to be treated in accordance with international standards for juvenile justice (para. 8.8).

### International criminal law

International criminal law is a body of international law prohibiting certain categories of conduct viewed as the most serious crimes of concern to the international community as a whole (Rome Statute, preamble). It seeks to make individual perpetrators of such conduct criminally accountable for their actions. The core crimes under international law are genocide, war crimes, crimes against humanity and the crime of aggression. With the exception of the Special Tribunal for Lebanon, a so-called “hybrid tribunal” applying terrorism offences under Lebanese criminal law, “terrorism” is not an offence over which the international criminal tribunals have so far been given jurisdiction. That having been said, many of the atrocities terrorist groups reportedly have committed, including some that involved the use of children for their commission, would appear to amount to war crimes or crimes against humanity.<sup>104</sup>

The provisions outlined below are significant in terms of international criminal responsibility of children, as well as in terms of determining the legal status of the children as victims of a violation of international law. With regard to the jurisdiction of international criminal tribunals over children, differences exist. Article 26 of the Rome Statute explicitly excludes jurisdiction of the International Criminal Court over individuals under 18 years of age. The Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, however, does not include any comparable provision but the Tribunal has not indicted anyone under the age of 18. While the Statute of the Special Court for Sierra Leone explicitly grants the Court jurisdiction to try children between the ages of 15 and 18 at the time of the crime, the Court has not tried anyone who was under 18 at the time of commission of the offence.

In connection with the determination of children’s legal status as victims, in the Rome Statute, “war crimes” include the recruitment of children under 15 into an armed group or their use in hostilities

<sup>102</sup> Geneva Conventions of 12 August 1949 (United Nations, *Treaty Series*, vol. 75, Nos. 970-973), common article 3.

<sup>103</sup> C. Hamilton and L. Dutordoir, “Children and justice during and in the aftermath of armed conflict”, Working Paper No. 3 (September 2011), p. 28.

<sup>104</sup> See, for example, the discussion of acts committed by Boko Haram in “Report on Preliminary Examination Activities 2015”, paras. 195-209.

(article 8, para. 2, subparas. (b) (xxvi) and (e) (vii)), as well as the commission of rape, sexual slavery, enforced prostitution or forced pregnancy (article 8, para. 2, subparas. (b) (xxii) and (e) (vi)). Therefore, children recruited and exploited by violent extremist and terrorist groups in an armed conflict who are subject to the above-mentioned violations must be considered victims of war crimes.

## 2. Laying the foundations for the treatment of children alleged to have committed or accused of committing terrorism-related offences

In cases where an individual under the age of 18 and over the minimum age of criminal responsibility has been recruited by a terrorist or violent extremist group and is in contact with the justice system for having allegedly committed a terrorism-related offence, States should ensure that accountability mechanisms are fully in line with international law related to juvenile justice.

The present section provides an overview of key issues to be considered prior to establishing criminal accountability of a child alleged to have committed terrorist offences.

### The status of children alleged to have committed terrorism-related offences

Since the emergence of the phenomenon of children's recruitment by terrorist and violent extremist groups, experts and policymakers have debated over the legal status of children who are alleged to have committed terrorism-related crimes. In particular, they have discussed whether and how children hold dual identities as victims and perpetrators.<sup>105</sup>

At the outset of this discussion, it is important to underline that the international legal framework has clearly established that recruiting and exploiting children are violations of international law and forms of violence in which the children become victims (see chapters I and II above). Recognizing that such children should be treated primarily as victims also reaffirms that no child recruitment process can be regarded as truly voluntary, because of the cognitive abilities of the child, and the different forms of coercion or influence associated with recruitment methods.

As for the reasons why terrorist and violent extremist groups target children for recruitment and exploitation and why children join such groups, those reasons are often substantially the same, regardless of whether or not the armed groups have been designated as terrorist groups. The roles and activities children get involved in may also be the same, as are the forms of violence they are subjected to. While counter-terrorism law, both international and domestic, draws a distinction between terrorist groups and armed groups not designated as terrorist groups, from the point of view of international humanitarian law and the human rights law protecting children against use in armed conflict, the situation of the children does not differ. For that reason, justice authorities should recognize the "primarily victim" status of children recruited by terrorist and violent extremist groups, particularly in situations of armed conflict.

However, the imperative of treating a child recruited by a terrorist or violent extremist group "primarily as a victim" does not mean that the child should be granted immunity for criminal acts committed during his or her association with the terrorist or violent extremist group. Instead, the notion of primary victimization should be duly recognized, integrated and considered at the different stages of the justice process. This means that children should be awarded the safeguards and guarantees of child victims, concerning safety, safeguards and appropriate assistance, including reparations (see chapter II

<sup>105</sup> European Commission, Radicalisation Awareness Network, "RAN issue paper: child returnees from conflict zones" (November 2016), p. 2.

above). It also means that prosecution should always be regarded as a measure of last resort and, whenever a child is alleged to have committed a criminal offence, the rights and safeguards provided by the international legal framework for child offenders should be fully respected and applied.

However, as mentioned in chapter II above, 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. An important element of the victim protection framework is the non-punishment of victims of trafficking for offences directly connected or related to the trafficking situation that they have experienced.

The non-punishment principle for child victims of trafficking in persons is accepted as international good practice and is recognized in a number of regional legal instruments and policy documents.<sup>106</sup> The non-punishment principle should apply regardless of the role of the child in the offence and where the offence was committed and irrespective of the initiation or outcomes of criminal proceedings, or the charges brought forward against the perpetrators.<sup>107</sup>

Recently, the Security Council, in its resolution 2331 (2016) on trafficking in persons in conflict situations, called upon Member States to ensure that victims are treated as victims of crime and in line with domestic legislation not penalized or stigmatized for their involvement in any unlawful activities in which they have been compelled to engage.

It is therefore advisable that States take all measures necessary to ensure that victims of trafficking are not prosecuted, deprived of liberty or otherwise sanctioned, whether criminally or administratively, for offences committed in relation to their trafficking experience. Applying such provisions, where they exist, may prove to be crucial for the rehabilitation and the physical and mental recovery of the child victim.

### Respect for the minimum age of criminal responsibility

National legislation establishes a minimum age under which a child is presumed not to have the capacity to infringe the penal law. Consequently, a child under that age cannot be held criminally liable and instead should be dealt with exclusively by the child protection system.

In some countries, legislation and practice regarding terrorism-related offences, on the basis of the serious nature of the offences, introduce exceptions to and/or derogations from the minimum age of criminal responsibility. For example, two different age thresholds are set, usually lowering the minimum age of criminal responsibility for the commission of serious crimes, including terrorist offences.

Such exceptions and derogations contradict the nature of the minimum age of criminal responsibility. It cannot be assumed that the seriousness of the act that the child has allegedly committed necessarily implies a greater maturity of that person. Accordingly, the Committee on the Rights of the Child has expressed great concern over such practices and recommended that the minimum age should be the same for all criminal offences<sup>108</sup> and that no exception should be provided on the basis of the nature of the offence. It is thus of crucial importance that legislation concerning terrorism-related offences takes into consideration the minimum age of criminal responsibility established by domestic law and does not introduce exceptions.<sup>109</sup>

In addition to having an appropriate definition of minimum age of criminal responsibility in national legislation, suitable measures should be taken to ensure respect of it in practice. In particular,

<sup>106</sup> See, in particular: art. 26 of the Council of Europe Convention on Action against Trafficking in Human Beings; art. 14, para. 7, of the ASEAN Convention against Trafficking in Persons, Especially Women and Children; European Parliament and Council of the European Union directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims; and Principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking.

<sup>107</sup> UNICEF Innocenti Research Centre, *Child Trafficking in the Nordic Countries: Rethinking Strategies and National Responses—A Technical Report* (May 2012), p. 99.

<sup>108</sup> A/63/41, annex IV, paras. 30 and 35.

<sup>109</sup> UNICEF, "South Asia and the minimum age of criminal responsibility: raising the standard of protection for children's rights" (Kathmandu, UNICEF Regional Office for South Asia, 2005), p. 15.

child-sensitive age assessment methods (see chapter II above) should be applied when there are issues in determining the child's exact age, in order to avoid having a situation in which a child under the minimum age of criminal responsibility is nevertheless held criminally responsible or a child under the age of 18 is treated as an adult. Moreover, the age to be considered is that of the child at the time of the offence, not the age of the child upon apprehension or at the time of trial. When terrorism-related offences have been committed over a long period of association with a group, there should be a differentiation in this regard.

### Competence of the juvenile justice system

As mentioned above, the Convention on the Rights of the Child requires States parties to establish laws, procedures, authorities and institutions specifically applicable to children alleged to have committed offences (article 40, para. 3). In other words, a State is obligated to establish a specialized juvenile justice system<sup>110</sup> to prosecute and adjudicate children who are over the State's minimum age of criminal responsibility<sup>111</sup> and under the age of 18. No exception to the competence of this system to prosecute and adjudicate children is provided for on the basis of the gravity of the offence.

The State's obligation to establish a specialized juvenile justice system derives from an international consensus that due to their age and immaturity, individuals under the age of 18 who are alleged to have or are accused of having infringed the penal law require treatment in criminal proceedings that is separate and different from the treatment of adults in criminal proceedings. Therefore, juvenile justice systems, in addition to focusing on the nature of the offence committed, should also be responsive to the child's care and developmental needs in order to ensure that children are reintegrated into their communities.

There are some notable differences between a juvenile justice system and the criminal justice system applicable to adults. One major difference relates to the dual role of juvenile justice, which is aimed not only to preserve public safety and hold a perpetrator accountable for having committed a crime, but also to protect the rights of a child alleged to have committed an offence and promote his or her reintegration into society.<sup>112</sup> Another major difference is that the best interests of the child remain a primary consideration, even in criminal cases.<sup>113</sup> Children are also provided with a greater level of procedural protection by the Convention on the Rights of the Child.

In many countries, however, there is a lack of understanding about the role and functions of the juvenile justice system. For instance, it may be wrongly assumed that the criminal justice system applicable to adults is the only effective system to protect society from serious crime, while the juvenile justice system has the exclusive role of protecting children. It is of crucial importance to clarify these misperceptions. The juvenile justice system, while being particularly adapted to making special considerations for the social reintegration of a child, is not merely to protect children. In fact, it is also a key objective of the juvenile justice system to establish effective accountability mechanisms and therefore to protect society from crime.

<sup>110</sup> The term "juvenile justice system" refers to the laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children in conflict with the law. In addition, the term "children in conflict with the law" refers specifically to those individuals under the age of 18 who are alleged as, accused of or recognized as having infringed the penal law.

<sup>111</sup> In art. 40, para. 3(a), of the Convention, States parties are obliged to establish a minimum age under which children shall be presumed not to have the capacity to infringe the criminal law. The age set by States varies between 7 and 18, but the Committee on the Rights of the Child has recommended (A/63/41, annex IV, para. 32) that the minimum age of criminal responsibility should not be under 12 years of age.

<sup>112</sup> According to art. 40, para. 1, of the Convention on the Rights of the Child, States parties recognize the right of every child alleged as, accused of or recognized as having infringed the penal law to be treated in a manner consistent with the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

<sup>113</sup> Convention on the Rights of the Child, art. 3.

Accordingly, children accused of terrorism-related offences should not be dealt with by authorities not specialized in the treatment of children. International law requires the establishment of specialized laws, procedures, authorities and institutions to deal with children. While the establishment of specialized investigatory and judicial authorities for terrorism-related offences has been recommended as a good practice, it is not a binding legal obligation under international counter-terrorism law.

When a child is alleged to have committed a terrorism-related offence jointly with an adult, the competence of authorities and institutions specifically applicable to a child should prevail. That may entail conducting separate proceedings for the child and for the adult as alleged offenders.

These considerations are especially relevant when specialized counter-terrorism proceedings are carried out before military courts. The trial of civilians, including those accused of terrorism or national security offences, by special or military courts is generally impermissible under international human rights law and can be used only in exceptional circumstances, as a last resort.<sup>114</sup> The Committee on the Rights of the Child<sup>115</sup> has expressed specific concerns about children being tried before military courts,<sup>116</sup> which inherently denies children the application of juvenile justice standards.

### Specialization of professionals

The specialization of professionals who enter into contact with children is crucial to increasing the effectiveness of the juvenile justice system. It promotes a greater understanding of the specific needs and rights of children and favours the appropriate treatment of the child throughout his or her contact with the justice system. Specialization can to some extent be guaranteed through the establishment of authorities and institutions specifically applicable to children, such as specialized police units, prosecution services and juvenile court.

Staffing requirements, vetting mechanisms and recruitment and employment procedures should be clearly defined, in order to ensure that all staff coming in contact with children are highly qualified. Vetting mechanisms are also vital to ensuring that selected staff have no record of violence or sexual offences.

The Committee on the Rights of the Child recognizes the importance of well-informed professionals. The following excerpt is from general comment No. 10 (2007) of the Committee on the Rights of the Child:<sup>117</sup>

Professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities.

Terrorism-related cases involve particular considerations, especially in terms of security concerns, specialized legal competencies and special investigation techniques and resources. It is thus highly recommended that the professionals in charge of dealing with such cases undergo specialized training and are equipped with adequate resources.

<sup>114</sup> For more details, see UNODC, *Human Rights and Criminal Justice Responses to Terrorism*, pp. 147-148; and the report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2004/60), para. 60.

<sup>115</sup> The Committee issued general comment No. 10 (2007), on children's rights in juvenile justice, to provide States parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with the Convention (A/63/41, annex IV, para. 3).

<sup>116</sup> "Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May-14 June 2013)" (CRC/C/ISR/CO/2-4), paras. 19-20.

<sup>117</sup> General comment No. 10 (2007) on children's rights in juvenile justice (HRI/GEN/1/Rev.9 (Vol. II)), chap. VI, para. 40.



### Developing a specialized cadre of professionals to deal with cases involving terrorism

The following excerpt is from the Global Counterterrorism Forum's Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector:

*Good Practice 8: Provide for the professional development of investigators, prosecutors and judges who handle terrorism cases*

A long-term commitment to developing and building a specialized cadre of permanent career investigators, prosecutors and judges (where relevant) is needed to ensure effective prosecution. Career prosecution and investigative services should be equipped with the infrastructure, remuneration and specialized training they need to perform critical counter-terrorism functions within the criminal justice system. In particular, they should be able to handle the complex legal, forensic, technological and financial aspects of counter-terrorism investigations and prosecutions. A competent and impartial judiciary attuned to the complexity and importance of terrorism cases, including human rights aspects, is also critical to an effective criminal justice approach to counter-terrorism within a rule of law framework. Training and resources necessary to handle these cases appropriately should be available to investigators, prosecutors and judges.

### Terrorism-related charges brought against children

The past decade has seen the progressive broadening of the criminalization, in the domestic law of numerous countries, of conduct related to terrorism, including preparatory acts and forms of complicity, conspiracy and associative offences. The expanded use of inchoate offences and preparatory act offences has contributed to an increasing number of children in contact with the justice system on the basis of their association with terrorist and violent extremist groups.<sup>118</sup> The Secretary-General has noted with concern that children formerly associated with such groups are often systematically treated as security threats rather than as victims and are detained and prosecuted for their alleged association.<sup>119</sup>

According to the Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, one recent trend in global terrorism is the high number of children who are radicalized to violence, recruited, and involved in terrorism-related activities. Increasingly, children are being recruited by terrorist groups within or outside their country. Some are abducted or forcibly recruited, some are enticed by promises of money or other material advantages, some join voluntarily and some have little or no choice but to accompany their parents or other family members.

The circumstances of children associated with terrorist and violent extremist groups vary widely. For a significant number of these children, their situation may be directly comparable to that of child soldiers in that the children find themselves involuntarily caught up in a situation of armed conflict, where they associate themselves (whether voluntarily or through force) with a terrorist or violent extremist group. It is therefore important to note that in the Paris Principles, it is stated that children who have been associated with armed forces or armed groups should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership of those forces or groups

<sup>118</sup> See Global Counterterrorism Forum, "Recommendations on the effective use of appropriate alternative measures for terrorism-related offences", p. 2.

<sup>119</sup> Children and armed conflict: report of the Secretary-General (A/70/836-S/2016/360), para. 16.

(para. 8.7). Against this background, States should refrain from charging and prosecuting children associated with terrorist or violent extremist groups for mere association with those groups, in particular in any such cases where the child's association with the terrorist or violent extremist group is comparable to the situation of a child soldier who is associated with an armed force or armed group.



### Case study: Children in Switzerland alleged to have or accused of having committed criminal offences in Switzerland

Switzerland has established a specialized juvenile justice system, applicable to children over the minimum age of criminal responsibility and under the age of 18. This system is codified in the Juvenile Criminal Law Act and the Juvenile Criminal Procedure Code. In contrast to criminal law applicable to adults, the juvenile justice system pays special attention to the life and family situation of the young individual, to the development of the individual's personality and to educational principles.

Recently, Switzerland has been facing the phenomenon of citizens returning from the Syrian Arab Republic or another country with a war zone. These individuals may, depending on the circumstances, be suspected of participating in or supporting a terrorist organization and subject to a criminal investigation. Where the suspects are juveniles (under 18 years of age at the time of their departure), the competent authority is the prosecutor's office of the Swiss canton in which the young person resides.

The Swiss system has established that there is no exception to the competency of the juvenile justice system in cases of terrorism involving children. Accordingly, the prosecution is led by the cantonal juvenile court judge and the juvenile prosecutor carries out all the investigative activities necessary to ascertain the truth. Once this phase is completed, the prosecutor has the choice to close the proceedings, issue a summary penalty order or bring charges before the juvenile court. It is also worth noting that prosecution is waived or abandoned if a mediation procedure leading to an agreement between the injured person and the minor is carried out.

Whether a child requires special educational care or therapeutic treatment is determined on a case-by-case basis. Irrespective of whether the minor is responsible for the commission of a crime, various protective measures can be selected according to the child's needs, such as supervision, personal care, outpatient care or accommodation. If the culpability of the child is ascertained, the court orders a penalty, either in addition to the protection measure or as the sole sanction. Depending on the act, penalties can take the form of an admonition, a personal work order, a fine or deprivation of liberty. However, precise limits are set to detention measures. Deprivation of liberty may only be ordered for a maximum of one year in the case of misdemeanours or felonies committed by children who have attained the age of 15. Children over 16 years of age who have committed serious offences may be sentenced to deprivation of liberty for up to four years.





### Checklist for practitioners: key elements

- States must ensure that any measures taken to combat terrorism, including the investigation and prosecution of persons suspected of terrorism-related offences, comply with all the obligations related to child rights under international law, in particular international human rights law, refugee law and humanitarian law.
- Any child alleged as, accused of or recognized as having committed a terrorism-related offence or an offence against national security has the right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
- Any child associated with a terrorist or violent extremist group should be primarily considered a victim of a violation of the international normative framework. In this regard, irrespective of considerations of their legal responsibility with regard to any alleged offence defined as terrorist and/or a threat to national security under national legislation, such children should be afforded the rights set forth by the international legal framework related to child victims.
- Children who have been associated with a violent extremist or terrorist group should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership in the group, particularly where association with the group has taken place in a context of armed conflict.
- Whenever the violence committed against a child by a terrorist or violent extremist group qualifies as trafficking in persons, the child should be treated and afforded protections as a victim of trafficking in persons and should not be prosecuted, deprived of liberty or otherwise sanctioned, whether criminally or administratively, for offences committed as a consequence of his or her situation as a trafficked person.
- Being charged with terrorism-related offences or offences against national security should not constitute cause to rebut the conclusive presumption that a child under the minimum age of criminal responsibility, as defined by domestic legal system, cannot commit a criminal offence. Equally, it should not constitute cause to prosecute and try a child, or a person who was under 18 at the time of the alleged offence, as an adult. Domestic legislation should not define different (lower) ages of criminal responsibility solely for terrorism-related offences or for offences against national security.
- Any child alleged as, accused of or recognized as having committed a terrorism-related offence has the right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law and should be treated in accordance with laws and procedures and dealt with by authorities following procedures specifically applicable to children. At the same time, it is recommended that criminal justice officials handling terrorism cases undergo specialized training and be equipped with adequate resources.

## B. Pretrial stage

Evidence shows that children are especially vulnerable to violence during their initial contact with law enforcement officers and others in the justice system. The risks of intimidation, bribes, beatings, sexual violence and even torture are usually aggravated by the absence of the children's parents and lawyers.<sup>120</sup> Specialized procedures adopted in the framework of counter-terrorism or a state of emergency can have a further impact on the safety of children. Often such "exceptional procedures" include broader powers of arrest, longer periods in police custody and delayed access to legal representation.

In many national legal systems, the gravity of terrorism-related offences means that the possibility of alternatives to formal judicial proceedings or diversion mechanisms cannot or will not be taken into consideration. Moreover, the backlog caused by the considerable number of terrorism-related cases, especially in areas of conflict, slows down criminal proceedings and delays appropriate treatment of children. This negatively affects the functioning of the entire justice process and undermines the possibility of adjudication and remand detention in compliance with juvenile justice standards. In the long term, the impact of prolonged detention and denied or delayed access to services limits the opportunities of effective reintegration processes.

Law enforcement and security forces may be the first to come in contact with children who have been demobilized, or have been captured during their association with terrorist groups, especially in situations of conflict. While this does not, and should not, entail bringing criminal charges against these children, it points to the need for law enforcement officers to be trained in the appropriate treatment of children and for different options favouring the reintegration of children.

### 1. International standards and norms concerning the treatment of children upon arrest and during the pretrial stage

This section presents an analysis of the requirements for appropriate treatment of children during investigation and the pretrial stage, according to international law. Juvenile justice standards and norms provide especially detailed rules, and their application is not in contrast with the obligations under international law related to counter-terrorism.

#### International legal framework related to countering terrorism

The international legal framework against terrorism does not provide detailed guidance regarding the arrest of the alleged offender and his or her treatment during the pretrial stage. While in the relevant conventions, protocols and Security Council resolutions emphasis is on the importance of the criminal justice response to terrorist crimes, notably through the obligation to criminalize and prosecute, the framing of that response is largely left to domestic criminal justice systems. The universal counter-terrorism instruments typically state only that any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out must be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.<sup>121</sup>

<sup>120</sup> Office of the United Nations High Commissioner for Human Rights, United Nations Office on Drugs and Crime and Special Representative of the Secretary-General on Violence against Children, "Prevention of and responses to violence against children within the juvenile justice system" (New York, 2012), pp. 11-13.

<sup>121</sup> See, for example, art. 14 of the International Convention for the Suppression of Terrorist Bombings.

To meet their obligation to effectively bring to justice persons suspected of terrorism-related offences, States have enacted laws strengthening investigatory powers through broader powers of law enforcement to carry out searches and seizures, special investigation techniques, such as undercover operations and covert surveillance of communications, and enhanced exchange of information between intelligence agencies and law enforcement agencies. States have also enacted laws extending police custody and pretrial detention periods.

### International legal framework related to juvenile justice

According to the international legal framework related to juvenile justice, all contact between the law enforcement agency and the child alleged to have committed an offence should be managed in such a way as to respect the legal status of the child, promote the well-being of the child and avoid harm, with due regard to the circumstances of the case.<sup>122</sup> Should initial contact occur in the absence of the parents or legal guardians, the authorities have an obligation to notify them immediately.<sup>123</sup> Any interview or questioning should be preceded by the provision of appropriate information to the child, parents and legal guardians, and prompt access to legal aid should also be guaranteed.<sup>124</sup> In addition, starting at the earliest stages and during the entire period when the child is in contact with the justice system, the use of force or restraints should be limited to exceptional circumstances, which can be defined as situations where the child poses an imminent threat of injury to himself or herself or others; it should also be clarified that restraints or force must never be used as a means of punishment.<sup>125</sup>

The international legal framework on juvenile justice provides for the opportunity to apply pretrial diversion measures from the earliest stages of the proceedings. According to article 40, paragraph 3 (b), of the Convention on the Rights of the Child, States should seek to promote, whenever appropriate and desirable, measures for dealing with children in conflict with the law without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.<sup>126</sup> Diversion measures can only be applied following informed consent of the child (rule 11.3 of the Beijing Rules).

Whenever possible, police custody and pretrial detention should be avoided and alternative measures to detention should be considered, such as close supervision, care or placement with a family or in an educational setting or home. This is in line with article 37, subparagraph (b), of the Convention on the Rights of the Child, which states that detention should be used only as a measure of last resort and for the shortest appropriate period of time. International standards and norms also contain a number of provisions aimed at ensuring that conditions of pretrial detention comply with the rights and needs of children and are consistent with the presumption of innocence. They include:

<sup>122</sup> See, for example, the Beijing Rules, rule 10.3.

<sup>123</sup> See, for example, the Beijing Rules, rule 10.1; and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex), para. 19.

<sup>124</sup> United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 69/194, annex), para. 34 (f).

<sup>125</sup> CRC/C/GC/10, para. 89.

<sup>126</sup> Diversionary measures are also referred to in the Beijing Rules (rule 11), the Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex, paras. 15 and 42) and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110, annex) (rule 2.5). According to the Beijing Rules (rule 11.2), diversion may be used at any point of decision-making by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one, several or all of the authorities involved, according to the rules and policies of the respective systems. Its use is not necessarily limited to petty cases, thus rendering diversion an important instrument.

(a) Children should be separated from adults, except in certain circumstances where it may not be in their best interests to do so,<sup>127</sup> and girls should be separated from boys. Children in pretrial detention should also be held separately from convicted children;<sup>128</sup>

(b) Children have the right to prompt access to legal counsel, and they can apply for free legal aid and communicate regularly with their legal advisers, in respect of privacy and confidentiality requirements;<sup>129</sup>

(c) The child's contact with his or her parents and family should be maintained regularly, regardless of the nature of the offence that the child may be charged with;

(d) Children should receive and retain materials for their leisure and recreation to the extent that this is compatible with the interests of the administration of justice;<sup>130</sup>

(e) Children have the right to challenge the legality of the detention before a court or other competent independent and impartial authority and the right to a prompt decision on any such action.<sup>131</sup>

## 2. Arrest and investigation in terrorism-related cases involving children

Practitioners in different regions of the world are facing considerable challenges in balancing the need to protect child rights with the specific arrest and investigation procedures adopted in terrorism-related cases. The present section provides guidance on how to effectively investigate terrorism offences while respecting the rights of the child during investigation and upon arrest.

### Special investigation techniques and children

The clandestine nature of terrorist conspiracies and activities and the mode of operation of terrorist organizations require specialized investigation methods. The term “special investigation techniques” is used to refer to techniques adopted in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aiming at gathering information in such a way as not to alert the target persons.<sup>132</sup> They include the use of undercover agents and informants to infiltrate terrorist groups and the use of covert surveillance methods, such as intercepting telephone and email communications.

The use of special investigation techniques in cases involving children recruited and exploited by terrorist and violent extremist groups can raise delicate legal and ethical problems for investigation agencies.<sup>133</sup> For instance, exerting pressure on a person involved with a terrorist group to become a police informer can yield highly valuable information on the group's plans but places the informer's life at considerable risk. This risk may be acceptable in the interest of public security in cases where the potential informer is an adult, but in many instances it will not be acceptable if the potential informer is a child. Similarly, a surveillance operation allowing the investigators to follow over a period of time

<sup>127</sup> Art. 37, subpara. (c), of the Convention on the Rights of the Child; and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 30.

<sup>128</sup> Art. 10, para. 2, of the International Covenant on Civil and Political Rights; art. 37 of the Convention on the Rights of the Child; rule 13.4 of the Beijing Rules; and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 17.

<sup>129</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 18 (a).

<sup>130</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 18 (c).

<sup>131</sup> Art. 37, subpara. (d), of the Convention on the Rights of the Child; and rule 7.1 of the Beijing Rules, according to which basic procedural safeguards such as the right to appeal to a higher authority are to be guaranteed at all stages of proceedings.

<sup>132</sup> Recommendation Rec(2005)10 of the Committee of Ministers to member States on “special investigation techniques” in relation to serious crimes including acts of terrorism.

<sup>133</sup> This section examines specific child-related human rights questions. On more general issues of human rights and compliant use of special investigation techniques, see UNODC, *Human Rights and Criminal Justice Responses to Terrorism*, Counter-Terrorism Legal Training Curriculum series (Vienna, 2014), pp. 88-103.

the preparations for a terrorist attack can provide invaluable evidence. However, where one of the persons under surveillance is a child, allowing that child to become more and more deeply involved in an act of terrorism may cause unjustifiable harm to the child. In dealing with such situations, investigators are required to take into account the obligation to protect the child from violence and harm, the principle of the best interests of the child, and the desirability of promoting the child's reintegration. This may require them to reach the conclusion that investigative measures that would have been permissible if all the suspects were adults are not permissible because a child suspect is involved.

### Regulation of appropriate conduct with children during arrest

It is important for criminal justice officials to appreciate how the use of special counter-terrorism powers regarding arrest, searches, interrogation, police custody and detention can affect children more deeply than adults in view of the developmental level of children. In particular, the potential for harm, as well as negative secondary effects, including mistrust, stigma and traumatic reactions, is especially enhanced. The application of the criteria of necessity and proportionality, which should govern decisions on measures such as searches, arrest and detention,<sup>134</sup> must take this into account.

In addition, the effectiveness of such deviations from usual practice can also be quite different in cases involving children. It is well recognized that children are more vulnerable to self-incrimination, to confessing crimes they have not committed and to being wrongfully convicted. Their developmental vulnerabilities, and specifically their reactions to pressure, intimidation, and authority, largely account for such behaviours and increase the risk of inaccurate accounts by children.

That explains why the international legal framework establishes specific interviewing techniques for a child who is an alleged offender during and following his or her arrest (see chapter II above). Table 2 contains a summary of some of the crucial requirements for dealing with children during the investigation phase in order to minimize the risks of violence while, at the same time, boosting the effectiveness of the proceedings.

**Table 2. Requirements for dealing with children during investigations**

|   |  |
|---|--|
| <b>Arrest in accordance with the law</b>          | The United Nations Study on Violence against Children has shown that children are particularly vulnerable to violence during apprehension or arrest. Laws and procedures should provide appropriate guidance to limit arrest of children to a last resort and set clear boundaries to the action of law enforcement agents.  |
| <b>Notification of parents or legal guardians</b> | Identifying, locating and notifying parents of children associated with terrorist groups may be especially difficult in situations of conflict or in remote areas. Whenever the parents cannot be reached, a legal guardian or another support person (such as a social worker) should be present to support the child from the moment of arrest and during subsequent investigation. In cases of unaccompanied children, including child returnees, agencies responsible for family tracing and reunification must be contacted without delay, in order to prioritize the procedures, taking into account the best interests of the child (see chapter V in the present publication). |
| <b>Prompt access to legal counsel</b>             | In terrorism-related cases, access to legal counsel is often delayed. In addition, because of existing limitations to legal aid schemes, legal aid providers are commonly appointed only for court proceedings. This hinders appropriate legal representation upon arrest and during pretrial detention, which is essential to prevent longer deprivation of liberty and to guarantee respect for procedural guarantees.   |

<sup>134</sup>See Human Rights and Criminal Justice Responses to Terrorism, pp. 88, 95, 106 and 107.

|   |  |
|---|--|
| <b>Limitations to the use of force</b>                  | Detailed guidance for law enforcement professionals should address the prohibition of the use of force on children. In order to make such prohibition both effective and safe, regulations should include alternative strategies to engage children, ranging from the least restrictive methods to more restrictive methods, according to an appropriate evaluation of risks, and should also include specific limits to potential exceptions to the rule.   |
| <b>Avoidance of delays</b>                              | The passage of time affects children differently than adults. Long periods in police custody or pretrial detention violate the rights of children and can be especially detrimental to their reintegration. In addition, police custody and pretrial detention facilities are often not prepared to host children deprived of liberty, which increases the risks of violence and inappropriate treatment. Although counter-terrorism laws often include amendments to criminal procedures, it would be extremely dangerous to apply such exceptions to children; accordingly, it is strongly recommended that shorter delays, which are more suitable to children's rights and needs and are usually set by domestic laws related to juvenile justice, are always respected. |
| <b>Regulation of searches and collection of samples</b> | Intimate and non-intimate searches and related collection of samples are procedures that can easily harm the dignity of the child and can be abused to perpetrate sexual violence. Procedures should ensure that searches of children are carried out only when necessary and, in the case of intimate searches, only by authorized medical personnel. Searches should always be carried out by personnel of the same gender of the child.   |

### Ethnic, racial or religious profiling and the prohibition of discrimination

The difficulty of terrorism prevention measures and investigations, the pressure to show results and the perception that certain ethnic, racial or religious communities are associated with a terrorist or violent extremist group can lead law enforcement officials to focus their prevention and investigation efforts primarily on persons corresponding to these communities. While profiles based on factors that have been statistically proved to correlate with certain criminal conduct may be effective tools when law enforcement resources are limited, the use of broad profiles that reflect unexamined generalizations or stereotypes is extremely problematic. Profiling based on stereotypical assumptions that persons of a certain race, national or ethnic origin or religion are particularly likely to commit crime may lead to practices that are incompatible with the principle of non-discrimination.<sup>135</sup>

The Committee on the Elimination of Racial Discrimination has explicitly called upon States to ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.<sup>136</sup>

With regard to children, it is worth noting that they are affected by profiling based on stereotypical assumptions both directly and indirectly, when their families are concerned. Considering the impact of stigmatization on children, their specific vulnerability to such practices should be duly taken into account.

In addition to the violation of human rights that it entails, profiling based on stereotypical assumptions that persons of a certain racial, national or ethnic origin or religion are particularly likely to

<sup>135</sup> *Handbook on Criminal Justice Responses to Terrorism*, Criminal Justice Handbook Series (United Nations publication, Sales No. E.09.IV.2), p. 50; for further discussion of profiling and non-discrimination in terrorism investigations, *Human Rights and Criminal Justice Responses to Terrorism*, pp. 55 ff., and Counter-Terrorism Implementation Task Force, "Basic human rights reference guide: the stopping and searching of persons in the context of countering terrorism", 2nd ed. (New York, March 2014), para. 34.

<sup>136</sup> General recommendation XXX on discrimination against non-citizens, adopted by the Committee on the Elimination of Racial Discrimination at its sixty-fifth session (Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18 (A/59/18)), para. 469.

commit terrorist acts poses a number of issues in terms of effectiveness. Indeed, evidence shows that such methods can be not only unproductive but also especially harmful.

**Table 3. Key flaws of ethnic, racial or religious profiling as an investigation method**

| Over-inclusive and under-inclusive  | Increasing predictability of law enforcement focus  | Mistrust between minority communities and law enforcement   |
|---|---|---|
| Profiling should not result in too many innocent people being included in an investigation or numerous potential suspects being automatically excluded. | When targets of law enforcement activities are known in advance, offenders can more easily circumvent the expected profile. | While participative efforts are at the core of numerous strategies for the prevention of violent extremism, group targeting alienates certain communities and thus undermines confidence in the police. |

*Note:* For further evidence, see European Parliament, Directorate General for Internal Policies, “Study: Ethnicity and Race-Based Profiling in Counter-Terrorism, Law Enforcement and Border Control” (2008), part III.

When coupled with increased law enforcement capability to carry out searches and arrests, which are often part of counter-terrorism measures, such unacceptable profiling methods can become especially damaging. It is thus the responsibility of lawmakers and policymakers to undertake conscious, comprehensive efforts to prevent the use of such methods, including by:

(a) *Revising existing legislation to prohibit discrimination, with specific references to the work of law enforcement.* It may be especially useful to introduce clear and objective definitions of “reasonable suspicion standards”;

(b) *Encouraging the reporting of unacceptable methods and put in place appropriate auditing mechanisms to review police practices;*

(c) *Providing capacity-building initiatives for law enforcement officers* that would include appropriate training on “reasonable suspicion standards”, as well as on the impact of group profiling. It is especially important that the training includes the provision of information on: the specific repercussions of profiling for children; children’s enhanced vulnerability to stigma; and appropriate conduct during investigations involving children.

### Pretrial detention

Pretrial detention should be applied as a measure of last resort and for the shortest appropriate period of time.<sup>137</sup> As acknowledged by the Committee on the Rights of the Child, there will be circumstances where it may be necessary to detain a child alleged to have committed an offence, but these should be limited to where the child is an immediate danger to himself or herself or others, or it is considered necessary to ensure his or her appearance at the court proceedings.<sup>138</sup>

The Committee on the Rights of the Child recommended that, if a child is detained during the pretrial phase, the detention should be reviewed every two weeks to determine whether the criteria for detention continue to be met. The Committee also recommended that the period of pretrial detention before the child is charged (i.e. the period when the child is under investigation) should not exceed 30 days<sup>139</sup> and that the court should make a final decision on the charges not later than six months after

<sup>137</sup> In accordance with art. 37, subpara. (b), of the Convention on the Rights of the Child.

<sup>138</sup> CRC/C/GC/10, para. 80.

<sup>139</sup> A/63/41, annex IV, para. 83.

they have been presented. The imperative to limit delays to a minimum in cases involving children applies also when the charges concern terrorism-related offences.

### Use of diversion and alternatives to detention

Despite the serious nature of terrorism-related offences, States, as well as international organizations, are increasingly recognizing the need and utility of alternatives to formal judicial proceedings, as well as alternatives to detention. Indeed, the progressive broadening of national counter-terrorism strategies has led to greater focus on prevention and reintegration. During the past few years, the range of terrorism-related offences has widened considerably; at the same time, States have been dealing with a growing number of individuals charged with terrorism-related offences, whether in countries affected by conflict or in countries faced by a high number of returning foreign terrorist fighters. Accordingly, measures that can foster a more solid link to the community and address violent extremist behaviour through specialized treatment are showing increasing merit.

In the case of children, international law requires to provide for multiple diversion options, as well as alternatives to detention. Such measures have the inherent merit of preventing the risks of victimization and stigmatization that are associated with long periods in police custody or detention and are thus more responsive to the developmental needs of children.<sup>140</sup> Accordingly, diversion measures should be applied at all stages of the proceedings, including during trial, and alternative measures should also be considered from the moment of arrest, and also as a sentence.

International standards do not limit the applicability of diversion measures on the basis of the seriousness of the offence. It is thus strongly recommended that domestic legislation and regulations adopt a similar view, stressing that the most relevant criteria to decide on the appropriateness of diversion or alternative measures should be the individual assessment of the personal circumstances and needs of the child. Restorative justice, mediation and community-based programmes for children are only some of the options that could prove effective in cases of children accused of terrorism-related offences. In view of the diverse avenues of recruitment of children by terrorist and violent extremist groups, and the influence of various “push factors” and “pull factors” (see chapter I above), effective prevention of further recidivism will require strategies that can tackle the root causes of the problem. Indeed, diversion and alternatives are particularly appropriate means for achieving this goal, as they generally focus on the impact of criminal behaviour, forms of reparation for the victims, and at the same time, they provide an opportunity to work on and improve positive skills.<sup>141</sup>

This is not to say that proportionality to the gravity of the offence should not be taken into account. However, different diversion and alternative measures include varying degrees of monitoring and accountability and are thus mindful of proportionality considerations, responding to public safety interests. At the same time, by involving actors beyond the justice system, diversion and alternatives to detention usually contribute to the development of effective coordination mechanisms and a heterogeneous network of practitioners that play a considerable role in the prevention of terrorism and violent extremism, as well as in the reintegration phase.

<sup>140</sup> UNODC, *Planning the Implementation of the United Nations Model Strategies and Practical Measures on the United Nations Model Strategies and Practical Measures on Violence against Children in the Field of Crime Prevention and Criminal Justice: A Checklist* (Vienna, 2015), pp. 29 and 30.

<sup>141</sup> UNICEF, “Toolkit on diversion and alternatives to detention”. Available at [www.unicef.org/tdad/index\\_55674.html](http://www.unicef.org/tdad/index_55674.html).





### Example of increased recognition of diversion and alternatives in the context of terrorism by the Global Counterterrorism Forum

The following excerpt is from the Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context:

*Good Practice 7: Consider and design diversion mechanisms for children charged with terrorism-related offenses*

Bearing in mind the consequences of submitting children to criminal proceedings, which may raise the level of their vulnerabilities, States should look at other ways of addressing offending behavior by children. Diversion seeks conditional channelling of children in conflict with the law outside the judicial proceedings towards a different way of addressing the issue that enables many children's cases to be resolved by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record. Children who may be diverted into a program should be given the opportunity to be heard before a final decision is made.

States are encouraged to implement and promote laws that contain specific provisions for the application of diversion mechanisms, whenever appropriate and desirable. ... Guidelines should be developed allowing law enforcement officials, prosecutors and judges to exercise their discretion to divert children into diversion programs at different stages of the process.

The child will be assessed before entering a diversion program. Diversion programs for children involved in terrorism-related activities need to be carefully tailored to the characteristics of the child and the offense committed ...

The successful completion of the diversion program by the child should result in a definite and final closure of the case, and no criminal or other forms of public records should be kept.

*Good Practice 8: Consider, and apply where appropriate, alternatives to arrest, detention and imprisonment, including during the pre-trial stage, and always give preference to the least restrictive means to achieve the aim of the judicial process*

...

... Prosecutors and judges play a key role in deciding about protective, supportive, educational and security measures for children facing terrorism-related charges.

Consistent with the laws in their countries, judges should be given a variety of possible alternatives to institutional care and detention. Alternatives in the shape of community-based options for the supervision of children can be appropriate alternatives to detention ...



### Checklist for practitioners: key elements

- In using special investigation techniques, investigators should take into account the vulnerability of children, the principle of the best interests of the child and the desirability of promoting the child's reintegration.
- Terrorism investigation and prevention measures must avoid profiling children based on stereotypical assumptions that persons of a certain racial, national or ethnic origin or religion are particularly likely to commit terrorist acts.
- The arrest, detention or imprisonment of a child shall be in conformity with the law and should be used only as a measure of last resort and for the shortest appropriate period of time.
- Children should not be detained by military authorities; in situations where children are captured by military authorities, policies and procedures should be in place to ensure age-appropriate protections and a handover to civilian authorities at the earliest possible stage.
- Upon the apprehension of a child, his or her parents or guardian are immediately notified, and, where immediate notification is not possible or not in the best interests of the child, the parents or guardian must be notified within the shortest possible time thereafter.
- Children deprived of their liberty shall have the right to prompt access to legal and other appropriate assistance.
- Every child arrested and deprived of liberty should be brought before a competent authority to examine the legality of this deprivation of liberty within 24 hours. Pretrial detention should be reviewed regularly, preferably every two weeks. States should introduce the legal provisions necessary to ensure that the court or juvenile judge or other competent authority makes a final decision on the charges not later than six months after they have been presented.
- Special interviewing techniques should be applied to ensure that contact between law enforcement authorities and a child alleged to have committed an offence are managed in a way that respects the legal status of the child, promotes the well-being of the child and avoids harm.
- Consideration should be given to dealing with a child who is an alleged offender without resorting to formal trial, or suspending proceedings in favour of diversion measures, with a view to promoting the child's reintegration and the assumption by the child of a constructive role in society.

## C. Trial and sentencing

During the adjudication of terrorism-related offences, it is essential to ensure respect for the rule of law, to ensure respect of the fundamental rights of all parties and to deter future acts of terrorism. It is also important to consider that the conduct of the trial and the decisions taken by the court will have a crucial impact on the future of the child. While the courtroom environment can always be intimidating for children, in terrorism-related cases this is compounded by heightened security and media attention, longer and more complex proceedings and the possibility of long prison sentences. The application of counter-terrorism laws and procedures may lead to the specific rights and needs of children, in particular the requirement to promote their rehabilitation and reintegration, being overlooked.

When a child is accused of or brought to trial for terrorism-related offences, juvenile justice procedures and safeguards should always be fully applied. This section focuses on how to ensure the participation of the child in the proceedings; the implementation of appropriate responses to security concerns and confidentiality requirements related to terrorism-related cases; and the principles that should guide competent authorities when sentencing a child.

## 1. International standards for bringing to trial and sentencing children

The safeguards that protect the right to a fair trial apply to both children and adults. These include the right to be presumed innocent, the right to be informed promptly of the charges, the right to have the charges determined without delay by a competent and impartial judicial body, the right to legal counsel or other appropriate assistance, the right not to be compelled to give testimony or to confess guilt, the right to confront witnesses and the right of appeal. However, the international legal framework related to juvenile justice includes some specificities concerning the adjudicatory phase. A brief overview of such specificities and specific obligations deriving from the international legal framework related to counter-terrorism is provided below.

### International legal framework related to counter-terrorism

As mentioned earlier, with regard to investigations, the international counter-terrorism instruments require that any person who is taken into custody or regarding whom proceedings are carried out should be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.<sup>142</sup>

Regarding sentencing, the international counter-terrorism instruments require that the punishment duly reflects the serious nature of terrorist offences.<sup>143</sup>

While the international legal instruments against terrorism are silent on the specific question of children accused or convicted of having committed a terrorist offence, that issue was addressed in General Assembly resolution 70/291, on the United Nations Global Counter-Terrorism Strategy Review. In that resolution, the Assembly reiterated that a child alleged to have infringed the law (including by being involved in the commission of acts of terrorism) should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child.

### International legal framework related to juvenile justice

The Convention on the Rights of the Child, as well as international standards and norms on juvenile justice, set heightened standards of protection for children facing trial. These include the right to support from an adult or guardian and the right to have their privacy respected at all stages of the proceedings.<sup>144</sup> The purpose of the right to privacy is to avoid the harm that can be caused to the child by undue publicity. Negative publicity can stigmatize the child and is likely to have a negative impact on the child's ability to access education, work and housing and on the child's reintegration in general.<sup>145</sup>

<sup>142</sup> Art. 14 of the International Convention for the Suppression of Terrorist Bombings.

<sup>143</sup> Security Council resolution 1373 (2001), para. 2 (*d*) and (*e*); and art. 4, subpara. (*b*), of the International Convention for the Suppression of Terrorist Bombings.

<sup>144</sup> According to art. 40, para. 2 (*b*) (vii), of the Convention, every child alleged as or accused of having infringed the penal law should be guaranteed to have his or her privacy fully respected at all stages of the proceedings.

<sup>145</sup> See, for example, rule 8 of the Beijing Rules; see also HRI/GEN/1/Rev.9 (Vol. II), chap. VI, para. 64.

The right of a child to have legal or other appropriate assistance in the preparation and presentation of his or her defence at trial is also well recognized.<sup>146</sup> Where facing a trial, or indeed any hearing that has the potential to result in the child being removed from the family, deprived of liberty or subject to any form of sanction, the child should be represented by a lawyer. Failure to ensure legal representation in such instances could mean that the child is denied full access to the proceedings and is not able to participate or defend her or himself in a meaningful way.

In article 40, paragraph 2 (b) (iii), the Convention on the Rights of the Child provides for the presence of a child's parents or guardians in judicial proceedings unless it is considered not to be in the best interests of the child, taking into account his or her age or situation.<sup>147</sup>

In addition, the international legal framework provides specific obligations related to sentencing of children, both in terms of methods and in relation to appropriate sentences. According to article 40, paragraph 4, of the Convention on the Rights of the Child, when sentencing a child for the commission of any criminal offence, the response should be based not only on the consideration of the objective gravity of the offence, but also on individual circumstances.

With regard to the use of sanctions, article 40, paragraphs 3 (b) and 4, of the Convention on the Rights of the Child and rules 17 and 18.1 of the Beijing Rules place a specific obligation on States to develop a range of non-custodial measures. And, as mentioned above, article 37, subparagraph (b), of the Convention provides that the detention of a child should be in conformity with the law and should be used only as a measure of last resort and for the shortest appropriate period of time. Finally, under article 37, subparagraph (a), of the Convention, for offences committed by children, it is prohibited to impose the death penalty or life imprisonment without possibility of release.

## 2. Adjudicatory process and sentencing in terrorism cases involving children

The present section includes key recommendations to ensure an appropriate balance between respecting the child's rights and the specific requirements of adjudication of terrorism-related offences. The recommendations focus on the preparation and conduct of trials, as well as on sentencing.

### Child participation

The effective participation of a child in judicial proceedings is a key principle enshrined in article 12 of the Convention on the Rights of the Child and it should inform the entire process. For children, however, the court environment can be especially intimidating, and at times traumatizing. This is especially true for children who may have experienced violence and are going to relive traumatic experiences through criminal proceedings. Child participation, therefore, requires comprehensive measures to ensure appropriate conditions for the child. According to the Committee on the Rights of the Child, a fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore the child needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events and to make appropriate decisions about evidence, testimony and the measures to be imposed.<sup>148</sup>

<sup>146</sup> See, for example, art. 40, para. 2 (b) (ii), of the Convention on the Rights of the Child ("to have legal or other appropriate assistance in the preparation and presentation of his or her defence"; and art. 14, para. 3 (d), of the International Covenant on Civil and Political Rights.

<sup>147</sup> Rule 15.2 of the Beijing Rules states that the parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

<sup>148</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, para. 46.

The provision of complete information to the child is the bedrock of active participation, allowing the child to exercise conscious decision-making. It is essential that a child understands not only the charge brought against him or her and its potential consequences, but also the judicial procedure, and his or her role during the trial. In order to be meaningful, the information provided must be adapted to the developmental level of the child. The flow of regular information should not be interrupted at the time of judicial proceedings, and judges who may not have directly interacted with the child before should be made aware of existing guidelines on child-sensitive communication.

### Safe and child-friendly environment

The establishment of a specialized juvenile justice system requires specialized procedures, as well as specialized practitioners. The use of separate juvenile courts can be an effective way to adapt the court environment to provide an atmosphere of understanding that is conducive to effective participation. However, even when legislation provides for children to be tried in existing family courts, or separate juvenile courts, such dispositions are often disregarded in practice,<sup>149</sup> and the conduct of terrorism-related cases is likely to further undermine their use. Nonetheless, when children are tried in ordinary courts, it is of crucial importance to make special arrangements. These may include modifications to the court environment and adaption of the length of the proceedings, taking into account the age and maturity of the child,<sup>150</sup> as well as the potential of the proceedings to harm him or her.

### Legal representation

Access to legal representation is a requirement of due process. Taking into account the developmental needs of children, domestic legislation often does not allow children to waive such rights, in order to ensure their effective defence. The principle of equality of arms also includes the opportunity to adequately prepare the defence.<sup>151</sup>

In some cases, it may be advisable to consider establishing a security clearance system for lawyers who will have access to special files or information or to establish in consultation with the defence bar a list of lawyers who have had either the special training, the security clearance or both to make them more effective at exercising their duties and defending certain individuals accused of terrorist acts under difficult and challenging circumstances. Defence lawyers must also have the means to seek and obtain special protection measures for themselves and for witnesses (lay or expert) who are required to mount an effective defence of their client.<sup>152</sup>

### Right to avoid self-incrimination

There is an especially delicate balance to be respected between encouraging participation of the child, and forcing testimony. Professionals involved in the court proceedings should be especially aware of the higher tendency of children to self-incrimination and of the risk that pretrial confessions may have been obtained through the exercise of undue pressure or influence. Such considerations are crucial in view of the tendency to rely heavily on accomplices' testimony during terrorism-related cases. When providing information to the child, particular emphasis should be put on the consequences of testimony and on the right to remain silent. Whenever the child chooses to remain silent, the court must refrain from regarding this as a confession of guilt.

<sup>149</sup> Nikhil Roy and Mabel Wong, "Juvenile justice: modern concepts for working with children in conflict with the law" (London, Save the Children UK, 2004), p. 79.

<sup>150</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, para. 46; see also rule 14 of the Beijing Rules.

<sup>151</sup> For an in-depth discussion of the right to legal counsel in terrorism cases, see *Human Rights and Criminal Justice Responses to Terrorism*, pp. 63-70.

<sup>152</sup> *Handbook on Criminal Justice Responses to Terrorism*, Criminal Justice Handbook Series (United Nations publication, Sales No. E.09.IV.2), pp. 83-87.



### Case study: European Court of Human Rights: the case of *Salduz v. Turkey*

In the case of *Salduz v. Turkey*, Mr. Salduz, a 17-year old accused of terrorist offences in support of the Kurdish Workers Party (PKK), was interviewed by the police without the assistance of a lawyer and made self-incriminating statements. Although he subsequently confirmed these statements before a judge during the pretrial phase, the European Court of Human Rights found that his right to a fair trial had been violated by the courts relying on his statement to the police. The Court highlighted in this regard the particular importance of access to a lawyer from the start of detention for children.<sup>a</sup>

<sup>a</sup> European Court of Human Rights, Application No. 36391/02, Judgment of 27 November 2008.

### Privacy

While trials are generally to be carried out publicly and openly, international law makes a notable exception for cases when children are involved. This is motivated by the enhanced vulnerability of children during the conduct of judicial proceedings and the especially detrimental impact of stigma on their reintegration. Given the particularly delicate nature of terrorism-related cases, all trials of children accused of terrorism-related crime are to be held behind closed doors. In addition, the requirement to protect the privacy of children also extends to the publication of information that would be conducive to the identification of the child (limitations to the public nature of proceedings are discussed in more detail in chapter III, section B, above).

### Effective court security measures

Higher security risks in the adjudication of terrorist offences not only concern the safety of the child, but also affect the security of all participants (for security measures related to children as victims or witnesses, see chapter II above). To ensure a fair trial, the risks of intimidation, retaliation, and obstruction of justice should be effectively prevented. The implementation of security measures depends largely on available resources and on coordination between the appropriate authorities. The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses includes some relevant examples.



### Enhancing courthouse and judicial security

According to Good Practice 7 of the Global Counterterrorism Forum's Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses, enhanced courtroom and judicial security may include:

- Increased police or other security staff both in and outside the courtroom
- The strategic use of security checkpoints and screening procedures
- The use of metal detectors, X-ray scanning devices and other screening technology at the public entrances to the courthouse and courtroom
- Prohibiting the possession of cell phones and other electronic devices in the courthouse and courtrooms
- Separate and secure parking and entrances for judges, prosecutors and court personnel

### Social enquiry reports

Social enquiry reports have the objective of supporting the adjudicatory process by providing the court with information on the situation of the individual child and by presenting suggestions on the most appropriate sentence to be applied. They are an extremely valuable tool to the application of sentences that are responsive not only to the seriousness of the offence, but also to the personal situation of the child.

Social enquiry reports should contain relevant information related to the family background of the child, the child's current circumstances, including where he or she is living and with whom, the child's educational background and health status, and previous offences, as well as the circumstances surrounding the commission of the offence and the likely impact of any sentence on the child.<sup>153</sup>

The adjudication of cases involving children accused of terrorism-related crimes may pose particular difficulties. In order to strengthen the impact of social enquiry reports, it is recommended that clear guidelines be developed on the content, style and objective of the reports and that professionals are adequately trained on their significance. Social workers carrying out investigations of such cases should be appropriately trained on potential security risks. Judges should not discount lightly the recommendations made in the reports or discount them merely on the basis of the gravity of the offence. Experience has shown that an effective measure to boost adherence to such recommendations during sentencing is a formal requirement that the court justifies in writing the reasoning behind the selection of a different sentence.

In particular, guidelines could be developed to ensure that especially relevant aspects of the child's rehabilitation are taken into account, such as:

- (a) The specificities of the recruitment process, and especially an analysis of "push factors" and "pull factors" that were decisive in the case of the individual child, in order to ensure that the selected sentence addresses the fundamental needs of the child;
- (b) Family relationship with particular emphasis on the role of the family in the recruitment process, as well as on the identification of positive relationships that will be conducive to reintegration. Situations where the families are also facing stigma or fear and require adequate support should also be highlighted;
- (c) The experiences within in the group in terms of violence, exploitation and relationships of submission or control with other members of the group;
- (d) Risks for the child safety, with particular emphasis on the risks of secondary recruitment, or retaliation from members of the groups. Risks related to ostracism by the community should also be analysed.

### Sentencing

Throughout the judicial process, and especially at the time of sentencing, judges have a crucial and complex role. They are required to take into account the need to promote and facilitate the reintegration and rehabilitation of the child, while at the same time they need to consider the needs of the victims and the particular seriousness of terrorist acts and to deter reoffending.

International law requires the adjudication of children to be based on due consideration of both the circumstances of the offence and the personal situation of the child. Thus, while the risks of reoffending should not be discounted, it is crucial to take into account the conditions that led to the recruitment of the child, the power imbalance between the terrorist group and the child, and the impact of these factors on the consent of the child to any criminal act following recruitment.

<sup>153</sup> *Justice in Matters Involving Children in Conflict with the Law*, p. 104.

Furthermore, the court is required to apply deprivation of liberty only as a measure of last resort and to consider all possible non-custodial sentences. While alternatives to deprivation of liberty have the merits of focusing on the educational, psychosocial and behavioural needs of the child, they can also focus on preventing further violence and include effective monitoring systems.

For instance, non-custodial measures can provide anger management and anti-aggression training to address violent tendencies. Short-term fostering orders or residence orders can be used in exceptional circumstances to remove the child from the families or personal environment when these are deemed to be conducive to further criminal activity. Other measures, such as supervision orders, focus on prohibiting certain activities and ensuring closer monitoring of the child's life, without affecting the child's living arrangements and educational activity.<sup>154</sup>

Finally, the absolute prohibition of capital punishment and life imprisonment without possibility of release applies without exception in terrorism-related cases. Therefore, under no circumstances can it be considered acceptable to apply such measures to a person sentenced for offences that were committed before the young person turned 18, regardless of the type of crime that may have been committed.



### Checklist for practitioners: key elements

- Actions taken in relation to a child alleged to have committed or accused of having committed, conspired to commit or attempting to commit a terrorism-related offence are to be taken expeditiously from the outset and without any unnecessary delay.
- A child associated with violent extremist or terrorist groups has the right to have his or her privacy fully respected at all stages of the proceedings, in order to avoid harm caused by undue publicity or by the process of labelling. Any information that may lead to the identification of the child is not to be published.
- Every child alleged of having committed or accused of having committed, conspired to commit or attempted to commit a terrorism-related offence has at least the following guarantees:
  - The presumption of innocence
  - The right to be informed promptly and directly
  - The right to legal counsel and legal aid
  - The right to assistance of his or her parents or legal guardians
  - The right to be heard
  - The right not to be compelled to give testimony or confess guilt
  - The right to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality
  - The right to free assistance of an interpreter if the child cannot understand or speak the language used
  - If recognized as having committed a terrorism-related offence, the right to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law

<sup>154</sup> For further guidance on the application of non-custodial sentences, see *Justice in Matters Involving Children in Conflict with the Law*, pp. 104-107.



- Such guarantees are to apply from the first contact of the child with national authorities and for the entire duration of the proceeding with no exception.
- Sentencing of a child offender by the competent authority is to be guided by the following principles:
  - Neither capital punishment nor life imprisonment without possibility of release is to be imposed for offences committed by persons under 18 years of age.
  - The sentence should always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the child, as well as to the needs of the society.
  - Alternatives to custodial sentences should be available also for children convicted of terrorist offences.
- Any sentence must promote the child’s reintegration and the child’s assumption of a constructive role in society.

## D. Children deprived of their liberty

Despite the existence of an international norm that establishes that deprivation of liberty<sup>155</sup> is to be a measure of last resort and for the shortest appropriate period of time,<sup>156</sup> the detention of children alleged to have committed a terrorism-related offence is often the norm rather than the exception. The reasons for this include the assumptions that they have assimilated a violent extremist ideology and are a particular risk to society and that alternatives to detention cannot be contemplated in terrorism-related cases.

Children are detained at all stages of the justice process, often in accordance with counter-terrorism provisions for adults. They are also often held for longer periods than what would be usually permitted for ordinary crimes. When apprehensions or arrests are part of extensive operations against terrorist groups or take place in situations of conflict, large numbers of individuals are caught together and transferred to detention facilities. The identification of children (if it happens at all) is often delayed, and the children spend long periods of time deprived of their liberty together with adults. Many facilities in which children are deprived of their liberty do not meet the minimum requirements set forth in international law. Conditions are particularly poor in overcrowded facilities and in police custody and pretrial detention facilities.

Reports also indicate an overreliance on administrative detention,<sup>157</sup> whether for children who have actively participated in hostilities or children who are considered to pose a security threat as a result of engagement in alleged terrorist activities or involvement with violent extremist groups.<sup>158</sup> Children may be placed in administrative detention by the army, security forces or the police, and children may be held in military facilities, prisons or juvenile facilities. This poses concerns in terms of

<sup>155</sup> For the purpose of this publication, 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)).

<sup>156</sup> Art. 37, subpara. (b), of the Convention on the Rights of the Child.

<sup>157</sup> Administrative detention is the deprivation of liberty of a person, initiated or ordered by the executive branch of government, not the judiciary, without criminal charges being brought. On the permissibility of administrative detention in terrorism-related cases, see *Human Rights and Criminal Justice Responses to Terrorism*, pp. 125-128.

<sup>158</sup> Carolyn Hamilton and others, *Administrative Detention of Children: A Global Report*, Discussion paper (New York, UNICEF and Coram Children’s Legal Centre, 2011), chap. 1; and S/2016/1098, paras. 32-38.

restrictions of fundamental rights, access to justice and identification of the appropriate legal framework.

Poor conditions of detention facilities and inadequate treatment of children deprived of liberty are not only violations of child rights, but also factors contributing to violence against children and violence against society in general. In a recent report, the Secretary-General noted how such developments are likely to have an impact not only on the well-being of the child, but also on society as a whole, because they may disrupt efforts to reintegrate children.<sup>159</sup>

In general, children in detention may be vulnerable to violence by their peers, by staff and by adult detainees and to self-harm.<sup>160</sup> Violence against girls in custody often includes rape and other forms of sexual violence such as threats of rape, touching, “virginity testing”, being stripped naked, invasive body searches, insults and humiliations of a sexual nature.<sup>161</sup>

Children accused or convicted of terrorism-related offences are especially vulnerable to stigma and violence, including as part of efforts to extract information from them, especially when they are deprived of their liberty.

If and when deprivation of liberty of a child is absolutely necessary, the conditions of detention and the treatment of the child must be respectful of the dignity and special needs of the child and reduce to a minimum the risk of violence. This section provides guidance on minimum standards to ensure that a child alleged to have committed or convicted of having committed a terrorism-related offence, if deprived of his or her liberty, is treated in a way that is conducive to the child’s rehabilitation and reintegration into society, thereby leading to the prevention of recidivism, in the interest of public safety.

## 1. International standards on the treatment of children deprived of liberty

The international legal framework provides for particularly strict limitations to deprivation of liberty of children (see above sections A and C of this chapter). Such firm provisions are motivated by the serious impact of detention on children, particularly in terms of isolation, the risk of violence and stigma, which deeply affects the reintegration process (see chapter IV, section E.2, below). Hence, international legal instruments contain detailed rules on how to guarantee the appropriate environment and services for children in detention.

As noted earlier, the international instruments against terrorism require any person who is taken into custody on charges related to the commission of terrorist acts to be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.<sup>162</sup> The General Assembly, in its resolution 70/291, reiterated that all children alleged as, accused of or recognized as having infringed the law, should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child.

### International legal framework related to juvenile justice

According to article 37 of the Convention on the Rights of the Child, States parties must ensure that: the arrest, detention or imprisonment of a child is to be used only as a measure of last resort and for the shortest period of time; no child is to be subject to torture or other cruel, inhuman or degrading

<sup>159</sup> A/70/836-S/2016/360, para. 16.

<sup>160</sup> “Prevention of and responses to violence against children within the juvenile justice system”, pp. 14 and 15.

<sup>161</sup> A/HRC/7/3, para. 34.

<sup>162</sup> Art. 14 of the International Convention for the Suppression of Terrorist Bombings.

treatment or punishment; and every child deprived of liberty is to be treated with humanity and respect for the inherent dignity of the human person and in a manner that takes into account the needs of a person of his or her age.

Conditions of detention that may be acceptable for adults may still amount to inhuman or degrading treatment if applied to children. According to the Istanbul Statement on the Use and Effects of Solitary Confinement,<sup>163</sup> the use of solitary confinement should be absolutely prohibited in cases involving persons under the age of 18.<sup>164</sup> And, according to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex), methods of restraint and force should not cause humiliation or degradation and should be used only for the shortest possible period of time (para. 64).

The international legal framework also contains rules regarding children deprived of their liberty, who should be held separately from adults unless it is not in the child's best interest to do so.<sup>165</sup> Recognizing the special circumstances of girls who are deprived of their liberty, international standards also state that girls placed in an institution deserve special attention as to their personal needs and problems and should be held separately from young males.

Children have the right to facilities and services that meet all requirements of health and human dignity.<sup>166</sup> A child who is deprived of his or her liberty has the right to maintain contact with his or her parents, legal guardians and other significant persons.<sup>167</sup> According to article 24, paragraph 1, of the Convention on the Rights of the Child, children have the right to the enjoyment of the highest attainable standards of health and to facilities for the treatment of illness and rehabilitation. The same article obliges States parties to ensure that no child is deprived of his or her right to access to such health-care services.<sup>168</sup>

The provisions on education and vocational training are vital, as they facilitate the child's reintegration and reduce the likelihood of recidivism. In article 28 of the Convention on the Rights of the Child, it is stated that States parties must take certain measures to ensure that children enjoy the right to education on the basis of equal opportunity. The right to education continues to apply to children even when they are deprived of their liberty, and according to international standards and norms, children deprived of their liberty should receive the same standards of and access to education as those enjoyed by all other children.<sup>169</sup>

International standards and norms also specify the requirement to provide meaningful activities such as recreational, physical and leisure activities.<sup>170</sup> Religious, cultural and other rights of children as set out in article 14, paragraph 1, and article 30 of the Convention on the Rights of the Child should be adequately protected also in detention.<sup>171</sup>

Moreover, every child should have the opportunity to make requests or complaints to the director of the detention facility and to his or her authorized representative.<sup>172</sup> By the same token, every child should

<sup>163</sup> A/63/175, annex.

<sup>164</sup> According to the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, the use of prolonged or indefinite solitary confinement has increased in various jurisdictions, especially in the context of the "war on terror" and "a threat to national security" (A/66/268, para. 57).

<sup>165</sup> See art. 37, subpara. (c), of the Convention on the Rights of the Child; art. 10, para. 2 (b), of the International Covenant on Civil and Political Rights; rules 13.4 and 26.3 of the Beijing Rules; and para. 29 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

<sup>166</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, paras. 31-37.

<sup>167</sup> The importance of the role of the family for the well-being of the child and his or her rehabilitation and reintegration is recognized in the Beijing Rules (rule 26.5), as well as in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (paras. 59-62).

<sup>168</sup> See also the Beijing Rules (rule 26.2) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (paras. 49-55).

<sup>169</sup> For detailed standards on education of children in detention, see the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, paras. 38-46, and the Beijing Rules, rules 26.1, 26.2 and 26.6.

<sup>170</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, paras. 32 and 47.

<sup>171</sup> See also the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, paras. 4 and 48.

<sup>172</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, paras. 75 and 76.

have the right to make a request or complaint to the central administration, the judicial authority or other proper authorities through approved channels and to be informed of the response without delay.

States are required to establish a regular and independent system of inspection of facilities where children are deprived of their liberty. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own.

## 2. Conditions of detention and the treatment of children deprived of their liberty

Considering the enhanced vulnerabilities of children deprived of their liberty by reason of terrorism-related charges, States must not forget their responsibility to ensure appropriate conditions in detention facilities and access to quality services. This will require tailored legislation, policies and procedures for all children deprived of their liberty. The present section provides key general guidance on how to guarantee that institutional treatment of children is always conducted in a way that reflects international obligations. Chapter IV, section E.2, of the present publication complements this section, addressing more specifically strategies and measures to facilitate the reintegration of children deprived of their liberty.

### Ensuring that deprivation of liberty is a measure of last resort

States should develop and use as effective alternatives to formal judicial proceedings mechanisms that are child- and gender-sensitive. This should be done to help meet the key objective of ensuring through legislation, policy and procedures that deprivation of liberty is a measure of last resort, also in the case of children alleged to have committed terrorism-related crimes.

Another effective strategy would be to exclude the use of detention for children who are merely victims of recruitment and exploitation by terrorist and violent extremist groups. Whether deprivation of liberty is used as punishment or as a means of protection from further harm, it is inappropriate to respond to the needs of such children, who should be granted appropriate assistance (see chapter II above). The use of detention in the case of children who are charged solely with the offence of association with a terrorist group should be considered with particular caution, as such an offence may be a direct result of their recruitment.

### Limiting and regulating administrative detention

It is of crucial importance to set appropriate limits to the use of administrative detention and to provide for specific safeguards for children, taking into account their rights and needs. Administrative detention is only permissible where and to the extent it is explicitly provided for in domestic legislation and surrounded with appropriate limitations and safeguards. The relevant law must have adequate clarity and regulate relevant procedure,<sup>173</sup> while the detention itself must be carried out by competent officials or persons authorized for that purpose. Where placing a child in administrative detention does not comply with domestic law, this will render the detention unlawful both in domestic law and in international law.

<sup>173</sup> Human Rights Committee, *Floresnilo Bolaños v. Ecuador*, Communication No. 238/1987 (Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40)); V. P. Domukovsky, Z. Tsiklauri, P. Gelbakhiani and I. Dokvadze v. Georgia, Communication No. 623, 624, 626 and 627/1995 (Official Records of the General Assembly, Fifty-third Session, Supplement No. 40 (A/53/40 (Vol. I)), chap. XI, sect. M.

In addition, the use of administrative detention must not be arbitrary and must be necessary in all the circumstances of the case and proportionate to the ends being sought.<sup>174</sup> The Human Rights Committee has held that, in determining whether administrative detention is necessary, proportionate and appropriate, an assessment must be made of the particular child. A blanket policy of administrative detention, for instance, of all child members of a terrorist group, is likely to be considered arbitrary detention as such a policy would not pay sufficient regard to the circumstances of each individual case.<sup>175</sup> Finally, as long as administrative detention is lawful, its conditions and the treatment of the child submitted to it should be in compliance with international standards and norms.

### Separation of children from adults and of girls from boys

When deprivation of liberty is absolutely necessary, conditions of detention and the treatment of children must be respectful of the dignity and special needs of the child and reduce to a minimum the risk of violence. One key measure in this regard is to ensure that, if deprived of their liberty, children are separated from adults. According to the Committee on the Rights of the Child, there is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, their well-being and their future ability to remain free of crime and to reintegrate.<sup>176</sup> Clear regulations should set the criteria for the separation of children from adults and the placement of children in appropriate facilities, excluding any exception from being made on the basis of the type of offence. The only exemptions to this general rule concerns children deprived of their liberty with other members of their families.<sup>177</sup> However, such exceptions should be determined only following careful evaluation of the risks, the personal situation of the child and an assessment of the child's best interests. In any case, the presence of family members should never justify the placement of children in high-security prisons, which by their nature contradict the basic requirements for the treatment of children deprived of liberty.

Furthermore, States should also ensure that girls are separated from boys. This is not only considered essential to prevent instances of violence against girls, but it is also a general requirement to ensure that the treatment provided to girls is mindful of their specific needs and rights.

Finally, clear criteria for the separation of different categories of children should be defined, where appropriate. In particular, if separation is deemed necessary, it should be ensured that it is always carried out to provide the most appropriate type of care, following the identification of specific needs.<sup>178</sup> Therefore, children should not be separated merely according to the type of offence they have been charged with, but rather on the basis of child-sensitive assessment and classification procedures.

### Access to a variety of services

States should ensure through legislation, policy and procedures that children deprived of liberty have access to a variety of quality services that should be responsive to the specific needs of children both as a group and on an individual basis, always with a view to promoting their effective rehabilitation and reintegration.

Health-related services should include preventive and specialized treatment. Regardless of their involvement in criminal acts, children who have been associated with terrorist groups are likely to have undergone violence, the consequences of which can affect them in the long term. Specialized treatment should be available to such children, including treatment of sexual diseases, and mental health

<sup>174</sup> *Danyal Shafiq v. Australia*, Communication No. 1324/2004 (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 40 (A/62/40 (Vol. II))*), para.7.2; and *A. v. Australia*, Communication No. 560/1993 (CCPR/C/S9/D/560/1993), para. 9.2.

<sup>175</sup> *A. v. Australia*, para. 9.4; *C. v. Australia*, Communication No. 900/1999 (*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40 (A/58/40 (Vol. II))*), para. 4.26.

<sup>176</sup> A/63/41, annex IV, para. 85.

<sup>177</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 29.

<sup>178</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 28.

support. However, the provision of medical treatment requires the informed consent of the child, unless there are exceptional circumstances. Appropriate guidance should thus illustrate how to inform the child, require her or his consent and clearly define the circumstances under which the consent of the child is not required. Finally, whenever the highest standards of treatment cannot be guaranteed, arrangements should be made to guarantee the prompt transfer of the child to medical facilities.

Educational and vocational training is essential to provide children with the skills and qualifications that will allow them to pursue a constructive role in society upon their release. In order to be effective, the level of teaching and training provided should be adapted to the level of the individual child and not only to his or her age. Leisure and sport are also necessary for the healthy development of children.

Sometimes as part of the above-mentioned activities, programmes that support positive behavioural skills, dialogue and efforts to increase trust should be also provided. One example is the increased use of restorative justice approaches for conflict-solving in custodial facilities, which can help foster a culture of peace and open dialogue.<sup>179</sup> When children have been associated with terrorist groups, it is likely that they have become accustomed to a hierarchical relationship, the abuse of power and violent confrontations. These types of programmes can be especially important to these children, as they promote healthy dynamics among peers and help to undermine the criminal group mentality.

Even children who are separated on the basis of the type of offence that they have committed should maintain access to essential services. Similarly, restrictions to any of these services should never be used as a disciplinary measure.

### Preventing and responding to violence against detained children

Adequate conditions of detention and treatment of children may contribute to a positive environment where violence is unlikely to occur. However, ensuring that contributing and risk factors are swiftly identified and pre-empted is crucial to preventing violence from happening in detention facilities.

A wide range of strategies and measures can help prevent, identify and respond to instances of violence.<sup>180</sup> For example, States should provide for a lawful disciplinary system, in compliance with the principles of positive discipline and restorative justice approaches, which prohibits the use of torture or other cruel, inhuman or degrading treatment or punishment, including the use of isolation or solitary confinement, and the use of restraints or force, except in specified exceptional circumstances.

Another important measure is the establishment of safe, effective and child-sensitive counselling, reporting and complaint mechanisms to address incidents of violence. It is advisable that these mechanisms integrate gender and cultural dimensions and use a child-friendly form of communication. In addition, these mechanisms should include: opportunities for the appeal of decisions made in response to complaints; sanctions against grievous breaches of the law or policy, including criminal, civil and employment law sanctions; and measures to protect children from possible reprisals arising from the submission of complaints.<sup>181</sup>

Establishing independent oversight, inspection and monitoring mechanisms also contribute to preventing and responding to violence against children. States should ensure that institutions where children are deprived of their liberty are regularly inspected by a team of persons appointed by government or other authorized bodies, such as national human rights institutions, ombudsmen or inspecting judges. Visits must respect the principle of confidentiality to protect children from harassment or reprisals and should include an option for unannounced visits.<sup>182</sup>

<sup>179</sup> *Handbook on Restorative Justice Programmes*, Criminal Justice Handbook Series (United Nations publication, Sales No. E.06.V.15), p. 65.

<sup>180</sup> See the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, paras. 29-47.

<sup>181</sup> "Prevention of and responses to violence against children within the juvenile justice system", pp. 14 and 15.

<sup>182</sup> *Ibid.*

Finally, clear procedures should be set to ensure the prompt investigation of incidents of violence, taking into account the need to guarantee effective protection to both the child and those who have reported the incident. Mechanisms of equitable redress should be accessible to the child and his or her family, in order to obtain appropriate compensation. Regular communication with the child on the status of the complaint and potential investigations is a key component of a safe environment and transparent procedures.



### Checklist for practitioners: key elements

- The purpose of non-custodial sentences is to promote the rehabilitation and reintegration of the child into society. When a child is recognized as having committed terrorism-related offences or offences against national security, the competent authority should consider alternatives to detention.
- Where national legislation provides for police custody in terrorism-related cases that goes beyond the ordinary police custody delays or extends the permissible duration of pretrial detention in terrorism-related cases, such provisions authorizing exceptional detention regimes should not be applied in the case of child suspects.
- Where national legislation allows for administrative detention on security grounds, preventive detention on the grounds of risks related to terrorism or national security, the already very strict limitations that international law places on such detention regimes must be applied even more strictly where children allegedly associated with terrorist or violent extremist groups are deprived of liberty.
- When deprivation of liberty is absolutely necessary, the conditions of detention and the treatment of children should be respectful of the dignity and special needs of the child and minimize the risk of violence.
- Children must be separated from adults. Girls must be separated from boys.
- Every child deprived of liberty is to be treated with humanity and respect for the inherent dignity of the human person and in a manner that takes into account the needs of persons of his or her age. In particular, every child deprived of liberty should be separated from adults, unless it is considered to be in the child's best interest not to do so, and should have the right to maintain contact with his or her family through correspondence and visits, unless there are exceptional circumstances. Any decision to derogate from these standards should be subject to regular judicial review. Children deprived of their liberty have the right to receive adequate medical care, education suited to their needs and vocational training. Girls deprived of their liberty deserve to have special attention given to their specific needs.







## Chapter 4

Rehabilitation and  
reintegration of children  
recruited and exploited by  
terrorist and violent  
extremist groups



## A. Reintegration of children recruited and exploited by terrorist and violent extremist groups

### 1. Reintegration as a multidimensional process

Social reintegration is understood as the process through which a child following recruitment and exploitation by a terrorist or violent extremist group recovers the capabilities to assume a constructive role in society. The reintegration process follows a disruption that has had an impact on the life and personal development of the child, and it represents a transition towards renewed individual and social opportunities.

Achieving social reintegration should be the primary purpose of any action taken by public authorities affecting children recruited by terrorist and violent extremist groups, and it is a crucial step to ensuring that the child will assume a constructive role in society. When developing policies and programmes to promote social reintegration, it is necessary to take into account various dimensions of this multidisciplinary process.

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Key components of social reintegration of children include:

*Health and psychosocial recovery and support.* Measures should, through child-sensitive interventions, address the impact of recruitment, violence and conflict on the physical and mental well-being of the child. Such measures should not be exclusively remedial in nature, but should focus on preventing health-related issues from having a long-term impact on the development of the child.

*Educational and vocational opportunities.* Measures should focus on the objective of promoting self-sufficiency in the life of the child. Involvement with terrorist or violent extremist groups and the violence related to that involvement may curtail the child's educational and vocational opportunities. Interventions should take into account the needs and the aspirations of children, as well as the social and economic environment in which reintegration occurs.

*Return to family and community life.* Recruitment, exploitation, conflict and criminal activity not only have a negative impact on the personal life of the child, but also disrupt his or her relationship to the family and the community. The process of reintegration in the family and the community should address conflict and stigma and should rebuild a social network for the child. In order to do so, related initiatives should take into account the needs of the children, as well as those of their families and communities, paying particular attention to social norms that require recognition in order to overcome the disruption.

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The above-mentioned aspects are strongly interdependent, and failure to address any of them is likely to have a negative impact on the outcome of the overall reintegration process. Programmes and services focusing on children should thus follow a holistic approach, taking into account the individual needs and rights of the child, the expectations and needs of families and communities and the characteristics of the environment in which the reintegration process is to take place.

Children who have been associated with terrorist and violent extremist groups face a complex set of specific challenges during their reintegration process.

### Prevailing health concerns

First of all, violence has a severe impact on the physical and mental well-being of a child. This is not limited to children in areas of conflict; it also applies to children returning from areas of foreign conflict, whether they travelled on their own or were taken along by their parents.

Children who have been involved in conflict, in particular, may have sustained physical injuries or may be suffering from acute or chronic diseases, including as a result of the children being malnourished or a disease being left untreated for a prolonged period of time. Such physical impairments may significantly influence the future development and reintegration of children. Furthermore, children, especially (but not exclusively) girls, who have been recruited are at particular risk of developing sexually transmitted infections that can endanger sexual and reproductive health.<sup>183</sup>

Violence affects the psychosocial development of children in various ways. Research has found that children recruited by armed groups in Sierra Leone and Uganda exhibited high rates of post-traumatic stress disorder, depression and other psychological illnesses.<sup>184</sup> Traumatic events, such as serving as a combatant or executioner, increase the risks of developing severe mental health disorders. If left untreated, such disorders are likely to impair a child's ability to eat, sleep, concentrate and learn<sup>185</sup> and, as a consequence, may inhibit the child's educational and future employment prospects. Furthermore, children formerly associated with armed groups are likely to have developed substance dependence. This can happen either because the children were forced to consume drugs and/or alcohol by the groups, in order to make the child more easy to manipulate and to numb the children's fear and sensitivity to pain<sup>186</sup> or because the children became dependent on drugs and/or alcohol after their return, having no access to better coping mechanisms.

### Prevailing social concerns

Children who have been associated with terrorist and violent extremist groups often face strong stigmatization and rejection from their families and communities. They may be ostracized because they violated important social norms or acted directly against their families' or their own values and beliefs or because of community pressure. Some armed groups, including terrorist and violent extremist groups, deliberately force children to commit atrocious violence against their family and community in order to prevent defection.<sup>187</sup>

Moreover, children can be perceived as representing a security threat regardless of whether they have been actively involved in violence. As a result of the much-publicized indoctrination strategies of terrorist and violent extremist groups and such groups' continued use of children to carry out violent acts, concerns about security threats also affect children who were forcibly abducted by such groups or who joined such groups without sharing their beliefs (e.g. because of the economic incentives). The concern that indoctrination and continued exposure to violence can lead persons to regard violence as normal has led to the development of "deradicalization" programmes, which may pose additional challenges because of their lack of a definitional basis, the selection of target groups, their voluntary participation and their potential for discrimination.

<sup>183</sup> Matthew Happold, *Child Soldiers in International Law* (New York, Juris Publishing, 2005), p. 18.

<sup>184</sup> Shane Dixon Kavanaugh, "The uphill battle to saving ISIS' child soldiers", *Vocativ*, 22 July 2015.

<sup>185</sup> "The psychological impact of child soldiering", in *Trauma Rehabilitation after War and Conflict: Community and Individual Perspectives*, Erin Martz, ed. (New York, Springer, 2010), pp. 311-349.

<sup>186</sup> See, for example, UNICEF, "Children at both ends of the gun". Available at [www.unicef.org/graca/kidsoldi.htm](http://www.unicef.org/graca/kidsoldi.htm).

<sup>187</sup> A/HRC/30/67, para. 44.

### Marginalized reintegration

As they are primarily victims of violence, facing rejection and fear, children recruited and exploited by terrorist and violent extremist groups are also especially vulnerable to punitive approaches and may end up being dragged into the formal justice system, which, in turn, can lead to secondary victimization (see chapter III above). In many cases, reintegration measures are disregarded, marginalized or delayed. This represents a clear violation of these children's rights, as it curtails their opportunities to engage productively in social life. At the same time, it creates conditions conducive to future grievances, violence and crime, which represent a serious risk for society.

## 2. Challenges related to the reintegration of girls

The situation of girls requires specific attention and dedicated approaches, taking into account that because their experience within a terrorist or violent extremist group may have been notably different from that of boys, the path to social reintegration for girls may also be different from the path for boys.

### Exposure to violence

Because of the roles they normally have within terrorist and violent extremist groups, girls tend to be more easily and repeatedly subjected to sexual violence and slavery by those groups. The report of the Secretary-General on conflict-related sexual violence underlines that such groups not only perpetrate sexual violence and slavery, but also often explicitly justify sexual violence and slavery in their ideological publications. The ideological opposition of ISIL affiliates to the autonomy and education of women and girls has placed adolescent girls, primarily, at heightened risk of abduction for the purposes of sexual slavery and forced marriage.<sup>188</sup> It is also stated in the report that it is crucial to recognize sexual violence as a tactic of terrorism and victims of sexual violence as victims of terrorism in order to pave the way for reparations and redress<sup>189</sup> (see also chapter II of this publication).

At the same time, gender-based approaches should also take into account that boys are also at risk of being subjected to sexual violence by terrorist and violent extremist. Reports show that boys who were sexually abused within ISIL were later subjected to torture or death on the basis of accusations of homosexuality.<sup>190</sup>

### Consequences of violence

Studies show that gender also has an impact on the reaction to extremely violent events, and that girls in particular have higher chances of developing post-traumatic stress disorder,<sup>191</sup> which can be associated not only with stronger exposure to traumatic events, but also with more limited access to treatment.<sup>192</sup> Girls may also have suffered particularly severe and stigmatizing physical injuries. In particular, girls may require surgery to repair traumatic or obstetric fistulas following violent sexual assaults,<sup>193</sup> a condition that may

<sup>188</sup> ISIL describes the capture and enslavement of "infidel" women and children as an inevitable consequence of its conquest of new territory and seeks to regulate and codify sexual slavery, as expressed in its fatwa No. 64, of 29 January 2015. This continues the explicit justification of sexual enslavement presented in its pamphlet of December 2014 entitled "Questions and answers on taking captives and slaves" (S/2016/361/Rev.1, para. 21).

<sup>189</sup> S/2016/361/Rev.1, para. 22.

<sup>190</sup> In one reported case from the Governorate of Deir al-Zour, a 15-year-old boy was stoned to death after he had been accused of being homosexual. At least 25 men have been murdered by ISIL in the Syrian Arab Republic on suspicion of homosexuality or for sodomy, according to the Syrian Observatory for Human Rights (Human Rights Watch, *World Report 2017, Events of 2016* (2017), p. 575).

<sup>191</sup> Kennedy Amone-P'Olak, "Psychological impact of war and sexual abuse on adolescent girls in Northern Uganda", *Intervention*, vol. 3, No. 1 (2005).

<sup>192</sup> Miranda Olf and others, "Gender differences in posttraumatic stress disorder", *Psychological Bulletin*, vol. 133, No. 2 (2007), pp. 183-204.

<sup>193</sup> See World Health Organization, "Healing child soldiers", *Bulletin*, vol. 87, No. 5 (2009).

have consequences such as incontinence, infertility and extreme pain. Furthermore, girls are particularly prone to sexually transmittable infections, which, in turn, may add to their stigmatization and rejection.

### Stigma and rejection

Community ostracism is particularly likely when women have become pregnant and given birth to children during their association with terrorist or violent extremist groups. For instance, recent research conducted by UNICEF in northern Nigeria has found that women and girls who escaped from Boko Haram and returned home with children were regarded with “deep suspicion”, as they were perceived to have given birth to the “dangerous” children of Boko Haram fighters.<sup>194</sup> Similarly, research conducted on the aftermath of the conflict in Sierra Leone found that females associated with armed groups who returned home with children were liable to be subject to stigmatization, and their children labelled as “undesired”, “children of bad memories” or “children of hate”.<sup>195</sup>

Rather than being regarded as victims, women and girls who survived sexual violence and their children are often considered as potential perpetrators of violence, as these victims of conflict are perceived by many as being partly responsible for the violence and losses suffered by entire communities during the insurgency.<sup>196</sup> Such forms of rejection leave girls without a choice and can even lead to their re-recruitment.

## 3. Specific contexts of children

The design and implementation of reintegration policies and programmes require an understanding of the circumstances in which children are recruited and used by terrorist and violent extremist groups. Specific circumstances entail different challenges, some of which are illustrated below, and those challenges require tailored responses.

### Release and demobilization

When children in situations of conflict are recruited by a terrorist or violent extremist group, they often live with the group and are subject to the group’s control. The reintegration process cannot begin until the release of the children has been ensured. However, the nature and strategies of terrorist and violent extremist groups often limit the opportunities to negotiate the release of the children. In addition, government agencies, international actors and intergovernmental or private entities contracted to run disarmament, demobilization and reintegration programmes may have particular issues in accepting persons, including children, connected to a terrorist group. These additional issues add to the multiple challenges of designing and implementing disarmament, demobilization and reintegration programmes respecting, protecting and fulfilling child rights, including through the promotion of effective reintegration. When developing disarmament, demobilization and reintegration programmes, the specific needs of women and girls deserve special consideration; unfortunately those needs are often neglected.

### Cross-border situations

Because of the transnational nature of terrorism, children may come in contact with public authorities in a foreign State. This consideration is particularly relevant in view of the growing number of children who are recruited across national borders, whether alone or through their families, as part of the

<sup>194</sup> UNICEF and International Alert, “‘Bad blood’: perceptions of children born of conflict-related sexual violence and women and girls associated with Boko Haram in north-east Nigeria”, Research summary (2016).

<sup>195</sup> Dyan E. Mazurana and others, “Girls in fighting forces and groups: their recruitment, participation, demobilization and reintegration” *Peace and Conflict: Journal of Peace Psychology*, vol. 8, No. 2 (2002), pp. 97-123.

<sup>196</sup> “‘Bad blood’: perceptions of children born of conflict-related sexual violence”.

phenomenon of foreign terrorist fighters (see chapter I, section B, above). Specific interventions in these cases are related to the possibility of repatriation, the evaluation of risks facing the child and, in many cases, opportunities for family tracing and reunification.

### Involvement with the justice system

In many instances, children recruited and exploited by terrorist and violent extremist groups come in contact with the justice system for having allegedly committed terrorism-related offences (see chapter III above). Additional issues then might need to be taken into account, as justice proceedings might contribute to social stigma and could lead to secondary victimization, including through violence committed during arrest, when the child is deprived of his or her liberty, during trial and also while serving a sentence. Violence committed against a child in contact with the justice system has the potential to disrupt the personal development of the child and pose additional obstacles to efforts to enable the child to assume a constructive role in society.



#### Checklist for practitioners: key elements

- Social reintegration of children is to be understood as a multidimensional process, which takes into account health and psychosocial support, educational and vocational opportunities, and restoration of family and community bonds.
- Children recruited by terrorist and violent extremist groups are especially vulnerable to health-related consequences of violence, stigma and rejection.
- Girls recruited and exploited by terrorist and violent extremist groups require specific approaches to reintegration, because of their increased exposure to violence, as well as the specific health-related and social consequences of their association with the groups.
- Reintegration measures also need to take into account the specific contexts of children, including children in cross-border situations, children facing release from terrorist or violent extremist groups and children in contact with the justice system as alleged offenders.

## B. Promoting comprehensive reintegration policies and programmes

The present section is intended to promote awareness of the particular challenges faced by children when re-entering society following association with a terrorist or violent extremist groups.

In addition, due to limited resources, reintegration programmes are at risk of being conceived using a one-size-fits-all approach. Yet the experiences of children recruited and exploited by terrorist and violent extremist groups can be extremely different, and programmes that fail to take into account proper assessments of the individual needs of the child and to have the necessary flexibility to provide different responses are at considerable risk of being ineffective. Broader socioeconomic conditions are also a crucial factor that should not be underestimated.

In addition, children who have been associated with terrorist and violent extremist groups are often regarded with extreme suspicion. While this is not the case for all children, it is necessary to consider that terrorist and violent extremist groups have proved to be especially effective in the indoctrination of children. When children who have been associated with such groups have internalized violent extremist ideologies, they may show stronger resistance to reintegration efforts, exhibit more distrust towards and lack of cooperation with authority figures and reject social norms and positive behaviours. This can lead to higher risks of re-recruitment or future offending.

Finally, public opinion may demand “tougher” approaches to dealing with children recruited by terrorist and violent extremist groups. This is especially the case when there is the perception that these children are receiving “special treatment” in comparison with other groups of vulnerable persons. Specific strategies should be elaborated to tackle the lack of public support, in order to ensure that these children have access to the necessary services and an opportunity for effective reintegration.

The present section provides a general overview of key elements for comprehensive reintegration policies and programmes targeting children who have been associated with terrorist and violent extremist groups. In particular, it aims to foster a holistic understanding of reintegration processes, supporting the design and implementation of programmes based on a developmental perspective and capable of fulfilling the specific rights and needs of children. As such, it is conceived as the basis for more specific considerations related to different contexts, including demobilization and release interventions, children in cross-border situations and children in contact with the justice system.

## 1. International legal framework on the reintegration of children

According to the international legal framework, States have a broad obligation to promote and support the social reintegration of children in vulnerable situations. The present section refers to provisions contained in the international legal instruments addressing the broad requirement to implement child-sensitive reintegration programmes, whether for children who are victims of violence, children in conflict situations or children in contact with the justice system.



### Convention on the Rights of the Child: article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 39 of the Convention on the Rights of the Child highlights that reintegration of children is a multilayered process requiring comprehensive efforts. First, assistance for the purposes of reintegration should be provided to all children who have experienced neglect, exploitation or violence, including armed conflict. Secondly, reintegration processes should include a variety of measures, addressing different dimensions of the child’s well-being, notably the physical, psychological and social aspects. Thirdly, when devising reintegration measures, States parties need to be mindful of the environment in which the reintegration is to take place: it should be conducive to healthy and respectful self-development.

Furthermore, article 40 of the Convention stresses the importance of treating children who are alleged offenders in a manner that is consistent with the promotion of their sense of dignity, which reinforces the child's respect for the human rights of others and which takes into account the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. The right of children to education and vocational training on the basis of equal opportunity are recognized (article 28), and the education of the child is essential to fostering the development of the child's personality, talents and mental and physical abilities to their fullest potential, and the preparation of the child for responsible life in a free society (article 29). In addition, States parties to the Convention are obliged to take all appropriate means to ensure that all children within their jurisdiction are protected against all forms of discrimination (article 2).

The aforementioned provisions are in line with the requirement to take any action affecting the child taking into account their best interests as a primary consideration. Consideration of the best interests of the child is a key principle enshrined in article 3 of the Convention and it is meant to support the fulfilment of all the rights of children and foster a child's holistic development.

### *Universal legal framework related to counter-terrorism*

While international legal instruments against terrorism underline the need for accountability (see chapter III of this publication), they also stress the requirement to foresee and implement appropriate reintegration strategies. In particular, the Security Council, in its resolution 2178 (2014), called upon all Member States to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing their recruitment of children and by developing rehabilitation and reintegration strategies for returnees. Furthermore, in its resolution 70/291, the General Assembly, strongly condemning the systematic recruitment of children to perpetrate terrorist attacks, reiterated that every child alleged as, accused of or recognized as having infringed the law, particularly those deprived of their liberty, should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child; and urged Member States to take relevant measures to effectively reintegrate children formerly associated with armed groups, including terrorist groups.

## **2. Planning and implementing reintegration measures**

The reintegration process requires the balancing of different interests and needs, in order to provide the child with meaningful options for reconstructing his or her role in society. While they are not necessarily especially expensive, reintegration programmes often require a long-term approach rather than a short-term one, as ensuring appropriate follow-up is a key component of the support provided to the children and their families and communities. Accordingly, reintegration programmes require continued, rather than ad hoc, investments and the involvement of State and non-State actors. Furthermore, to be effective, reintegration programmes require the cooperation of different institutions and professionals from various systems. Therefore, particular attention should be devoted to accurate planning, including a clear attribution of financial commitments from different stakeholders. Finally, comprehensive policies and programmes need to take into account the developmental needs of children, in order to effectively support social reintegration.

The development of effective reintegration interventions largely depends on having a coherent strategy, identifying key steps in the development of programmes, taking into account local needs, identifying and involving key stakeholders and mobilizing resources. Monitoring and evaluation are also key components of effective programmes.



Figure III. Key steps of policy development

| Comprehensive reintegration strategy   | Programme development   | Monitoring and evaluation   |
|--|---|---|
| <ul style="list-style-type: none"> <li>• Identify priority needs that the strategy is to respond to, and set the main objectives</li> <li>• Ensure appropriate consideration of the developmental needs of children and foster the implementation of child-sensitive intervention</li> <li>• Review the relevant legal and regulatory framework to ensure compliance with the objective of reintegrating child victims of violence, including recruitment and exploitation</li> <li>• Identify key stakeholders</li> <li>• Map existing resources</li> </ul> | <ul style="list-style-type: none"> <li>• Identify target groups and evaluate needs</li> <li>• Identify priorities and challenges faced by the community</li> <li>• Design and deliver interventions responsive to the individual needs of the child</li> <li>• Develop coordination mechanisms with relevant stakeholders</li> <li>• Develop a risk assessment and adaptation strategy</li> <li>• Mobilize resources</li> </ul> | <ul style="list-style-type: none"> <li>• Evaluate the effectiveness of programmes in achieving set goals</li> <li>• Evaluate the relevance of set goals</li> <li>• Evaluate the social impact of reintegration programmes</li> <li>• Identify the lessons learned, including lessons about ineffective and effective practices</li> </ul> |

*Note:* See also *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, Criminal Justice Handbook Series (2012), chap. III.

### Awareness-raising and communication strategies

Awareness-raising, advocacy and communication strategies are vital to the promotion of reintegration. A strategic approach to their elaboration is crucial when dealing with politically sensitive issues.

Advocacy and communication strategies should be rooted in sound child rights-based approaches, should be particularly careful to identify and address all appropriate target groups, including the children themselves, their families and their communities, and should adapt the messages accordingly. In order to maximize their effectiveness, it is also critical to ensure that advocacy strategies are rooted in credibility. This requires:

- (a) Collecting and presenting evidence;
- (b) Tackling the specific concerns and fears of the target group without denying them;
- (c) Identifying the partners that are better placed to deliver each message (neutrality, proximity and expertise are crucial to building legitimacy and trust).

In addition, strategies should take into account the specificities of each context, which deeply influence the assessment of risks associated with each strategy, as well as the identification of key messages to be delivered. For instance, each of the specific contexts outlined in the sections below require adaptation of advocacy and communication strategies to consider the specific challenges faced by those children.

Finally, ensuring that such strategies are developed and supported by a broad network of actors is necessary to foster legitimacy and to make sure that different points of views are represented. The inclusion of representatives of civil society and the private sector can help to ensure that more communities are reached, while the cooperation of the media and communication systems in the delivery of key advocacy and awareness-raising messages can help to ensure that the messages are coherent and that they reach a large area.

## Key elements of multidimensional interventions

### *Individual assessment*

Interventions to foster the reintegration of children should begin by acquiring an in-depth understanding of the personal circumstances of the child. The initial assessment should consider the child's age, level of development and personal experience in relation to his or her association with the group, including the risk of secondary victimization. It is especially important that the individual assessment identifies the specific needs of the child, as well as the risks that could undermine the reintegration process, and that the personal views of the child are solicited and taken into account. This process necessarily requires interviewing the children. As such, it should be ensured that the interviews are carried out by qualified personnel and that the number of interviews is limited, in order to avoid causing further hardship to the children (see chapter II, sections A and B (in particular section B.2 and table 1), above).

### *Reintegration plan*

Once the assessment has been carried out, a comprehensive strategy for the long-term reintegration of the child should be developed. The reintegration plan should include clear objectives and sound indicators of progress and should identify the different services that best respond to the needs and specific circumstances of the child. A reintegration plan can have multiple goals:

- (a) Guarantee that comprehensive and coordinated support is provided to children;
- (b) Ensure that services are selected on the basis of needs, rather than provided according to availability;
- (c) Facilitate the collection of key information, the evaluation of progress and continuity of care.

Such plans should also retain flexibility and be periodically reviewed to ensure their responsiveness to evolving circumstances.

### *Provision of services*

In order to promote the child's harmonious development, the services provided should be based on a multidimensional understanding of the reintegration process and address its key dimensions: health and psychosocial support; educational and vocational opportunities; and returning to family and community life. The separation of children previously associated with terrorist groups from other children and the provision of ad hoc programmes may further hinder reintegration and contribute to the notion of "special treatment".

### *Psychosocial support*

Psychosocial support is an important part of the child's immediate rehabilitation, as well as a precondition for his or her continued development and reintegration into society. Psychosocial support should include services to address the multilayered negative effects of violence on the health of a child, including physical consequences, as well as the behavioural impact. Community health-care and psychosocial support centres could help to carry out these services, which should be coupled with the

comprehensive provision of health-care services, including measures to address sexual and reproductive health,<sup>197</sup> as well as maternal health care and support.

### *Education and vocational training*

Education and vocational training are of crucial importance, especially as they facilitate access to future economic opportunities. They may serve to strengthen critical thought, dialogue and exchanges with peers, in addition to helping in the development of a healthy sense of self. Many children recruited by terrorist and violent extremist groups are at a crucial stage of their development and will have missed months or years of education. These programmes may involve skill-based training in a range of different trades and sectors, and they may need to include means for providing assistance to the child or youth with a view to eventually enabling him or her to set up a business.<sup>198</sup> A child who has no prospects of education and employment is likely to drift back towards his or her former group or companions from the group, which may result in re-recruitment or criminal activity.

### *Involvement of the family and the community*

The family can provide important psychological, social and economic support to a child. Acceptance by the family can provide safety, help counter stigmatization<sup>199</sup> and support readjustment to social norms and constructive behaviours. Reintegration programmes should thus provide support not only to the child, but also to family members, focusing on constructive ways to cope with change, and should identify new roles, rather than attempting to reconstitute the family life as it was before. Mediation and reconciliation efforts have proved effective in supporting these processes.

Acceptance in the community is also an important aspect of overcoming stigma and achieving the reintegration of such children and can be crucial to ensuring the children's access to education and economic opportunities. Reintegration programmes should assess the community's attitude towards these children: resistance and condemnation of the actions of terrorist and violent extremist groups can lead to security risks for the child. At the same time, experience has shown that such risks may be overestimated and that communities can forgive children. In many cases, reconciliatory efforts have proved more effective when integrating relevant cultural traditions of the community, such as cleansing ceremonies. Appropriate awareness-raising and sensitization campaigns are also relevant.

A child may not wish or be able to return to his or her family. In these cases, upon careful evaluation of the best interests of the child, alternative reintegration programmes, for instance programmes based on foster families, may be designed to accommodate the situation or wishes of the child.

### *Disengagement from violent extremism*

Programmes designed to counter so-called "radicalization" have struggled with the definitional ambiguity that characterizes the term "radicalization". Since there is no linear or universal process of "radicalization", "de-radicalization" measures vary widely, target different groups of children and may entail very different objectives. In addition, such programmes can be provided in different environments, following demobilization and release, in the community or as part of justice measures, including during deprivation of liberty, by a variety of State and non-State actors. An analysis of the key aspects is presented below with a view to promoting more consistent disengagement interventions addressing children and supporting the identification of positive practices, despite the limited evaluations of effectiveness in this specific area.

<sup>197</sup> Happold, *Child Soldiers in International Law*, p. 18.

<sup>198</sup> See also UNICEF, "UNICEF opens transit centre for child soldiers freed by LTTE", 3 October 2003.

<sup>199</sup> Singer, *Children at War*, p. 201.

It is important to define the type of intervention. A clear distinction has emerged between programmes that focus on a cognitive dimension and those that focus on behavioural aspects. Interventions focusing on a cognitive dimension are intended to alter views, values and attitudes and are often characterized as “de-radicalization” measures; those focusing on behavioural aspects are designed to modify forms of interaction and behaviour and can be more accurately defined as promoting disengagement from violence.<sup>200</sup> Programmes focusing on disengagement from violence tend to be more effective and are less likely to give rise to discriminatory practices.

It is important to maintain an individualized approach. Understanding the personal motivation and the “push factors” and “pull factors” that drove the individual child to accept involvement with the group is a crucial part of determining whether interventions aimed at disengagement are necessary and, if so, which aspects the interventions should focus on. Similarly, the programmes themselves should retain their flexibility and be adaptable to the individual strengths and weaknesses of each child.

Many features have proved especially useful for enhancing the effectiveness of interventions aimed at disengagement from violence, in particular:

- (a) The voluntary participation of children, building on the child’s willingness and motivation to disengage from the group;
- (b) The credibility of personnel, which includes the capability to build a trustful, honest and transparent relationship with the child, based on fair and correct treatment; knowledge of the violent extremist group that the child has been involved with; and independence from the government, which can also be a strong asset;
- (c) Initiatives that strengthen critical thinking, dialogue and acceptance of diversity and that challenge the legitimacy of violence as a means of pursuing ideological or political objectives;
- (d) Psychological and counselling services addressing grievance and trauma, focusing on rebuilding self-esteem, promoting a sense of self-control (independence from the group) and strengthening coping mechanisms, including specialized family support.

Finally, it is essential to ensure that the multidimensional character of reintegration processes is still guaranteed for children who are undergoing disengagement. They should have equal access to other services, including health-related assistance, educational and vocational measures and economic and social support. In other words, disengagement from violent extremism cannot happen in a vacuum.

### Reconciliation in non-judicial processes

As the recruitment of children by terrorist and violent extremist groups often takes place in a context of mass atrocities or in fragile States, non-judicial processes such as transitional or traditional justice may be especially helpful to promote the rehabilitation of the child.

For children who are victims of recruitment and exploitation by terrorist and violent extremist groups, non-judicial processes may provide an opportunity to be heard and to obtain reparations, as an alternative to formal judicial proceedings. For children alleged as having committed terrorism-related offences, such mechanisms may be more appropriate than those for providing accountability in the formal justice system.

Non-judicial processes can be especially significant for children formerly associated with terrorist and violent extremist groups in view of their focus on community reconciliation, a particularly crucial

<sup>200</sup> See UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, Criminal Justice Handbook Series (Vienna, 2016), p. 71.

aspect of the reintegration process. However, if these processes are not adapted to the rights and needs of children, they can also be conducive to further victimization.<sup>201</sup>

### *Truth and reconciliation commissions*

Over the past two decades, truth and reconciliation commissions have evolved as important informal mechanisms for providing accountability. They generally seek to establish the truth about an event, memorializing the event through the creation of a historical record; provide a forum in which victims; address impunity; and promote community reconciliation. An increasing number of truth and reconciliation commissions have taken measures to ensure that they are child-friendly, including by adopting innovative approaches, such as allowing children to submit artwork and to read testimonies. However, there continue to be challenges to the effective participation of children in truth and reconciliation commissions, in particular concerning the focus and limits of the mandate of such commissions. Furthermore, there is often a need to train members of such commissions on child rights and child-friendly procedures.



### **United Nations approach to transitional justice**

The following excerpts are from the Guidance Note of the Secretary-General on the United Nations Approach to Transitional Justice:

For the United Nations, transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.

Children are among those most affected by armed conflict and destabilizing political environments. Transitional justice processes and mechanisms should investigate and prosecute international crimes against children, offer effective remedies to children, and strengthen government institutions to protect and promote the rights of children. Children associated with armed forces or armed groups who may have been involved in the commission of crimes under international law should be considered primarily as victims, not only as perpetrators ...

The [United Nations] approach to transitional justice should recognize that children have the right to express their views in matters and proceedings affecting them, in accordance with their evolving capacities, and that child-friendly policies and procedures must be put in place to protect the rights of child victims and witnesses of crime involved. The best interest of the child should guide the process. When children are supported and guided, their participation can help to build their capacity for active citizenship in post-conflict recovery, also laying the foundation for a more just and peaceful society. Transitional justice processes and mechanisms should strengthen the protective environment for children in their families and communities.

<sup>201</sup> For detailed guidance on the adaption of non-judicial processes to the rights and needs of children, see Hamilton and Dutordoir, "Children and justice in the aftermath of armed conflict"; UN-Women, UNICEF and UNDP, *Informal Justice Systems: Charting a Course for a Human Rights-based Engagement* (2013); and Sharanjeet Parmar and others, eds., *Children and Transitional Justice: Truth-telling, Accountability and Reconciliation* (Florence, Italy, UNICEF Innocenti Research Centre; Cambridge, Massachusetts, Harvard Law School, 2010).



### Case study: Adapting truth and reconciliation commissions to the needs of children—a case study of Liberia<sup>a</sup>

In Liberia, the Act to Establish the Truth and Reconciliation Commission of 2005 required the adoption of specific mechanisms and procedures to address the experiences of children, paying particular attention to gender-based violations, as well as to the issue of child soldiers, providing opportunities for them to relate their experiences, addressing concerns, and recommending measures to be taken for the rehabilitation of victims of human rights violations in the spirit of national reconciliation and healing.<sup>a</sup>

<sup>a</sup> *An Act to establish the Truth and Reconciliation Commission (TRC) of Liberia*, approved June 10, 2005. Available at [www.ecoi.net](http://www.ecoi.net).

#### *Traditional justice mechanisms*

In many fragile States, a large proportion of disputes are resolved not through the formal justice system, which is frequently weak, but through traditional justice mechanisms. Traditional mechanisms are often particularly apt at bringing about social peace and may be the only form of justice that children and their families and communities view as meaningful and to which they de facto have access. Because of these qualities, there have been attempts to adapt forms of traditional justice to post-conflict reconciliation (e.g. in Afghanistan, Rwanda, Sierra Leone, Timor-Leste and Uganda) and to use them in counter-insurgency measures; however, those attempts have had mixed success.<sup>202</sup> Regardless of its numerous advantages, the challenge of this form of justice remains to ensure that it provides an effective remedy to children, promotes their rights and does not perpetrate further injustices.<sup>203</sup>

#### *Gender dimensions of traditional justice and reconciliation mechanisms*

Studies examining experiences with traditional ceremonies used as a transitional justice approach in the context of the Lord's Resistance Army in northern Uganda warn that attention must be paid to the way in which women and girls formerly exploited by an armed group may have a very different experience of such mechanisms than male community members and returnees.<sup>204</sup>

In some cases the rituals have provided relief and alleviated guilt on the part of returnee women and girls. But most of the women and girls ... said they found little meaning in the ceremonies and derived little relief from them. A recent study also found that “forced wives” were the least likely of any category of former captives to participate in traditional cleansing ceremonies. Some have described these ceremonies as “wasteful” and “useless.” One former forced wife and young mother in Kitgum District spoke for many when she said she had been forced to participate in the ceremony because “it is what the community people want, not what I need.”

#### *Including child returnees*

While it is especially complex to gather precise data on the number of children who have travelled across State borders to join terrorist and violent extremist groups, it is to be expected that a large

<sup>202</sup> Tim Allen and Anna Macdonald, *Post Conflict Traditional Justice: A Critical Overview*, JSRP paper No. 3 (2013).

<sup>203</sup> Hamilton and Dutordoir, “Children and justice in the aftermath of armed conflict”, p. 23.

<sup>204</sup> Khristopher Carlson and Dyan Mazurana, “Accountability for sexual and gender-based crimes by the Lord's Resistance Army”, in *Children and Transitional Justice*, Parmar and others, eds., pp. 256 and 257.

number of children, whether they have travelled with their families or alone, will be part of the flux of returnees expected in different States. In an effort to address the phenomenon of foreign terrorist fighters, the international legal framework has highlighted the need to provide for rehabilitation and reintegration programmes and to adopt appropriate criminal justice measures. The debate about favouring the rehabilitation approach over accountability has largely overlooked the specific needs and issues related to children.

Various explanations have been put forward to explain why foreign terrorist fighters decide to return home. The explanations include disillusionment with terrorist practices; being unprepared for the brutality and atrocities of fighting for ISIL or other terrorist groups; and dissatisfaction with life in territory under the control of terrorist groups and/or the conditions in which they were expected to live.<sup>205</sup> Considering the experiences of child returnees, it is especially important to ensure their access to rehabilitation and reintegration programmes, which should take into account that their degree of association or adherence to the groups may vary considerably. In particular, policymakers should consider the health and developmental consequences of the forms of violence experienced by the children<sup>206</sup> and the importance of promptly addressing their situation by using a rehabilitation approach, preventing future grievances.



### Case study: Key challenges in the reintegration of child returnees—a local model for reintegration and tertiary prevention in Vilvoorde, Belgium<sup>a</sup>

Over the last few years, Belgium has seen an increase in the number of foreign terrorist fighters as a proportion of its own population. As a response, the government of the city of Vilvoorde has introduced “a plan for warmth and safety”, which addresses each individual’s needs through the multidisciplinary engagement of employment officers, imams, social workers and school staff. The programme has been credited for helping to stop the departure of potential recruits since its launch in 2014.

The implementation of the programme has led to the identification of specific challenges that arise in cases of child returnees. The example below shows some of the key challenges faced by practitioners in the municipality of Vilvoorde.

A 17-year-old girl left Vilvoorde, after a troubled childhood, to join ISIL in the Syrian Arab Republic. There she married a man, also from Vilvoorde, with whom she has had three children: all of them are part of ISIL. On several occasions, she has expressed her desire to return to her family with her children. Her family has been in touch with local practitioners, while her husband’s family is very reluctant to communicate with authorities.

A number of challenges have influenced the work of local practitioners since the beginning, in particular:

- How should the tension between the families involved be managed (particularly because the girl’s husband does not agree with her plans to return and has threatened to kill her if she tried)?
- How can information be safely exchanged, thereby ensuring confidentiality and the safety of this girl, her children and other family members?

<sup>205</sup> Tanya Mehra, “Foreign terrorist fighters: trends, dynamics and policy responses” (The Hague, International Centre for Counter-Terrorism, 2016), p. 8.

<sup>206</sup> “Child returnees from conflict zones”, pp. 6-8.

- What are the legal implications for the girl's parents if they decide to help her? (The girl has been asking for money to return or at least to smuggle her children out of the country. It is also possible that family members would travel to pick up the children in a different country.)
- What are the legal consequences for the girl if she returns to Belgium? Considering that she joined ISIL as a child and claims to be a victim, there would be limited legal grounds to prosecute her. However, the lack of a clear legal framework means that other authorities, including law enforcement agencies and social actors, would need to be involved.
- What treatment would be appropriate for her children? Considering that they are not registered as nationals of Belgium, certain doubts have arisen, particularly in relation to their possible custody.

<sup>a</sup>The present case study was contributed by the service for deradicalization and countering violent extremism of the city of Vilvoorde.

### Promoting policies and programmes addressing the needs of girls

Improving the effectiveness of reintegration programmes for girls previously associated with terrorist or violent extremist groups requires the development of comprehensive models of intervention, integrating gender-related specificities throughout the programmes. In particular, the following elements should be evaluated and considered:

- (a) Gender-related risks;
- (b) Gender-related needs;
- (c) Gender-related responsivity factors;
- (d) Gender-related social roles.

This social aspect is especially important for the development of effective reintegration programmes. Experience has shown that the reintegration of women and girls is facilitated by giving particular attention to social aspects. Providing support for contact families, in particular for their role as caregivers, is especially necessary to ensure that girls become constructive members of society; it can also be effective in addressing responsivity factors associated with mental health.

Moreover, investing in the social capital of women and girls can prove beneficial to reintegration and reconciliation efforts as a whole. Research has shown that women and girls may have a crucial role in favouring the reintegration of children, including ex-child soldiers, even in cases where there is resistance by the community.

### Specialized personnel

The selection and training of specialized staff are especially crucial during the reintegration phase. The professional background of staff will need to be tailored to the specific rehabilitation needs of the children; general abilities that are especially important include:

- (a) Child-sensitive communication and language (see chapter II above);
- (b) Identification of distress, consequences of violence, including trauma, and other risk factors;
- (c) Understanding of the importance of rules of confidentiality;



(d) Understanding of cultural norms and forms of expression; in addition, the composition of the staff should reflect, to the extent possible, the diversity in the group of children who are the beneficiaries of the reintegration programme.

### Monitoring and evaluation

In view of the new and emerging challenges posed by the situation of children recruited and exploited by terrorist and violent extremist groups, consistent monitoring and evaluation of reintegration programmes are especially relevant.

The basic criteria for the evaluation of such reintegration programmes include the following:<sup>207</sup>

(a) *Relevance*: the extent to which objectives are consistent with the beneficiaries' requirements, country needs and priorities, relevant international standards, global priorities and the policies and objectives of partners and donors;

(b) *Efficiency*: a measurement of how well inputs (funds, expertise, time etc.) are converted into outputs;

(c) *Effectiveness*: the extent to which a project or programme attains its objectives and expected accomplishments and delivers the planned outcomes;

(d) *Impact*: the sum of the primary and secondary long-term effects of an intervention, positive or negative, direct or indirect and intended or unintended, on its beneficiaries and other affected parties;

(e) *Sustainability*: the extent to which the benefits of the project or programme, including long-term benefits, will continue after its completion.



#### Checklist for practitioners: key elements

- Reintegration of children will benefit from planning a comprehensive strategy, ensuring respect of key steps in programme development and guaranteeing monitoring and evaluation.
- Awareness-raising and communication strategies can be crucial components of efforts to prepare for the return of children to the community.
- Appropriate reintegration interventions should be based on an individual assessment, taking into account the views of the child, and should be coordinated through the design of a personal reintegration plan.

## C. Demobilization and release

Release entails the disassociation of the child from the group, and the transition to civilian life. According to the Paris Principles, release processes should be understood as including formal disarmament, demobilization and reintegration programmes, as well as the informal ways in which children leave by escaping, by being captured or by any other means.

The overlap between conflict and counter-terrorism efforts entails new challenges for programmes for the release of children associated with terrorist and violent extremist groups. It complicates the

<sup>207</sup> The basic criteria can be found in UNODC, *Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes* (2010), p. 14. This publication provides further guidance on the implementation of evidence-based programmes and their evaluation.

possibility to lead negotiations with the groups, including in favour of the release of children; and it complicates the possibilities of peace agreements. In addition, Governments may oppose the release of such children or deny them access to existing release programmes because of security concerns. One especially alarming development is the transformation of disarmament, demobilization and reintegration camps or interim care centres into detention facilities where persons may be held for indefinite periods. Experience has shown that children are particularly vulnerable in detention facilities, as they are often held together with adults and/or subjected to inhuman treatment, including torture.

Another factor that may hamper community reintegration is displacement. In some cases, when the children leave the armed groups, the communities that they had left may no longer exist or their composition may have significantly changed as a result of conflict.

In addition, in the past, disarmament, demobilization and reintegration programmes and other release programmes have largely failed girls. For instance, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) estimated that girls associated with armed groups in the Democratic Republic of the Congo accounted for 30-40 per cent of all children.<sup>208</sup> However, girls accounted for only 7 per cent of the children formerly associated with armed groups and registered by MONUSCO. The failure to reach most of the demobilized girls was confirmed by Child Soldiers International, which interviewed over 150 girls and found that more than a third had never received any type of assistance.<sup>209</sup> That was attributable to a number of competing factors, which included the inappropriate design of eligibility criteria, girls and women being considered as “dependants” rather than being associated with armed groups, and higher reluctance of armed groups to release girls because of the crucial support roles they often played. Motherhood may also strengthen the bond of the girls with the group, thereby becoming an obstacle to efforts to ensure the girls’ access to disarmament, demobilization and reintegration programmes.

While the following section does not comprehensively address the issue of release of children, it provides legal and operational guidance to address these key challenges with a view to ensuring child-sensitive treatment, while taking into account specific security concerns.



### Key challenges

- Difficult and delayed identification of children
- Instability of the context and lack of peace agreements
- Displacement
- Political sensitivity and resistance
- Leaving girls behind

## 1. International legal framework on release of children

The international legal framework includes the obligation to support the release of children who have been recruited and exploited by armed forces and armed groups, in a way that is conducive to their reintegration.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict imposes on States the obligation to take all possible measures to ensure that recruited

<sup>208</sup> MONUSCO, “Invisible survivors: girls in armed groups in the Democratic Republic of the Congo from 2009 to 2015” (2015).

<sup>209</sup> Child Soldiers International, “What the girls say: improving practices for the demobilisation and reintegration of girls associated with armed forces and armed groups in Democratic Republic of the Congo” (London, 2017).

children are demobilized or otherwise released from service. The Protocol does not make demobilization and release programmes conditional upon the cessation of hostilities. It is also recognized that, in the interest of promoting the child physical and psychological recovery and reintegration, release processes should entail the provision of appropriate assistance.

### *Security Council resolutions on children in conflict*

Already in 1999, the Security Council adopted resolution 1261 (1999), in which it urged States and the United Nations system to facilitate the disarmament, demobilization, rehabilitation and reintegration of children used as soldiers. This has been reiterated by the Council in various resolutions, including resolution 2225 (2015), in which it expressed grave concern over the violations of international humanitarian law committed by non-State armed groups, in particular violent extremist groups, and urged for the release of abducted children by all parties to conflict and encouraged Member States to undertake efforts to obtain the release of abducted children, including by establishing standard operating procedures on the handover of children to relevant civilian child protection actors, as well as to seek to ensure their family reunification, rehabilitation and reintegration. In addition, the Council, in its resolution 1325 (2000), encouraged all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants.

### *Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*

The Paris Principles include a series of provisions on crucial aspects to be taken into account when designing and implementing release processes for children (paras. 7.0-7.24). They establish that the release, protection and reintegration of children must be sought at all times, without condition and must not be dependent on any parallel release or demobilization process for adults. Accordingly, the lack of formal processes must not prevent activities aimed at pursuing the release of children from armed groups and, where formal disarmament, demobilization and reintegration processes exist, special provisions should be adopted for children (paras. 3.11-3.12).

## **2. Promoting child-sensitive release processes for children recruited by terrorist and violent extremist groups**

In practice, the demobilization and release processes are composed of different stages.

The recommendations presented below briefly address the specificities of release processes in the context of social reintegration. Failure to provide appropriate treatment and safe release options for children may prolong their association with terrorist and violent extremist groups or increase the chances of re-recruitment. The recommendations complement the general guidance presented in section B.2 of this chapter.



### **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: article 6, paragraph 3**

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

**Figure IV. Key stages of release processes for children**

### Planning in coordination with government stakeholders

The planning and preparation of release programmes for children can be crucial to their effectiveness. While release processes often involve a variety of actors, including international actors, as well as civil society and non-governmental organization, ensuring the involvement of State actors is essential to guarantee that reintegration prospects for children will be sustainable. This is especially critical when considering the additional political sensitivities related to dealing with terrorist and violent extremist groups. The security concerns of State actors will need to be taken into account in order to ensure safe procedural agreement and shared commitment to the programmes.

Involvement and “buy-in” of government actors can be facilitated through the development and approval of a handover agreement or protocol, according to which the parties agree that all released children are to be transferred to the care of civilian actors. Planning should further include the implementation of information-sharing systems; the establishment of multilateral bodies responsible for the coordinated design and implementation of release programmes and services for children; and shared commitment to humanitarian principles. A detailed assessment of security and programming risks should be carried out, and mitigating mechanisms and special measures to address potential emergencies should be developed.

### Case study: Guaranteeing immediate access to reintegration—the protocol for the handover of children in the Niger

Since the eruption of the Boko Haram crisis, the Niger has been faced with multiple challenges related to considerable numbers of children associated with the group. In February 2017, the Government of the Niger took a crucial step to recognize the rights of these children and ensure their fair treatment by signing a protocol with the United Nations system.

In the protocol related to children allegedly associated with armed or terrorist groups, reference is made to the commitment of the Niger to the protection of children’s rights through the ratification of numerous international conventions and other legal instruments.

In addition, in the protocol it is stated that in situations of conflict, numerous human rights violations are perpetrated and children are particularly exposed to serious violations, including their recruitment and use by armed and terrorist groups.

Accordingly, the protocol engaged the Government:

- To ensure the protection of any child formerly associated with armed or terrorist groups on the national territory, in line with the best interests principle;
- To ensure that any child found on the national territory following association with armed or terrorist groups is handed over to child protection services, for their transfer to the interim care centre, except in cases in which flagrant crimes have been committed;

- To restrict exchanges of information related to the identity, origin and health conditions of the child; to protect children from media interest; and prohibit any interrogation of the child aimed at collecting military intelligence.

Finally, planning should provide for monitoring and review mechanisms to ensure that the release processes and implementing actors comply with the established planning, that the conditions and treatment of children respect international standards and that programmes are effective in promoting reintegration and preventing re-recruitment.

### Eligibility criteria

According to international law, States have an obligation to facilitate the release of children associated with armed groups, as their recruitment and exploitation are illegal. Therefore, release options should not be dependent on a political agreement between the parties to a conflict, such as a peace treaty, but should be carried out continuously.<sup>210</sup>

The definition of eligibility criteria for admitting persons to release programmes is especially essential to guarantee that all children have access to such programmes. As the recruitment of children is a violation of international law and recruited children are to be considered primarily as victims of that violation, eligibility criteria should enable all children under the age of 18 to have access to such programmes, regardless of the recruitment processes, as long as the children are willing to be demobilized. In addition, eligibility should not be contingent upon whether or not a person possesses a weapon or knows how to use one, as this approach is likely to discriminate against children, particularly girls, who are often associated with armed groups in supporting roles. Girls should be explicitly included in the criteria.<sup>211</sup>

At the same time, in the interest of balancing valid security concerns of States with the fulfilment of children's rights, appropriate screening mechanisms can be developed that ensure the involvement of specialized professionals, according to child-sensitive procedures. Ultimately, thoughtful, child-sensitive and principled approaches to disengaging children associated with violent extremist groups<sup>212</sup> benefit both human rights and security interests. Having broad access to release processes provides safer options for children willing to be demobilized, minimizing the risks posed to their personal well-being, as well as to their communities.

### Identification of children and safety measures

Ensuring the safety of a child is a key concern throughout the release process. The first step is to adopt measures to identify children as early as possible, so that they can be separated from adults and have access to specialized assistance.<sup>213</sup> Appropriate methods for the identification of children should be used, and the conditions and requirements of child-sensitive age assessment mechanisms should be taken into account (see chapter II of this publication).

Accommodation arrangements and procedural safeguards should also be put in place to prevent secondary victimization of children during the release process. In addition, the selection of

<sup>210</sup> Paris Principles, para. 7.1.

<sup>211</sup> Paris Principles, para. 7.18.

<sup>212</sup> Siobhan O'Neil, "Disengaging children in violent extremist contexts", 29 October 2015. Available at <https://cpr.unu.edu/>

<sup>213</sup> The establishment of age (i.e. the determination of who is a child) should allow for flexibility and should not be based on official documentation only because such documentation may be difficult or impossible to obtain.

personnel is a key factor for safety and provision of information to children. In particular, personnel in contact with children should be properly trained, should include females and should include child protection actors.<sup>214</sup>

The following key elements to ensure the safety of children during the release process are based on the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups:<sup>215</sup>

- Children should be separated from adults, and appropriate accommodation arrangements should be provided to ensure sufficient distance between children and adults during the release process. (Exceptions may be made in the case of children who undergo release together with their families, upon consideration of the children's best interests.) Separating a child from adults is instrumental to the process of disengagement of the child, as it limits the child's contact with former members of an armed group who may have been the child's superiors in the group's ranks.
- Measures should be taken to ensure sufficient security and surveillance, including secure accommodation. The water-closets for girls should be separated from the water-closets for boys.
- Information should be provided to children, in child-appropriate language, on their rights to safety and to protection from violence, including abuse. Children should be consulted on the effectiveness of available security measures and should be informed of the procedures to access safe complaint mechanisms.
- Interviews with children should be conducted by trained professionals and carried out according to specific guidelines on child-sensitive interviews (see chapter II, section B, of the present publication).
- Any information gathered from children should be treated according to the requirements of confidentiality. Children should be made aware of the reasons why information is being collected and how confidentiality is being ensured.

### Ensuring appropriate coordination between release and reintegration phases

The key purpose of release processes is to begin the rehabilitation and reintegration of children. Careful planning of coordination between these two phases can help to avoid punitive approaches and long periods of deprivation of liberty.

#### *Interim care centres*

Interim care centres are disarmament, demobilization and reintegration transit facilities in which children may be housed after being demobilized and released from the groups. Such centres are often criticized for potentially delaying family reunification and long-term reintegration. It should be kept in mind, however, that interim care centres may provide safe spaces in which children can live while waiting for family tracing and family reunification. Interim care centres also allow more time for children to disconnect from violent extremist groups before returning to their communities.

Operational guidance developed for the release process should include rules on the collection of information and confidentiality; the provision of identity documents to children;<sup>216</sup> conditions and safeguards for child-sensitive screening mechanisms, where appropriate; and agreements on the appropriate timeline between the children's release and their access to reintegration programmes.

<sup>214</sup> Paris Principles, para. 7.21.

<sup>215</sup> Paris Principles, paras. 3.19, 7.14-7.17 and 7.21.

<sup>216</sup> This does not always entail the provision of release papers, which may also entail risks, and should be decided upon consideration of the context and best interests of the child (see also the Paris Principles, para. 7.17).

Provisions concerning interim care can help to ensure a smooth transition between the release phase and the reintegration phase. Following the release period, which should not exceed 48 hours,<sup>217</sup> children can receive interim care provided by civilian actors, either through community-based arrangements, through foster care or in specialized interim care centres.

The decision on the most appropriate setting must follow a thorough evaluation of the context and the individual circumstances of the child. Only children should have access to interim care centres, and the management of such centres should be carefully regulated, including through codes of conduct, to ensure child-sensitive conditions and treatment. Regulations should guarantee that placement in an interim care centre is not for an indefinite period and that such centres are used to provide the necessary treatment to children, not to administratively detain them. When a released child is alleged to have or accused of having committed serious terrorism-related offences rather than merely having been a member of an armed group (see chapter III of this publication), the child may be dealt with by the juvenile justice system, in the interest of promoting his or her accountability while ensuring respect for the rights of the child.

The return of a child to the community following placement in an interim care centre must be carefully planned and include follow-up. Interim care is not an alternative to community-based reintegration or to support services for families and communities. It includes health-related services, counselling and programmes to foster positive life skills and livelihood opportunities, as well as material assistance (see section B.2 of this chapter). Experience has shown that the provision of direct cash benefits to released children is not an appropriate form of assistance,<sup>218</sup> as it can undermine the overall effectiveness of the programme and even lead to re-recruitment. Activities and programmes to foster the disengagement of children from terrorist and violent extremist groups can also be provided, in order to address risks of violent extremist behaviour. Such activities and programmes must respect the rights and dignity of children and should not be used for all released children: the decision to use such an activity or programme should be based on an appropriate individual assessment.

Access to reintegration programmes and services should not be made conditional upon the participation of the child in a formal release process, so that children who have left terrorist and violent extremist groups through self-demobilization are also guaranteed appropriate support during the reintegration phase. Finally, throughout the release and reintegration processes, the active participation of the children and their families and communities should be fostered. Accordingly, the children should be kept informed of their rights and of existing procedures, and their views should be sought and taken into account.

### Support for demobilizing girls

The use of girls for support roles and for sexual exploitation by terrorist and violent extremist groups also constitutes illegal recruitment (see chapter I, section A, above)<sup>219</sup> Efforts to promote the release of girls should begin with appropriate advocacy, targeting terrorist and violent extremist groups, as well as girls, who should be made aware that release programmes are available and should be informed about how the programmes function. Shame and fear of punishment should also be addressed to minimize girls' reluctance to join release programmes.<sup>220</sup>

Programmatic and practical arrangements have been shown to be essential to upholding the rights of girls. In addition to the appropriate design of eligibility criteria, there should be separate

<sup>217</sup> Inter-Agency Working Group on Disarmament, Demobilization and Reintegration, *Integrated Disarmament, Demobilization and Reintegration Standards*, Level 5: Cross-cutting issue — Module 5.30: “Children and DDR”, sect. 8.2 (2006), p. 17.

<sup>218</sup> Paris Principles, para. 7.35.

<sup>219</sup> See also, African Union Commission, “DDR and Children: Operational Guideline” (2014), section C.2.

<sup>220</sup> Inter-Agency Working Group on DDR, “Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS) — Module 5.30: Children and DDR” (2006), p.10.

accommodations for girls in places of refuge, and specific safety measures for girls should be provided,<sup>221</sup> especially since there are likely to be fewer girls than boys among the released children. Female personnel should be present, and disarmament, demobilization and reintegration packages should include clothing for girls, as well as female hygiene and sanitary products, and hygiene and nutritional products for babies. Taking into account the enhanced risks faced by girls, their transfer from temporary sites to interim care centres should be carried out immediately.<sup>222</sup> Finally, the specific needs of girls should also be taken into account during the transition from release to reintegration. It is especially important that access to reintegration programmes is also provided for girls who have “self-demobilized” and who may have chosen to continue their lives away from their communities of origin, as there will continue to be considerable danger of further victimization.



### Supporting girls in regaining their “lost value”

In a study on the demobilization and reintegration of girls associated with armed forces and armed groups in the Democratic Republic of the Congo,<sup>a</sup> the respondents agreed that girls returning from the bush had “lost their social value” because they had “known men”. However, they shared many suggestions on how girls could once again have a positive role and identity and therefore be more accepted by their communities. The suggestions included the following:

- *Involve girls in activities organized by and for the community.* If a girl receives a specific task to accomplish or is invited to join a group activity, especially if the initiative comes from an influential person in the community, it can greatly contribute to promoting a change in the attitude of her family and community. This type of intervention requires very little or no funding and should be prioritized.
- *Help all girls formerly associated with armed groups to return to school or to attend literacy and numeracy classes.* All of the girls interviewed expressed their desire to learn but faced many difficulties, including lack of funding and stigmatization. Enrolment efforts need to be accompanied by sensitization to foster support from parents, teachers and students. All illiterate girls should receive literacy and numeracy classes. Such classes can be set up at a very low cost by utilizing classrooms outside of regular hours and using volunteer teachers.
- *Provide girls with relevant vocational training.* Activities that enable girls to contribute to their family’s income and give them more economic independence also greatly contribute to restoring their social value.
- *Strengthen the girls’ capacity in agriculture and animal husbandry.* Revenues from agriculture and animal husbandry can also considerably improve the girls’ financial independence and give them a valued role in the community. Those activities should be considered for all girls who live in rural areas and already have some practical experience in those areas.

<sup>a</sup> Child Soldiers International, “What the girls say: improving practices for the demobilisation and reintegration of girls associated with armed forces and armed groups in Democratic Republic of Congo”. Available at [www.child-soldiers.org/](http://www.child-soldiers.org/).

<sup>221</sup> Fox, M.-J. (2004). Girl Soldiers: Human Security and Gendered Insecurity. *Security Dialogue*, 35(4), 465-479; Park, a. S. J. (2006). “Other Inhumane Acts”: Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone. *Social & Legal Studies*, 15(3).

<sup>222</sup> Inter-Agency Working Group on DDR, “Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS) — Module 5.30: Children and DDR” (2006), p. 10.





### Checklist for practitioners: key elements

- States have the responsibility to promote the release of children even during hostilities.
- The association of children with terrorist and violent extremist groups can impact political support and undermine effective access to release schemes.
- Disarmament, demobilization and reintegration programmes should pay particular attention to: agreement of national governments; eligibility criteria; safety measures; careful planning and oversight of handover mechanisms; interim care; and access to further reintegration services.
- Measures should be taken to ensure that self-demobilizing children enjoy equal access to services and measures that promote social reintegration.
- Disarmament, demobilization and reintegration programmes should pay specific attention to the particular situation and needs of girls.

### For further guidance on child-sensitive release processes for children

- *Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups*
- *Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*
- *Inter-Agency Working Group on Disarmament, Demobilization and Reintegration Integrated Disarmament, Demobilization and Reintegration Standards, Module 5.30: “Children and DDR” (2006). The Integrated Disarmament, Demobilization and Reintegration Standards are currently being reviewed, inter alia, to ensure that they are fully adapted to the context of armed conflicts involving terrorist and violent extremist groups*
- *African Union Commission, “DDR and children: operational guideline” (2014), available at: [www.peaceau.org/uploads/au-operational-guidance-note-on-children-in-ddr.pdf](http://www.peaceau.org/uploads/au-operational-guidance-note-on-children-in-ddr.pdf)*

## D. Cross-border cases

When children have crossed national borders, a number of questions arise in relation to legal safeguards to be provided by the hosting State, the opportunity of returning children to their country of nationality and the process of family reunification.

These children may have a different cultural, ethnic or linguistic background from nationals of the country they have entered, which exposes them to further risks of discrimination. Often travelling without their parents or completely alone, they may have also self-demobilized. Deprived of their family environment and other forms of protection, they are especially vulnerable to violence, including smuggling, trafficking and re-recruitment.

In some cases, States need to consider the possibility of repatriating children who are not their nationals, but may be exposed to the risks associated with justice proceedings upon return. While the possibility of proceedings against the child is not, in and of itself, reason enough to exclude repatriation, the nature of measures that are applicable in the country where the child would be removed, or requesting extradition, must be taken into account.

Rather than attempting to present a detailed discussion of each of these issues, this section is devoted to ensuring that security concerns related to the specific situations of cross-border cases involving children take into account the key principle of the best interests of the child and promote the social reintegration of the child.

## 1. International legal framework to deal with cross-border cases of children

According to the international legal framework, States are to ensure protection and fulfilment of the rights of all children within their jurisdiction, without discrimination on the basis of national or ethnic origin.<sup>223</sup> The obligation to promote social reintegration continues to apply when public authorities enter into contact with children who are not nationals of their countries, including if they have crossed a national border following their recruitment by a terrorist or violent extremist group.

The international legal framework related to counter-terrorism requires States to comply with their obligations under international law, in particular international human rights law, refugee law and humanitarian law.<sup>224</sup> This includes respecting international provisions, in particular non-refoulement, in cases of extradition for the purposes of facilitating prosecution.<sup>225</sup> In its resolution 2178 (2014), the Security Council, expressing grave concern over the acute and growing threat posed by foreign terrorist fighters, namely individuals who travel to a State other than their State 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, called upon all Member States to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters.

### Non-refoulement principle

The non-refoulement principle entails that States shall not extradite, expel or otherwise remove a person to another State where that person faces a real risk of persecution, including substantial risk of torture or other irreparable harm. It applies to all forms of transfer of a person from the jurisdiction of one country to another, including deportation, expulsion, extradition, informal transfer or “renditions”, and non-admission at the border.<sup>226</sup> The principle applies with respect to not only the country of origin, but also any country where the person faces risks of persecution.<sup>227</sup>

### Non-refoulement in various bodies of international law

Non-refoulement is a fundamental principle of international law. It has its origin in refugee law, and it is also a fundamental principle of human rights law.<sup>228</sup> Non-refoulement is a norm of customary international law and has acquired the status of *jus cogens*. It is also reflected in the international conventions and protocols against terrorism.<sup>229</sup>

Under international refugee law, causes of exception to the application of non-refoulement are provided when there are reasonable grounds to regard the individual as a danger to the security of the country in which he is or as a danger to the community of that country.<sup>230</sup> However, under human rights law, the principle of non-refoulement is non-derogable in times of public emergency and is not subject to restrictions in individual cases. This entails that the aforementioned exceptions on the basis

<sup>223</sup> See the Convention on the Rights of the Child, art. 2, para. 2.

<sup>224</sup> See, for instance, Security Council resolution 1624 (2005).

<sup>225</sup> See Security Council resolution 1373 (2001).

<sup>226</sup> Office of the United Nations High Commissioner for Refugees, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, paras. 7 and 11.

<sup>227</sup> Office of the United Nations High Commissioner for Refugees, “Note on non-refoulement”, (EC/SCP/2), 23 August 1977, para. 4.

<sup>228</sup> See, in particular, article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations, Treaty Series, vol. 1465, No. 24841); and arts. 6 and 7 of the International Covenant on Civil and Political Rights.

<sup>229</sup> See, for example, art. 15 of the International Convention for the Suppression of the Financing of Terrorism.

<sup>230</sup> See art. 33, para. 2, of the Convention relating to the Status of Refugees (United Nations, Treaty Series, vol. 189, No. 2545).

of national security and public order cannot be invoked when the refoulement would result in exposing the person to serious human rights violations,<sup>231</sup> including for persons suspected, accused or convicted of terrorism offences.<sup>232</sup>

### *Non-refoulement of children*

The Committee on the Rights of the Child has provided guidance on the application of non-refoulement to children. It has recommended that prohibition of transfer affects the country to which removal is to be effected or any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction.<sup>233</sup>

Examples of irreparable harm that preclude non-refoulement include those contemplated under article 6 of the Convention on the Rights of the Child relating to the right of the child to life, survival and development and article 37, which includes the prohibition of torture, inhuman or degrading treatment or punishment of children; prohibited punishments (the death penalty and life imprisonment without the possibility of parole); and principles governing the deprivation of a child's liberty. The Committee on the Rights of the Child regards underage recruitment and participation in hostilities as entailing a risk of irreparable harm involving fundamental human rights, including the right to life.<sup>234</sup>

Generally, a person whose extradition is being sought can waive full extradition proceedings and agree to be transferred to the requesting State. With regard to the transfer<sup>235</sup> of sentenced persons, some international agreements or national laws require the sentenced person's consent to the transfer. In the case of a child, particular attention must be paid to the validity of any expression of consent, while at the same time keeping in mind the interest to expedite proceedings to the extent possible without weakening safeguards.

Beyond the principle of non-discrimination, enshrined in article 2, the Convention on the Rights of the Child contains other provisions applicable to the situation of children associated with terrorist and violent extremist who are not in their country of nationality.

Article 22 of the Convention requires States parties to take appropriate measures to ensure that a child who is a refugee or asylum seeker (regardless of whether or not the child is accompanied by another person) receives appropriate protection and humanitarian assistance. Since children who are refugees or asylum seekers may often find themselves separated from their families, States parties should provide cooperation in any efforts by the United Nations and other competent intergovernmental or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.

Article 9 of the Convention establishes the responsibility of States parties to avoid the separation of the child from her or his family because, as stated in article 8, family relations are an element of the child's identity. Separation from the family can take place only if competent authorities, subject to judicial review, determine that such separation is necessary for the best interests of the child. In addition, in article 20 it is stated that children who are temporarily or permanently deprived of their family

<sup>231</sup> Human Rights and Criminal Justice Responses to Terrorism, pp. 192 ff.; and Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, para. 11.

<sup>232</sup> The application of the non-refoulement principle to the transfer of terrorism suspects is examined in depth in Human Rights and Criminal Justice Responses to Terrorism, pp. 190 ff.

<sup>233</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, para. 27.

<sup>234</sup> *Ibid.*, para. 28.

<sup>235</sup> UNODC, *Handbook on the International Transfer of Sentenced Persons*, Criminal Justice Handbook Series (Vienna, 2012), p. 20.

environment should be entitled to special protection and assistance provided by the State. These articles apply regardless of whether a child has been recognized as a refugee or has crossed a national border.

## 2. Policies and measures to support the reintegration of children in cross-border situations

The situation of children who are not nationals of the State where they have entered into contact with public authorities requires crucial decisions to be taken concerning the children's future. The main objective of such decisions is to identify a durable solution for the child, in line with his or her best interests. The present section highlights relevant procedures to ensure the respect and protection of child rights.

Practitioners need to provide immediate protection for such children and to make sure that crucial decisions concerning their future take into account the children's best interests. Avoiding delays in the proceedings is necessary to avoid additional obstacles to the reintegration of the children. Accordingly, States are invited to avail themselves of the support provided by international actors such as United Nations agencies, especially when their capacity is limited.

In view of the complexities of the procedures, the recommendations below are not intended to cover all circumstances, but they include references to instruments providing more detailed guidance.

### Ensuring prompt assistance

States are responsible for providing care and assistance for all children under their jurisdiction. Accordingly, as soon as children enter into contact with national authorities, proceedings should be initiated to prioritize the identification of the children, register them through an initial interview and provide them with identity documentation.<sup>236</sup> Specialized personnel should carry out these tasks in a child- and gender-sensitive way, to avoid secondary victimization.

At this stage, the determination of the child's potential needs for international protection and the determination of refugee status should begin. Accordingly, the child should be appointed with a guardian and a legal representative.<sup>237</sup> While these proceedings are taking place, the children should have equal access to appropriate care and protection services, including appropriate accommodation, as well as to rehabilitation and social reintegration programmes, including health-related services and educational measures.<sup>238</sup>

In view of the specific situation of children recruited and exploited by terrorist and violent extremist groups, care and assistance arrangements should take into account the heightened risks of victimization and/or re-recruitment. This, however, should not be interpreted as justifying reliance on institutionalization when alternative solutions are possible.

### Access to child-sensitive asylum proceedings

Children who have been associated with terrorist and violent extremist groups may be exposed to enhanced danger if they are returned to their country of origin, and this should be considered during asylum proceedings. The Committee on the Rights of the Child has called for an age- and gender-sensitive interpretation of the definition of "refugee", taking into account the particular motives for,

<sup>236</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, paras. 31-33.

<sup>237</sup> International Committee of the Red Cross and others, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* (Geneva, 2004), e-book, p. 46.

<sup>238</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, paras. 39-49.

and forms and manifestations of, persecution experienced by children, including underage recruitment into terrorist and violent extremist groups. (The causes of re-recruitment should also be considered). In addition, legislation and policies should reflect the need to provide specialized safeguards and support measures to children seeking asylum, such as legal representation and child-sensitive treatment.<sup>239</sup>

### Best interests assessment and best interests determination

The best interests assessment and the best interests determination describe procedures to ensure that the needs and rights of children are respected during the provision of assistance.

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*Best interests assessment:* this refers to a procedure that should be carried out systematically to determine the most appropriate actions to be taken in relation to the situation of the individual child. The child should be granted the opportunity to freely express his or her views, and the assessment should in any case be documented. While it does not require the strict procedural requirements of a formal determination, staff should have the requisite skills and knowledge.

*Best interests determination:* this describes the formal process designed to determine the child's best interests for particularly important decisions affecting the child, that require stricter procedural safeguards. This process should ensure adequate child participation without discrimination. It should also allow the views of the child to be given due weight in accordance with the child's age and maturity. It involves decision makers with relevant areas of expertise, and it balances all relevant factors in order to identify the best option.

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They differ, however, in their level of detail and regulation, which may be particularly relevant to the situation of children recruited by terrorist and violent extremist groups. While a comprehensive description of the different steps of the best interests determination is beyond the scope of the present publication, it should be noted that such children, when in cross-border situations, are particularly likely to require a formal determination because: (a) owing to the higher risks of persecution and re-recruitment, they are especially likely to be entitled to refugee status, which should be considered during the identification of durable solutions for the child; and (b) their experience could easily expose them to risks of victimization during the stages involving temporary care and living arrangements.

### Family reunification

Family tracing and reunification are regarded as essential components of the search for a durable solution for unaccompanied and separated children. Accordingly, family tracing and reunification should be prioritized except where they would be contrary to the best interests of the child, including when there is a risk that they would lead to the violation of fundamental human rights of the child, or when they would jeopardize fundamental rights of those being traced. Children who have been granted refugee status in the host country automatically satisfy this test, as do children whom a competent authority determines cannot be returned as this would be contrary to the principle of non-refoulement.<sup>240</sup>

Where the child faces a lower level of risk in the country of origin (including that of being affected by indiscriminate effects of generalized violence), the opportunity of family reunification is determined on a case-by-case basis, following a formal best interests determination.

<sup>239</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, paras. 64-78.

<sup>240</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, paras. 80 and 82.

### Definitions of “unaccompanied children” and “separated children”

The following definitions are taken from general comment No. 6 (2005) of the Committee on the Rights of the Child:<sup>241</sup>

- “Unaccompanied children” are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.
- “Separated children” are children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

<sup>241</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, paras. 7 and 8.

When children have been involved in armed violence against their own community, preparations for reunification should take into account the need to shield them against discrimination, targeted attacks and further recruitment.<sup>241</sup>

### Ensuring that repatriation mechanisms fulfil the rights of the child

The Office of the United Nations High Commissioner for Refugees describes repatriation as the voluntary return of a person to, and reintegration in, his or her country of origin.<sup>242</sup> Voluntary repatriation may take place in the context of family reunification, or even when the child’s family cannot be traced, based on the fact that the child’s home State will support and care for the child. According to international human rights standards, particularly the right of an individual to return to his or her own country,<sup>243</sup> States are duty-bound to admit their nationals and cannot compel any other State to keep them through measures such as denationalization<sup>244</sup> (i.e. a State cannot take away a child’s citizenship or passport).

Repatriation may also take place on the basis of a decision of national authorities in the hosting State, for instance as a consequence of lack of recognition of refugee status. Nonetheless, repatriation of a child recruited and exploited by terrorist and violent extremist groups is not an option if it would lead to a “reasonable risk” that the child’s return would result in the violation of fundamental human rights of the child, in particular if the principle of non-refoulement applies. Non-rights-based arguments such as those relating to general migration control cannot override the child’s best interests. While it has been acknowledged that there may be cases where the child’s best interests are overridden by other rights-based considerations, such as posing a serious threat to the society of the host State, such decisions can only occur after careful balancing of the child’s best interests and other considerations, and they are the exception, not the norm. In terms of the process, the Committee on the Rights of the Child has emphasized that, in all cases return measures must be conducted in a safe, child-appropriate and gender-sensitive manner.<sup>245</sup>

<sup>241</sup> *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, p. 37.

<sup>242</sup> UNHCR, *Handbook on Voluntary Repatriation: International Protection* (Geneva, 1996).

<sup>243</sup> This right is contained within general international human rights treaties, including the Universal Declaration of Human Rights, art. 13, para. 2 and the International Covenant on Civil and Political Rights, art. 12, para. 4.

<sup>244</sup> *Handbook on Voluntary Repatriation*, part 2.1.

<sup>245</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, paras. 85-86.



### Checklist for practitioners: key elements

- States should ensure protection and fulfilment of the rights of *every child within their jurisdiction*, regardless of the child's nationality.
- In any decision affecting children in cross-border situations, States have the obligation to respect the principle of *non-refoulement*, and appropriate support to *access asylum proceedings* should be provided to any child facing risks upon returning to his or her country of origin.
- A formal and detailed best interests determination process should precede any particularly important decision identifying a long-term solution for the child, in particular before family reunification and repatriation

### Promoting children's participation

The determination of the child's best interests, especially in view of crucial decisions such as family tracing and repatriation, and ultimately the child's reintegration, cannot disregard his or her views.<sup>246</sup> Children should be informed of developments concerning their situation (for instance, the outcome of family tracing) by persons of trust and in a timely, child-sensitive manner.

#### For further guidance on the treatment of children in cross-border situations

- *General comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin (HRI/GEN/1/Rev.9 (Vol. II)), chap. VI*
- *International Committee of the Red Cross and others, Inter-Agency Guiding Principles on Unaccompanied and Separated Children (2004)*
- *Office of the United Nations High Commissioner for Refugees, UNHCR Guidelines on Determining the Best Interests of the Child (2008)*
- *Office of the United Nations High Commissioner for Refugees, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum. Available at [www.refworld.org/](http://www.refworld.org/)*
- *Jan Murk, "Children's rights in return policy and practice in Europe: a discussion paper on the return of unaccompanied and separated children to institutional reception or family" (UNICEF, 2015)*

## E. Rehabilitation and reintegration as a key purpose of the justice process

Regardless of whether they are considered as victims of a violation of international law, children recruited by terrorist and violent extremist groups often face criminal justice charges and may be dealt with by the justice system. In such cases, it is especially important to support their reintegration throughout the justice process.

The consequences of labelling children as "terrorists" when they come in contact with the justice system are particularly serious. Such labelling encourages reliance on punitive approaches and increases the risk of secondary victimization within the system. In addition, it can compromise efforts to return the child to family and community life, including by undercutting educational and

<sup>246</sup> CRC/C/GC/12, paras. 123-126.

employment opportunities. Stigma may have an especially crucial impact on a child whose personality is still developing, affecting the child's perception of his or her self.

In addition, children recruited by terrorist and violent extremist groups may have embraced the beliefs of the groups. While this does not, in itself, justify recourse to justice measures, it can pose challenges to social reintegration. Addressing this phenomenon among children deprived of their liberty can be particularly challenging, because of the risk of contagion effect. While evidence of the extent of this phenomenon in custodial settings is not conclusive, the conditions of reduced liberty, together with frustration, grievances and lack of future opportunities, can create circumstances that are conducive to further recruitment. Practitioners face the twofold challenge of supporting the reintegration of those children who have internalized violent extremist ideology while preventing the recruitment of other children. At the same time, the risk of overestimating the number of children who may require disengagement or “deradicalization” programmes is higher among children in custodial settings.

The section below offers guidance on providing support to children charged with terrorism-related offences, with a view to ensuring that they have equal opportunities for social reintegration.

## 1. Reintegration in the international legal framework on juvenile justice

The Security Council, in its resolution 2178 (2014), called upon all Member States to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by developing and implementing rehabilitation and reintegration strategies for returning foreign terrorist fighters. The General Assembly, in its resolution 70/291 on the United Nations Global Counter-Terrorism Strategy Review: reiterated that every child alleged as, accused of or recognized as having infringed the law should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child; and, bearing in mind relevant international standards on human rights in the administration of justice in this regard, urged Member States to take relevant measures to effectively reintegrate such children.

### *International legal framework related to the rights of the child*

The Convention on the Rights of the Child recognizes the right of children alleged as, accused of or recognized as having infringed the penal law to be treated in a way consistent with the promotion of their sense of dignity and worth, which takes into account the desirability of promoting their social reintegration (article 40). Accordingly, no limitation to the other provisions of the Convention, in particular those relating to non-discrimination and the right to education, should be justified on the basis of the child's alleged or recognized involvement in criminal activities, regardless of the seriousness of those activities.

Furthermore, in article 37 of the Convention, it is stated that deprivation of liberty of a child is to be used only as a measure of last resort and for the shortest period of time; that is particularly relevant to promoting the reintegration of the child.

In the Beijing Rules, it is stated that sufficient attention should be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law (rule 1.3). Accordingly, in the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, Member States were urged to consider the use of non-coercive treatment, education and assistance programmes as



alternative measures to judicial proceedings and the development of alternative non-custodial interventions and effective social reintegration programmes (para. 31 (d)).

In particular, juvenile justice standards stress the importance of the following elements:

- (a) Appropriate scope for discretion at all stages of the proceedings to select the measures that are more responsive to the needs of the child (see also chapter III of this publication);
- (b) Full respect of the child's right to privacy, in order to avoid the harm caused by undue publicity;
- (c) Use and application of alternative measures to formal judicial proceedings;
- (d) Provision of tailored assistance, including education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process (see rule 24.1 of the Beijing Rules), during the application of justice measures, whether of a non-institutional or institutional character;
- (e) Mechanisms to ensure that the possibility of release is considered throughout deprivation of liberty.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty concern specifically the conditions and treatment of children deprived of their liberty (see chapter III above) and include an entire section focusing on the provision of education and vocational training activities to prepare the child for return to society and future employment, as well as a section on leisure activities and physical training. Special attention should be devoted to ensuring equal access to such services to children of foreign origin or with particular cultural or ethnic needs (paras. 38-47).

Maintaining the connection between the child, the family, the community and the outside world is a precondition for successful reintegration. To that end, specific procedures, including early release, and special courses should be devised. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society.<sup>247</sup>

According to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (General Assembly resolution 65/229, annex), juvenile female prisoners should have access to education and vocational training, as well as access to age- and gender-appropriate services (rules 37 and 38). And, in view of women prisoners' disproportionate experience of domestic violence, they should be consulted when deciding who is allowed to visit them (rule 44). At the same time, the importance of family and social ties for the reintegration of women is emphasized.

## 2. Supporting the effective rehabilitation and reintegration of children alleged to have committed terrorism-related offences

Obtaining appropriate support to achieve social reintegration is a right of all children in contact with the justice system. In cases involving children recruited by terrorist and violent extremist groups, the justice system should recognize that, while the children may be alleged offenders, they are at the same time victims of a violation of international law. The application of justice measures should thus include specific assistance addressing the consequences of the violation.

The recommendations below are to be implemented in the framework of a functioning and child-sensitive justice system (see chapter IV of this publication) and are intended to complement the general guidance provided in section B of this chapter.

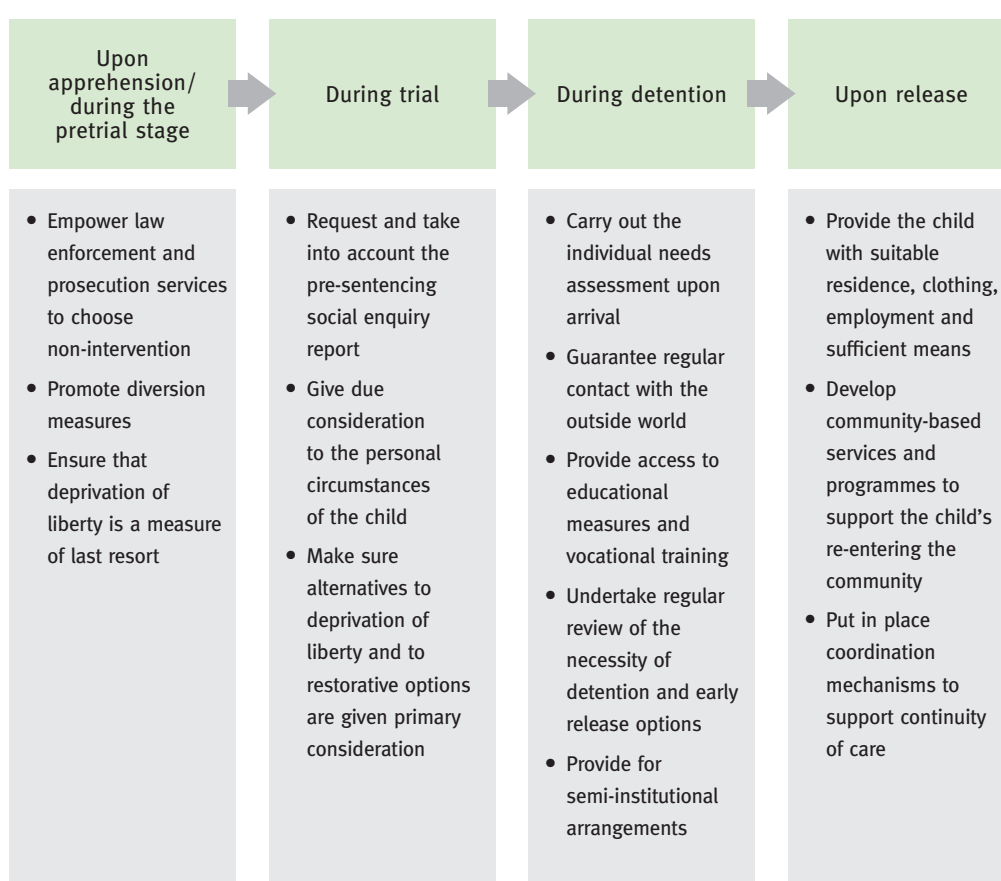
<sup>247</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, paras. 59-62, 79 and 80; see also Guidelines for Action on Children in the Criminal Justice System, para. 20.

### Promoting options conducive to reintegration at all stages of the justice process

A comprehensive approach to promoting the reintegration of children in conflict with the law should be mainstreamed through laws, regulations, procedures and institutions. Legislation should include a variety of provisions that support the social reintegration of children beginning with the early stages of their involvement with the justice system.<sup>248</sup> Specific incentives should be in place to award primary consideration to measures providing for the treatment of children without resorting to judicial proceedings or deprivation of liberty, whenever appropriate. In particular, systematizing preference for measures that are community-based and restorative in nature allows to pursue accountability without subjecting the child to the disruptive effects of deprivation of liberty (see chapter III above).

Figure V summarizes some of the measures that can be put in place to foster the social reintegration of children alleged to be offenders, according to the different stages of the justice process.

**Figure V. Measures to foster the social reintegration of children alleged to be offenders**



### Privacy, confidentiality and records

Ensuring fulfilment of the right of children to privacy and data protection protects them from disproportionate stigmatization stemming from their association with terrorist and violent extremist groups. Specific provisions should ensure that:

<sup>248</sup> HRI/GEN/1/Rev.9 (Vol. II), chap. VI, paras. 27 and 28.

- (a) Information that may lead to the identification of the child is never made public;<sup>249</sup>
- (b) Court proceedings involving a child constitute an exception to the general rule that a trial is to be held in public and are thus conducted behind closed doors;
- (c) Offences committed during childhood do not appear on the criminal records of children when they become adults, in order to provide them with a real opportunity to be fully reintegrated into society with a clean record.

It is especially important that future employers do not have access to privileged information concerning the child's past offences once he or she or turns 18. The seriousness of the offence committed should not influence such provisions.

At the policy and programme levels, various measures can support confidentiality. If diversion measures are applied, regulations ensure that confidential records may be kept for administrative and review purposes only and should later be eliminated. Their access must be strictly limited to authorized personnel, for a determined period of time. In any case, such records must not be equated with criminal records. In addition, strict rules of confidentiality should be applied to information concerning the child's background, circumstances and involvement with the group and any other personal information that may be gathered during the assessment and for the purposes of the social enquiry report.

### Use of individual assessment as a basis in selecting appropriate measures

The individual assessment can be used at different stages: as the basis for designing a reintegration plan;<sup>250</sup> to allow for discretion in selecting the most appropriate intervention; and upon admission in a custodial facility. Child-sensitive assessments take into account the main needs of the individual child, as well as risk factors, strengths and responsivity factors. In the context of children recruited by terrorist and violent extremist groups, additional risks should be taken into account, such as the risks of re-recruitment, retaliation from the group and secondary victimization within the justice system.

Various risk assessment tools have been developed to evaluate the likelihood of violent extremist tendencies.<sup>251</sup> Such tools may be necessary:

- (a) To properly assess the personal circumstances that led the child to become involved with a terrorist or violent extremist group, whether that happened out of conviction, through coercion or for material gain;
- (b) To recognize the different levels of involvement in such a group;
- (c) To avoid considering such children as a homogeneous group and determine the need for measures to promote disengagement from violence.

Tools for assessing the risk of violent extremism are generally developed for adults and therefore fail to take into account the specific educational needs and developmental factors of children, including desistance (i.e. abstaining from reoffending) and age relativity.<sup>252</sup> When adopted for children, they will require in-depth revision and adaptation.

### Countering isolation when non-institutional and institutional measures are applied

Children who are alleged to have or accused of having committed terrorism-related offences are subjected to measures that isolate them from their families, their peers and educational and rehabilitation

<sup>249</sup> *Ibid.*, para. 66.

<sup>250</sup> *Introductory Handbook on the Prevention of Recidivism*, p. 118.

<sup>251</sup> *Council of Europe Handbook for Prison and Probation Services regarding Radicalisation and Violent Extremism* (2016), p. 14.

<sup>252</sup> Gina M. Vincent, Laura S. Guy and Thomas Grisso, *Risk Assessment in Juvenile Justice: A Guidebook for Implementation*, 6 November 2012, p. 21. Available at [www.modelsforchange.net/](http://www.modelsforchange.net/).

services. Whether the justice measures applied to the children are of a institutional or non-intuitional nature, they should always guarantee an appropriate balance between accountability and rehabilitation.

### *Establishing trust and credibility*

A positive relationship between the children and personnel must be based on the strictest respect for the children's rights and ensuring fairness, high standards of conduct and open channels of communication. Appropriate selection and training of the personnel are crucial (see section C.2 of this chapter) and should take into account that practitioners dealing with children not only should maintain security, but should also be responsible for accompanying the development of the child.

### *Supporting relations with families and contact with the outside world*

Supporting relations with families and contact with the outside world can be especially challenging during the implementation of justice measures. Sometimes other family members have also been charged with terrorism-related offences. In other cases, family members avoid contact with such children to avoid stigmatization. Special care and attention should be given to identify a positive network for the child and support regular and constructive contact with a view to facilitating reintegration.

### *Maintaining access to a variety of measures, including measures involving educational, vocational, health and psychosocial support*

Involving children in educational, vocational and psychosocial support programmes is easier when diversion and alternative measures are being applied, but it can be more challenging for children deprived of their liberty. When possible, children in detention should also be allowed to attend educational and vocational activities outside of the detention facility. When such activities are provided in institutional facilities, this should not be reflected on the certificates indicating the degrees or qualifications obtained, in order to facilitate the children's reintegration after they have been released.

### *Early release schemes and semi-institutional arrangements*

Early release schemes and semi-institutional arrangements, including through the development of periodic assessments, represent a crucial mechanism for ensuring that children return to their communities as soon as they are ready.

### *Disengagement from violence during deprivation of liberty*

The application of disengagement programmes for children deprived of their liberty entails additional considerations, as it is often on a non-voluntary basis, it involves additional concerns related to security and there may be a higher risk of the participating children being influenced by other children who have also been deprived of their liberty. As these interventions are often new and evidence of their effectiveness is limited, goals and progress indicators should be clearly defined and sound monitoring should be continuously carried out.

Children who are considered to have been "indoctrinated" by terrorist and violent extremist groups are often detained together with adults and denied access to child-appropriate services. An effective reintegration process presupposes the separation of children from adults in detention, not only to protect the children from secondary victimization, but also to provide effective support to ensure their personal development.

There is currently considerable debate on the merits of dispersal and separation strategies, focusing on the risks of further recruitment.<sup>253</sup> Regardless of the strategy that has been chosen, however, in most cases, the living arrangements themselves are likely to be insufficient to effectively prevent recruitment during deprivation of liberty, and security is better achieved through a comprehensive set of measures focusing on safety and promoting positive interaction. When it is deemed necessary to separate groups of children, the separation should be based on careful assessment of violent and aggressive behaviour rather than on ideology. Practitioners in different regions have reported that separation based on ideology has often strengthened the adherence of children to violent extremist groups, feeding into the dynamics of “us versus them” and reinforcing power hierarchies within the groups.



### Case study: Children deprived of their liberty on the basis of terrorism-related charges—the juvenile wing of the Roumieh prison in Lebanon

In January 2013, 12 children accused of having committed terrorism-related offences were moved from the adult wing of Roumieh Prison in Lebanon to the juvenile wing. Recognizing that the status of children should prevail over any other status, including the status of persons alleged to have committed the offence of association with a terrorist group, this transfer allowed those children to be treated as any other children deprived of liberty.

The children also became part of a pilot project that focused on 56 children charged with terrorism-related offences, who were in detention between December 2012 and February 2016. The collected data concerned (a) their profile; (b) their judicial status; (c) the impact of their detention conditions prior to and after their placement in the juvenile wing; and (d) the impact of the rehabilitation approach. The goal was to collect relevant evidence and monitor the effectiveness of the approach adopted to deal with an unexpected situation, which had been recognized as a challenge by the prison staff.

The prison management chose a dispersal approach instead of isolation or concentration, in order to avoid discrimination (flagging, isolation, regrouping, etc.). The children were thus included in the system that was already in place and took part in the rehabilitation programmes without any changes being made to the content or schedules. At the same time, for security reasons, the children were subject to discreet follow-up in order to regularly assess their progression or regression. Throughout the detention period, regular visits by the child’s family were guaranteed. Activities for each child were selected on the basis of: (a) the child’s profile, developmental level and general behaviour; (b) individual preferences; and (c) the period to be spent in detention.

Initially, these children showed unusual reluctance to take part in common activities, rejected contact with women personnel and expressed their determination to have individual cells or to be grouped with their peers. All these demands were dismissed, and it became clear to them that abiding by the rules was the only option and that no exception would be made to those rules.

All children took part in one or two activities designed for the purpose of rehabilitation. The objective was to focus on self-esteem, self-consciousness, sociability and cultural diversity in order to counter “radicalization”. This method had a successful outcome, and disengagement was noticed through some changes in behaviour and activities and was also fully maintained during family visits.

<sup>253</sup> Global Center on Cooperative Security and International Centre for Counter-Terrorism — The Hague, “Rehabilitating juvenile violent extremist offenders in detention: advancing a juvenile justice approach” (December 2016), p. 6.

Having a dispersal regime does not preclude the implementation of other measures to promote security within the custodial facility, while also promoting positive social interaction. In particular, having smaller institutions with an adequate number of trained practitioners allows for appropriate monitoring and follow-up.

Finally, restrictions and disciplinary measures should never become systematic, entail restrictions of children's fundamental rights (including health and nutritional requirements; access to educational measures and contact with the outside world) or amount to degrading treatment (see chapter III of this publication). Unfair treatment may promote or strengthen grievances, antisocial behaviour and adherence to violent extremism.

### Preparation for release and aftercare

The passage between deprivation of liberty and the return to the community is a delicate transition, in particular for children who have been associated with terrorism-related offences and who may face considerable rejection following their release. Adequate preparation should start as early as possible and should take into account the following key aspects:

- (a) Appropriate mechanisms should be in place to ensure effective coordination between the management of the custodial facility and the services and agencies responsible for the supervision, which includes the transmission of relevant records to facilitate the continuity of care and support of the child for at least six months following his or her release;
- (b) A reintegration plan should be developed for and with the child, in coordination with child's parents or legal guardians and in cooperation with the agencies responsible for the child's supervision after release;
- (c) Timely information should be provided to both the child and his or her family concerning in particular the release date, as well as the extent and availability of support and assistance services;
- (d) Educational and psychosocial support should be aimed at preparing the child for life after his or her release;
- (e) Mechanisms favouring progressive preparation prior to release should be in place, including the child's placement in semi-open institutions and short visits to his or her family.

Indeed, many States now have experience in the use of "gradual approaches" to the release of children. This entails the creation of semi-open institutions, which generally accommodate only a small number of children and allow the children to attend different activities outside of the facilities. Often children in such institutions are allowed to advance towards increasingly open arrangements. While favouring the progressive reintegration and autonomy of children, such institutions also allow for regular monitoring of risks and the children's progress, thus providing a satisfactory response to the numerous security concerns that may be associated with children convicted of certain offences. At the same time, when coupled with early release schemes based on appropriate review, such institutions can contribute to ensuring that children are detained for the shortest possible time.

In addition, practical and psychosocial support should be provided at the moment of release and during the months that follow and should be aimed at ensuring that the conditions for a successful reintegration are in place. In particular, appropriate accommodation should be provided if the family is not in a position to guarantee it. Ongoing support should facilitate access to education and training, as well as financial assistance following release. Particular attention should be paid to ensuring that the child's contact with persons, whether in the family or the community, who may have played a role in the original involvement of the child with the terrorist or violent extremist group are not renewed. Emphasis should be given to identifying and supporting a positive network

for the child. This is especially important since a key aspect of reintegration is learning to navigate and manage relationships in a healthy and constructive manner throughout the re-entry process.<sup>254</sup>



### Checklist for practitioners: key elements

- States should integrate the objective of social reintegration at every stage of the justice process concerning children.
- Individual assessments are crucial to the elaboration of a reintegration plan and its periodic review.
- During the application of justice measures, special attention should be given to avoiding the isolation of the child and promoting positive measures of socialization and connections with the outside world.
- Continuity of care is especially crucial during the transition from deprivation of liberty to life in the community, and specialized assistance should be provided to that end.

<sup>254</sup> Ibid., p. 11.

## Annex. Relevant international legal framework

### A. International human rights law

#### Convention on the Rights of the Child

The Convention sets out the civil, political, economic, social, health and cultural rights of children.

##### Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

The Optional Protocol prohibits the compulsory recruitment of children into the armed forces of States parties.

##### Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

The Optional Protocol requires parties to prohibit the sale of children, child prostitution and child pornography.

#### International Covenant on Civil and Political Rights

This treaty sets out a variety of civil and political rights for all people.

#### Worst Forms of Child Labour Convention, 1999 (No. 182), of the International Labour Organization\*

This convention calls for the prohibition and elimination of the worst forms of child labour, including the compulsory recruitment of children in armed forces.

#### Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention requires States parties to take effective measures to prevent torture in any territory under their jurisdiction and forbids States to transport people to any country where there is reason to believe they will be in danger of being tortured.

##### Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Optional Protocol supplements the Convention by establishing an international inspection system for places of detention.

### GENERAL ASSEMBLY RESOLUTIONS

#### Universal Declaration of Human Rights (General Assembly resolution 217 A (III))

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\* See also ILO recommendation 190 “concerning the prohibition and immediate action for the elimination of the worst forms of child labour”, which supplements the Worst Forms of Child Labour Convention (1999).



## **B. United Nations standards and norms in juvenile justice**

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (General Assembly resolution 45/112, annex)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex)

Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex)

Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex)

United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 69/194, annex)

### **OTHER RELEVANT UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE**

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex)

United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110, annex)

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (General Assembly resolution 65/229, annex)

Basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex)

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (General Assembly resolution 67/187, annex)

## C. Other soft law

**Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups and**

**Principles and Guidelines on Children Associated with Armed Forces or Armed Groups**

In these instruments, States were called upon to undertake all efforts to end the unlawful recruitment or use of children by armed forces and armed groups.

### OTHER RELEVANT RESOLUTIONS

**Mainstreaming holistic approaches in youth crime prevention (Economic and Social Council resolution 2016/18)**

**Technical assistance for implementing the international conventions and protocols related to counter-terrorism (Economic and Social Council resolution 2017/17)**

## D. International legal and policy framework related to terrorism

### UNIVERSAL COUNTER-TERRORISM INSTRUMENTS

**Convention on Offences and Certain Other Acts Committed on Board Aircraft**

**Convention for the Suppression of Unlawful Seizure of Aircraft**

**Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation**

**Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation**

**Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents**

**International Convention against the Taking of Hostages**

**Convention on the Physical Protection of Nuclear Material**

**Amendment to the Convention on the Physical Protection of Nuclear Material**

**Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation**

**Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation**

**Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf**

**Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf**

**Convention on the Marking of Plastic Explosives for the Purpose of Detection****International Convention for the Suppression of Terrorist Bombings****International Convention for the Suppression of the Financing of Terrorism****International Convention for the Suppression of Acts of Nuclear Terrorism****Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation**

The Convention has not yet entered into force.

**Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft**

This protocol has not yet entered into force.

**Protocol to amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft**

This protocol has not yet entered into force.

**SECURITY COUNCIL RESOLUTIONS****Security Council resolution 1373 (2001)**

In this resolution, the Security Council established a framework for improved international cooperation against terrorism.

**Security Council resolution 1624 (2005)**

In this resolution, the Security Council urged Member States to adopt measures to prevent incitement to commit terrorist acts and recruitment into terrorist groups by countering violent extremism.

**Security Council resolution 2178 (2014)**

In this resolution, the Security Council condemned violent extremism and addressed the phenomenon of foreign terrorist fighters, including their recruitment of children, and called upon all Member States to develop rehabilitation and reintegration strategies for returnees.

**GENERAL ASSEMBLY RESOLUTIONS****United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288)****The United Nations Global Counter-Terrorism Strategy Review (General Assembly resolution 70/291)****E. International humanitarian law**

The provisions of the Geneva Conventions of 12 August 1949 cover specific aspects of the law of armed conflict. (Customary international law is binding on all States and parties to a conflict.)

**Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949 (First Geneva Convention)****Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949 (Second Geneva Convention)**

**Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949 (Third Geneva Convention)**

**Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention)**

The additional protocols to the Geneva Conventions supplement shortcomings of the Geneva Conventions related to the conduct of combatants and protection of civilians. (Some of the provisions are considered customary law, whereas others apply only to States that have ratified the protocol.)

**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)**

**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)**

**GENERAL ASSEMBLY RESOLUTIONS**

**Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex)**

## **F. International criminal law**

**Rome Statute of the International Criminal Court**

This treaty established the International Criminal Court and its functions, jurisdiction and structure. It provides that the conscription or enlisting of children under the age of 15 years into armed forces or armed groups and their use to participate actively in hostilities constitute war crimes, regardless of whether the conflict is of an international or non-international nature.

## **G. International refugee law**

**Convention relating to the Status of Refugees**

The core principle of this convention is non-refoulement of refugees, which is considered a rule of customary international law, ergo binding on all States.

**1967 Protocol relating to the Status of Refugees**

This protocol removed the temporal and geographical restrictions on refugee status.

## H. Other sources of international law

### United Nations Convention against Transnational Organized Crime

The Convention is the main international instrument in the fight against transnational organized crime. It signifies the recognition by Member States of the seriousness of the problems posed by such crime, as well as the need to foster and enhance close international cooperation in order to tackle those problems.

**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**

### SECURITY COUNCIL RESOLUTIONS ON CHILDREN IN CONFLICT

Security Council resolution 1261 (1999)

Security Council resolution 1314 (2000)

Security Council resolution 1379 (2001)

Security Council resolution 1460 (2003)

Security Council resolution 1539 (2004)

Security Council resolution 1612 (2005)

Security Council resolution 1882 (2009)

Security Council resolution 1998 (2011)

Security Council resolution 2225 (2015)

### SECURITY COUNCIL RESOLUTIONS ON WOMEN AND PEACE AND SECURITY

Security Council resolution 1325 (2010)

In this resolution, the Security Council called for international security institutions to address the different impacts of conflict on women and men and to engage women fully in conflict resolution, peacekeeping and peacebuilding.

Security Council resolution 2242 (2015)

In this resolution, the Security Council placed the women, peace and security agenda as a central component in addressing the challenges of the new global context of peace and security, including the challenges of rising violent extremism.

### SECURITY COUNCIL RESOLUTIONS ON TRAFFICKING IN PERSONS IN ARMED CONFLICTS

Security Council resolution 2331 (2016)

In this resolution, the Security Council condemned all acts of trafficking, particularly the sale or trade in persons undertaken by Islamic State of Iraq and the Levant” (ISIL), and recognized the importance of collecting and preserving evidence relating to such acts in order to ensure that those responsible can be held accountable.







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