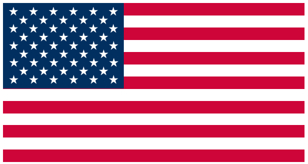
The International Institute for Justice and the Rule of Law

IIJ JUVENILE JUSTICE PRACTITIONER'S NOTES

Judges

A publication under the IIJ Juvenile Justice Initiative



This publication is an integral part of the IIJ Juvenile Justice Initiative,
produced with the support of the Government of the United States.

The International Institute for Justice and the Rule of Law

Inspired by the Global Counter-terrorism Forum (GCTF), the IIJ was established in 2014 as a neutral platform for training and capacity-building for lawmakers, judges, prosecutors, law enforcement, corrections officials, and other justice sector practitioners to share and promote the implementation of good practices and sustainable counter-terrorism approaches founded on the rule of law.

The IIJ is an intergovernmental organisation based in Malta with an international Governing Board of Administrators (GBA) representing its 14 members: Algeria, France, Italy, Jordan, Kuwait, Malta, Morocco, the Netherlands, Nigeria, Tunisia, Turkey, the United Kingdom, the United States, and the European Union. The IIJ is staffed by a dynamic international team headed by an Executive Secretary, who are responsible for the day-to-day operations of the IIJ.

Disclaimer

This publication has been produced with the financial support of the United States Department of State. Its contents are the sole responsibility of the International Institute for Justice and the Rule of Law and do not necessarily reflect the views of the Government of the United States.

For more information, please contact:
The International Institute for Justice and the Rule of Law
University of Malta - Valletta Campus
Old University Building, St. Paul Street, Valletta, Malta

info@theiij.org @iijmalta @iijmalta_fr theiij.org

Table of Contents

Acknowledgements 2

Preface 3

Introduction 5

Action Point 1:
Judges who handle terrorism cases against children should be part of a separate child court system 6

Action Point 2:
Only child court judges should have jurisdiction over children suspected of or charged with terrorism offences 8

Action Point 3:
Child court judges should meet legal obligations of child justice set forth in the international instruments ratified by their countries 10

Action Point 4:
Child court judges should appoint counsel as soon as possible for children charged with terrorism-related offences in accordance with international and national law 12

Action Point 5:
Child court judges should carefully assess information about the age of a child suspected or accused of a terrorism offence 15

Action Point 6:
Child court judges should assess child suspects holistically and consider whether their alleged criminal conduct was voluntary 17

Action Point 7:
Child court judges should ensure that the child's rights are protected at every stage of a proceeding 19

Action Point 8:
Child court judges should order diversion in appropriate cases 22

Action Point 9:
Child court judges should exercise caution when ordering the arrest and detention of a child suspected of terrorism offences 25

Action Point 10:
Child court judges should protect the privacy rights of children suspected of terrorism offences during all phases of the proceedings and thereafter 30

Action Point 11:
Child court judges should create a child-friendly courtroom environment in terrorism prosecutions involving children 33

Action Point 12:
Child court judges should receive information and clarification from appropriate experts before imposing pre-trial or post-trial measures 34

Action Point 13:
Child court judges should receive specialised training in adjudicating terrorism cases involving children 36

Action Point 14:
Child court judges should support other child justice actors in working as a team 40

Conclusion 42

Acknowledgements

The International Institute for Justice and the Rule of Law (IIJ) wishes to thank the following professionals, listed in alphabetical order, for their contributions to research, writing, coordinating and reviewing this *IIJ Juvenile Justice Note for Judges* (hereafter *IIJ Note for Judges*):

Mr Thomas Black, Former Federal Criminal Prosecutor, United States, and Co-Author of the *IIJ Note for Judges*

Ms Leili Cruz-Suarez, Judge, Philippines

Mr Magatte Diop, Judge, Senegal

Ms Martha Koome, Chief Justice, former Court of Appeals' Judge and Chair of the National Council on the Administration of Justice Special Taskforce on Children Matters, Kenya

Ms Naoual Kareche, Child Court Judge, Algeria

Mr Derek Shugert, Former Resident Legal Advisor in Niger, Department of Justice, United States

Mr Zelalem Teferra, Senior Legal Officer, African Union Court of Human and People's Rights, and Co-Author of the *IIJ Note for Judges*

The IIJ wishes to extend a special thanks to the following practitioners and officers of international organisations for providing substantive peer review to the *IIJ Note for Judges*.

Mr Kristian Bartholin, Deputy Head of Counter-Terrorism Division, Action against Crime Department, Council of Europe (who peer-reviewed this Note in his personal capacity)

Mr Phillippe René Nsoa, Magistrate, Cameroon

Ms Elisabeth Gueye Mbengue, Judge, President of the Child Court, High Instance Tribunal of Dakar, Senegal

Ms Céline Glutz, Senior Legal and Policy Adviser, Federal Department of Foreign Affairs, Switzerland

Ms Anne Mosimann-Girardet, Human Rights Expert and Legal Advisor, Federal Department of Foreign Affairs, Switzerland

Mr Cedric Foussard, Advocacy and Global Learning Advisor, Access to Justice Programme, Terre des hommes

Ms Marta Gil Gonzalez, MENA Regional Coordinator, Access to Justice Programme, Terre des hommes

Ms Laura Jacques, Legal Expert and Technical Advisor, Access to Justice Programme, Terre des hommes

Mr Duccio Mazarese, Programme Officer, United Nations Interregional Crime and Justice Research Institute (UNICRI)

Ms Chiara Bologna, Associate Programme Officer, UNICRI

Ms Margherita Alinovi, Intern, UNICRI

This publication and associated activities were organised, coordinated and implemented by the IIJ under the direction of Mr Thomas Wuchte, Executive Secretary, and Mr Emerson Cachon, Programme Manager.

Preface

Children impacted by terrorism – whether as victims, witnesses, or alleged offenders – increasingly find themselves in criminal justice systems tasked with enforcing national counter-terrorism laws. These laws most often mandate severely restrictive measures and harsh penalties. Balancing the special rights and needs of children with the demands of counter-terrorism legal frameworks poses significant challenges for justice sector practitioners. Without specialised training and a working knowledge of the legal rights afforded to children under applicable international law, justice sector stakeholders – including investigators, prosecutors, judges, detention personnel and defence counsel – may find themselves ill-equipped to effectively handle terrorism matters involving children.

Given their inherent vulnerabilities, children are disproportionately impacted by offences committed by terrorist actors. In some cases, children are recruited against their will, or without fully understanding the consequences of their actions. They are easily manipulated by adults who prevail upon them to carry out violent attacks or who seek their involvement to provide support for terrorist organisations. This manipulation can also be driven by those who take advantage of religious, cultural, political, or economic conditions to encourage child involvement in terrorism-related offences.

To address the challenges that arise when handling child cases in the counter-terrorism context, the International Institute for Justice and the Rule of Law (IIJ), with funding from the Governments of Switzerland and the United States, embarked on the Initiative to Address the Life Cycle of Radicalization to Violence. The IIJ Juvenile Justice Initiative started with development by the International Institute for Justice and the Rule of Law (IIJ) of the Global Counter-terrorism Forum (GCTF) *Neuchâtel Memorandum on Juvenile Justice in the Counter-terrorism Context* (hereafter *Neuchâtel Memorandum*), which sets out thirteen Good Practices designed to provide guidance for all relevant actors on the handling of terrorism cases involving children.[1]

The *Neuchâtel Memorandum,* endorsed by the GCTF in September 2016, reinforces the obligations enumerated by the United Nations *Convention on the Rights of the Child* (*CRC*) to treat children involved with terrorism with "the respect, protection, and fulfillment of their rights as defined by the applicable international legal framework, as applied by national law".[2] Since its entry into force on 2 September 1990, the *CRC* has been ratified by 196 countries and contains obligations on the handling of child cases in all matters, including terrorism. These obligations are binding under international law on all states that have ratified the *CRC*. (The United States has not ratified the *CRC*, but recognises the need to establish specialised juvenile[3] justice systems that protect the rights of the child and ensure that the best interests of the child are a primary consideration in terrorism cases.)

The IIJ Juvenile Justice Initiative developed a strategy to promote visibility and implementation of the GCTF *Neuchâtel Memorandum*, including the development of the *IIJ Juvenile Justice Toolkit*[4] (hereafter *IIJ Toolkit*). The latest phase of the IIJ Juvenile Justice Initiative has aimed at helping the countries served by the IIJ to implement the *Neuchâtel Memorandum* Good Practices. This phase started by raising awareness of the *Neuchâtel Memorandum* during a series of five regional workshops for practitioners from the Sahel, Middle East-North Africa (MENA), East Africa, Western Balkans and Southeast Asia. The workshops, conducted between October 2017 and November 2018 in Yaoundé, Cameroon, Valletta, Malta, and Bangkok, Thailand, welcomed participants from a total of 27 countries.

[1] https://www.thegctf.org/DesktopModules/DnnSharp/SearchBoost/FileDownload.ashx?file=356&sb-bhvr=1

[2] GCTF, *Neuchâtel Memorandum*, Section III, Good Practice 5; See also The *United Nations Convention on the Rights of the Child* (*CRC*), Articles 37 and 40.

[3] In this one instance, we use the terminology of the United States (U.S.) system as we are making a specific reference to the U.S. specialised process for handling of juvenile criminal cases.

[4] Available on the IIJ website at: https://theiij.org/wp-content/uploads/2021/09/IIJ-TOOLKIT-JUVENILE-JUSTICE.pdf

Other participants, experts and facilitators included representatives from international organisations and non-governmental organisations (hereafter NGOs) such as the African Court of Human and People's Rights, the Association of Southeast Asian Nations (ASEAN), the Centre for Democracy and Development in Nigeria, the Council of Europe (CoE), the European Commission, Hedayah, the International Red Cross, the Organization for Security and Cooperation in Europe (OSCE), the Penal Reform International, the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP), the United Nations International Children's Emergency Fund (UNICEF), and the United Nations Interregional Crime and Justice Research Institute (UNICRI), as well as the Swiss and United States governments.

All five workshops utilised the *IIJ Toolkit*, which sets out the relevant international framework for each Good Practice of the *Neuchâtel Memorandum,* which includes case studies to illustrate how countries have responded to children involved in terrorism-related activities within international standards. Each section ends with a reflection exercise, permitting practitioners to consider their knowledge of standards and ways to implement the *Neuchâtel Memorandum*.

The IIJ organised each workshop around the five sections of the *IIJ Toolkit*, which mirror those of the *Neuchâtel Memorandum*, namely: (1) the status of children under international law; (2) preventing children's exposure to violent extremism and recruitment by terrorist groups; (3) justice for children; (4) rehabilitation and reintegration of children into society; and (5) capacity-building, monitoring, and evaluation of specialised child justice programmes. The *IIJ Toolkit*'s exercises and assessments facilitated the discussions at the workshops and called for each delegation to describe how their national laws, regulations, and practices might respond to the specific issues raised by the hypothetical situations presented. Expert facilitators led open discussions in which participants freely exchanged national experiences, including challenges encountered, successes achieved, and solutions developed, in implementing the Good Practices of the *Neuchâtel Memorandum.*

The IIJ, assisted by consultants, incorporated feedback from participants at these events into the *IIJ Juvenile Justice Notes for Practitioners,* a set of five practice guides – one each for investigators, prosecutors, judges, defence counsel, and detention personnel. The principal purpose of the *IIJ Juvenile Justice Notes for Practitioners* (hereafter *IIJ Notes for Practitioners*) is to provide practical guidance to practitioners on how to implement the *Neuchâtel Memorandum,* and to provide examples of how countries have already implemented some of its principles. The *IIJ Notes for Practitioners* are consistent with the *United Nations Convention on the Rights of the Child* and are largely based upon the information shared during the five regional workshops, but also incorporate material published by international organisations, court decisions, and research conducted by the drafters.

Following the drafting of the *IIJ Notes for Practitioners*, the IIJ convened a Juvenile Justice Focus Group consisting of, in addition to the drafters, other child justice experts and practitioners from Africa, the Middle East, Europe, and the United States, who met in Valletta, Malta, in March 2019. Members of the Focus Group reviewed and discussed the draft *IIJ Notes for Practitioners* and offered suggestions for amendments aimed at making them as relevant as possible for all practitioners in the field. Following the incorporation of those suggestions, the IIJ submitted the draft *IIJ Notes for Practitioners* to peer review by practitioners and organisations with leading roles in the field of child justice. After incorporating comments and suggestions received from the peer reviewers, the IIJ finalised the *IIJ Notes for Practitioners* and is pleased to present them.

Introduction

The Global Counter-terrorism Forum (hereafter GCTF) *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counter-terrorism Context* (hereafter *Neuchâtel Memorandum*) reinforces the obligation imposed by the *United Nations Convention on the Rights of the Child* (hereafter *CRC*) for countries to treat children[5] allegedly associated with or involved in terrorism-related acts with "the respect, protection, and fulfillment of their rights as defined by the applicable international legal framework, as applied by national law." Consequently, parties to the *CRC* must strive to create "appropriate child-specific procedures for cases involving children".[6]

Judges handling cases involving children (hereafter child court judges) play a crucial role in ensuring that the child justice system operates successfully, respecting children's rights while safeguarding the public. To be effective, child court judges must not only master the rules and procedures uniquely applicable to children, but must possess specialised knowledge about the mental, emotional, and physical development of children to ensure they are treated with respect and receive age-appropriate treatment, as well as to create a proper environment for the resolution of the child's case.

This *IIJ Juvenile Justice Note for Judges* (hereafter *IIJ Note for Judges*) offers "action points" regarding how judges can address the issues mentioned above by employing and promoting effective practices to support child-specific procedures for children involved in terrorism-related offences. The *IIJ Note for Judges* aims to capture and build upon the discussions, presentations, and suggestions of practitioners participating in the five regional workshops and the focus group meeting implemented under the IIJ Juvenile Justice Initiative. This Note also highlights examples of how specific countries have implemented the guiding principles of the *Neuchâtel Memorandum*.

Judges from both common law and civil law criminal justice systems participated in the development of this *IIJ Note for Judges*, offering suggestions for both action points and examples of successful implementation.[7] At times, the workshops and focus group discussions noted the differences between these two criminal justice systems and the distinct roles judicial actors play in each system. While the differences in legal traditions make developing specific and detailed action points challenging, the following action points have been prepared with the goal of providing both civil and common law system judges with helpful suggestions on how to put into practice the *Neuchâtel Memorandum* Good Practices. Even though some of the action points may apply more directly to one system or another, it is hoped that all judges will find them useful.

[5] The *CRC* defines a child as every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. In addition, some legal systems allow for special consideration for young adults above the age of 18 years. While this *IIJ Note for Prosecutors* refers to "children", it does not preclude specific measures from applying to young adults above the age of 18, consistent with the *Neuchâtel Memorandum*.

[6] *CRC*, Article 40 (3); *Neuchâtel Memorandum*, Section III, Good Practice 5 at p. 6.

[7] Prosecutors, investigators, defence counsel and detention personnel in attendance at separate workshops and the focus group meeting also provided comments and suggestions that have been incorporated into the *IIJ Note for Judges*.

Action Point 1:
Judges who handle terrorism cases against children should be part of a separate child court system

Countries should consider establishing separate groups of judges who handle only cases involving children, including those suspected or accused of committing terrorism or related offences.[8] Having specialised child judges will promote a child justice system that is more just, efficient and child-centred than a system in which judges who mostly handle adult cases are only occasionally called upon to apply specialised rules and considerations required by national and international law for children, especially in the counter-terrorism context. Designating separate units or groups of appropriately trained judges will allow them to develop the depth of expertise needed to effectively implement all national and international standards for child justice, especially in the counter-terrorism context.

Countries should also establish separate courts for children in which these specially-trained child judges would work. If this type of systemic reform is not possible, however, only those judges from regular criminal or civil courts who are specially trained should handle cases involving children, including all those involving minors suspected or charged with terrorism offences. Even if cases involving children must be resolved in court facilities normally dedicated to adult matters, separate courtrooms or court days should be designated for the proceedings.

Countries have taken various approaches in establishing separate child court systems as highlighted below.

Highlighted Examples

In the absence of freestanding children's courts, **Cameroon** has opted for an original model integrating child protection professionals into cases of children in conflict with the law. Assessors "known for their interest or expertise in children's issues" are appointed to sit alongside professional magistrates when the trial court, ruling as a child justice court, hears cases involving children (Article 709 of the *Criminal Procedure Code*).

In the **Philippines**, the law establishes procedures for resolving cases against children using diversionary measures in lieu of formal prosecution and judgment. If diversion is not appropriate and prosecution is warranted, child cases are handled in special Family Courts. The *Family Courts Act of 1997* mandates that a Family Court be established in every province and city in the country. A Family Court has jurisdiction over all cases involving children charged with a criminal offence committed within the court's geographic jurisdiction and for whom diversionary measures are not appropriate. Regional Family Courts can adjudicate cases involving minors charged with offences under the counter-terrorism laws, although those cases are frequently transferred to Family Courts in urban centres to be handled by prosecutors with more experience in such matters.

...

[8] *CRC*, article 40 (3), requires that states "shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law". In addition, United Nations Committee on the Rights of the Child (hereafter: Committee), *General Comment No.24*, para. 106 states, "[a] comprehensive child justice system requires the establishment of specialised units within the police, the judiciary, the court system, the prosecutor's office, as well as specialised defenders or other representatives who provide legal or other appropriate assistance to the child".

...

All Family Court judges apply the *Juvenile Justice and Welfare Act of 2006*, which sets out the rights of children suspected or accused of criminal offences, including terrorism. The Act also allows cases against children to be prosecuted.

Albania's *Code of Criminal Justice for Children*, section 27, provides that each district court must establish a section for children with jurisdiction over all cases involving children charged with criminal offences.

In *The Child Act of 2001* (Act 611), section 11 (1), **Malaysia** created Courts for Children with jurisdiction to try all offences except offences punishable with death (section 11 (5)). Each Court for Children consists of a magistrate and two Ministry of Justice-appointed advisers, one of whom must be a woman. The advisers inform and advise the magistrate concerning decisions affecting the child during the court case. A Court for Children sits in a different building, or sometimes a different room, and on different days than adult courts. In addition, a separate entrance to the building in which a Court for Children sits must be provided for children to enter and leave in order to protect their privacy. The only individuals allowed in the courtroom during proceedings are the judicial officials identified in the statute, designated relatives of the child, and anyone else the court permits to attend. In Kuala Lampur, Malaysia's capital, the Court for Children operates as a separate court. In more remote areas, the Court is part of the regional court and is presided over by a designated magistrate.

In **England** and **Wales**, children who are not eligible for diversionary measures due, for example, to the seriousness of the offence, or who have exhausted their eligibility for such measures, are placed in the child justice system, which operates in the form of a Youth Court to hear cases involving minors between 10 and 18 years old. The Youth Court was established to prevent children and young people from entering into contact with or associating with adult suspects during any phase of a trial.[9]

In **Canada**, a child accused of having committed a criminal act may only appear and be tried before a specialised Youth Court that has jurisdiction over children from 12 to 18 years of age who commit criminal offences[10], including terrorism offences.[11]

[9] *Children and Young Persons Act 1933*, section 50 (as amended by section 16 (1) of *Children and Young Persons Act 1963).*

[10] The Canadian *Youth Criminal Justice Act (S.C. 2002 c.1)* (as amended October 17, 2018), section 13 (establishing "youth justice courts" under the act, and authorising provinces and indigenous councils to establish them; deeming any court hearing case against a minor a "youth justice court" acting under the act), section 14 (1) (youth justice courts have jurisdiction over all offences committed by minor except regulatory offences (contraventions) and military offences).

[11] *Ibid.* section 14 (2) and *Criminal Code (R.S.C., 1985, c. C.46), Part II.1 Terrorism*, sections 83.01, et. seq.

Action Point 2:
Only child court judges should have jurisdiction over children suspected of or charged with terrorism offences

Address children alleged to be involved in terrorism-related activities in accordance with international law and in line with international juvenile justice standards.

GCTF Neuchâtel Memorandum, Good Practice 1

Apply the appropriate international juvenile justice standards to terrorism cases involving children even in cases that are tried in adult courts.

GCTF Neuchâtel Memorandum, Good Practice 6

Child court judges should be able to apply a separate set of child justice laws in cases of children suspected of or charged with a terrorism or related offence. If child court judges do not have clear authority under their national laws to judge cases of minors charged with committing terrorism offences, or if the applicable procedural law for such cases is not settled, judges and other justice officials should consider working with appropriate government offices and departments to develop, approve and implement legislation that clarifies their jurisdiction and the relevant procedural law.

In some countries, national legislatures have passed child justice laws that apply to all cases involving children, no matter the offence at issue. Other countries may not yet have a comprehensive child justice law that clearly establishes the authority of child court judges to hear cases of minors suspected of or accused of terrorism offences, or the procedures that apply to them. For example, some older child justice statutes may have been written to cover more common offences committed by minors, before the phenomenon of children's participation in terrorism or related offences had emerged. Counter-terrorism laws written years later may apply to all terrorism or related offences without making it clear that prosecutions of children for those offences should occur under pre-existing child justice statutes. In such a situation, child court judges might not have express jurisdiction to handle cases of minors suspected or charged with terrorism offences. This could result in children being investigated and prosecuted under the country's counter-terrorism laws applicable to adults, which may not incorporate all of the special rights and considerations granted to children under international human rights and humanitarian law.

In addition, compliance with international child justice standards can be problematic if a country has adopted special security measures to meet a particularly acute rise of terrorism. In some cases, such emergency measures have been interpreted to authorise mass arrests without charges and indefinite pre-trial detention of individuals upon mere suspicion of involvement in terrorist activities. Other basic rights may also be violated under those special statutes.

Application of such restrictive counter-terrorism laws to children is not consistent with international law and standards aimed at protecting minors in conflict with the law. In order to assure that children suspected or charged with terrorism offences are treated in compliance with the *CRC* and other international child justice standards, countries should adopt separate legislative frameworks granting child court judges jurisdiction over all cases involving minors charged with criminal offences, including violations of terrorism laws.

Judges in countries with laws that do not clearly give them jurisdiction over terrorism offences committed by children should consult with appropriate national authorities to develop and approve a unified code of child justice that clarifies their jurisdiction.

Highlighted Example

The **Philippines** has adopted the *Juvenile Justice and Welfare Act of 2006* (hereafter *JJWA*), which establishes a comprehensive statutory regime of jurisdictions, duties, responsibilities, and procedures[12] for all child justice actors in the country. Under the terms of the law, a "child in conflict with the law" is defined in section 4 (e) as a "child who is alleged as, accused of, or adjudged as, having committed an offence under Philippine laws". "Offence" is defined in section 4 (o) as including "any act or omission whether punishable under special laws or the Revised Penal Code, as amended". Consequently, the *JJWA* applies to terrorism and related offences as well as to more common offences such as robbery, theft, and burglary.[13]

[12] Additional mandatory procedures for implementing the *JJWA* are issued by the Juvenile Justice Welfare Council, a governing body created in section 69 of the Act.

[13] Section 58 of the *JJWA* also specifically exempts children from application of the death penalty provided for in any other Philippine statute, such as the *Comprehensive Dangerous Drugs Act of 2002*.

Action Point 3:
Child court judges should meet legal obligations of child justice set forth in the international instruments ratified by their countries

Address children prosecuted for terrorism-related offenses primarily through the juvenile justice system.

GCTF Neuchâtel Memorandum, Good Practice 5

Child court judges should always be guided in their work by the applicable international laws, rules, and standards regarding child justice. This requires them to understand the rights of children codified in human rights treaties[14] and other internationally recognised standards and norms of child justice[15]. When accused children are migrants, or the terrorist acts they are charged with are committed in the context of an armed conflict, child court judges should determine if the norms and standards set forth in international refugee and humanitarian law conventions apply in the case.[16]

According to the law of treaties, “every treaty in force is binding upon the parties to it and must be performed by them in good faith”.[17] In addition, “a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.[18] Some countries, however, have declared that certain provisions of international treaties they sign, including the CRC, cannot be interpreted in ways that conflict with their national or religious laws.[19] As a result, judges need to be familiar with precisely how the provisions of the international conventions, including the CRC, apply in their courts. Consistent with national constitutional and criminal law, child court judges should apply the applicable provisions of international treaties ratified by their countries pertaining to the protection of the rights and freedoms of children.

If such norms differ from or contradict domestic laws and traditions, judges should seek clarification from higher courts. They should also work with the appropriate national officials to harmonise their countries’ domestic legislation and constitutional frameworks with their international obligations so that the child justice system can work for the best interests of children.

[14] These include principally the *CRC* (1990) and *International Covenant on Civil and Political Rights* (hereafter *ICCPR*) (1966).

[15] GCTF, *Neuchâtel Memorandum*, Good Practices 1, 5 and 6; *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (hereafter *Beijing Rules*) (1985); *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty* (hereafter *Havana Rules*) (1990); *United Nations Guidelines for Action on Children in the Criminal Justice System* (hereafter *Vienna Guidelines*) (1997); *United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (hereafter *ECOSOC Vienna Guidelines*) (2005).

[16] See *United Nations Convention Relating to the Status of Refugees* (hereafter *Convention on Refugees*) and *Protocol Relating to the Status of Refugees* (1967); *African Union Convention Governing Specific Aspects of Refugee Problems in Africa* (1969); the *Four Geneva Conventions of 12 August 1949 relative to the Protection of Victims of Armed Conflict*, and their *Additional Protocols of 1977*; United Nations Children’s Fund (hereafter UNICEF); *Paris Commitments to Protect Children Unlawfully Recruited or Used by Armed Forces or Armed Groups* and the *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* (hereafter *Paris Commitments and Principles, Consolidated version*) (2007).

[17] *United Nations Vienna Convention on the Law of Treaties* (hereafter *Vienna Convention*) (1969), article 26 (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith”.)

[18] *Vienna Convention*, article 27 (“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46” (regarding treaty adoption laws)).

[19] See generally, Declarations and Reservations, and Objections, filed by parties to the CRC.

Highlighted Examples

In *State Attorney v. Mouhamadou SECK,* a case involving a minor accused of participating in terrorist acts, the Special Criminal Chamber of the High Instance Tribunal of Dakar, **Senegal**, determined that international commitments Senegal made pursuant to the Convention on the Rights of the Child (ratified by Senegal on 2 September 1990) and the African Charter on the Rights and Welfare of the Child (1990) required the State to prosecute the minor in the country's competent child court, rather than in the Special Criminal Chamber that, by law, had exclusive jurisdiction over terrorism cases. The Court found that under Senegal's constitutional regime, its international obligations under the two treaties mentioned above took precedence over its contrary domestic laws. As a result, the special criminal chamber determined that it lacked jurisdiction to try the accused child and ordered that the case be tried in child court.[20]

In a child case in **Ethiopia**, the cassation division of the Supreme Court cited and directly applied the *United Nations Convention on the Rights of the Child* (1990), even in absence of proper implementing legislation or an official translation of the Convention into the working language of the Court. Although not in a counter-terrorism context, the court ruled in the case of *Mrs. Tsedale Demissie v Mr. Kiflie Demissie* that international human rights instruments ratified by Ethiopia automatically form part of the law of the country, and must be applied by the courts to promote the best interest of the child.[21]

[20] *State Attorney v. Mouhamadou SECK,* Special Criminal Chamber of the High Instance Tribunal of Dakar, Senegal, 10 April 2018.

[21] *Mrs. Tsedale Demissie v Mr. Kiflie Demissie,* Ethiopian Supreme Court, Cassation Div. decision, No. 23632, 2007, p. 3.

Action Point 4:
Child court judges should appoint counsel as soon as possible for children charged with terrorism-related offences in accordance with international and national law

In terrorism cases involving children, child court judges should ensure that counsel with expertise in child justice standards and representation of minors accused of serious offences are appointed as early as possible. The right to the legal services of a lawyer is an important component of the right to a fair trial and applied equally to children as to adults. If they or their legal guardians are indigent, they should be provided legal assistance at the expense of the state.[22] Courts should ensure that children benefit from legal assistance throughout all stages of the proceedings.[23]

Trust between an accused child and his or her lawyer takes time to establish. Lawyers cannot effectively defend child defendants if they have insufficient opportunity to meet before the proceedings to discuss the process for the hearings, to resolve questions, to gain their clients' perspectives on the cases, and to plan their legal strategies. Late appointment of counsel makes it more difficult to create the effective attorney-client relationship that is needed to effectively represent a child.

Prompt appointment of counsel also ensures effective representation at the child's first court appearances. In cases in which pre-trial detention during the investigation or pre-trial proceedings is a possibility, early access to legal counsel will enable child defendants to challenge the lawfulness of their detention, to make their best cases for unconditional or conditional release, and to ensure that detention, if ordered, takes place in a facility suitable for children.[24] Early access to legal representation will also reduce the risk that the child may unwittingly waive important rights, such as the right against self-incrimination.[25]

At the earliest opportunity, child court judges should also verify that children appearing before them have had the benefit of counsel during questioning or other police contact occurring before the first court appearance If a child was not assisted by counsel as provided by law, a judge should inquire into the voluntariness and legality of any statements obtained by police or investigators, as well as any evidence secured by investigators in reliance on the statement. If appropriate, a judge should convene a hearing, or take other steps under national law, to determine if a denial of counsel's assistance should result in exclusion of or non–reliance upon certain evidence in the case against the child.

[22] See *CRC*, article 37 (d) ("Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action"); ACRWC, article 17 (2) (c) (iii); ICCPR, article 14 (3) (b). See also *Gideon v. Wainwright*, 372 U.S. 335, 339 (1963).

[23] *Beijing Rules*, Rule 15 (1) ("Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country").

[24] See United Nations Human Rights Committee (hereafter UNHRC), *General Comment* No. 35, Article 9 (Liberty and security of the person) (2014), paras. 15, 46 ("access to independent legal advice, preferably selected by the detainee").

[25] *Salduz v Turkey*, European Court of Human Rights (hereafter ECtHR) judgment of November 27, 2008, para. 54. See also Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives, (CAT/OP/MDV/1, 26 February 2009), para. 62; see generally Council of Europe (hereafter COE), European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter CPT standards) (2010); Inter-American Commission on Human Rights (hereafter IAComHR), *Report on Terrorism and Human Rights* (2002), para. 127.

This question is especially important in countries that have adopted special counter-terrorism legislation that modifies or limits rights of suspects, including children, to counsel in the immediate aftermath of a violent terrorist attack. Child court judges should be aware of the special status of minors under international law and their increased vulnerability to even inadvertent police influence or coercion that could lead to involuntary statements or confessions. If a child claims to have been tortured, coerced, or shows physical or psychological signs of abuse, a judge should make immediate inquiry into the matter. The court should also determine if any evidence should be excluded as a result, and should take action consistent with national law to have the perpetrators of the torture or abuse held accountable. If appropriate, a child court judge should also order that a tortured or abused minor immediately receive all necessary medical attention and other support.

Child court judges should also ensure, consistent with international and national law, that law enforcement officers, or other officials not related to the defence team, do not have access to interviews and correspondence between children and their legal counsel.[26] If lawyers are unable to confer with their clients and obtain confidential information and instructions without surveillance, their assistance will lose much of its usefulness. The confidentiality of communications between the child and his or her legal representative or other assistant is to be guaranteed according to article 40 (2) (b) (iii) of the *CRC*.

In addition, the child's right of protection against interference with his or her privacy and correspondence is to be respected, as per article 16 of the *CRC*. These are legally binding standards for all States that have ratified the *CRC*.[27] Any exceptions to these obligations, *i.e.,* for national security reasons, should be accompanied by adequate safeguards, including court oversight, if permitted by national law. For example, police surveillance of communications or correspondence between children and their lawyers should require prior court authorisation and be based upon a demonstrated and convincing justification offered by prosecutors or investigators. In addition, courts should consider assigning an independent judge who is not involved in an investigation or prosecution to review any intercepted materials and keep confidential from prosecutors and investigators all matters not strictly related to the basis on which the court approved the request for interception.[28]

Highlighted Examples

A child's right to consult with an attorney or other personal representative can attach at different times in different countries, especially where legal traditions diverge between civil and common law. In some countries, including **Algeria**[29], **Egypt**, and **Morocco**, initial statements that children make to police will be invalidated if lawyers were not present when the statement was made. In other countries, including **Albania**, **Kosovo**, **Macedonia**, **Montenegro**, **Serbia**, **Indonesia**, **Malaysia**, and **Thailand**, attorneys are appointed immediately following children's arrests, regardless of whether or not the minors are to be interrogated by police.

...

[26] UNHR, article 18 (4).

[27] See also: Committee General Comment No.24, para. 53.

[28] *Erdem v Germany,* ECtHR, judgment of 5 July 2001, paras. 61-69, particularly para. 67.

[29] Article 54 of the Algerian Law No 15-12 of 15 July 2015 on child protection requires the presence of a counsel during the investigation and specifically during interrogations in police custody. However, the law creates an exception in the case of a minor between 16 and 18 years old who is suspected to have committed a terrorist offence. This exception permits police and investigators to question the child without counsel present only when it is necessary to collect or preserve evidence or to prevent the commission of an imminent attack against persons, and only with the agreement of the public prosecutor.

...

In **Jordan** and **Malta**, children must invoke their rights to have a lawyer present, and if they do so, statements taken without counsel will be invalid.[30] In some common law systems, like the **United States,** counsel must be provided to children who request representation before police interrogation can proceed. If, however, investigators do not wish to conduct questioning, or the suspect voluntarily waives the right to assistance of an attorney, counsel will be appointed at the first hearing before a judge, when the charges are officially filed and explained to the accused. In **Niger**, **Senegal**, and **Tanzania** legal assistance is compulsory in child proceedings. In **Djibouti** and **Cameroon**, notification of the right to counsel is mandatory at the early stages of all child proceedings.

In **Macedonia**, judges appoint defence counsel with the necessary training and experience to handle child justice matters when children and their families do not have the ability to arrange representation. The Government of Macedonia maintains a list of specially trained attorneys from which child court judges select competent lawyers to represent minors.

*The Juvenile Justice Act of **Papua New Guinea***[31] provides that children are entitled to legal representation at all stages of the proceedings and, when offences charged are punishable with more than two years' imprisonment, legal aid must also be provided by the state, if necessary.

*The **Kenyan** Children Act of 2001* requires courts before which children are brought to ensure that minors benefit from legal assistance, and where they are unrepresented, order that they be granted legal representation at no cost.

[30] According to workshop participants, in some countries, including Ethiopia, Nigeria, and Tanzania, the law requires the presence of counsel at an initial interrogation, but it may not always be possible to comply with that requirement. Lack of an established and adequately financed public defender service can frustrate the provision of legal counsel to children after their arrests. Safety issues may also prevent attorneys from access to child clients, especially when children are arrested by the military in conflict zones.

[31] New Guinea, *Juvenile Justice Act 2014* (No. 11 of 2014), article 68 (1) ("A juvenile is entitled to have legal representation at all stages of the proceedings").

Action Point 5:
Child court judges should carefully assess information about the age of a child suspected or accused of a terrorism offence

Assess and address the situation of children in a terrorism-related context from a child rights and child development perspective.

GCTF Neuchâtel Memorandum, Good Practice 2

Address children's vulnerability to recruitment and/or radicalization to violence through preventive measures.

GCTF Neuchâtel Memorandum, Good Practice 3

Child court judges should ensure that children appearing before them have reached the minimum age for criminal responsibility set by national law.[32]

In some countries, immediately following a child's detention by police or another arresting authority, social service personnel, investigators, or prosecutors are required by law or practice to conduct an investigation into the child's background and age and prepare a report that is shared with other child justice actors, including the court. The information in the report may be used by the police, prosecutors, and child court judges to decide whether to bring preliminary charges or to order or recommend pre-trial detention. The court may also rely on the report in choosing the appropriate disposition in the case. Thailand and Kenya, for example, have such requirements in their child justice legislation.

Child court judges should, however, have the ultimate authority to determine whether children suspected or accused of committing criminal offences, including terrorism, have reached the country's minimum age for criminal responsibility. Even in cases in which the prosecution and defence agree that the suspected child is over the minimum age, judges should make independent assessments of all of the available information before proceeding on that basis. In practice, judges should examine reports prepared by other child justice actors for completeness and accuracy. If there are questions about whether a child has surpassed the minimum age for criminal responsibility, the presiding child court judge should consider ordering a new investigation into the matter before going forward with the prosecution. If the court deems the proof of age insufficient after all reasonable steps have been taken, then it should consider the particular child to be below the minimum age for criminal responsibility, order the dismissal of the case, and refer the minor to the appropriate child welfare agency to receive any necessary services or assistance.

[32] The United Nations Committee on the Rights of the Child recommends that the minimum age for criminal responsibility of a child be set no lower than 14 years of age. It also expressed its concern about the practice in some countries of allowing exceptions to the minimum age based upon the seriousness of the offence involved. Committee *General Comment No.24*, para. 20-24.

In some countries, it will also be necessary to make a determination of a child's precise age. This occurs where national legislation authorises different dispositions, including diversion and alternative sentences, for children in different age ranges. A case in Kenya illustrates the importance of accurately determining a minor's age in systems that impose different disposition measures for children of different ages. In a prosecution involving a minor female convicted of a criminal offence, the court reviewed two conflicting reports regarding her age. One report was based upon information from her parents and the other was based upon an initial medical examination. The court decided that the child was between 15 and 18 years of age and sentenced her to three years' confinement in a custodial institution for child offenders. Upon arrival at the custodial institution, the institution's director became doubtful of the accuracy of the court's age determination, so the director ordered a new, more intensive medical examination. That examination concluded that the girl was only 14 years of age, which was below the statutory minimum age for a custodial sentence. As a result, the case was referred back to the court, where the judge accepted the results of the new examination and issued a non-custodial probation order in accordance with the relevant legislation.

Child court judges should be familiar with, and employ, all of the practices and capabilities of their criminal justice systems to determine children's ages. Judges should stay informed about advanced medical and forensic tests that can be performed to determine age if more traditional information, including birth or baptismal certificates, or school, medical, or church records, are unavailable or inconclusive. Thailand, for example, sometimes uses dental examinations for that purpose.

Action Point 6:
Child court judges should assess child suspects holistically and consider whether their alleged criminal conduct was voluntary

At the very outset of the judicial proceedings, child court judges should gather all available information on the circumstances of the alleged offences, as well as the personal, social, political, economic, and criminal background of accused minors. Some countries have laws and regulations that require child justice actors who have early contact with children to gather such data and share it with prosecutors and judges. Even in jurisdictions where no such laws exist, child court judges should take steps to obtain reports and examinations compiled in the case.

In appropriate cases, child court judges should order state social workers and professionals to examine children accused of offences and submit reports to the court. This information will assist child court judges to verify children's ages, assess their mental development, and gauge their level of radicalisation, if any.[33] Consistent with national law and the best interests of the children involved, judges should seek additional information from family members or legal guardians, school and religious officials, and other community members.[34] Such an assessment will influence virtually all judicial decisions in the proceeding and help lead to a disposition that promotes both the best interests of children accused of offences and the security interests of the community. These considerations apply equally to investigating judges who conduct investigations in proceedings of a child case in some criminal justice systems.

International child justice standards, including the GCTF's *Neuchâtel Memorandum,* stress that children arrested for alleged involvement in terrorist acts should not automatically be considered to have participated knowingly in those offences.[35] Judges should recognise that children are frequently victims of adults who coerce or forcibly radicalise them and use them to carry out terrorist activities. As a result, it is important that judges ascertain whether children appearing before them acted with discernment, that is, voluntarily with an understanding of the nature and consequences of their conduct. Children who are not fully developed — emotionally, intellectually, and psychologically — may be incapable of forming the intent necessary to be held criminally responsible.

If investigation and other information available to child court judges or investigating magistrates suggest that, in a particular case, a child did not become involved in the criminal conduct voluntarily and with an understanding of the consequences of the actions involved, judges should not apply punitive sanctions. They should consider instead alternative dispositions, including diversion away from the criminal justice system, remand to an appropriate child training or education facility, or protective measures, placement or participation in a community-led rehabilitation and reintegration programme.

[33] *Beijing Rules*, Rule 15.

[34] *United Nations Standard Minimum Rules for Non-Custodial Measures*, General Assembly Resolution 45/110 of 14 December 1990 (hereafter *Tokyo Rules*), Rule 7.1.

[35] *Paris Commitments and Principles, Consolidated Version*, Principle 11 (children used or recruited by armed groups are primarily victims).

Highlighted Examples

The ***Tanzania*** *Law of the Child Act* (2009) provides that children who have been remanded into custody shall be assessed by a social welfare officer within three days of the start of the remand. A written assessment report must be made available to the child court and the report must contain information on the family background and other material circumstances relating to the child that are likely to be of assistance to the child court. These elements include an assessment of whether the child may be in need of care and protection, an estimation of the child's age, a recommendation regarding the child's release from remand and possible placement for the period before trial, a description of any factors that may affect the child's criminal capacity, and any other information regarding the child which the social welfare officer deems relevant.[36]

In **Cameroon**, children arrested for having been involved in terrorist acts are at first considered to be suspects. Investigations are later conducted, however, to determine if they may have been associated with other terrorists. If the investigation reveals some link to a terrorist group, judges make further inquiries into the backgrounds of the children to ascertain whether they were forcibly recruited by the group. Judges are trained to recognise these situations and to delve more deeply into the child's personality and social situation.

Similarly, in **Macedonia** and **Serbia**, when minors are suspected of committing terrorist-related offences, investigation is made to determine whether they should be treated as suspects or as witnesses, and whether diversion in lieu of prosecution should be considered, especially if they are first-time offenders.

[36] Tanzania, *Law of the Child (Juvenile Court Procedure)*, Government Notice No. 182, published on 25 May 2016, section 30 (first assessment of the child).

Action Point 7:
Child court judges should ensure that the child's rights are protected at every stage of a proceeding

Address children prosecuted for terrorism-related offenses primarily through the juvenile justice system.

GCTF Neuchâtel Memorandum, Good Practice 5

Apply the appropriate international juvenile justice standards to terrorism cases involving children even in cases that are tried in adult courts.

GCTF Neuchâtel Memorandum, Good Practice 6

An important aspect of the work of child court judges is to ensure throughout the judicial proceedings that minors have received all of the special rights guaranteed to them under international and national law. Those rights include all the rights accorded to adult defendants under international human rights standards, *inter alia,* the rights to file for *habeas corpus* relief, to have legal representation, to be promptly informed of the reasons for arrest, to be notified of the charges filed against them, to the presumption of innocence, to present, examine and cross- examine evidence[37], and to be tried within a reasonable period of time.[38]

In addition, however, child court judges should ensure that the additional rights children are afforded under the CRC and international child justice standards are respected during the proceedings. The *CRC* protects minors against the death penalty and life imprisonment without parole. Arrest, detention, or imprisonment of children should be used only as a last resort and for the shortest time possible.[39] Children must be treated "in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."[40] All decisions should prioritise the child's reintegration and assumption of a constructive role in society.[41]

[37] *Beijing Rules*, Rule 7.

[38] *Ibid.* Rule 20.1 The right to be tried within a reasonable period of time requires the judge to establish and use good case management practices to avoid unnecessary delays in processing child cases and reducing any time in detention.

[39] *CRC*, article 37 (b).

[40] *CRC*, article 37 (c).

[41] *CRC*, article 40.1.

To ensure that children's rights are respected and their best interests considered, justice sector actors, including judges, may need to adopt special procedures and practices over and above those applicable in adult cases. Judges' management of cases in compliance with international child justice principles can be especially challenging if a jurisdiction lacks adequate personnel with specialised knowledge and training. In addition, extra time and effort may be required to make sure children understand, and have the chance to participate in, the proceedings. For example, some children will need foreign language interpreters to do so. Child court judges may need to designate social services experts, or child psychologists, to assist minors to understand and participate in the investigation and court hearings.

As noted above, some countries have adopted special counter-terrorism laws that allow for extended periods of detention, special procedures, and longer delays in court proceedings due to the complex nature of terrorism investigations and prosecutions. Child court judges should be alert to possible prejudice to minors' rights from application of such procedures, which are usually developed for cases involving adult defendants. Children's rights to prompt resolution of their case[42] and to have the proceedings focus on their best interests, specifically their rehabilitation and reintegration into society, could be compromised if cases proceed at a slower pace than necessary. If it will not prejudice the rights of children before the courts, judges should consider shortening the permissible statutory and procedural deadlines in the investigation and prosecution of terrorism or terrorism-related cases in order to avoid unnecessary delays.

Children also have the right to attend court, and in some jurisdictions, to attend investigative proceedings in their cases. Judges should make sure that their rights under national law to be physically present are respected, unless there is an express waiver of that right. Having the child physically present before the court can assist judges to ensure that child defendants have not been subjected to inhumane and degrading treatments or unlawful detention. It will also facilitate a child suspect's full understanding of the judicial process, and promote their appropriate participation in the proceedings. It also allows judges to assess the child's demeanor, which helps in reaching an informed decisions about their mental, cognitive, physical, emotional, psychological, and social development. Those characteristics are highly relevant in assessing criminal responsibility and making dispositions that will best promote rehabilitation and reintegration into society.

At the first court appearance of a child accused of a terrorism offence, the judge should inquire into whether the child's parents or legal guardians have been traced and notified of the arrests or detention. When such a notification has not been made, judges should make a specific order that it be done within the shortest possible time, certainly before any trial begins. Only if evidence shows the parents were complicit in the offences should courts dispense with parental notifications. If the accused child is a national of a foreign country, notification should also be given to the consular authorities of the state of which the child is a citizen.[43]

[42] *CRC*, article 40 (2)(iii); Committee *General Comment No.24*, paras. 90-91. In paragraph 90, the Committee recommends that the child must have a first appearance before the competent authority within 24 hours of arrest; if continued detention is ordered, he or she must be charged and appear before the court within 30 days; and if detained throughout, all charges against him or her must be resolved within 6 months or the child is released.

[43] *Ibid.*, *Havana Rules*, Rules 10, 56.

Highlighted Examples

In a landmark judgment in *In re Gault*, the **United States** Supreme Court ruled that children have the same due process rights to a fair trial as adults. The Court concluded that Gault's (the accused) commitment to the State Industrial School was a violation of the U.S. constitution since he had been denied the right to an attorney, had not been formally notified of the charges against him nor of his right against self-incrimination, and had no opportunity to confront his accusers. The Court emphasised that in such proceedings due process requires that adequate written notice of the reasons for the arrest be afforded to the child and his parents or guardian. Such notice must inform them "of the specific issues that they must meet", and must be given "at the earliest practicable time, and, in any event, sufficiently in advance of the hearing to permit preparation".[44]

In **Algeria**, **Cameroon**, **Egypt**, **Jordan**, **Mali**, **Malta**, **Morocco** and **Niger**, families must be traced, contacted and invited to take part in any questioning of their children. If a family cannot be traced or attend, a social worker may be asked to step in. Families or guardians must also be contacted and informed of decisions to hold minors in police custody. Similar provisions also exist in countries in Southeast Asia, including **Indonesia**, **Malaysia**, **the Philippines** and **Thailand**. In **Singapore**, both parents and accused children are obliged to participate in family conferencing. Parents must also go for mandatory counselling.[45]

Child court judges should be cautious about basing convictions and sentences on admissions of guilt or self-incriminating statements of children. If judges use such admissions, they should do so with great care, and only after ascertaining that the admissions were obtained legally and made freely with full understanding of the consequences. Child court judges should inquire whether counsel, parents or guardians, and other representatives were present at the time of the statements. In some countries, national law requires the presence of one or more of those individuals in order for such statements to be used in court proceedings against children. In any event, whenever the child chooses to remain silent, the court must refrain from regarding this as a confession of guilt.[46]

Child court judges should ensure that all case dispositions are proportional to the gravity of the offences and the child's personal circumstances and promote their rehabilitation and reintegration into the community. In all decisions concerning child suspects, judges should seek to promote the child's best interests. All detention decisions and case dispositions should be proportional to the gravity of the offences and the age and circumstances of the child suspects involved. If measures are imposed that restrict the child's rights, they should do so only to the least extent possible and should constitute the most effective means possible to achieve the child justice system's dual objectives: protecting society from terrorist acts while promoting the rehabilitation and reintegration into the community of child suspects.

[44] *In re Gault*, 387 U.S. at 31-42.

[45] Singapore, *Children and Young Persons Act* (as amended 31 December 2001), section 46.

[46] See *UNODC Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System (2017)* (hereafter UNODC Handbook), p. 93. For a comprehensive discussion of the basis for the special treatment that the international community provides to children involved in terrorism or violent extremist groups, see Chapter 1 of the Handbook. Regarding the key principles that should inform any action directed towards these children, please see the *UNODC Roadmap on the Treatment of Children Associated with Terrorist and Violent Extremist Groups (2019).*

Action Point 8:
Child court judges should order diversion in appropriate cases

Consider and design diversion mechanisms for children charged with terrorism-related offences.

GCTF Neuchâtel Memorandum, Good Practice 7

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.

GCTF Neuchâtel Memorandum, Good Practice 8

Child court judges should consider diverting children charged with terrorism-related offences to resolve charges without formal criminal prosecution.[47] Judges, as well as other child justice actors, should be aware of the international consensus that children involved in criminal proceedings may become more vulnerable to stigmatisation and re-victimisation as a result of undergoing an unfamiliar and intimidating process, especially if they are subject to prolonged periods of pre-trial or post-trial detention. These negative effects can be especially acute in prosecutions for terrorism offences, which can be highly publicised events that cause strong emotional reactions by the public against the alleged perpetrators. Child court judges may be faced with issues and circumstances that make it more difficult for them to ensure fair investigative and trial processes. Terrorism prosecutions, including those involving children, can also be prolonged by unexpected delays that magnify the risk of harm to the child suspects involved. Even the most efficient prosecutions can cause emotional and psychological stress to children as a result of the uncertainty created by the criminal process. These negative consequences may endanger prospects for rehabilitation and reintegration into the community.[48]

In appropriate cases and consistent with national law, child court judges should order child defendants into alternative programmes, including conditional release or probation, mediation, restorative justice, or community-based arrangements, that can address the root causes of children's disaffection and increase their prospects for de-radicalisation and reintegration. Such diversionary programmes are effective ways to promote the well-being of children by positively affecting their behaviour without subjecting them to a criminal process. At the same time, such measures can protect society from future criminal behavior by allowing authorities to monitor the children's activities and intervene, if appropriate.

Diversionary or alternative measures also allow for more proportionate responses to child criminal conduct that appropriately account for their lack of full cognitive, psychological, and emotional development. In this regard, countries where diversion is a common practice usually grant judges authority to choose from a variety of possible dispositions, including care, guidance and supervision orders; counselling; probation; foster care; and education and vocational training programmes. In making decisions regarding diversionary dispositions,

[47] *CRC*, article 40 (3) (b); *Beijing Rules*, Rule 11.1; GCTF, *Neuchâtel Memorandum*, Good Practice 7. In this action point, diversion refers to channelling children away from prosecution altogether, upon the condition that they successfully complete a remedial step or programme to which they and their parents or guardians agree and that the court approves. Completion of the alternative measures should result in no criminal charges being filed or the dismissal of cases already initiated. It can also result in the expungement or sealing of official child court records regarding contacts with the police, prosecution, and court.

[48] *UNODC Handbook*, ch. 3, pp. 88-90.

judges should act in the best interests of children, but also ensure the children are held accountable for their criminal conduct. Judges should order dispositions in all cases, including terrorism prosecutions, taking into account children's personal circumstances and the seriousness of the offences.[49]

Countries should consider whether to grant authority for diversionary dispositions to the prosecutor[50], or possibly even to the police.[51] In many countries, however, only judges have the authority to agree to diversion from prosecution in serious cases like those involving terrorism or related offences.[52] Regardless of which diversionary system is in place, its success depends upon all judicial actors working for the ultimate rehabilitation and reintegration of children and implementing the international standards for treatment of child defendants.

Following are examples of countries that have implemented diversion programmes allowing judges to avoid submitting child suspects to a formal criminal justice prosecution, including cases involving terrorism or related cases.

Highlighted Examples

In **the Philippines**, the *JJWA* authorises community-based, police-led, and prosecutor-led diversion agreements for children accused of offences carrying maximum prison sentences of six years. Children who refuse to voluntarily enter diversion programmes, or fail to successfully complete them, will be referred to the Family Court for formal prosecution. In addition, children charged with offences punishable by maximum prison sentences of more than six but fewer than 12 years, can be granted diversionary measures only by child court judges. In both circumstances, child court judges must determine before arraignment whether diversion is appropriate. Those determinations are aided by reports and recommendations from Diversion Committees consisting of clerks of court, prosecutors, public defenders, and assigned social workers. If a Committee recommends a diversion plan, which must have the child's and any complainant's agreement, a court will set a hearing with all parties present at which it will decide whether to accept the plan. If a court agrees to order diversion, an assigned social worker will serve as a programme monitor who must report to the court on the child's progress in the programme. Once a child successfully satisfies the terms of a diversion order, a judge may order the case closed.

If the case involves an offence punishable by more than 12 years' imprisonment, a court must determine the child's guilt or innocence in accordance with established child justice procedures. If the child is found guilty, the court will impose a judgment and sentence. Nevertheless, the child court judge must suspend the sentence and order one or more statutory non-imprisonment measures, as required in a binding Supreme Court rule. If the child successfully complies with the alternative measures, the case can be discharged. Only if a child refuses to participate in or fails to comply with a court-ordered alternative measures programme will a judge execute the suspended sentence.

...

[49] *Ibid*. International child justice standards call for countries to apply diversionary measures regardless of the seriousness of the offences involved.

[50] Prosecutor-led diversion is a growing practice in many countries and offers significant benefits to children charged with serious offences while protecting the community against terrorist activities. See *IIJ Juvenile Justice Note for Prosecutors, Action Point 7*, (IIJ website). Some countries, including the Philippines authorise police to grant diversionary measures for certain less serious offences.

[51] Police-led diversion may not be appropriate for all cases in which children may be involved in terrorism. Nevertheless, when children engage on the margins of terrorist activity, such as recruitment or spreading of extremist ideology, police may be able to direct minors to programs that prevent them from getting involved more deeply and that positively affect their future behaviour. Care should be taken, however, to authorise police-led diversion only where the terrorist activity is nascent, relatively minor, and non-violent.

[52] In some countries, police and prosecutors have authority to channel children involved in less serious violations of law into diversionary programmes established by national legislation, thus avoiding institution of the formal criminal justice process. The Philippines employs such a system.

…

Thailand has instituted a procedure that requires police, within 24 hours of arrest, to send children to an Observation and Protection Center for a determination of whether diversion measures should be pursued immediately or whether the case should be referred to the Juvenile and Family Court, where diversionary measures can be ordered by child court judges.[53]

In **Japan**, judges before whom children are accused may make one of the following decisions: (1) dismiss the case; (2) refer the case to the governor of the prefecture or the chief of the child guidance centre in the child's hometown; (3) place the child on probation, in a support facility, or child training school; or (4) refer the case to the public prosecutor. A referral for prosecution can be made only when a child is 14 years or older at the time of the criminal acts and a judge finds it is appropriate for the child to be treated under the regular criminal procedure.[54]

[53] *Juvenile and Family Court and Juvenile and Family Procedure Act* (hereafter Thailand, JFCJFP), BE 2553 (1991) as amended, article 50, et seq.

[54] Nobuhito Yoshinaka, *Recent Changes in Youth Justice in Japan*, Hiroshima Hogaku, Vol. 33, No. 4 (2010), p. 89 (describing Japan's *Juvenile Law* 1949 (as amended) (2010)).

Action Point 9:
Child court judges should exercise caution when ordering the arrest and detention of a child suspected of terrorism offences

Child court judges may be asked to authorise warrants or orders for the arrest of one or more children suspected by investigators or prosecutors of committing terrorism offences. In addition, child court judges may be required to determine the legality of arrests already made by police, usually at hearings immediately following apprehension. At those hearings, judges decide whether children taken into custody by investigators should be released or held in detention pending further proceedings. In cases involving arrest warrants, or in hearings after apprehension, child court judges should order a child's arrest or pre-trial detention only in accordance with the law and procedures established by the jurisdiction's applicable law.

Child court judges should be reluctant to issue warrants or orders as a first step in bringing minors before investigators or the courts. Arrests, especially where physical restraints like handcuffs are used, risk traumatising children to a greater extent than adults. If children are arrested forcefully, they may also experience the arrest as violent and even abusive.[55] Instead of having police or other authorised officials take physical custody of children, by force if necessary, child court judges should first consider whether less intrusive means would assure the child's attendance in court, such as issuing a summons to appear, or having the police discreetly request parents to bring a child to the appropriate place. Child court judges should order arrests of minors only if those alternatives have failed, or are likely to fail if attempted, or that an arrest is necessary to preserve evidence or the safety of a child or others involved.[56] The importance of treating children in accordance with their legal status under international law, and with consideration of their ages and wellbeing, should be stressed to police and investigators.

Highlighted Example

The **New Zealand** *Children, Young Persons, and Their Families Act 1989* strictly limits arrests of minors. In most cases, children can only be arrested upon a showing that a summons is not sufficient to prevent further offending, or that arrest is necessary to prevent the loss or destruction of evidence or witness interference. Arrests are also allowed when children refuse to provide their names and addresses to police and it is therefore necessary to ensure their appearance before the court[57].

In every decision whether to detain or otherwise deprive a child of liberty, child court judges should place special emphasis on a child's age and consider it a mitigating factor.[58] Child court judges in terrorism cases should look at a wide range of options under national law for release with conditions, such as house arrest, strict

[55] *UNODC Handbook*, ch. 3, p. 85.

[56] *CRC*, article 37 (b) (detention or custody "measure(s) of last resort and for the shortest appropriate period of time"; *Accord*, GCTF, *Neuchâtel Memorandum*, Good Practices 2, 3, 4, 9, and 10; *Beijing Rules*, Rule 17 (1)(b); *United Nations Security Council Resolution 2225* (2015) (on children and armed conflicts).

[57] *Young Persons, and Their Families Act 1989*, section 214 (1) (a)-(b), section 245 *et.seq.*

[58] In the context of terrorism, pressure on judges to order the arrest and detention of those individuals suspected of committing a violent attack against the community, including children, can be quite great. Judges should resist that pressure and consider the arrest and detention of a child in light of his or her special status as a presumptive victim of terrorism, right to have personal circumstances and level of maturity taken into account, and right to a disposition in his or her best interests.

supervision, mandatory reporting to pre-trial services or probation offices, living at a particular residence, and, if appropriate, agreeing not to associate with certain individuals, visit certain locations, or engage in certain activities closely related to the conduct involved in the suspected offence. Child court judges should choose the least restrictive of those measures, or a combination of them.[59]

The judge should only order detention if it is necessary to protect the public and the integrity of the criminal proceedings, and to ensure a child's appearance in court. A child should only be detained in a facility designed specifically for children, separate from adults and segregated by gender. Judges should also ensure that children are not arbitrarily detained for extended periods of time[60], and should closely monitor the progress of the investigation and prosecution and schedule periodic hearings to review the conditions of confinement and the continuing necessity for the original detention order.[61] Pre-trial detention can lose its preventive nature and become punitive when it is long, a circumstance that violates children's rights, including the right to the presumption of innocence.

During the IIJ workshops, all of the participating countries agreed with the principle that arrest and pre-trial detention of children should be the exception and not the rule. Many countries described their practices in providing separate child facilities for pre-trial custody of minors who cannot be released. A few examples of countries that provide such special arrangements for children include Albania, Algeria, Djibouti, Egypt, Kenya, Macedonia, Mali, Malta, Montenegro, Morocco, the Philippines, Serbia, Tanzania, Thailand and Uganda.

Highlighted Examples

In the **Philippines**, the *Juvenile Justice and Welfare Act of 2006* provides that police who detain a child suspect must transfer him or her within eight hours to the custody of a Social Welfare and Development Office (or a designated non-governmental organisation). The Social Welfare and Development Officer (SWDO) will determine the child's age and explain to the child, parents, and/or guardians the consequences of the child's act, with a "view towards counselling and rehabilitation, diversion from the criminal justice system, and reparation, if appropriate" (section 21 (i)). Based upon that initial meeting and the preliminary police investigation, the SWDO will recommend to the prosecutor's office whether, based upon the child's age, maximum possible punishment, and level of discernment, the minor should be immediately released to parents, guardians, or another designated person in order to seek a community-based diversion agreement without referral to the court.

Children not eligible for immediate release may be housed in a social welfare facility away from adults and members of the opposite gender to await the SWDO's determination of whether to proceed toward a community-based diversion agreement or refer the case to the prosecutor to begin the process of court-ordered diversion. Children awaiting these decisions in the social welfare facility can take advantage of social and other services aimed at addressing their particular needs for rehabilitation and reintegration into the community. If the case proceeds to court, a child court judge must either (1) release the child on recognisance to parents, guardians, or other suitable individuals, (2) grant an amount of bail, or (3) transfer the minor to a youth detention home or youth rehabilitation centre (*JJWA*, section 35). No child in the Philippines is detained before trial in an adult facility or with members of the opposite gender.

...

[59] *Tokyo Rules*, Rules 5 and 6; IACHR, *Annual Report No. 2/97* (1997), paras. 26-37

[60] The United Nations recommends that pre-trial detention last no longer than 6 months. Committee *General Comment No.24*, para. 90. It should also be noted that the prohibition of arbitrary arrest and detention, an obligation under international human rights law, equally applies to children (see article 9, *Universal Declaration of Human Rights*).

[61] The Committee recommends that pretrial detention is reviewed regularly with a view to ending it. Committee *General Comment No.24*, para. 90.

...

In **Serbia**, under the *Law of Juvenile Criminal Offenders and Criminal Protection of Juveniles*, No. 85/05, children awaiting their trials before child court judges may be released, or remanded to "a home, educational or similar institution, under supervision of a guardianship authority or placement in [a] foster family on [a] temporary basis (hereinafter: temporary placement measure) if this is necessary to separate the child from his current environment or to provide assistance, supervision, protection or accommodation for the juvenile" (article 66). Only if such measures would not provide adequate safety and security can child court judges order detention of minors. Any detention must be separate from adults, cannot exceed one month, with limited renewals, and must be reviewed periodically by a child court judge to determine whether it should continue (sections 66-67).

In **Brazil**, once arrested, a youth under the age of 18 should be released to a parent or a responsible adult. Deprivation of liberty should be limited to serious cases in which the youth's safety or the public order requires it. Minors may be held in police lockups for no more than five days, after which they must be released or transferred to a child detention centre.[62]

In **South Africa**, pursuant to the *Child Justice Act of 2008*, children may be placed in child and youth care centres. In deciding whether to place children in such facilities, judges must take the following factors into account: age and maturity level; seriousness of the offences charged; risks that the children may be dangers to themselves or other people; and the appropriateness of the security levels of the centres in relation to the children's circumstances and the seriousness of the offences with which they are charged.

In **Algeria**, only child court judges have the authority to release or detain children suspected of committing terrorist or related offences. Based on the circumstances, judges may release minors to their parents, guardians, or other family members, or place them in child observation shelters where they can communicate with their families. In the shelters, adult tutors are assigned to accompany children throughout their cases and to explain the justice process to them.

Child court judges should also first consider alternative disposition measures permitted under national law for minors found to be responsible for, or to have knowingly participated in, terrorist or related offences. Alternative disposition measures should provide children with social, psychological, familial, educational, and vocational and other training services best suited to promote their rehabilitation and reintegration into the community. Child court judges should impose custodial sanctions only in cases in which it can be determined that a particular child would not benefit from alternative disposition measures and would pose a serious risk of danger to the community if not sanctioned and detained. Judges should take into consideration the rehabilitative needs of the defendants, the protection of society, and the interests of the victims.[63]

There was broad recognition among IIJ workshop and focus group participants of the benefits of applying alternative measures to detention in cases involving children who have committed or participated in terrorist or related offences. The implementation of this practice, however, differs among states, and may also vary, even within a single state, depending upon the age of a minor and the seriousness of the offences. Child court judges in some jurisdictions regularly apply community-based or other non-custodial measures aimed at providing children with needed services. Other countries offer such services only in child custodial facilities, such as residential education or training centres. In a few countries, however, child programmes are provided only in child detention facilities. Below are examples of some of the disposition measures courts have employed to limit the placement in detention centres of children involved in terrorism related offences.

[62] *The Statute of the Child and Adolescent (1990)*, articles 174, 175, 185 (2), 193, 196.

[63] *Tokyo Rules*, Rule 8.1.

Highlighted Examples

In **Nigeria**, **Rwanda** and **Tanzania**, 16-year-old children arrested and charged with unlawful possession or trafficking of arms and participation in terrorist offences could be prosecuted for those offences, but are eligible for alternative sentences that avoid detention. Specifically, **Nigerian** judges can place minors in de-radicalisation and reintegration programmes. **Rwanda** has an option that allows judges to suspend prison sentences and place children in re-education or rehabilitation centres, rather than in prisons. **Tanzania** offers some community-based programmes in such cases. **Kenya** and **Uganda** also allow for placement in child institutions.

In **Thailand**, even in cases carrying possible penalties of 20 years in jail (which include certain terrorism offences)[64], community-based alternative measures are available for children. The JFCJFP, article 90, provides that in cases involving children, courts may order that the director of the Juvenile Observation and Protection Center prepare "a rehabilitation plan that contains conditions with which the child or juvenile including his or her parents, guardians, any persons or representatives of an institution with whom a child or juvenile is residing shall comply". Multidisciplinary teams from the Juvenile and Family Courts prepare social inquiry reports for children and develop rehabilitation plans during a conferencing process that includes children, parents or guardians, victims (including parents or guardians), a child's teachers, community leaders, and sometimes, prosecutors, assigned social workers, or case psychologists. Rehabilitation plans can contain only conditions with which an accused child agrees to comply. Children may be required to finish school, compensate victims, complete ordination, and participate in a "disciplinary camp". A rehabilitation plan may also incorporate conditions for a child's parents or guardians, such as obligating the child's father to attend an alcohol addiction treatment centre, or requiring that the minor's mother participate in a counselling programme. Parents and guardians may also be required to enroll in programmes to improve their parenting skills. Child court judges and members of the rehabilitation teams monitor the programmes, which usually last between six months and two years.

Successful completion of the programs results in dismissal of the children's cases. Failure to complete the plan results in judges issuing further orders they consider appropriate.[65]

In **Albania**, judges and other child justice actors may resolve all criminal cases involving children, including violations of counter-terrorism laws in the criminal code, by ordering diversionary measures, including restorative justice and mediation programmes; advising children and families; issuing verbal or written warnings to children; imposing mandatory measures; or placing children in foster care. Restorative justice measures require children to take certain steps regarding the victims, including providing possible compensation. Mediation involves a broader group of the children's family and community members in developing plans for the offenders to make amends to the victims. Mandatory measures can involve restrictions on a child's movements, such as limiting contacts with certain individuals or locations, curfews, a requirement to live at a certain address, and compliance with reporting requirements and other court orders aimed at promoting a minor's re-socialisation and rehabilitation. Specifically, mandatory measures may require children to stay in school, work, and participate in certain treatment, educational or medical programmes. Placement in a foster home for 6-24 months may be ordered by courts if home environments are not adequate for proper supervision and care.[66]

...

[64] Thailand, *Criminal Code*, B.E. 2499 (1956), as amended by the *Criminal Code* (No. 17), B.E. 2547 (2003), section 135/1 (The Offence in Respect of Terrorization).

[65] This description is taken from UNICEF, *Diversion not Detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific* (2017), pp. 106-107.

[66] *Code of Criminal Justice for Children*, 37/2017. sections 62-69.

...

In **the Philippines**, diversionary or alternative disposition measures can be imposed by authorised community-based committees in cases involving minor offences. Committees include, among others, police and prosecutors. At each level, child justice actors have an increasingly large selection of options for diverting children from prosecution or resolving cases that have reached a court. In more serious cases that do not qualify for police or prosecutor-led diversion – including most terrorism prosecutions – child court judges may order diversionary measures such as restitution or reparation of damage to victims; pologies to victims; care, guidance, and supervision orders; counselling programmes; attendance at training sessions for anger management, problem solving, conflict resolution, formation of good values, and other life skills; community service; confiscation of proceeds and instruments of crime; fines; payment of costs of the proceedings; and institutional care and custody.[67]

[67] The Philippines, *JJWA*, section 31.

Action Point 10: Child court judges should protect the privacy rights of children suspected of terrorism offences during all phases of the proceedings and thereafter

> **Address children prosecuted for terrorism-related offenses primarily through the juvenile justice system.**
>
> *GCTF Neuchâtel Memorandum, Good Practice 5*

As noted previously, in the aftermath of a violent terrorist event, public interest in the investigation and prosecution of individuals accused or suspected of committing the offences can become intense. In addition, news and social media outlets may seek to discover and disclose as much information about the proceedings and the participants as they can access. Judicial officials should take all possible steps to prevent disclosure to the public or the media of personal or other private information regarding children in judicial proceedings. When children are suspected and accused of terrorism and the public interest focuses on them, there can arise a significant risk that their privacy rights will be compromised from disclosure of their identities, their family connections, their addresses, or other private details of their lives. Inappropriate or unlawful disclosure of personal information could subject children to public ridicule or threats. They may become stigmatised before all the facts surrounding the events are known. Even if they are later found not to be responsible for the terrorist acts involved, their future rehabilitation and reintegration into society could be adversely affected.

In accordance with national legislation and local court rules, child court judges should exercise control over the information the media can access and publicly disclose about court proceedings involving children. Judges and other court personnel should shield children from intense media scrutiny and ensure that their privacy rights are preserved.[68] Consideration should be given to imposing special security measures during judicial proceedings, such as closed hearings, limiting media access and coverage of events in the courtroom, and excluding communication and recording devices, such as audio and video recording devices, cellphones, electronic tablets, and similar equipment, from the courtroom.[69]

In addition, judges may wish to consider requiring police, the prosecution service, defence counsel, and other court personnel to refer to child defendants by a neutral identifier, such as a number, letter, or other generic designator during court proceedings. Child court judges may also wish to arrange for private, secured entrances and exits to and from the courtroom and courthouse for use by children and their parents and other family members.[70]

A comprehensive national legislation scheme would certainly provide more effective protection for children's personal information than *ad hoc*, improvised steps. In countries without such a statutory framework, judges handling child terrorism cases should consider recommending and promoting the adoption of new laws and

[68] See also the international legal framework on the right to privacy, in particular ICCPR article 17.

[69] GCTF, *Neuchâtel Memorandum*, Good Practice 5, 6; CRC, article 40 (2) (b) (viii).

[70] These measures help protect the privacy rights of child witnesses in all cases, whether the accused are adults or minors.

regulations to protect such data and to prevent its disclosure to the media and public. Disclosure to a country's government agencies so they can monitor the operation of the child justice system and offer ideas for improvements should also be strictly regulated by law. Below are examples of practices adopted by five countries with legislation protecting children's private data and information.

Highlighted Examples

The Philippines' *Juvenile Justice and Welfare Act of 2006* provides a comprehensive framework for maintaining the confidentiality of information involving children in the criminal justice system. Section 43 of that act mandates that information concerning children gathered from the time of their initial contacts with authorities until the final dispositions of their cases is to be considered privileged and confidential. Public access to the information and to child court proceedings is strictly prescribed. Parties and the participants in the proceedings are prohibited from disclosing information about them. The police must use a separate police blotter and a coding system to conceal material information that could lead to the identity of child suspects and witnesses. Records of children in conflict with the law cannot be used in subsequent proceedings for cases involving the same individuals as adults, except when beneficial for those individuals and upon their written consent. Finally, adults cannot be prosecuted for refusing to disclose the existence or underlying conduct involved in proceedings brought against them when they were minors.

Albania's new *Code of Criminal Justice for Children (Law No. 337/2017)*, Chapter XV, Sections 136-139, provides an extensive statutory scheme for maintaining and storing information pertaining to children who have entered the criminal justice system. Section 136 requires the Ministry of Justice to create the Integrated Data System of Criminal Justice for Children (IDS). Data from the police, prosecution service, courts, institutions for execution of sentences, and probation officers must be collected, entered into, and updated in the IDS. The purposes of the data collection include allowing justice operators to follow the progress of each case involving a child; ensuring efficient and prompt administration of child prosecutions; permitting all relevant institutions to access information necessary to correct a child's denial of rights during a proceeding; and providing a statistical database that can be used to analyse and improve child criminal justice policies. Access to the data is subject to written regulations and limited to authorised institutions and officials. Dissemination or disclosure of child information contained in the database is prohibited unless authorised by law. Children who have been sentenced may inspect their own files, which are stored and eventually destroyed in accordance with Albania's records retention law.

In **Tanzania** and **Uganda**, trials should normally be held in public, but judges have the discretion to exclude the media in family and child cases. In **Tanzania**, posting about child cases on social media without permission is considered contempt of court, even if the post may not affect the outcome of a judgment.

In **Cameroon**, child court judges should make courtrooms child-friendly, hold trials in-camera, and establish protective atmospheres to ensure the privacy of all children. Failure to comply with the requirement to hold trials in-camera results in the annulment of the decision to be made (Article 720(1) of the *Criminal Procedure Code*). The need to protect the privacy of the minor is extended to the publication of the judgment, which should not contain any element making it possible to identify the child. Violation is subject to penal sanctions pursuant to article 198 of the *Criminal Code*.

Child court judges should also protect the privacy interests of children even after the prosecution is complete, sanctions have been imposed, and the case has been resolved. This includes complying with all regulations in place to protect the personal and private information of children from disclosure while they are subject to the court's disposition measures. For example, the Council of Europe's *Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures* requires that member states establish case files for children subject to the criminal justice sanctions; that the files contain only information relevant to the imposition of the sanction or other measure; that the files be disclosed only to those individuals authorised by law to inspect them, including children, parents, guardians, and authorised officials; that children subject to the measures have the right to challenge the information in their case files; and that following completion of the sanctions, files be destroyed or maintained in archives with strictly controlled access that prevents disclosure to unauthorised third parties. Prosecutors and judges should not use the information contained in the case files of child defendant in any adult proceedings in subsequent cases involving the same offender.[71]

Child Court judges should also exercise great care in commenting publicly, especially to the media, about child investigations and prosecutions. Public pronouncements about the facts of cases, the evidence, or especially the identities of the parties, risk the disclosure of personal and private information about the children involved. The best practice is usually to make no statementat all. In fact, judicial ethics rules often prohibit judges from making public comments regarding specific cases.

If child court judges are called upon to comment publicly about particular cases, however, they should make sure that the information disclosed cannot be used to identify child suspects or witnesses, or their family members or associates. Statements should be factually accurate and balanced, and carefully avoid inflammatory descriptions of the facts or evidence. As appropriate, judges and national or local governing judicial bodies should consider designating a person or a group of individuals to serve as media relations officers in order to receive and respond to inquiries from the public about cases involving children charged with terrorism and related offences. The media relations officers should also be in charge of training child justice and other judges regarding when and how they may respond individually, if at all, to such inquiries. In this way, child court judges can ensure that only appropriate, accurate information is provided to the public without compromising the privacy rights of children suspected or accused of participating in terrorism.

[71] *Beijing Rules*, Rule 21.2.

Action Point 11:
Child court judges should create a child-friendly courtroom environment in terrorism prosecutions involving children

Address children prosecuted for terrorism-related offenses primarily through the juvenile justice system.

GCTF Neuchâtel Memorandum, Good Practice 5

Child court judges should take steps to ensure that courtrooms are as "child-friendly" as possible. Children are more likely to be intimidated by a justice system they do not fully understand and in which they can be subjected to detention, interrogation, judgment, and punishment. As a result, child suspects may exhibit fear, inhibition or defiance that can obstruct judicial proceedings and make it more difficult for other officials to identify minors' individual needs. "Child-friendly" courtrooms often alleviate these concerns.

IIJ workshops and focus group participants offered many suggestions to create such an environment, including placing the court's bench at the same level as the prosecution and defence counsel tables; having court officials wear less formal, civilian clothing; maintaining court security guards' firearms out of a child's sight; and having separate, private entrances and exits from the courtroom and courthouse.[72]

Child court judges should also take extra steps to make sure children accused of offences understand the court proceedings. Judges should address children using language they will easily understand and should speak to children using terms and concepts appropriate to their individual developmental levels. Doing this through an interpreter can be especially challenging. Written material should also be prepared so child defendants can easily understand it, even if their cognitive and analytical abilities are not yet fully developed. Simply reading or reciting information, especially complex legal principles, to children does not guarantee that they will understand it. Written and oral communications in the criminal justice system often contain technical legal terms and concepts unfamiliar to lay persons, especially children. Simple, clear, age-appropriate language is required in child cases, including terrorism or related matters. In addition, child court judges should consider asking minors who appear before them to explain in their own words the information provided, or describe what happened in the court proceedings, in order to verify that they indeed understood.

Child court judges should also consider allowing children and their lawyers, or other representatives, to visit a courtroom in advance of any proceedings to allow children to become more comfortable with the court environment and permit their counsel to explain where the judicial actors will be located and what their respective roles will be.

[72] For child victims and witnesses and child-friendly justice, please also see *UNODC Handbook*, pp. 50-56.

Action Point 12:
Child court judges should receive information and clarification from appropriate experts before imposing pre-trial or post-trial measures

Apply the principle of individualization and proportionality in sentencing.

GCTF Neuchâtel Memorandum, Good Practice 9

Before deciding upon the appropriate measures to impose during the pre-trial and disposition phases of child prosecutions, child court judges should have access to, and request if necessary, reports by relevant experts concerning the background, circumstances, education, and needs of children suspected of or found responsible for terrorism offences.[73] Preparation of such reports requires justice systems to ensure that social service personnel with the appropriate training and experience to investigate and present the information to child court judges. Social service experts should seek out relevant information from children's teachers, associates, and other members of their communities. Child court judges should consider obtaining information from children's medical caregivers, including psychologists and psychiatrists, who may have examined or treated them. Social services personnel and other reporting experts should be present during the court's disposition proceedings to respond to questions or provide needed clarification regarding their reports.

Highlighted Examples

The **Philippines** *Juvenile Justice and Welfare Act*, section 16, contains the following provision: "Intake Report by the Social Welfare Officer. - Upon the taking into custody of a child in conflict with the law, the social welfare officer assigned to the child shall immediately undertake a preliminary background investigation of the child and, should a case be filed in court, submit to the court the corresponding intake report prior to the arraignment". The intake report is also provided to the investigating officer who must initially determine, based upon factors listed in the statute, whether to refer the child for immediate diversion or to the prosecutor or court for the filing of a case.

If a child does not qualify for immediate diversion, a court action will be undertaken, in which case, the Social Welfare Officer must prepare a more extensive case study report. That report is defined in section 4 (e) of the *JJWA*: "(e) Case study report is a written report on the social case inquiry conducted by the social worker of the local government unit or the Department of Social Welfare and Development or by the social worker designated by the court on the social, cultural, economic and legal status or condition of the child in conflict in the law.

...

[73] *Beijing Rules*, Rule 16.1 states, "[i]n all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the child is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority".

...

It shall include, among other matters, the child's development age; educational attainment; family and social relationships; the quality of the child's peer group; the strengths and weaknesses of the family; parental control; the child's attitude towards the offence; the harm or damage done to others resulting from the offences,

if any; and the attitude of the parents towards the child's responsibility for the offence. The social worker shall also include an initial determination of the child's discernment in the commission of the offence." Section 30 requires that case study reports must be provided to child court judges before arraignment of a minor, or as soon thereafter as possible.

The **Albanian** *Code of Criminal Justice for Children*, section 47, requires "independent assessment reports" be prepared by prosecutors and judges when certain decisions are made in child proceedings, *i.e,* when diversion is granted, punishment is imposed, sentence is executed, or conditional release is considered. The reports are to be prepared by designated experts, the Probation Service, or other appropriate agency. Further, information from reports written during the earlier stages of a proceeding is added to those reports produced later in order to present a complete and current description of the child's circumstances.

The **Tanzanian** *Child Act* states, "[t]he social welfare officer shall also be present during the court review proceedings and, if requested by the court, give evidence on any matter contained in the report".

In **Papua New Guinea**, the child court judge must always request that social care officers appear and must consider their opinions before making any decision in a child case.

Action Point 13:
Child court judges should receive specialised training in adjudicating terrorism cases involving children

Address children alleged to be involved in terrorism-related activities in accordance with international law and in line with international juvenile justice standards.

GCTF Neuchâtel Memorandum, Good Practice 1

Assess and address the situation of children in a terrorism-related context from a child rights and child development perspective.

GCTF Neuchâtel Memorandum, Good Practice 2

Judges who handle terrorism matters involving children should receive specialised training[74] before they begin handling cases involving children, especially those involving terrorism charges. Countries should also consider whether training in international child justice standards and principles should be required as part of the initial training and education that prospective judges receive before they qualify to be appointed or designated as judges. A primary focus of judicial training in child justice should be upon the special rights of children under international criminal, human rights, and humanitarian law, counter-terrorism frameworks, as well as national legislation and practices governing the operation of the child justice system. The dual purposes of the child justice system should be emphasised so that judges understand that they should not only protect the community by holding accountable children who commit terrorism or other offences, but must also act in the best interests of the children involved[75].

Cases in which children are suspected or accused of committing terrorism offences present unique legal issues and practical challenges that normally do not arise in cases involving adults or cases involving children suspected of committing other criminal offences. Judges, as well as others in the child justice system, should receive training in how vulnerable, malleable, and disaffected children can be victimised by terrorists and violent extremist groups that recruit, exploit, and use them to commit acts, including violent acts, against communities and nations. Judges should have the opportunity to understand that such groups often subject children to fear, indoctrination, and psychological pressure through enslavement, sexual exploitation, and exposure to combat or to dangerous terrorism operations. An explanation of how children can be affected by those experiences should be part of the specialised training curriculum. For example, as a result of their participation with violent terrorist groups, children may suffer physical harm and disabilities, experience cognitive impairment and slower intellectual development, and experience severe emotional problems.

[74] Committee *General Comment No. 24*, para. 112.

[75] *CRC*, article 3 (1) (“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”).

Judges should understand how children's stigmatisation from being identified as "terrorists" could expose them to risks of violence from the communities to which they may eventually return. The training should also explore how some punishments — long periods of incarceration, housing children with adults, and providing little opportunity to receive proper medical, psychological, educational, and vocational support and services – may prevent children from moving beyond their turbulent pasts and re-entering society as law-abiding, productive members.

Child court judges should receive training about how children differ developmentally from adults, highlighting the factors that often make minors incapable of forming criminal intent in their actions.[76] The sociological, psychological, emotional, and cultural influences experienced during childhood are also important factors affecting the behaviour of children. It has been noted that minors frequently act impulsively and succumb to peer pressure. They can also be influenced or manipulated by adults to become involved in illegal, and sometimes violent, activities. Psychological and physical immaturity can make children particularly vulnerable to radicalisation and coercion that can lead to their participation in terrorist acts. As noted, these vulnerabilities can result in children becoming victims of, rather than voluntary participants in, terrorism or related offences.[77]

Child court judges should also receive information during their training regarding the root causes of the child suspect's involvement in terrorism related offences.[78] The factors that lead to terrorism undoubtedly differ among countries, depending upon their histories, cultures, and past experiences with terrorist groups and violence. Being aware of those factors will allow child court judges to better understand the specific circumstances, influences, and needs of children who come before them suspected or accused of committing terrorism offences. In turn, that understanding will allow judges to fashion pre-trial, trial, and post-trial measures that serve the best interest of the children involved while protecting the community from unwarranted security risks.

Before judges begin handling terrorism cases involving children, they should also receive appropriate training regarding alternative measures for detention, prosecution, and sentencing that are available under national and international law[79], and training that assists them in creating an appropriate child-friendly environment in the courtroom and elsewhere during the judicial process.[80] A child charged with an offence should be dealt with in a manner which takes full account of his or her age, level of maturity and intellectual and emotional capacities. Steps should be taken to promote the child's ability to understand and participate in the proceedings without intimidation or inhibition.

[76] The United States Supreme Court has taken note that, "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds"—for example, in "parts of the brain involved in behavior control." *Miller v. Alabama,* 132 S. Ct. 2455, 2464 (2012) (quoting *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010)).

[77] GCTF, *Neuchâtel Memorandum,* Good Practice 2.

[78] Committee *General Comment No.24*, para. 112.

[79] See Action Points 9 and 10 herein.

[80] See Action Point 12 herein.

Ideally, the instruction described in this Action Point should be developed and implemented by a national training institute that guarantees consistency and continuity of course content. States should provide these national training institutes with adequate resources and authority to fulfil their mission and to require all child court judges in the country to participate in initial and continuing programmes of capacity building and skills development. Judicial training should be multi-sector instruction and should include police, prosecutors, social services personnel, and probation officers to ensure that judges understand the roles of those other actors. Such a multi-disciplinary approach will allow all officials to understand how they can work together to fulfil the child justice system's dual purposes of protecting the community and working for the best interests of the minors involved. In addition, the national institute should seek out experts from across the country, the region, and the international community to present the training, rather than relying solely on a permanent faculty or group of designated trainers. Collaboration with a broad range of experts from diverse regions will ensure that all participants in the training receive the best information available to assist them in performing their duties.

Several examples of states that have established specialised child justice training programmes for judges are underlined below. These programmes represent affirmative steps states have taken to support the implementation of international standards for child justice.

Highlighted Examples

In 2008, **Kenya** established its Judiciary Training Institute (JTI) to provide training and education to members of the Kenyan judiciary. The JTI is responsible for developing and conducting continuing education programmes for judges and other judicial officers, including staff. Kenya requires all Kenyan judges and magistrates serving in courts in the country to receive regular training conducted by the JTI. Courses cover substantive law, evidence, procedure and, where appropriate, specific areas of specialisation. All magistrates in Kenya's Children's Court are specially trained in child justice laws and standards.

Cameroon, similar to other countries with civil law traditions, has established a magistrate school that provides initial and continuing training of individuals embarking upon a career as a "magistrate"[81] (prosecutor or judge). The Cameroonian magistrate school includes a course on child justice and standards that all students take, including those who will become magistrate judges. In addition, since 2004, the Ministry of Justice, in coordination with UNICEF, provides seminars concerning the rights of children, which magistrates, including judges, can attend throughout their careers. These seminars are open to social workers who are usually appointed as assessors in courts dealing with child defendants. They are also open to police officers and prison administration staff to enable multidisciplinary interaction ensuring an integrated approach to interventions in the field.

The Philippines' *Family Courts Act of 1997*, section 4, establishes the general qualifications for Family Court judges who handle cases involving children suspected or accused of crimes, including terrorism offences. That section also provides that judges of the Family Courts "shall undergo training and must have the experience and demonstrated ability in dealing with child and family cases". The law also requires the Philippines Supreme Court to provide continuing education regarding "child and family laws, procedures and other related disciplines to judges and personnel of such court".

...

[81] In most civil law systems, the prospective Judge or Prosecutor is trained at the judicial school. If they successfully complete the curriculum and graduate from this school, the graduate is integrated into the Magistracy as a Magistrate and during his or her career may hold different positions in the judiciary (Judge or President of a Tribunal or Court) and in the Public Prosecutor's Office (Deputy Public Prosecutor or Prosecutor).

...

In **Albania**, the *Code of Criminal Justice for Children* (37/2017) requires, in article 26, that individuals who administer criminal justice for children must be trained and have specific knowledge about the topics set out in the statute. Those topics include, inter alia, standards and principles concerning the rights of children; child psychology principles important for communicating with children using age-appropriate language; indicators that an offence has been committed against a child; the dynamics and nature of violence against children, including the effect and consequences for children experiencing such abuse; the ways incitement of children to commit violence can occur; and skills and techniques related to assessment of critical situations and risk assessment for individual children. Article 27 of the Code requires that all judges assigned to the child section of a district court "must be specialised and trained on criminal justice for children".

In **Lebanon**, child court judges receive specialised training in handling cases involving minors. The training is conducted with the participation of police and prosecutors in order to promote a better understanding of how each entity operates within the child justice system. Such an integrated approach also seeks to foster the development of policies and practices to ensure that the best interests of children are appropriately considered, together with the public's interest in having secure communities free from terrorist and other criminal activities.

Action Point 14:
Child court judges should support other child justice actors in working as a team

In light of the critical role judges play in the child justice system, they should strive to make decisions based on the most complete and accurate information available to them. This is feasible only if they collaborate with other child justice actors and appropriate experts. In all cases, the decisions of child court judges should be informed by information collected by police and other investigators, defense counsel, prosecutors, investigating magistrates, probation officers, social service experts, and community members knowledgeable about the backgrounds of children appearing before them.

Some countries have established legal frameworks for child justice actors to collaborate with each other.[82] Other countries foster exchanges of information on an informal or *ad hoc* basis. All such practices, formal or informal, must be consistent with applicable international and national privacy, data protection and personal information disclosure laws. Information sharing among child justice officials should also be subject to supervision and review so it does not create a real or apparent conflict of interest. For example, judges who wish to communicate with case prosecutors should include defence counsel in the discussions in order to avoid a perception that the communications are inappropriate. Perceptions that judges and prosecutors are coordinating case results without defence counsel's participation could cause a loss of public confidence in the criminal justice system. Judges in countries that do not allow relevant actors or agencies to gather and share information in child terrorism cases should consider promoting the adoption of legislation to ensure that justice officials, including judges, can do so within the overall international child justice framework.

Highlighted Examples

The Netherlands has created a multi-disciplinary system that includes justice and protection agencies that collaborate to develop individually tailored plans for children involved in or at risk of committing terrorism offences. Groups are established at the municipal level and include a child case manager, prosecutors, police, probation officers, child protection workers, mental health experts, school officials, municipal officials, and representatives of the office of the national security and counter-terrorism coordinator. When a child comes into contact with the police, the group convenes to consider the case. If prosecution is inappropriate, the group may impose one or more administrative orders to provide the appropriate services and security measures for the child. Any measures requiring judicial authorisation can be referred to the Child Court for approval. Information about the child is shared among the group members in accordance with the Dutch data protection laws that cover personal data, judicial data and criminal records, and police information.

The national security and counter-terrorism coordinator's office has established a specialised mechanism for sharing case-specific information with the group without compromising national security interests.[83]

...

[82] In view of the complexity of child recruitment by terrorist and violent extremist groups, a multi-agency approach is especially relevant. See also *UNODC Handbook*, p.35.

[83] A fuller discussion of the Netherlands' collaborative approach in child counter-terrorism matters appears in the IJJO Study, *supra*, n. 10, at section 5, pp. 48-49.

...

Thailand also requires that prosecutors and social services agencies coordinate and exchange information from the time children first come into contact with law enforcement authorities. The *Juvenile and Family Court and Juvenile and Family Procedure Act of 1991 (BE 2553)* provides that within twenty-four hours of arrest, children must be sent to one of the country's Observation and Protection Centers (OPC), which are staffed by social workers, probation officers, and psychologists. Information about a child's character and background is compiled and later shared with the Family Court and the prosecution service for use in any judicial proceedings.

A **Philippines** judge explained that prosecutors in child cases are members of Diversion Committees established under court rule for court cases involving minors charged with offences punishable by up to 12 years' imprisonment. The Committees are led by a Clerk of Court and consist of prosecutors, defence attorneys, and assigned social workers. The purpose of the committees is to determine if children being charged with crimes can be diverted to receive alternative measures and services. The Committees convene meetings with parents, custodians, or the minors' nearest relatives to discuss whether diversion is appropriate. Committee members consider a number of statutorily authorised alternative measures and services, which can be applied individually or in combination. The alternative measures range from simple reprimands to mandatory attendance at trainings and seminars aimed at avoiding recidivism, as well as community service and institutional custody and care. Committees prepare reports containing their conclusions and recommendations for case dispositions, which judges review and consider in hearings with all parties present. If diversionary measures are ordered, social workers follow up with the children and their parents through monthly meetings and provide judges with progress reports. Children who successfully complete diversion programmes are eligible to have their disposition orders terminated by a judge. This process avoids court judgments and imposition of traditional punishments against children.

Child court judges can also have a leading role in the implementation of all of the *Neuchâtel Memorandum* Good Practices, especially Good Practices 5 – 10 relating to Justice for Children, but also Good Practice 2, which relates to assessing children from a child's rights and development perspective. Judges should be willing to cooperate, consistent with their national laws, in their government's prevention and de-radicalisation efforts, as well as rehabilitation and reintegration programmes. Since judges are often prominent members of the community in which they serve, they can also help educate the public about the dual purposes of the child justice system and the special rights of children under international and national law.

Conclusion

In the child justice system, the judge plays a crucial role in overseeing trials, deciding on a sentence and thereby determining the future of children charged with criminal conduct, including terrorism-related offences. This role requires specialised expertise and skills that are specific to the trial of children, which do not entirely conform to those required in adult court proceedings. Child justice principles require that judges handling counter-terrorism cases involving children receive appropriate training regarding the causes of the minor's participation in terrorism or terrorism-related activities. Many countries have recognised that having specialised judges is a highly effective way to guarantee both the best interests of the child and the security of the community. States should develop and establish judicial programmes with a multi-sector approach to allow the judge to understand the perspectives of all the sectors involved in dealing with children before making a decision. Judges are encouraged to base their decisions on the needs of children, as highlighted in social inquiry reports or similar assessments, considering that custodial measures should be imposed as a last resort.

Throughout the process, the judge should ensure the protection of all pre-trial, trial and post-trial rights of the child. If there is a question as to the child's age, the judge can refer to birth records, religious community records, school records, parents' statements, village midwives' statements and physician's or dentist's assessment. If the uncertainty on the age persists, the minor would be presumed to be under the minimum age of criminal responsibility. The child should always be presumed innocent until proven otherwise. The judge should not convict or pronounce a sentence based on confessions of guilt unless they ascertain that admissions were not made under duress. In addition, child court judges should protect the privacy rights of minors. The judge should guarantee the non-disclosure of the child's identity to the media or public, and should consider other measures including conducting closed-hearings and excluding recording devices[84] from the courtroom.

Depending on the case and if consistent with national law, the judge should consider diversionary or alternative measures to imprisonment. In any event, any dispositions should be driven by the child's wellbeing and should increase their chances of rehabilitation and reintegration into the community. For this reason, the judge should always consider that while adults are judged on the grounds of their past, minors should be judged for the sake of their future. Therefore, the judgment of the child defendant must be a means rather than an end.

The *CRC*, the *ICCPR*, and other international instruments require these protections. Numerous examples are highlighted throughout this Note to illustrate how countries implement the action points. The international community has recognised the best way to achieve an effective and fair child justice system — an approach that both provides accountability and appropriately addresses in a sustainable manner the root causes of the involvement of children in terrorism related activities — is to encourage every nation to fully implement these protections by ensuring that all child court judges are well-trained and have adequate resources to perform their jobs.

[84] Cellphones, audio and video recording devices and similar equipment

The International Institute for Justice and the Rule of Law
University of Malta - Valletta Campus
Old University Building, St. Paul Street, Valletta, Malta

info@theiij.org

@iijmalta_fr **www.theiij.org**