



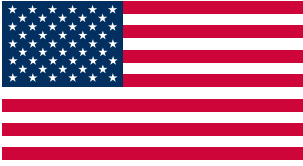
The International Institute for  
Justice and the Rule of Law

**IJJ JUVENILE JUSTICE  
PRACTITIONER'S NOTES**

# Prosecutors

*A publication under the  
IJJ Juvenile Justice Initiative*





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## The International Institute for Justice and the Rule of Law


Inspired by the Global Counter-terrorism Forum (GCTF), the IJ 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 IJ 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 IJ is staffed by a dynamic international team headed by an Executive Secretary, who are responsible for the day-to-day operations of the IJ.

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## 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 (IJJ), 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 IJJ Juvenile Justice Initiative started with development by the International Institute for Justice and the Rule of Law (IJJ) 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.<sup>1</sup>

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”.<sup>2</sup> 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<sup>3</sup> 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 IJJ Juvenile Justice Initiative developed a strategy to promote visibility and implementation of the GCTF *Neuchâtel Memorandum*, including the development of the *IJJ Juvenile Justice Toolkit*<sup>4</sup> (hereafter *IJJ Toolkit*). The latest phase of the IJJ Juvenile Justice Initiative has aimed at helping the countries served by the IJJ 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. Other participants, experts and facilitators included representatives from international

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

<sup>2</sup> GCTF, *Neuchâtel Memorandum*, Good Practice 1; See also The *United Nations Convention on the Rights of the Child (CRC)*, Articles 37 and 40.

<sup>3</sup> 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.

<sup>4</sup> Available on the IJJ website at: <https://theijj.org/wp-content/uploads/2021/09/IJJ-TOOLKIT-JUVENILE-JUSTICE.pdf>

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 *IJJ 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 IJJ organised each workshop around the five sections of the *IJJ 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 *IJJ 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 IJJ, assisted by consultants, incorporated feedback from participants at these events into the *IJJ 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 *IJJ Juvenile Justice Notes for Practitioners* (hereafter *IJJ 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 *IJJ 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 *IJJ Notes for Practitioners*, the IJJ 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 *IJJ 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 IJJ submitted the draft *IJJ 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 IJJ finalised the *IJJ 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<sup>5</sup> 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”.<sup>6</sup>

This *IJJ Juvenile Justice Note for Prosecutors* (hereafter *IJJ Note for Prosecutors*) offers “action points” regarding how prosecutors can employ and promote effective practices to support child-specific procedures for children involved in terrorism-related offences. The *IJJ Note for Prosecutors* 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 IJJ Juvenile Justice Initiative. This Note also highlights examples of how specific countries implemented the guiding principles of the *Neuchâtel Memorandum*. The action points and highlighted examples focus principally on the *Neuchâtel Memorandum’s* Good Practices 5 through 10, which concern “Justice for Children”, but also touch upon other of the *Memorandum’s* good practices.

Although this Note is intended for prosecutors, the same practices which are recommended to prosecutors throughout this document are also recommended to investigative magistrates in those legal systems where they lead the investigative process.

Prosecutors from both common law and civil law criminal justice systems participated in the development of this *IJJ Note for Prosecutors*, offering suggestions for both action points and examples of successful implementation.<sup>7</sup> At times, the workshop and focus group meeting discussions noted the differences between the operation of these two criminal justice systems and the distinct roles played by judicial actors 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 prosecutors with helpful suggestions on how to put the *Neuchâtel Memorandum* Good Practices into practice. Even though some of the action points may apply more directly to one system or another, it is hoped that all prosecutors will find them useful.

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<sup>5</sup> 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 *IJJ 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*.

<sup>6</sup> *CRC*, Article 40 (3); *Neuchâtel Memorandum*, Section III, Good Practice 5 at p. 6.

<sup>7</sup> Judges, investigators, defence counsel, and detention personnel in attendance at the workshops and focus group meeting also provided comments and suggestions that have been incorporated into the *IJJ Note for Prosecutors*.

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## **Action Point 1:**

# **Prosecutors should work in specialised units that handle child cases involving terrorism and related offences**

The Convention on the Rights of the Child requires States to establish specific laws, procedures, authorities and institutions applicable to children suspected of committing offences, including terrorism-related offences. Therefore, each State party is bound to establish a child justice system for children aged between the legal minimum age of criminal responsibility and eighteen. Only that specialised child justice system can prosecute cases involving these children, and not the criminal justice system applicable to adults. Considering the notable differences between the child justice system and the criminal justice system, including the best interests of the child which should remain a primary consideration in criminal cases involving children, it is of utmost importance that only specialised practitioners from dedicated units handle cases involving children suspected of terrorism-related offences.<sup>8</sup> Although international conventions and standards for child justice do not require countries to establish separate prosecution units to handle cases of children charged with or suspected of committing terrorism offences, it is recommended that organising such units be considered.

Applying international and national child justice standards in a counter-terrorism context requires that prosecutors have a deep understanding of the special rights and interests of children involved in the criminal justice system. It also demands that those practitioners understand the differences in cognitive, physical, psychological, and social development between children and adults, as well as the contextual facts in which terrorism-related offences involving children are committed. Prosecutors trained in these areas and working together in a separate unit can share their experiences and practices in handling child cases involving terrorism. Over time, they can also become aware of and formulate the best responses to the phenomenon of children involved in activities that threaten the community's security on a large scale. Experience has shown that the nature and sources of terrorism are constantly changing, and the roles that children play continue to evolve. Balancing the best interests of a child and the public's right to security can be a delicate task. The search for the right balance in specific cases would undoubtedly benefit from close collaboration of prosecutors working side-by-side in a separate unit. Child counter-terrorism prosecutors working in a separate unit can better assure that the special rights of children are respected during the judicial process. Establishing such units would be a further step toward making the child justice system work for the best interests of the child while maintaining public security.

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<sup>8</sup> UNODC, *Handbook*, pp. 77-78



## Highlighted Examples

**Switzerland** has established a specialised child justice system at the cantonal, or regional, level. The competent authority is the Prosecutor's office of the Swiss canton where the child resides. The child court prosecutor, along with the cantonal child court judge, investigates all cases in which children are suspects, including those involving terrorist offences. At the end of the investigation stage, the prosecutor may close the matter, issue a summary penalty, or bring charges against the child under the *Juvenile Criminal Law Act* and the *Juvenile Criminal Procedure Code*<sup>9</sup>.

The goals of the system are to prevent re-offending and promote integration, protection and education of the child. Various protective measures can be applied depending on the needs of the child and may terminate when the child reaches age 25. Protective measures have priority over penalties in the child justice system.

The **Philippines** has organised its child prosecution resources in a practical way to meet the challenges presented by its geography and its own security situation. The country is an archipelago comprised of over 7400 separate islands dispersed over a large area in the western Pacific Ocean. Its two largest cities, Manila and Quezon City, are in the north, far from the rural southern areas where most of the Philippines' terrorist acts have occurred since 2000. The Philippines' government has created separate child prosecution units in the larger cities. These units have prosecutors specialised in terrorism cases. In the rural areas, however, which have fewer people and fewer resources, prosecutors trained in child justice standards are tasked with handling adult cases as well as all child matters, not just those involving terrorism offences.

Terrorism cases involving children arising in the distant regions of the country are oftentimes transferred to Manila or other larger urban areas, mainly for security reasons and because the provincial prosecutors do not have the resources or the experience to handle them. On the one hand, this practice results in more child terrorism cases being handled by highly competent, specially trained prosecutors in the cities. On the other hand, the proceedings may occur far from the scene of the events and from the homes of suspects and witnesses. It can be difficult to secure the attendance of witnesses at a trial in urban areas for a number of reasons, including a lack of efficient means of transportation from remote areas, the witness's inability to afford to travel long distances and pay for lodging in the cities, a general fear of having to relocate for a substantial period of time during court proceedings, and a loss of interest in the case due to repeated postponements of the trial.

Occasionally, cultural differences between the community where the offence occurred and the urban area in which the case is handled can complicate the prosecution as well, making it difficult to promote public confidence in the justice system. Despite these challenges, the Philippines has implemented a practical system in which child cases, including terrorism matters arising in urban and rural areas, are handled by prosecutors specially trained to deal with prosecuting minors. The country continues to work to strengthen its child justice system in dealing with terrorism cases occurring throughout its territory.

In **Kenya**, the Office of the Director of Public Prosecutions (ODPP) is consolidating all child prosecutions, including those for terrorism offences, within the Juvenile Justice section of the Children, Victims and Witness Support Division of the ODPP. This consolidation, which will be completed in 2019, is being done administratively, without the need for new legislation.

<sup>9</sup> As described in United Nations Office on Drugs and Crime, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups, The Role of the Justice System* (2017), p. 80.

Prosecution offices should also consider developing procedural manuals for prosecutors who handle child cases involving terrorism or related offences. Representatives attending workshops under the Initiative from several countries, specifically the Philippines, Macedonia, Serbia, Kuwait, Mauritania, and Jordan, advised that their prosecution services have developed procedural manuals for prosecutors handling child cases. It is not clear, however, if those manuals deal specifically with the prosecution of child cases in a counter-terrorism context. It is recommended that all countries with child prosecutors' manuals include sections dealing with cases arising out of acts that violate national counter-terrorism laws. Likewise, countries with counter-terrorism prosecutors' manuals should consider including sections concerning prosecutions of children charged with terrorism offences.

### Highlighted Example

In 2014, **the Philippines'** Juvenile Justice and Welfare Council issued a resolution containing revised rules and regulations implementing *Republic Act No. 9344, Juvenile Justice and Welfare Act of 2006*, as amended by *Republic Act No. 10630*. The Directive serves as a type of manual for prosecutors and others. The Act covers all offences, including those involving terrorism. In Part XI, sections 57-62, the Council resolution set out the specific duties of the Prosecutor's Service in handling child cases. The regulation covers the Prosecutor's authority to conduct a preliminary investigation and file charges, his obligations to notify the child's attorney or the Public Attorney's Office of the charges, the timing of a probable cause determination and notice to the minor's lawyer. As discussed below, the Council resolution also sets out the prosecutor's role in implementing the statute's mandatory diversion procedures.

## Action Point 2:

# Prosecutors should oversee investigations of children accused or suspected of involvement in terrorism offences

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

*GCTF Neuchâtel Memorandum, Good Practice 3*

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

*GCTF Neuchâtel Memorandum, Good Practice 5*

Consistent with national law, prosecutors should actively supervise terrorism investigations involving children<sup>10</sup> to ensure they are carried out by the investigative services in accordance with national and international child justice standards, as well as international human rights and humanitarian law principles<sup>11</sup>. Prosecutors’ roles in the investigation and prosecution of terrorism or related offences involving children differ among countries. In countries that follow a common-law tradition, prosecutors may take a more active role in supervising the investigation than prosecutors in civil law countries. Whether actively supervising a terrorism investigation or reviewing results of an investigating agency’s work, prosecutors should take all possible steps to ensure that the investigative services conduct effective, fair, and complete investigations of the offences.

They should also ensure that children involved in the investigations have received the special rights and considerations afforded minors in light of their age, gender and cognitive development. Investigations should be conducted to accomplish two principal goals:

- to establish, based on lawfully obtained and reliable evidence and information, the identities and specific roles of the individuals responsible for commission of terrorism offences; and
- to promote the best interests of the children involved and protect their chances for rehabilitation and reintegration into the community following the judicial process.

Based on their training and role in a criminal justice system, prosecutors are uniquely qualified to help ensure that from the earliest contact children have with law enforcement officials, their rights are respected and they are treated with dignity in compliance with international and national child justice standards.

<sup>10</sup> Investigation methods shall respect the criteria of necessity and proportionality. In case of conflicts between juvenile law and standards and counter-terrorism legislation, the child’s best interest principle shall apply.

<sup>11</sup> For a discussion of a prosecutor’s role in terrorism cases generally, see UNODC *Handbook on Criminal Justice Responses to Terrorism*, Part Two, pp. 74-75 (role of prosecutor as guarantor of compliance with international rule of law and human rights principles, citing *Guidelines for the Role of Prosecutors (Eighth United Nations Congress of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.26, annex).

## Highlighted Examples

A **Serbian** prosecutor who attended an Initiative workshop reported on a case in which police, in close coordination with the prosecutor, took swift action to identify a Serbian child who had posted on the Internet his intention to purchase a high-powered rifle to carry out an assault at his school. Within hours of receiving a tip from an international police organisation, Serbian police were able to identify the child involved and conduct a search of his residence to verify that he had posted the threats. No firearms were found at the home. By responding quickly, the police, under the supervision of the prosecutor, intervened to prevent the child from actually purchasing a weapon or carrying out his threat. The prosecutor then interviewed the child, in the presence of his parents and attorney, regarding a possible violation of the Serbian security laws prohibiting possession of a firearm. After the interview, the prosecutor declined prosecution and resolved the case through an order requiring the child to be supervised by a social services provider. In this case, the prosecutor helped to protect the public's security interest as well as resolve the case in the best interests of the minor.

In **Kuwait**, child prosecutors often travel immediately to the scene of a crime involving a minor in order to take charge of the investigation and ensure that the matter is handled expeditiously and in compliance with national and international laws respecting children. According to a Kuwaiti prosecutor at the focus group meeting, judicial proceedings involving children experience fewer delays and are resolved more quickly because of this policy. Prompt attention to these cases helps reduce the chances of a child being detained for long periods during the investigation or pending court proceedings, and can avoid the psychological, emotional, and physical harm that can result from the uncertainty of a prolonged process.

## Action Point 3:

# Prosecutors should verify that the child has obtained the minimum age of criminal responsibility

Before bringing charges, prosecutors should determine whether children have attained the minimum age for criminal responsibility under national law.<sup>12</sup> Prosecutors should make sure that a thorough investigation of a child's age has been completed. Many jurisdictions require police or social service workers to investigate the personal circumstances of children by police or investigators, including their age, and to provide that information to other justice officials, including prosecuting authorities. Prosecutors should thoroughly review any such report to satisfy themselves that the age of all child suspects has been accurately ascertained. If there is any question or doubt about the matter, prosecutors should consider requesting investigators to consult, *inter alia*, available birth and school records, health records, criminal histories, and travel documents. Prosecutors should also consider asking investigators to discuss the suspected offender's age with family and community members. In addition, if national law allows and circumstances require, prosecutors should request the appropriate medical or other agency to perform any necessary physical examinations, including dental exams or x-ray analysis, to assist in determining the person's age. If the prosecution deems the proof of age insufficient after all reasonable steps have been taken, then it should presume the particular child to be below the minimum age for criminal responsibility and no prosecution should be instituted.<sup>13</sup> In such a case, prosecutors should consider whether the child is eligible for protection and services under the country's child welfare laws.

### Highlighted Examples

**The Philippines** has set the minimum age for criminal responsibility at 15 years. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child, testimony of other persons, the physical appearance of the child and other relevant evidence. In appropriate cases, the Philippine authorities also employ dental examinations of suspected children to provide an approximate age range for the suspected child. In case of doubt as to the age of the child, authorities must presume the child is below the age of criminal responsibility.

**Albania's Code of Criminal Justice for Children, Law 37/2017, Articles 7 (1), (3)**, sets the minimum age for criminal responsibility at 14 years, and further provides that "[i]f it is impossible to determine exactly the age of the person, but there are reasons to believe that he/she is a child, he/she shall be considered a child, in the sense of this Code, until age is determined".

<sup>12</sup> In addition, prosecutors should determine whether the suspected offender is under the age of 18 years. Article 1 of the CRC defines a child as a young person below that age. Article 40 of the CRC sets out the rights of children in conflict with the law, including, "whenever appropriate and desirable", diversionary measures that avoid formal prosecution.

<sup>13</sup> United Nations Committee on the Rights of the Child (hereafter: Committee) *General Comment No.24*, para.24 (doubt to be resolved in favour of child). In the Philippines, a "child in conflict with the law shall enjoy the presumption of minority. S/he shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older". *Juvenile Justice and Welfare Act of 2006*, § 7.

In some countries, the precise age of children who have attained the minimum age for criminal responsibility may determine what protective or punitive measures may be imposed during the child proceedings. In systems that adopt such differentiation, the court should be authorised to impose not only disciplinary sanctions, but also a full range of protective and rehabilitative measures, if children's individual circumstances and characteristics warrant them.

### Highlighted Examples

As explained by an investigating magistrate from **Lebanon** who attended an IJ workshop, *Law 422/02* authorises different measures for children in different age ranges. A child under 7 years of age has no criminal responsibility. Children between 7 and 11 years of age who have violated the law can receive only protective measures. If the child is between 12 and 14 years of age, a judge may impose protective measures, reform measures, or disciplinary measures, regardless of the crime involved. Only older children, between 15 and 17 years of age, may be sentenced to prison, *albeit* for shorter periods than adults. Even in the cases of older children, specialised child judges may exercise discretion to impose the most appropriate measures, including alternatives to confinement, depending upon the characteristics of the child and the circumstances of the case.

A case in **Kenya** illustrates the importance of accurately determining a minor's age in systems that impose different dispositions for children within different age ranges. 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<sup>14</sup> 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 she 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 issued a new, non-custodial probation order in accordance with the relevant legislation.

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<sup>14</sup> The *Kenyan Borstal Institutions Act* (rev. 1992) establishes child custodial centres called "borstals" in which child offenders receive care and training as determined by judges and custodial administrators. Children ordered to such custodial centre must also work in the centre unless medically unable to do so.

## Action Point 4:

# All children recruited and exploited by violent extremist and terrorist groups shall be primarily recognised as victims

As soon as prosecutors become involved in a child case, especially one in which terrorism charges have been or could be filed, they should promptly examine all the facts of the case to assess whether any child suspect was recruited, coerced, or subjected to undue influence in the commission of the terrorism offence under investigation. Whether a child was a victim or a suspect acting with discernment in the terrorism offence is a key factor in determining the course of the criminal process. That determination is also important in identifying and promptly delivering needed support and services to address the individual's specific circumstances.

Prosecutors should understand that children who have been deemed victims of terrorist acts, and who promptly receive appropriate social services and psychological and emotional support, will likely have better chances of overcoming any trauma and hardship from the acts themselves, and will be less prone to re-victimisation from having to participate in a criminal justice process. Even when children are considered as suspects in terrorism cases, they should be provided appropriate services. They will likely confront a justice system whose procedures they do not fully understand. A child charged with an offence should be dealt with in a manner which takes full account of their age, level of maturity and intellectual and emotional capacities. Steps should be taken to help the child understand and participate in the proceedings without intimidation or inhibition. Children may also feel isolated, defiant, and fearful, which could leave them combative and resistant to rehabilitation and reintegration measures. Prosecutors should refrain from treating child offenders harshly or in other ways that do not promote outcomes that serve their best interests.

The support child offenders receive may differ in kind and intensity from that provided to victims who were coerced into participating in a terrorism offence. Offenders should receive assistance to assure their safety, address the reasons for their participation in the offence, and put in place the first steps toward their rehabilitation and reintegration into the community. Prosecutors should identify a child's precise role in the terrorism offence by making an independent review of all available information about the incident. The information examined should include evidence recovered by investigators, results of social services and psychologists' reports into the child's personal and family background, the child's criminal history, and any investigative interviews of the child or other individuals involved in the conduct. Prosecutors should take into account whether the minor acted without discernment or was a knowing participant in the terrorism offence when making decisions about pre-trial detention, prosecution, referral for possible diversionary measures that could avoid formal prosecution, or transfer to a child welfare agency to receive needed support and services.

When, as a result of this assessment, prosecutors determine that the children have been solely victims who were coerced or recruited by adults to participate in the terrorism offences, they should decide against prosecution and take all steps available under their national laws to see that the children receive proper services and treatment. In such cases, children should be released to their parents, guardians, or an appropriate social services agency, and the criminal case should be dismissed. Prosecutors should also be alert to the possibility of new facts arising during the investigation or court proceedings that could change their initial determination regarding the role of a child involved in the conduct under investigation.

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Recognising that a child was a victim of undue influence does not mean that the minor cannot also be held criminally responsible for participating in terrorist acts. In some cases, children who have been coerced to engage in terrorist conduct may be both victims and suspects. They may have initially been influenced to join or participate in a terrorist group, but only later knowingly and willfully committed violent terrorist acts. When making decisions and recommendations regarding what detention, diversion, and disposition measures should be applied in the case, prosecutors should consider as a mitigating factor the extent to which the children involved have been victimised. All necessary steps should be taken to see that, within the context of child proceedings, minors receive appropriate services to meet their needs as both victims and offenders.

The participants at the IJJ Juvenile Justice focus group meeting discussed a case in which the Kenyan prosecutor ascertained that several children were actually victims of adult recruitment, rather than willing participants, in a terrorism recruitment offence. The prosecutor explained that a religious local leader radicalised several children in a neighbourhood school. At the leader's direction, the children began threatening other students who were of a different religious faith. After the police and prosecutor got involved, they determined that the children were actually victims of the unlawful radicalisation efforts of the religious leader, who had taken advantage of their minors' immaturity and lack of discernment. The prosecutor decided to charge the religious leader under Kenya's counter-terrorism laws. The children were not charged, even though their conduct in attacking other students could have been considered a violation of the law as well. The prosecutor decided instead to call the children as witnesses at the trial of the religious leader, who was convicted.

### Highlighted Examples

**Thailand** and **Indonesia** require police and investigators to gather evidence concerning whether a child was a victim or a participant in a terrorism offence. Children who were victims are not prosecuted but are returned to their families or offered needed social or mental health services. Children who willfully participated in the offence are prosecuted in either a child court or in a regular court applying specialised child procedures. In addition, courts in both countries apply alternative dispositions under their respective child justice laws if the minor is found culpable.

In **Albania**, **Kosovo**, and **Macedonia**, investigators and prosecutors distinguish victims of terrorism from culpable participants. In each country, victims forced or induced to participate in a terrorist act are released to their families without prosecution. Child welfare services are available if the child is determined to be a child in need of such assistance.

In **Algeria**, **Egypt**, and **Morocco**, victims are provided protective services, including psychological evaluation and rehabilitative measures, while culpable participants are prosecuted under the country's respective child justice provisions.



## Action Point 5:

# Prosecutors should be cautious in accepting confessions of children suspected or accused of committing terrorism offences

Investigators and prosecutors can use confessions by individuals suspected of committing crimes, especially a terrorism offence, to assign culpability and understand the nature, causes and consequences of acts of violence carried out against the community. When investigators obtain a confession from a minor, however, prosecutors should exercise extreme care in evaluating that confession to ensure it was given voluntarily. It is important to recall that no confession or judicial interviews implicating a child shall be organised without the presence of a defense counsel. It is the duty of judicial actors to inform the child about his or her rights to silence and protection against self-incrimination.

Several unique factors may lead children to make false or inaccurate statements to police or other investigative authorities. In some cases, minors may wish to submit to or please authority figures, such as police officers. Children may also lack a full understanding of the consequences of admitting to a crime. They may not comprehend legal terminology used by interrogators and may not possess the developmental capacity needed for good decision-making. Even if present during the interrogation, parents and attorneys may also lack the necessary skills and training to effectively advise child suspects about making statements to police, including confessions.<sup>15</sup>

Therefore, before relying upon a child's confession as a basis for bringing criminal charges, including for terrorism or related offences, prosecutors should understand the circumstances and length of the child's initial detention, how police and investigators treated the child, and the conditions under which the child was interrogated, including whether effective legal representation was provided during questioning. Minors, especially those who have been victimised by members of terrorist groups, may be especially vulnerable to police interview methods that could cause children to feel intimidated, helpless, and frightened.<sup>16</sup> In such circumstances, a child's confession may not be accurate, truthful, or complete. It may not even be voluntary, in which case it should be excluded from evidence in the proceedings.<sup>17</sup>

Making prosecutorial decisions based upon a child's unreliable confession can result in an investigation and prosecution that does not fairly and fully identify and hold accountable all the individuals responsible for violent acts of terrorism. It can also cause the minor's continued victimisation by the criminal justice system, work against the child's best interests, and make rehabilitation and reintegration into the community more difficult.

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<sup>15</sup> See generally, Redlich, Allison D., *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, Rutgers Law Review, Volume 62:4, November 8, 2010.

<sup>16</sup> A common methodology for interrogating adults has been summarised as "accusation, confrontation, isolation, and psychological manipulation." Some researchers believe that employment of these tactics in cases involving juvenile suspects can result in false confessions to crimes the minor did not actually commit. *Ibid.*, p. 952.

<sup>17</sup> *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), article 15.

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In light of the vulnerability and special needs of children, especially those who have been exposed to the violence that often accompanies terrorism offences, the right to counsel is of particular importance.<sup>18</sup> Prosecutors should be familiar with relevant international conventions that establish a child's basic right to such assistance.<sup>19</sup> In some cases, regional instruments also provide guidelines on implementing the right to counsel, which may establish a more robust right to assistance than the more general international instruments.

## Highlighted Examples

In 2014, the **African Commission on Human and Peoples' Rights** adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention (so-called Luanda Guidelines) in order to implement certain rights guaranteed by the African Charter of Human and Peoples' Rights. Part 7 of the Luanda Guidelines relates to the rights of "vulnerable groups," including children. Guideline 31 (g) provides that "[c]hildren shall be guaranteed the right to the presence of lawyer, or other legal services provider, of their choice and, where required, access to free legal services, from the moment of arrest and at all subsequent stages of the criminal justice process. Legal assistance shall be accessible, age appropriate and responsive to the specific needs of the child"<sup>20</sup> (emphasis added).

In May 2016, the **European Parliament** and the **Council of the European Union** adopted the *Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings* (hereinafter *Directive*)<sup>21</sup>. The overall purpose of the *Directive* is to encourage enforcement of the safeguards established by international and European Union law regarding a child's right to counsel in criminal proceedings. The *Directive* describes the legal basis, established in decisions of the European Court of Human Rights and previous EU Commission directives, of the right to counsel that applies to all criminal suspects in the European Union (hereafter EU) member states.

It also provides that children have a right to counsel "without undue delay and from the earliest stages of the proceedings; before questioning by police or other competent judicial authority, upon carrying out investigation or evidence-gathering acts, after deprivation of liberty, or where children are summoned before court in criminal matters; in due time before they appear".<sup>22</sup> The *Directive* further sets out conditions under which children can waive the right to legal representation, and when a state can derogate that right based upon its assessment that a lawyer's assistance "is not proportionate in light of the circumstances of the case".<sup>23</sup>

<sup>18</sup> In this regard, prosecutors have a duty to conduct a fair and reliable investigation into a juvenile's role in the conduct under investigation as possible terrorism. A prosecutor "should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law, including the [African] Charter [of Human and Peoples' Rights]." See African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, 2003, Principle F (a)(1).

<sup>19</sup> *International Covenant on Civil and Political Rights*, article 14 (3)(b) (right to consult counsel of own choosing during court proceedings); *Convention of the Rights of the Child*, article 40 (2)(b)(ii) (right to "appropriate assistance" for preparation and presentation of defence at trial); *Beijing Rules*, Rule 15 (right to counsel "throughout the proceedings").

<sup>20</sup> According to responses to a hypothetical case in the IJJ Juvenile Justice Toolkit, Ethiopia, Nigerian, Rwanda, Tanzania, Uganda, Morocco, Algeria, and Egypt have laws that require that an attorney or other appropriate representative be present at any interrogation of a juvenile arrested by authorities. The same is true for Albania, Serbia, and Macedonia. In Jordan, Malta, Kosovo, and Montenegro, a juvenile has a right to request a lawyer before being questioned. Countries in Southeast Asia provide for counsel early in a juvenile case. For example, in Thailand and the Philippines, the police must advise the public attorney's office of a juvenile's arrest at the same time they contact the minor's parents or other relatives.

<sup>21</sup> *Directive (EU) 2016/800*. The *Directive* is binding only upon members of the European Union, but it can serve as a model regarding children's right to counsel.

<sup>22</sup> *Directive*, article 6 (3) (a-d).

<sup>23</sup> *Directive*, article 6 (6).

## Action Point 6:

# Prosecutors should use and promote alternative measures to pre-trial detention for children

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

*GCTF Neuchâtel Memorandum, Good Practice 3*

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

*GCTF Neuchâtel Memorandum, Good Practice 5*

**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*

Prosecutors should be aware of their national laws regarding alternatives to pre-trial detention in cases in which children are charged with terrorism offences, and consider whether to impose or advocate for such alternatives in all appropriate cases.<sup>24</sup> Prosecutors can play a significant role in deciding whether child suspects will be conditionally released or detained in confinement centers following their arrests for suspected terrorism offences. In some countries, prosecutors have the authority to order detention or release of children following arrest. In other countries, where only courts can enter such orders, prosecutors make recommendations concerning whether children should be released or detained pending further proceedings. In making release or detention decisions and recommendations, prosecutors should be guided by the best interests of the children involved. In most cases, the best interests of children will be served by releasing them to their parents or other responsible persons and making arrangements for them to receive the educational, vocational, and psychological services needed to promote their eventual rehabilitation and reintegration into the community.<sup>25</sup>

In some countries, even if children are initially detained, they can become eligible for conditional release if, upon further assessment, circumstances warrant. For example, if threats or security risks initially prevent the release of a child, the custodial order should be periodically reviewed to determine if the threats have been eliminated so that release to the parents or other appropriate person could be ordered. Release conditions, whether ordered initially or following additional evaluation in a detention center, should further the minor's prospects for rehabilitation and reintegration into the community by providing appropriate educational, vocational, and social development services.

<sup>24</sup> The *Neuchâtel Memorandum* reiterates international standards that pre-trial detention of children is appropriate only when no conditions for release will ensure their appearance in court or the safety of the community or themselves. Pre-trial detention should be ordered only as a last resort and should be carried out in a dedicated juvenile facility that separates adults from minors and segregates them by gender. Pre-trial detention of children should be ordered only for the shortest possible time in order to prevent victimisation or radicalisation while in custody.

<sup>25</sup> There may be cases in which children would be at risk for threats or violence if they were returned to the community shortly after arrest. These risks could come from other participants in the offence or from members of the community. In such cases, it is possible that the children would be safer if they remained in custody. Any detention of children for their own security, however, should occur only in an appropriate juvenile facility equipped to handle their needs and to allow them to communicate with their families, lawyers, and others in the community.

## Highlighted Examples

In **Algeria**, children under 13 years of age can never be detained during a criminal case and will be released to family members to await police questioning or other proceedings. Older children who come into contact with the police are either released to their parents or sent to a youth observation shelter where a tutor is assigned to assist them through the entire court process. While in the shelter, which is not an agency of the Ministry of Justice, children may regularly communicate with family members.

In **Indonesia**, children arrested for suspected terrorism offences are not sent to jail to await further proceedings. Rather, officials transfer them to a child protective services agency where appropriate services are available.

**Austria** has created Social Network Conferences aimed at developing a plan for the conditional release of children charged and detained for certain terrorism offences. The plan is developed with the participation of the children and their social networks (family, friends, teachers, and others), and often includes a minor's agreement to undergo therapy, attend school, and participate in a work apprenticeship. Implementation of the plan requires the approval of the youth judge, who then orders monitoring by a probation officer.

A case from **Kenya** illustrates how important it is that detention and release decisions relating to children take into account the customs and culture of the community into which a minor will be released. In the Kenyan case, prosecutors charged a 17-year-old male with numerous counts under Kenya's counter-terrorism statutes arising out of his possession of a grenade and materials for making an improvised explosive device. The child was initially placed in a de-radicalisation center housed in a child section of an adult prison. However, the child's attorney filed a request with the court for his release, arguing that the minor had a right to reasonable bail. The court, and later the High Court, agreed and ordered that the child be released to his father, who agreed to supervise his son's activities and guarantee his appearance in court proceedings. The child's release meant that he could no longer participate in the de-radicalisation program because of the distance of his home from where the court proceedings were occurring. During the subsequent stages of the case, the child fled the jurisdiction, which resulted in a failed prosecution and prevented authorities from offering the youth further services and programs aimed at his de-radicalisation and reintegration into society. Authorities eventually came to learn that the child's family had been encouraged to take him out of the area, in part to avoid community stigmatisation for having a "terrorist" living in its midst. In addition, the parents feared their son would be severely punished by the court simply because of the gravity of the charges. They did not understand that their minor son would be treated much differently than an adult charged with similar offences.

As a result of this experience, **Kenyan** officials decided to review the bail and bond policies applicable to children. The task force assigned to do the review established two goals: to educate the public that the child justice system in Kenya works for the best interests of minors, not just to impose severe sanctions for offenders and to revise the bail and bond policy for children to require courts to name third-party sureties in addition to an accused child's parents. Such third parties could include responsible religious and community leaders, as well as school officials, who could exercise additional supervision over the child during the pendency of the case.

## Action Point 7:

# Prosecutors should have the authority to offer children diversionary measures that avoid criminal prosecution and should use that authority to the greatest extent possible

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

*GCTF Neuchâtel Memorandum, Good Practice 7*

Prosecutors should apply diversionary measures to children suspected or accused of terrorism offences in compliance with their national laws. International standards call for officials at all levels of a child justice system, including prosecutors, to have adequate discretion to allow them to take the most appropriate actions in a particular case to respect the rights and special needs of children.<sup>26</sup> Many existing diversion programs at the prosecutorial level, however, are limited to children charged with minor narcotics, theft, or property offences. Children charged with more serious crimes, such as most terrorism offences, are sometimes ineligible for such programs. Frequently, even if a child terrorism suspect is eligible, only a court may grant diversion measures.<sup>27</sup> If national legislation for diversion at the prosecutorial level does not now exist, prosecuting authorities should consider whether they could administratively institute protocols within their offices for diverting children involved in terrorism offences, especially those who have participated in non-violent, participatory, or association offences defined under a country's counter-terrorism laws.<sup>28</sup>

Diversion measures offered by prosecutors before cases are filed can avoid unnecessary emotional trauma and stigmatisation that often occurs when minors are prosecuted in the child justice system.<sup>29</sup> Diversionary measures can also increase a child's chances for successful rehabilitation and reintegration into the community, as well as lower recidivism rates for child offenders, provided that a multi-sectoral support programme is provided. Further, diversion alternatives allow cases to be resolved without undue delay<sup>30</sup>, which saves prosecution and judicial resources<sup>31</sup>. A child offender's successful completion of a diversion program should result in the dismissal or forbearance of any prosecution for the offences involved.

<sup>26</sup> *Beijing Rules*, Rule 11.2 ("The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules"); General Comment No.24, para.72 ("[...]the Committee wishes to emphasize that the competent authorities - in most States the office of the public prosecutor - should continuously explore the possibilities of avoiding a court process or conviction, through diversion and other measures.").

<sup>27</sup> *Beijing Rules*, Rule 11, Commentary (diversion should be available at prosecution level and not limited to petty cases).

<sup>28</sup> IJ focus group meeting participants suggested that prosecutors always seek the agreement of the appropriate police or other law enforcement officials, as well as relevant social service workers, before granting diversionary measures to children. Such agreements will help to ensure that prosecutors have knowledge of all of the available information necessary to make informed decisions about offering diversion, and will also foster collaboration between various juvenile justice actors.

<sup>29</sup> GCTF, *Neuchâtel Memorandum*, Good Practice 7, recognises that children, who are frequently vulnerable because of their young ages and less developed cognitive skills, may experience continued psychological, emotional, and physical harm from having to participate in a juvenile criminal justice process.

<sup>30</sup> *Beijing Rules*, Rule 20 (prompt resolution of juvenile cases a "paramount concern"); African Charter on the Rights and Welfare of the Child, Article 17 (2)(c)(iv) (OAU Doc. CAB/LEG/24.9/49 (1990)) (child rights include prompt case resolution).

<sup>31</sup> Melissa Labriola, Warren A. Reich, Robert C. Davis, Priscilla Hunt, Michael Rempel, and Samantha Cherney, *Prosecutor-Led Pretrial Diversion: Case Studies in Eleven Jurisdictions* (2018), p. 11 (published by the Center for Court Innovation).

As countries address an increasingly complex and widespread threat of violent terrorism, they will likely encounter more child members of terrorist organisations who participate in some way in the group’s illegal activities. Children may also be radicalised to act individually to further a terrorist philosophy or agenda. In response, countries are expanding their definition of terrorism and imposing criminal penalties to cover a broader range of conduct related to it.

In this environment, diversionary measures for child offenders are increasingly important, particularly as countries expand their counter-terrorism laws to cover less serious, non-violent preparatory, participatory, and associative acts such as advocating terrorism, dissemination of terrorist propaganda, attempts to engage in terrorism, and membership in a terrorist organisation. In addition, experience shows that children often commit this type of less serious offence, rather than directly engaging in acts of violence. Given minors’ vulnerabilities, diversion will often be the most appropriate response to a child’s participation, membership, or assistance in terrorism offences. Offering effective diversionary measures aimed at rehabilitation and reintegration as soon as possible will give children the best chance to redirect their lives away from violence. If national laws prevent prosecutors from exercising their discretion to offer diversionary measures in child terrorism cases, states should consider policy and legislative changes to authorise the practice.<sup>32</sup> If countries wish to have a measure of judicial control, they could require that diversionary agreements be approved by the child court and monitored by a probation officer.

Below are examples of countries that have established prosecutor-led diversion efforts in child cases, either legislatively or as a matter of prosecutor discretion, that can apply to terrorism-related cases. Similar models could be considered in countries where prosecutors are not now able to divert children suspected of terrorism offences away from the formal criminal justice system.

### Highlighted Examples

**Albania’s** *Code of Criminal Justice for Children, Law 37/2017*, Article 14 (1), states that “priority shall be given to the alternative measures of diversion from criminal prosecution” in cases involving children. Article 56 (2) provides that “[d]iversion against the child in conflict with the law may be applied upon initiative of the prosecutor or upon request of the child in conflict with the law or child’s representative”. Children, assisted by their representatives, may accept or reject prosecutors’ diversion offers. A child may also make a diversion proposal. If a prosecutor rejects it, the child and legal representative may appeal to a court within 15 days for an order to implement the measures. The statute also regulates what diversionary measures may be offered to children, as well as the procedures and considerations that all judicial actors must use when deciding whether to enter into a diversion agreement.

Article 75 of Law No. 4-2010 of 14 June 2010 on child protection in the **Republic of Congo** provides that: “Every effort shall be made to deal with child offenders without resorting to judicial proceedings before the competent authority. The police, the prosecutor’s office or other services dealing with child offenders shall have the power to deal with such cases at their discretion without applying the formal criminal procedure, in accordance with the criteria laid down for this purpose in the Congolese legal system and also with the principles contained in the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*. [...] In order to facilitate the discretionary settlement of cases involving child offenders, efforts shall be made to organise temporary supervision and counselling programmes and to ensure the restitution of property and compensation for victims.”

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<sup>32</sup> IJJ Study, Sections 6.3 and 6.4, p. 50.

...

In 2014, **the Philippines'** Juvenile Justice and Welfare Council issued a resolution containing revised rules and regulations implementing Republic Act No. 9344, *Juvenile Justice and Welfare Act of 2006*, as amended by *Republic Act No. 10630*. The Council resolution sets out the specific rules prosecutors must follow in entering into diversion agreements with children in conflict with the law (see sections 50-56). Initially, the resolution identifies the specific cases in which prosecutors may agree to diversion, such as those in which children are accused of offences with a maximum sentence of six years' imprisonment<sup>33</sup>. It also stipulates that prosecutors will chair the diversion committees that recommend whether diversion should be granted in particular cases. The committees must include representatives from designated public and private entities. Prosecutors' duties in directing the committees are also set out, as are the factors the committees must consider in deciding whether diversion is appropriate.

The resolution also specifies the diversion measures that may be included in diversion agreements, including restitution of property; reparation of damage; indemnification of consequential damages; written or oral apologies; care, guidance, and supervision orders; counseling for children and their families; attendance at trainings, seminars, and lectures concerning anger management skills, problem solving and conflict resolution skills, and values formation.

A **United States** federal counter-terrorism prosecutor described how he and a federal investigator relied upon the substantial discretion prosecutors have under U.S. law to informally offer diversion to a child who attempted to obtain a firearm to carry out an attack at his high school. Before the minor could actually take possession of the firearm, the investigator learned of the plan and intervened, taking steps including the execution of a search warrant at the child's home. During a subsequent interview with the young man and his parents, the prosecutor explained the evidence the investigator had gathered about the planned attack, which stunned the parents, who were unaware of the extent of their son's disaffection. They immediately resolved to become more involved in his life. Although the minor's conduct could have been prosecuted under a U.S. counter-terrorism law, the prosecutor decided to offer an alternative measure, considering that the child had no prior history of similar conduct and did not complete his planned attack, and further considering the prosecutor's assessment that the child's conduct reflected common teenage "acting out", rather than actual radicalisation.

The child agreed to stay in school and disassociate himself from radical influences on the Internet and elsewhere. The parents also undertook to help him recognize the dangers of becoming involved with violent attacks and terrorism. The parent-child relationship improved significantly and no prosecution was initiated. After more than twelve months, the child continued to show positive changes in his attitude and conduct, and his parents detected no further tendencies toward radicalisation.

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<sup>33</sup> Philippines, *Juvenile Justice and Welfare Act of 2006*, section 23 (a). For more serious offences, only a juvenile court judge can order diversion.

## Action Point 8:

# Prosecutors should protect the confidentiality of children’s information and records

**Good Practice 3: Address children’s vulnerability to recruitment and/or radicalization to violence through preventive measures.**

*GCTF Neuchâtel Memorandum, Good Practice 3*

**Good Practice 5: Address children prosecuted for terrorism-related offenses primarily through the juvenile justice system.**

*GCTF Neuchâtel Memorandum, Good Practice 5*

In accordance with Good Practice 5 of the *Neuchâtel Memorandum*, prosecutors should take all necessary steps consistent with their national law to protect the confidentiality of information disclosed during the proceedings and maintained in the records of children suspected of terrorism offences.<sup>34</sup> Even in countries without a comprehensive legislative or regulatory framework, prosecutors have a duty under international child justice standards to make sure information and records of young offenders are “kept strictly confidential and closed to third parties”<sup>35</sup>.

Officials should take simple and practical steps to protect children’s identities and personal information obtained during investigations and prosecutions of their suspected involvement in terrorism. It is recommended that prosecuting authorities consider establishing internal office protocols requiring that individual prosecutors follow certain mandatory practices to protect against improper disclosure of personal information of children. For example, prosecution reports, court filings, and other documents should substitute the names of children with other identifiers, such as numbers, letters, or other generic designators, which can also be used during investigations and court proceedings.<sup>36</sup> Children’s personal data, including both their identities and information that could lead to their identification, should be redacted from public documents, files, and reports, including those placed on public court dockets. Prosecutors should also promote the use of closed hearings in child proceedings, excluding members of the public and the media. Prosecutors should also seek judicial orders limiting the parties’ disclosure of sensitive information outside the courtroom when needed.

In the end, however, a comprehensive legislation scheme will provide more effective protection of children’s personal information. In countries without such a framework, prosecutors should consider recommending and promoting the adoption of new laws and regulations to protect such data, and to regulate its disclosure to other government agencies for such purposes as monitoring and improving the country’s child justice system. Below are examples of legal frameworks adopted by two countries that protect children’s private data and information.

<sup>34</sup> See also, CRC, article 40 (2) (vii); *Beijing Rules*, Rule 8.

<sup>35</sup> *Beijing Rules*, Rule 21 (1).

<sup>36</sup> These efforts should be supported by police and other investigative agencies, as well as all social service personnel involved during the judicial process. For recommendations regarding these juvenile justice actors, see the *IJJ Juvenile Justice Note for Investigators*.



## Highlighted Examples

**The Philippines'** *Juvenile Justice and Welfare Act of 2006* provides a comprehensive framework for maintaining the confidentiality of information concerning children in the criminal justice system. Section 43 of that Act mandates that information concerning a child gathered from the time of the initial contact with authorities until final disposition of the case is to be considered privileged and confidential. Public access to the information and to child court proceedings is strictly prescribed. Parties and other participants in the proceedings are prohibited from disclosing information about them. The police must use a separate police blotter and a system of coding to conceal material information that could disclose a child's identity. Records of a child in conflict with the law cannot be used in subsequent proceedings for cases involving the same offender as an adult, except when beneficial for the offender and upon his or her written consent. Finally, should a child against whom court proceedings are initiated later be prosecuted as an adult for subsequent misconduct, evidence of the existence or underlying conduct involved in their child proceedings is fully protected from disclosure.

**Albania's** new *Code of Criminal Justice for Children* (Law No. 337/2017), Chapter XV, Sections 136-139, provides an extensive statutory scheme for maintenance and storage of 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, input, 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 the proceeding; and providing a statistical database that can be used to analyse and improve criminal justice policies for children. Access to the data is subject to written regulations and limited to authorised institutions and officials. Dissemination or disclosure of a child's information in the data base is prohibited unless authorised by law. Children who have been sentenced may inspect their own files, which will be stored and eventually destroyed in accordance with Albania's records retention law.

Prosecutors should also support the protection of children's privacy interests even after the prosecution phase of a case has ended. They should understand and comply with all regulations in place to protect minors' personal and private information from disclosure during the time they are subject to court-ordered 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 sanctions or other measures; that the files be disclosed only to those individuals authorised by law to inspect them (children, parents, guardians, and authorised officials); that children have the right to challenge the information in their case files; and that following completion of the sanction, the files be destroyed or maintained in archives with strictly controlled access that prevents disclosure to unauthorised third parties. Also, prosecutors also should not to use the information contained in the case files in an adult prosecution of the child.<sup>37</sup>

<sup>37</sup> *Beijing Rules*, Rule 21.2.

Prosecutors should exercise great care in commenting publicly, especially to the media, about child investigations or 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 children involved in those matters. The best practice is usually to make no statement at all. If one is made, however, prosecutors should make sure that the information being disclosed cannot be used to identify child suspects or witnesses, their families, or associates. Any statement should be factually accurate and balanced, and carefully avoid inflammatory descriptions of the facts or evidence in pending cases. Prosecuting authorities should consider designating a person or a group of individuals as media relations officers with the responsibility 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 prosecutors regarding when and how they may respond individually, if at all, to such inquiries. In this way, prosecuting authorities will be able to 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.

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## Action Point 9:

# Prosecutors should receive specialised training to handle terrorism cases involving children

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*

Design and implement specialised programs for terrorism cases to enhance the capacity of all the professionals involved in the juvenile justice system.

*GCTF Neuchâtel Memorandum, Good Practice 12*

Participants in the workshops and focus group meeting universally recognised that all prosecutors who handle cases in which children are suspected of or charged with a terrorism or terrorism-related offence should receive specialised training. That training should focus not only on the unique treatment prosecutors and investigators must accord minors under international child justice standards as implemented by national law, but how those laws, as well as international child justice standards, are best applied in a counter-terrorism context.<sup>38</sup> Further, judicial actors dealing with children involved in terrorism cases should be instructed in “sociology, psychology, criminology and behavioural sciences” as they relate to children, as this deeper background “is considered as important as the organisational specialisation and independence of the competent authority”.<sup>39</sup>

A number of participants and speakers at the workshops emphasised that the adverse effects on children of participating in or witnessing serious crimes can be magnified when the activity involves violent terrorist or associated acts. As a result, a child may be highly vulnerable to psychological, emotional, and physical harm in a counter-terrorism context. Dealing with such children requires criminal justice actors to understand the special status and rights of minors that the international community has developed to take account of such vulnerabilities. Consequently, this Action Point suggests that specialised training programmes be implemented for prosecutors, among other judicial actors, to ensure that national and international child justice standards are appropriately implemented in the cases they handle.

<sup>38</sup> For further information on the applicable international legal framework regarding children suspected of or charged with terrorism-related offenses, please see the *UNODC Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System* (2017) (hereafter UNODC Handbook). 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).

<sup>39</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, General Assembly Resolution 40/33 of 29 November 1985 (hereafter *Beijing Rules*), Rule 22 Commentary.

Participants in the workshops agreed that the need for such training programs is increasing in light of the growing number of terrorism incidents in which children are becoming involved as participants, victims, or witnesses. There was also broad agreement that the training described in this Action Point should begin upon prosecutors' initial appointments to their positions and continue periodically throughout the time they prosecute, investigate, or supervise cases involving children.<sup>40</sup> Ideally, training should be carried out by national training institutes that ensure consistency in the content of the curriculum and continuity of programs so they reach all prosecutors.

To the extent that countries with existing child justice training programs do not already provide instruction in the counter-terrorism context, it is recommended that they consider including it. All counter-terrorism prosecutors who handle cases involving children should receive mandatory training in child justice standards dealing with the topics identified above as a requirement of their positions.

Countries may also wish to consider establishing joint training, or training exchanges, with their neighbours who face similar challenges in handling children suspected or accused of committing terrorism-related offences. Joint training and exchanges may provide useful ways in which countries can collaborate to improve the expertise and knowledge of prosecutors, judges, and investigators regarding the rights of children under international, criminal, humanitarian and human rights law. These types of joint training programs can also highlight how prosecutors can use international, regional, and bilateral agreements to obtain important information from another country for use in terrorism cases involving children, similar to adult cases. The European Judicial Training Network (EJTN) has established a training exchange that allows prosecutors and judges, among other officials, to visit other countries to increase their knowledge of specialised areas of the law, including child justice. Prosecutors on the African continent interested in establishing similar kinds of exchanges might consult with the existing African police, judicial, and economic cooperation networks, such as the Sahel Judicial Platform, the Intergovernmental Authority on Government and Development (hereafter IGAD), the West African Network of Central Authorities and Prosecutors (hereafter WACAP), and the Economic Community of West African States (hereafter ECOWAS). Prosecutors in the Middle East and Southeast Asia might also contact the League of Arab States and the Association of Southeast Asia Nations (hereafter ASEAN), respectively.

### Highlighted Examples

**Kenya** is creating a specialised training program for all of its prosecutors who handle terrorism cases involving children. An Initiative delegate from Kenya explained that the country mandates child justice training for all newly hired prosecutors. In August 2018, Kenya's Director of the Office of Public Prosecutions (ODPP) established the Prosecutor Training Institute (PTI), which has since developed training programs in both general (trial advocacy) and thematic (terrorism) areas for all of Kenya's newly hired prosecutors. In 2018, the first class of new prosecutor recruits completed a two-month training course that also incorporated instruction in international child justice standards, including the Good Practices in the *Neuchâtel Memorandum*.

The PTI planned to develop a curriculum that will serve to train not only new hires, but also prosecutors already working in the ODPP. The ODPP is, in turn, in the process of consolidating all counter-terrorism prosecutions involving children. It is expected that all ODPP prosecutors handling child cases involving terrorism charges will receive training in the *Neuchâtel Memorandum's* Good Practices.

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<sup>40</sup> Judges in West Africa and the Sahel have reiterated the need to receive specialised training for handling terrorism cases. *IJ Judicial Recommendations for Judges in the Sahel and West Africa, Implementing the GCTF's The Hague Memorandum on Good Practices for the Judiciary in Terrorism Cases* (2019), Recommendation 1, available at: [https://theijj.org/wp-content/uploads/Judicial-Guidelines-on-Good-Practices-for-the-Adjudication-of-Terrorism-Offences\\_High-Res-1-1-2.pdf](https://theijj.org/wp-content/uploads/Judicial-Guidelines-on-Good-Practices-for-the-Adjudication-of-Terrorism-Offences_High-Res-1-1-2.pdf). A growing international consensus has recognised the value of continuous training for criminal justice operators in specialised areas of the law, including juvenile justice.

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Similar to other countries with civil law traditions, **Cameroon** has established a school that provides initial and continuing training of individuals embarking upon a career as a “magistrate”<sup>41</sup> (prosecutor, investigative judge or sitting judge). The school includes a mandatory course on child justice and standards. In addition, since 2004, the Ministry of Justice has teamed with UNICEF to provide seminars concerning the rights of children, which magistrates can attend throughout their careers. These seminars are open to social workers who are usually appointed as assessors in courts dealing with child defendants, as well as police officers and prison administration staff to enable multidisciplinary interaction ensuring an integrated approach to interventions in the field.

Child prosecutors in the **Philippines** and **Kenya** who handle terrorism cases involving minors receive specific training that helps prepare them to prosecute such cases.

In the **Philippines’ Juvenile Justice and Welfare Act of 2006**, section 32 provides: “Duty of the Prosecutor’s Office. - There shall be a specially trained prosecutor to conduct inquest, preliminary investigation and prosecution of cases involving a child in conflict with the law. If there is an allegation of torture or ill-treatment of a child in conflict with the law during arrest or detention, it shall be the duty of the prosecutor to investigate the same”. As noted below, specially trained child prosecutors in large urban areas in the Philippines handle terrorism cases, including many arising in rural areas where prosecutors deal with all types of crime involving both children and adults.

In addition, a prosecutor from **Indonesia** who participated in an IJJ Initiative workshop explained that before any prosecutor may handle cases involving children, including those charged with terrorism offences, they must receive training and be certified in child prosecutions by the appropriate government authority.

According to a prosecutor from **Montenegro**, that country specially trains counter-terrorism prosecutors to handle cases involving children under its 2012 child justice law.

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<sup>41</sup> In most civil law systems, the prospective Judge or Prosecutor is trained at the judicial school. After graduating from this school, he or she 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).

## Action Point 10: Prosecutors should work as part of a child justice team

Prosecutors play such a critical role in the child justice system that their case-related decisions must be based on the most complete information available from the widest team of colleagues. In all cases, prosecutorial decisions on whether to charge a child terrorism suspect, the advisability of offering a diversionary measure instead of instituting a prosecution, and the appropriateness of alternatives to pre-trial detention should be informed by information collected by the police and other investigators, probation officers, social service experts, and community members knowledgeable about the child's background.

IJJ Initiative workshop and focus group meeting participants emphasised that prosecutors cannot, by themselves, comprehensively address all of the issues that arise when children become involved in activities or conduct that might violate a country's counter-terrorism laws. Prosecutors should work collaboratively with other child justice operators, officials from relevant public and private agencies, and members of the community to ensure that the child justice system works to promote the best interests of children while protecting the security interests of the community.

Some countries have established legal frameworks for such collaboration. Other countries foster exchanges of information among justice system operators on an informal or *ad hoc* basis. Any such practice, however, must be consistent with applicable international and national data protection and personal information disclosure laws. Prosecutors in countries that do not allow this type of information sharing should consider promoting legislation to make it legal, consistent with the overall international child justice framework. In the absence of such laws, countries should consider using lawful, informal methods of information exchange among child justice officials.

Prosecutors should also be willing to cooperate, consistent with their national laws, in their government's terrorism prevention efforts regarding children, as well as in their rehabilitation and reintegration programs. In this way, prosecutors can support the implementation of all *Neuchâtel Memorandum* Good Practices, and especially Good Practices 2 (assessing children from a child's rights and development perspective), 3 (prevention of child radicalisation to terrorism), 4 (creating support systems for children at risk of radicalisation), and 11 (development of programs for rehabilitation and reintegration into the community).

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## 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 child case managers, 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 come into contact with the police, a group convenes to consider the case. If prosecution is inappropriate, the group may impose one or more administrative orders to provide appropriate services or 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 Dutch data protection laws that cover personal data, judicial data, 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.<sup>42</sup>

**Thailand** also requires that prosecutors and social services agencies coordinate and exchange information from the time children first come in 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). OPCs are staffed by social workers, probation officers, and psychologists. Information about the character and background of children sent to the Centers is compiled and later shared with the Family Court and the prosecution service for use in judicial proceedings.

**A Philippines** judge attending an IJ Juvenile Justice workshop explained that prosecutors are members of Diversion Committees established under court rule for cases involving children charged with offences punishable by up to 12 years' imprisonment. The committees are led by the Clerk of Court and consist of prosecutors, defence attorneys, and assigned social workers. The purpose of the groups is to determine if children charged with serious offences can be diverted to receive alternative measures and services. The committees convene meetings with the parents, custodians, or the nearest relatives of children being prosecuted to discuss whether diversion is appropriate. The committees then consider a number of statutorily authorised alternative measures and services, which can be applied individually or in combination. These range from a simple reprimand to community service, mandatory attendance at trainings and seminars aimed at avoiding recidivism, and institutional custody and care. After the committees prepare reports of their conclusions, child judges hold hearings with all parties present to act the recommendations. If diversionary measures are imposed, social workers must follow up with the children and their parents through monthly meetings and file progress reports with the judges. Once a court decides that a child has successfully completed a diversion program, the judge can order that the program be terminated. This process avoids a court judgment and the imposition of punishment against most children appearing before child judges.

<sup>42</sup> A fuller discussion of the Netherlands' collaborative approach in child terrorism matters appears in the *IJJO Study, supra*, n. 10 at Section 5, pp. 48-49.

## Conclusion

In a child justice system, the prosecutor plays an essential role as the gatekeeper to the child court system, determining whether to charge a child with crimes or resolve the case with diversion or other alternative measures. This role requires specialised expertise and skills that are specific to child court and do not entirely conform to those required in an adult court proceeding. Child justice principles require that prosecutors handling counter-terrorism cases involving children receive appropriate training regarding the root causes of the minor's participation in criminal behaviour. Many countries have recognised that having trained prosecutors is a highly effective way to guarantee both the best interests of the child and the security of the community. Ideally, States should ensure that national training institutes carry out such training and train these practitioners continuously.

Whether actively supervising a terrorism investigation or reviewing information from investigators, the prosecutor should ensure that investigators respect children's rights at the initial stages of the investigation, in compliance with national and international laws. Before bringing charges, the prosecutor should ensure that a thorough investigation be undertaken to ascertain not only whether the child is, in fact, under the age of adulthood, but in addition whether they are under the minimum age for criminal responsibility. Prosecutors might consult birth records, religious community records, school records, parents' statements, village midwives' statements and physicians' or dentists' assessments to make this determination. If the child's age is still uncertain, the prosecutor should presume the child is under the minimum age. In addition, as with all criminal defendants, the child should always be presumed innocent until proven otherwise. In addition, prosecutors should treat the child first as a victim and not only as a suspect, if appropriate, considering that the child may have been coerced or recruited by adults to participate in the terrorism offence. Moreover, prosecutors should carefully assess confessions made by the child to ensure they were given voluntarily and obtained legally.

The prosecutor should also ensure the confidentiality of the child's information and records and make sure all hearings are closed to the press. If any information is shared with the media, it should be minimal and not should protect the child's identity. As far as the national law permits, the prosecutor must use and promote alternative measures to pre-trial detention for children. Any measures undertaken by the practitioners should be driven by the child's wellbeing and the chances of rehabilitating and reintegrating the child into the community.

The CRC, the International Covenant on Civil and Political Rights (ICCPR), and other international instruments require these protections. Many countries around the world have adopted some or all of these action points. Numerous examples are highlighted throughout this note to illustrate how this is being done. The international community has recognised that the best way to achieve an effective and fair child justice system that not only provides accountability, but also appropriately addresses the root causes of child terrorism, is to ensure that every nation fully implements these protections by employing well-trained and resourced prosecutors.

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