

VIOLENCE AGAINST CHILDREN AND JUSTICE FOR CHILDREN IN THE CONTEXT OF NATIONAL SECURITY AND COUNTER-TERRORISM

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I. INTRODUCTION: “VIOLENCE AGAINST CHILDREN” AS A FRAMEWORK FOR ACTION

When working with children¹ in contact with the justice system as victims, witnesses or alleged offenders, it can be observed that too often the obstacles in the children’s journeys can be traced back to episodes of violence, neglect and ill treatment. Indeed, exposure to violence can hamper personal, intellectual and social development of a child, and studies have shown that long-term exposure to violence can put children at risk of becoming involved in crime and violence in the future.² It is therefore important to recognize that consequences of violence against children cause considerable harm not only to the child but also result in high costs for society as a whole. Globally, an estimated one billion children – or one out of two children worldwide – suffer some form of violence³ each year.⁴ The fact that many of those children may come into contact with the justice system as alleged offenders in the future provides a clear image of how sectoral approaches tend to fail to respond to the real challenges faced by these children. Children’s right to protection from violence⁵ is based on the knowledge that children present additional vulnerabilities as they are still developing physiologically, socially, emotionally, neurologically and cognitively. They differ from adults in their social and emotional maturity, and their ability to make judgments and decisions, and this means they are unlikely to understand the impact of their actions or to comprehend criminal proceedings.⁶ This necessitates the special protections and treatment children are entitled to under international law.

The most recent child rights instrument approved by the United Nations General Assembly in 2014, the “United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice”⁷ (“Model Strategies”) were developed to help States to

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¹ Refers to every human being below the age of eighteen years as per Article 1, Convention on the Rights of the Child, (1989).

² Maxfield and Spatz Widom, “The Cycle of Violence: Revisited 6 years later” *Paediatrics & Adolescent Medicine* 150, 4 (1996), SOS Children Villages International, *The Right to Protection: Ending Violence Against Children* (2017), p. 11. Psychiatric Times, “From Victim to Aggressor” *Psychiatric Times* 24(7) (1 June 2007); Lam et al., “Will Victims Become Aggressors or Vice Versa? A Cross-Lagged Analysis of School Aggression” *Journal of Abnormal Child Psychology* (2017). WHO Regional Office for Europe, *The Cycles of Violence: The Relationship Between Childhood Maltreatment and The Risk of Later Becoming a Victim or Perpetrator of Violence* (EUR/07/50631214) (2007). Gómez, “Testing the Cycle of Violence Hypothesis: Child Abuse and Adolescent Dating Violence as Predictors of Intimate Partner Violence in Young Adulthood” *Youth & Society* 43(1) (2011).

³ When referring to “violence” against children, it is important to stress that this is not limited to physical violence but that the Convention on the Rights of the Child adopts a broader definition and refer to “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”, see Convention on the Rights of the Child, (1989), Article 19.

⁴ See WHO, Global status report on preventing violence against children 2020, (2020).

⁵ The Convention on the Rights of the Child foresees an obligation for Member States to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. See Convention on the Rights of the Child, (1989), Article 19.

⁶ The Committee on the Rights of the Child has referred to documented evidence in the fields of child development and neuroscience that indicates that “maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing”. See Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, (18 September 2019), para 22.

⁷ United Nations Model Strategies and Practical Measures on Violence against Children, A/RES/69/194 (18 December 2014).

address the need for integrated violence prevention and child protection strategies. They acknowledge the complementary roles of the justice system on the one hand, and the child protection, social welfare, health and education sectors, on the other, in working together to create a protective environment and in preventing and responding to violence against children.⁸ Using “violence against children” as a framework for action when it comes to the treatment of children recruited and exploited by criminal and armed groups, including terrorist groups, by the justice system is particularly relevant as these children may have been exposed to high levels of violence and should be treated and considered primarily as victims.

II. THE PHENOMENON OF CHILD RECRUITMENT AND EXPLOITATION BY CRIMINAL AND ARMED GROUPS, INCLUDING TERRORIST GROUPS

The recruitment and exploitation of children by criminal and armed groups, including terrorist groups, is a complex phenomenon that has been evolving considerably in the past years while new risks and challenges for children emerge. The Covid-19 pandemic has increased children’s vulnerabilities in the context of new means of recruitment employed by these groups, such as through the use of online communication and grooming, as misinformation is amplified through social media.⁹ Research indicates that children who have been recruited and exploited by criminal and armed groups, including terrorist groups, are subjected to extreme levels of violence, including forms of cruel, inhuman and degrading treatment.¹⁰ Girls are particularly vulnerable to the threat and reality of sexual and gender-based violence.¹¹ Exposure to this level of violence has grave implications for children’s development and well-being, as well as for the development of the communities in which they live. It can result in high risk of stigmatization and marginalization of children involved with such groups and generates challenging rehabilitation and reintegration needs.¹²

Children may become recruited or exploited for a wide variety of reasons and there are different types of factors that need to be taken into account. Negative circumstances and elements affecting the child that may be linked to the lack of socio-economic opportunities; marginalization and discrimination; poor governance and violations of human rights and prolonged and unresolved conflicts. Other factors or incentives that “pull” children towards the groups may include: a child’s individual background and motivations; sense of collective grievances and victimization; influence of distorted and misused beliefs, political ideologies and ethnic and cultural differences; material inducements; and significant influence of leadership, social and family networks.¹³ Most importantly, it should be highlighted that these groups deliberately choose to exploit children’s vulnerabilities and recruit them as they may present particular strategic advantages to the groups, as well as “propaganda value”.¹⁴ Some children are recruited using brutal and violent methods such as kidnapping. Others may join due to material inducements because they have no other choice to survive, for protection, or because they feel a responsibility to defend their families and communities.¹⁵ Peers and relatives may also have a strong influence on children’s behaviour by serving as role models, and research shows that children are particularly susceptible to peer influence, including pressure to engage in antisocial behaviours.¹⁶

⁸ It is important to note that there is currently no universally accepted, comprehensive definition of “terrorism” or “terrorist group”.

⁹ UNICRI, Stop the Virus of Disinformation, the risk of malicious use of social media during COVID-19 and the technology options to fight it, (November 2020), p. iii.

¹⁰ UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice Section*, (2017) p. 2.

¹¹ Ibid., p. 15. See also : O’Neil, Siobhan and Van Broeckhoven, Kato, *Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict*, New York: United Nations University, (2018), p. 72-73.

¹² See also: O’Neil, Siobhan and Van Broeckhoven, Kato, *Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict*, (New York: United Nations University, 2018), p. 199-200; 255.

¹³ UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice Section*, (2017), p. 30-31.

¹⁴ See also: O’Neil, Siobhan and Van Broeckhoven, Kato, *Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict*, New York: United Nations University, (2018), p. 45-46.

¹⁵ See UNODC, *Prevention of Child Recruitment and Exploitation by Terrorist and Violent Extremist Groups: The Role of the Justice System: A Training Manual*, (2019), p. 22.

¹⁶ Ibid.

Today, children recruited and exploited by criminal and armed groups, including terrorist groups, come into contact with the justice system and are being arrested, detained and prosecuted under counter-terrorism legislation in increasing numbers globally.¹⁷ Frequently, punitive approaches are given prevalence over restorative justice approaches which may expose these children to further risks of violence.¹⁸ A rights-based approach anchored in international law should be applied to make sure that all children, regardless of their potential status as alleged offenders and the gravity of the alleged offence, receive the care and protection they need and to ensure that their status first and foremost as victims of violations of international law is recognized.

III. JUSTICE FOR CHILDREN IN THE CONTEXT OF NATIONAL SECURITY AND COUNTER-TERRORISM: THE INTERNATIONAL LEGAL FRAMEWORK

Identifying the applicable international legal framework for children recruited and exploited by criminal and armed groups, including terrorist groups, can be difficult, especially in the national security and counter-terrorism context. There is a need for adopting a holistic approach to prevent and respond to violence against children perpetrated by these groups, recognizing the interconnection between different legal regimes, as international law offers responses that are valid and can lead to effectiveness.

In international humanitarian law one can find the basis of the prohibition of child recruitment and use in hostilities for children, as well as the right of special protection of children affected by conflict.¹⁹ This prohibition of the use of children is later reprised and broadened in the Rome Statute,²⁰ whereas international human rights law provides the broadest prohibition of child recruitment.²¹ The universal legal framework on counter-terrorism also promotes the prohibition of recruitment, and is increasingly recognizing the victimization of children.²² Finally, United Nations standards and norms may also provide guidance on how to prevent and respond to this serious form of violence in the field of crime prevention and criminal justice.

IV. MEASURES TO PREVENT AND COUNTER CHILD RECRUITMENT AND EXPLOITATION IN THE CONTEXT OF NATIONAL SECURITY AND COUNTER-TERRORISM, ANCHORED IN INTERNATIONAL LAW

A. Prohibition of Child Recruitment and Use in Hostilities

Prohibition and criminalization of child recruitment and exploitation are crucial and can also be seen as means to prevent this serious form of violence against children, as it will trigger key obligations of the State

¹⁷ See United Nations Global Study on Children Deprived of Liberty (2019), p. 640.

¹⁸ Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, (18 September 2019), para 99.

¹⁹ Article 77.2 of the First Additional Protocol to the Geneva Conventions prohibits the recruitment of children under the age of 15 years by the armed forces of the State and their participation in hostilities in the context of an international armed conflict, while Article 4.3 of the Second Additional Protocol explicitly prohibits the recruitment of children under the age of 15 years by non-State armed groups in the context of a non-international armed conflict.

²⁰ Rome Statute of the International Criminal Court (2002), Article 8.2 (b) (xxvi) concerning conscription or enlistment into the armed forces; and Article 8.2 (e) (vii) concerning conscription or enlistment into armed forces or armed groups.

²¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, (25 May 2000), article 4. See also: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("Palermo Protocol"), (15 November 2000).

²² Universal conventions and protocols applicable to the fight against terrorism such as the International Convention for the Suppression of Terrorist Bombings, (1997), do not specifically address the issue of child recruitment and use by terrorist groups. However, they do specify that the obligation to criminalize and prosecute acts of terrorism applies not only to the immediate perpetrators of such offences, but also to those who instruct others to commit the alleged terrorist act. Several resolutions adopted by the UN General Assembly as well as the Security Council condemn child recruitment, see notably Security Council Resolution 1373(2001); Security Council Resolution 2178(2014), and General Assembly Resolution 70/291(2016).

in relation to ensuring children's protection through the provision of services,²³ and it allows to shift the blame from child victims to those who recruit and exploit children to hold them accountable.

Specific provisions of international humanitarian law prohibit the recruitment and use of children in hostilities by the armed forces of a State and by non-State armed groups in the context of armed conflict for children under the age of 15 years.²⁴ The prohibition of the recruitment for this age category can also be found in international human rights law.²⁵ At the same time, within the framework of international criminal law, the Statute of the International Criminal Court establishes as a war crime the conscription or enlistment of children under the age of 15 years into armed forces or armed groups, as well as their use to participate actively in hostilities.²⁶

These provisions are complemented to protect children between the age of 15 and 18 years, whose recruitment is prohibited by the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.²⁷ In addition, the Worst Forms of Child Labour Convention includes the forced or compulsory recruitment of children for use in armed conflict in the list of "worst forms of child labour". The Convention also specifies that the worst forms of child labour include "work which, by its nature or the conditions in which it is carried out, is likely to harm the health, safety or morals of children",²⁸ which may include participation in hostilities. Under this Convention, States Parties are obliged to take immediate and effective measures to ensure the prohibition and elimination of these worst forms of child labour (including criminalization)²⁹ as a matter of urgency.

B. Children Recruited and Exploited by Criminal and Armed Groups, Including Terrorist Groups, Should Be Considered and Treated as Primarily Victims

To understand why, according to international law, child victims of recruitment and exploitation by terrorist and violent extremist groups should always be considered and treated primarily as victims and the implications of this principle, it is important to recognize that no child recruitment can be regarded as truly voluntary.³⁰ The perception of child recruitment and exploitation as a voluntary act places the blame on the child and can have far-reaching consequences. It leads to a focus of public action against the child and not against the groups and individuals that are recruiting. Moreover, it can also lead to stigmatization and thus reduce the number of complaints to authorities against acts of recruitment, for fear of reprisals or sanctions.³¹ It is therefore important to clarify the misconception of "voluntary recruitment" and recognize that there is also an inherent power imbalance between these groups, which deliberately target children for recruitment, and a child who is particularly vulnerable to these recruitment tactics.³² Indeed, the United Nations Special Representative of the Secretary-General for Children and Armed Conflict stated that recruitment processes are often characterized by elements of both coercion and voluntary recruitment, making such distinctions extremely difficult.³³ This has also been recognized by the International Criminal Court in the *Lubanga Dyilo*

²³ See UNODC, *Prevention of Child Recruitment and Exploitation by Terrorist and Violent Extremist Groups: The Role of the Justice System: A Training Manual*, (2019), p. 65.

²⁴ Article 77.2 of the First Additional Protocol to the Geneva Conventions which prohibits the recruitment of children under the age of 15 years by the armed forces of the State and their participation in hostilities in the context of an international armed conflict, while Article 4.3 of the Second Additional Protocol explicitly prohibits the recruitment of children under the age of 15 years by non-State armed groups in the context of a non-international armed conflict.

²⁵ Convention on the Rights of the Child, (1989), Article 38.

²⁶ Rome Statute of the International Criminal Court (2002), Article 8.2 (b) (xxvi) concerning conscription or enlistment into the armed forces; and Article 8.2 (e) (vii) concerning conscription or enlistment into armed forces or armed groups.

²⁷ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, (25 May 2000), article 4.

²⁸ International Labour Organization, Worst Forms of Child Labour (No. 182) (1999), Article 1.

²⁹ Worst Forms of Child Labour Recommendation, 1999 (Recommendation No. 190).

³⁰ UNODC *Roadmap on the Treatment of Children Associated with Terrorist and Violent Extremist Groups* (2019).

³¹ UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice Section*, (2017), p. 26-27.

³² See UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual*, (2019), p. 28. See also: O'Neil, Siobhan and Van Broeckhoven, Kato, *Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict*, (New York: United Nations University, 2018), p. 45-46.

³³ Hamilton C., and Dutordoir L., *Children and justice during and in the aftermath of armed conflict*, Working Paper No. 3. New York: Office of the Special Representative of the Secretary-General for Children and Armed Conflict, (2011), p. 28.

case, where the Court found that the distinction between voluntary and forced recruitment of a child is not only legally “irrelevant” but also superficial in practice.³⁴

The principle that these children should be considered and treated primarily as victims has been set by the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“Paris Principles”).³⁵ In addition, in 2018 the Security Council reinforced the principle by emphasizing that “children who have been recruited in violation of applicable international law by armed forces and armed groups and are accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law”.³⁶ This has also been reiterated by the Committee on the Rights of the Child that urged Member States to consider alternatives to prosecution and detention, including measures focusing primarily on children’s reintegration while applying due process for these children.³⁷

C. Child Recruitment and Exploitation as a Form of Human Trafficking

The Palermo Protocol links exploitation of children directly to their recruitment and other acts of trafficking. Its Article 3 defines trafficking in persons *inter alia* as “the recruitment (···) of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of another person, for the purpose of exploitation.”³⁸

When committed against adults, trafficking requires the establishment of an element of “means”, including the threat of force or other forms of coercion cited above, to achieve the consent of a person having control over another person. Nevertheless, the presence of the “means” element is not required in the case of child trafficking.³⁹ The fact that the Palermo Protocol does not require this element to be established for children indicates that the consent of the child, when it comes to recruitment, should always be considered irrelevant. Where there are indications of exploitation and trafficking of children, it is understood that the child victim was not free to make clear and informed choices regarding, for example, any possibility of escaping from the trafficker or finding other alternatives. The principle of non-penalization or non-punishment of victims of trafficking, including children, has been recognized in regional and international legal instruments⁴⁰ and is particularly important to consider when defining the criminal justice response for children accused of offences in the context of their recruitment and exploitation. The recognition of child recruitment as a form of trafficking shows how different forms of violence against children are inherently linked.

D. Detention as a Measure of Last Resort

As per international law, a child should only be in detention as a measure of last resort and for the shortest appropriate period of time.⁴¹ Still, many countries continue to deprive children of their liberty. According to the 2019 United Nations Global Study on Children Deprived of Liberty, there are approximately 1.5 million children deprived of liberty per year on the basis of a judicial or administrative decision. It found

³⁴ In its judgment to the Lubanga Dyilo case, the ICC has agreed that the distinction between voluntary and forced recruitment is superficial in practice in the context of armed conflict. See International Criminal Court (ICC), Situation in the Democratic Republic of the Congo, in the case of the Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, (14 March 2012), para. 612.

³⁵ See UNICEF, *The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, (February 2007). This legal instrument is non-binding but nevertheless represents a strong commitment by Member States.

³⁶ Security Council Resolution 2427 (2018).

³⁷ Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the justice system*, 18 September 2019 (CRC/C/GC/24), para 100.

³⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (15 November 2000).

³⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (15 November 2000), article 3(c).

⁴⁰ The principle of non-penalization of trafficked persons is recognized in regional and international legal instruments, including : Council of Europe Convention on Action against Trafficking in Human Beings, art. 26; Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Principles 7 and 8; Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons, article 7 (f) (A/69/269, annex); United Nations Global Plan of Action to Fight Human Trafficking (General Assembly resolution 64/293, annex).

⁴¹ Article 37(b), Convention on the Rights of the Child, (1989).

that children have been detained in the context of national security in 31 countries and, while at least 35,000 children are deprived of liberty in situations of armed conflict, at least 1,500 children are detained in the context of national security in countries without conflicts on their own territories.⁴²

There is a significant body of research demonstrating the harms that children experience when they are deprived of their liberty, that can hinder their rehabilitation and their ability to assume a constructive role in society, as per article 40 (1) of the Convention on the Rights of the Child. According to the Global Study, the impact on children is “inherently distressing, potentially traumatic and [has an] adverse impact on mental health, often exacerbated by poor treatment and unsatisfactory conditions.”⁴³ Detention in itself disrupts the positive support networks that children need to rehabilitate and reintegrate including their family and social relationships, and education and work prospects. It can have significant impacts on the children’s security, their development and well-being.⁴⁴ In addition, children who are associated with criminal and armed groups, including terrorist groups, may be particularly vulnerable to violence by peers, staff of detention facilities or other adults, due to the stigma attached to national security and terrorism. There is often an assumption that these children represent a risk and should be subject to targeted measures such as: placement in solitary confinement; detention in special sections or facilities under severe security regimes; and being deprived of access to services and programmes such as access to vocational training and education.⁴⁵ Regardless of the offence committed, above all, detention of children should be used as a measure of last resort and for the shortest appropriate period of time, regardless of the gravity or nature of the alleged offence.

E. Primacy of Child Justice Law for All Children in Conflict with the Law

Article 40 of the Convention on the Rights of the Child provides for an obligation of States Parties to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.⁴⁶ The Committee on the Rights of the Child stressed that trials of children by military tribunals and State security courts are a breach of rights for children, who should always be dealt with in specialized child justice systems.⁴⁷ This means that children over the minimum age of criminal responsibility and under the age of 18 must be dealt with within a specialized system irrespective of the severity of the offence that a child is charged with. In this regard, no exceptions should be permitted according to international law, even for the most serious offences, and a specialized system should be the primary jurisdiction for children charged with terrorism-related offences.⁴⁸

A specialized child justice system entails notably the establishment of a minimum age of criminal responsibility as well as the availability of a variety of dispositions, such as “care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence”.⁴⁹

F. Prosecution as a Measure of Last Resort and the Application of Alternatives to Judicial Proceedings (Diversions)

The Committee on the Rights of the Child has urged Member States to refrain from charging and prosecuting children for expressions of opinion or association only, as well as to consider non-judicial measures that are focused on reintegration as alternatives to prosecution and detention for children recruited and exploited by criminal and armed groups, including those designated as terrorist groups, and children charged in counter-terrorism contexts.⁵⁰

⁴² Nowak, M., *United Nations Global Study on Children Deprived of Liberty*, (2019), p. 640; 659.

⁴³ Nowak, M., *United Nations Global Study on Children Deprived of Liberty*, (2019), p. 261.

⁴⁴ See also: ICRC, *Children in Detention*, Brief, (November 2014), p. 16.

⁴⁵ See UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual*, (2019), p. 110.

⁴⁶ Convention on the Rights of the Child, (1989), Article 40(3).

⁴⁷ Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, (18 September 2019), para 96.

⁴⁸ See UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual*, (2019), p. 48.

⁴⁹ Convention on the Rights of the Child, (1989), Articles 40(3) and 40(4).

⁵⁰ Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, (18 September 2019), paras 100-101.

Alternatives to judicial proceedings, or diversionary measures, aim to channel or divert children in conflict with the law away from judicial proceedings through the development and implementation of procedures and programmes that foster their rehabilitation and reintegration.⁵¹ According to international law, they should be, whenever appropriate and desirable, available for children, providing that human rights and legal safeguards are fully respected.⁵² The Global Counterterrorism Forum (GCTF) has produced recommendations which emphasize that successful alternative interventions such as diversion can reduce the risk of public safety and security by effectively rehabilitating and reintegrating individuals so that they can become productive members of society.⁵³ Nevertheless, applying diversionary measures for children in terrorism-related proceedings can be hindered by different factors such as justice professionals' lack of knowledge and resources to implement these measures effectively or legislation restricting the use of diversion to certain types of offences. Given the seriousness of crimes and threats posed to national security in the context of counter-terrorism or organized crime, many justice professionals may also consider that diversionary measures are not suitable as a response to children suspected of such offences.⁵⁴

However, it is important to stress that there are no limitations under international law on the use of diversion, and it can and should be used when children are suspected of terrorism-related offences as much as for other serious offences whenever deemed appropriate.⁵⁵ Diversionary measures, including restorative justice measures, should not be perceived as “soft measures” but can be ways most adapted to addressing the root causes of the child's involvement with crime and violence. Individual assessment of children in conflict with the law can be a useful tool for strategic and planning considerations, keeping in mind that diversion from judicial proceedings can be introduced at any stage of the justice process by different justice professionals, depending on the conditions set by national law.⁵⁶

G. Rehabilitation and Reintegration as Primary Objectives for Children Recruited and Exploited by Criminal and Armed Groups, Including Terrorist Groups

As per the Convention on the Rights of the Child, States shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, abuse, recruitment etc.⁵⁷ When it comes to children in conflict with the law more specifically, the Convention also stresses the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.⁵⁸ This is particularly important also in the context of justice responses to children recruited and exploited by criminal and armed groups, including terrorist groups, in view of the serious forms of victimization suffered by these children.

The “rehabilitation” or recovery of child victims of recruitment and exploitation by criminal and armed groups, including terrorist groups, includes medical and psychological care and required legal and social services to be provided to children for them to recover from physical and psychological harm and help them resume a normal life.⁵⁹ The Optional Protocol on the Involvement of Children in Armed Conflict⁶⁰ also calls on States to provide assistance to victims of child recruitment for the purposes of their rehabilitation.

On the other hand, “reintegration” refers to the safe process through which a child victim and/or a child who has been in conflict with the law transitions back into the community, recovers physically and psychologically and acquires attitudes and behaviours conducive to assuming a constructive role in society⁶¹

⁵¹ UNICEF, *Toolkit on Diversion and Alternatives to Detention* (2009), Glossary of Terms.

⁵² Convention on the Rights of the Child, (1989), Article 40(3)(b).

⁵³ GCTF, *Recommendations on the Effective Use of Appropriate Alternative Measures for Terrorism-Related Offenses*, (2015).

⁵⁴ See UNODC, *Justice for Children in the Context of Counter-Terrorism: A Training Manual*, (2019), p. 74.

⁵⁵ Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, (18 September 2019), para 100.

⁵⁶ See UNODC, *Rehabilitation and Reintegration of Child Victims of Recruitment and Exploitation by Terrorist and Violent Extremist Groups: A Training Manual* (2019).

⁵⁷ Convention on the Rights of the Child, (1989), Article 39.

⁵⁸ Convention on the Rights of the Child, (1989), Article 40(1).

⁵⁹ See UNODC, *Justice in Matters involving Child Victims and Witnesses of Crime Model Law and Related Commentary*, (2009), p. 58 of the commentary in reference to article 29 (7) (c).

⁶⁰ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, (25 May 2000), Articles 6 and 7.

⁶¹ This definition has been adapted from article 39 and 40 of the Convention on the Rights of the Child. It takes into account

in accordance with articles 37 (b) and 40 (4) of the Convention on the Rights of the Child. Challenges that need to be taken into account when it comes to ensuring effective rehabilitation and reintegration in the national security and counter-terrorism context may include the experience of violence of children, stigma and exclusion attached to the type of offence, as well as the impact of deprivation of liberty. Access to psychosocial support is an important part of a child's rehabilitation, as well as a precondition for reintegration.⁶² It includes various forms of interventions such as life skills, emotional management and mentoring. A strengths-based approach to rehabilitation builds on pre-existing strengths of the child, helping the child develop new strengths and capabilities and may help her or him build self-confidence, learn to trust and develop new relationships.⁶³

V. CONCLUSION

When it comes to the treatment of children recruited and exploited by criminal and armed groups, including terrorist groups, by the justice system, responses to the difficult questions often arising in the context of national security and counter-terrorism can be found in international law, as well as standards and norms. While children associated with these groups may have been exposed to extreme levels of violence and may therefore have special rehabilitation and reintegration needs, the international legal framework on justice for children should apply to all children, regardless of the gravity of the offence. It is important to recognize these children's status and treatment as primarily victims, irrespective of their potential status as alleged offenders. Moving away from punitive approaches towards child-sensitive justice approaches is key in order to address children's rehabilitation and reintegration needs, and to avoid lasting consequences for children's and society's development alike.

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⁶² It includes various forms of interventions such as life skills, emotional management and mentoring. Ideally, psychosocial interventions should be combined with other interventions that address material wellbeing, health, education, and protection, and that build on local resources and coping mechanisms. See UNODC, *Rehabilitation and Reintegration of Child Victims of Recruitment and Exploitation by Terrorist and Violent Extremist Groups: A Training Manual*, (2019), pp. 23-30.

⁶³ See UNODC (2019), *Rehabilitation and Reintegration of Child Victims of Recruitment and Exploitation by Terrorist and Violent Extremist Groups: A Training Manual*, p. 132.

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