

Caught in the crossfire?



An international survey of anti-terrorism
legislation and its impact on children

Acknowledgements

CRIN is a global children's rights advocacy network. Established in 1995, we press for rights - not charity - and campaign for a genuine shift in how governments and societies view and treat children.

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Illustrations by Miriam Sugranyes.

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Contents

- 4-6 **Executive summary**
- 7-8 **Children, terrorism and counter-terrorism**
- 9 **About this report**
- 10-18 **State approaches to counter-terrorism: an overview**
- 19-26 **Terrorism prevention**
- 27-42 **Children accused of terrorism in the criminal justice system**
- 43 **Conclusion**

Executive summary

As terrorism has proliferated in the last 20 years, so have States' counter-terrorism strategies and the legislation that underpins them, which has introduced new surveillance measures, restrictions on behaviour, powers of detention, and hundreds of new offences carrying heavy sentences.

In developing their counter-terrorism strategies, States are obliged to ensure that human rights are promoted and protected in full. Approaches that undermine human rights are not only unlawful; they are now widely understood to be counter-productive, insofar as they consolidate the social conditions in which terrorism can flourish. Nonetheless, States commonly regard human rights as an operational impediment and are allowing them to erode. No group has been more vulnerable to this than children and young people, particularly from marginalised minority groups.

This report presents the findings from CRIN's research of anti-terrorism legislation in 33 countries across five continents. It shows that counter-terrorism measures are leading to extensive violations of children's rights:

- Children's behaviour and interests are monitored in schools and online, without their consent and sometimes without their knowledge;
- Children are criminalised for association with terrorist groups, even for marginal involvement, rather than treated as victims of grooming and calculated indoctrination by recruiters;
- Children can be routinely detained without charge for long periods under counter-terrorism powers in many countries;
- Children convicted of offences, such as association with a terrorist group, are punished with harsh and sometimes extreme penalties; life imprisonment is not unusual, and in some countries children have been executed;
- Some State military and intelligence agencies use children as spies and informants, exposing them to undue and potentially serious harm.

These effects of counter-terrorism measures are unambiguously incompatible with States' human rights obligations to children. In particular, the strategies violate several specific rights of the child, including:

- The right to privacy and to freedom of expression;
- The right to be protected from violence and exploitation;

- The right not to be used by State military and intelligence agencies;
- The right not to be deprived of liberty unlawfully or arbitrarily and the right to be treated with dignity;
- The right to a criminal justice system designed for the particular needs of children, and which recognises their lesser culpability by virtue of their cognitive and emotional immaturity relative to adults;
- The right of a child to have their best interests treated as a primary consideration in all actions concerning them.

Where apprehended children can be subject to extended detention without charge or harsh penalties after conviction, their treatment defies cardinal principles of juvenile justice established by the Convention on the Rights of the Child and other international rules and standards. In the worst cases, such punishments amount to torture, cruel, inhuman, or degrading treatment. Where counter-terrorism measures target one social group disproportionately, they are also likely to amount to a violation of the right to be free from discrimination.

States have favoured a ‘firefighting approach’ to counter-terrorism, by targeting suspected terrorists but not the social conditions in which terrorism can flourish. Structural risk factors that radically increase children’s vulnerability to recruitment, such as poverty, marginalisation and the stigmatisation of certain social groups—all of which are human rights violation in themselves—have been largely overlooked. A ‘human rights first’ approach to counter-terrorism would begin to reverse these social conditions.

A human rights approach would not criminalise children for association with terrorist groups, nor incarcerate them for terrorism offences. Instead, it would recognise children’s vulnerability to recruitment, supporting them to develop their own awareness of the risks. If children had been groomed and manipulated, the State would recognise their victimisation and provide rehabilitative care. Counter-terrorism authorities committed to human rights would not snoop on children, but would allow professionals charged with their care to make informed and measured decisions about any threats to their welfare. Nor should States ever imperil children by using them in the fight against suspected terrorists.

No State needs to violate the human rights of its public to tackle terrorism effectively, nor is there any advantage to be gained from doing so. A State willing to sacrifice children’s rights puts them in harm’s way, while handing an easy victory to terrorism.



Children, terrorism and counter-terrorism

Since 2001, atrocities by non-State groups have proliferated, particularly in developing countries in the Middle East, central Asia, and central and eastern Africa¹. In 2018, 11,000 attacks killed more than 25,000 people, many of whom were children².

Increasingly, children also number among the perpetrators³. Their relative cognitive and emotional immaturity, leaves young people vulnerable to indoctrination and manipulation, and so they face an elevated risk of recruitment by terrorist groups⁴. As of 2018, children are being used extensively, including by Islamist groups in developing countries such as so-called Islamic State, Boko Haram, and al-Shabaab⁵. Some children are recruited by force; others choose to join, incentivised by ideology, a sense of social purpose or the promise of financial security. Terrorism has been a growing concern in economically-developed countries also, where some children are groomed and indoctrinated into hostility towards society or the state, particularly through social media, and are enticed to associate themselves with terrorist groups. ⁶ Far-right and white supremacist terrorism is also on the rise in some jurisdictions.⁷

The prevailing counter-terrorism narrative targets extremist ideology for its potential to distort children's worldviews.⁸ It takes a 'firefighting' approach, by targeting suspected terrorists but not the social conditions in which terrorism can flourish. The research shows that structural factors related to the poverty,

1 Global Terrorism Database, <https://www.start.umd.edu/gtd>.

2 UN Secretary-General, 'Secretary-General's speech at SOAS, University of London, on "Counter-terrorism and human rights: winning the fight while upholding our values"', 16 November 2017. Available at: <https://www.un.org/sg/en/content/sg/statement/2017-11-16/secretary-general%E2%80%99s-speech-soas-university-london-%E2%80%9Ccounter-terrorism>.

3 Global Counterterrorism Forum, *Initiative to address the life cycle of radicalization to violence: Neuchâtel memorandum on good practices for juvenile justice in a counterterrorism context*, 2016, p. 1. Available at: <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>.

4 Global Counterterrorism Forum, Neuchâtel memorandum, 2016, op cit., p. 4; B Beber & C Blattman, 'The Logic of Child Soldiering and Coercion', *International Organization* 67(1), 2013, pp. 65–104.

5 For examples, see entries for Nigeria, Somalia and Syria at Child Soldiers International, *Child Soldiers World Index*, 2018. Available at: <https://childsoldiersworldindex.org>.

6 Global Counterterrorism Forum, *Neuchâtel memorandum*, 2016, op cit.

7 See UK Gov, "New figures show improved referrals to Prevent and rise in far-right concerns", 27 March 2018, available at: <https://www.gov.uk/government/news/new-figures-show-improved-referrals-to-prevent-and-a-rise-in-far-right-concerns>. The Guardian, "Far-right terror detentions rise fivefold since Jo Cox murder", 16 September 2018. Available at: <https://www.theguardian.com/world/2018/sep/16/far-right-terror-detentions-rise-fivefold-since-jo-cox>.

8 For example, see D Cameron, 'Extremism: PM speech', 20 July 2015. Available at: <https://www.gov.uk/government/speeches/extremism-pm-speech>.

marginalisation and stigmatisation of certain social groups—all forms of human rights violation in themselves—radically increase children’s vulnerability to recruitment⁹, yet governments and the public routinely overlook these.

As terrorism has developed, so have counter-terrorism strategies. States have introduced new surveillance measures, restrictions on behaviour, powers of detention, and terrorism offences carrying heavy sentences. While these measures may aim to be protective of public safety, they can also impinge on the daily life of citizens, particularly those of minority groups, in ways that can violate their fundamental human rights.

Counter-terrorism laws are often controversial for introducing many new criminal offences with serious penalties, conferring new powers for the State, and amending long-established procedural protections in the justice system. The human rights community campaigns forcefully when such laws are enacted, but rarely has there been a focus on children and the ‘special safeguards and care’ to which they are entitled.¹⁰

Children are more vulnerable than adults to certain detrimental effects of counter-terrorism measures. Internet surveillance, for example, can place children under suspicion for innocently exercising their curiosity about matters related to terrorism, unaware that they may be accessing proscribed content, or that their activity is monitored. When children do become aware, they may fear expressing their views on controversial issues. Children drawn into association with terrorist groups face extreme risks and, as this report will show, can face extreme penalties if apprehended and convicted of a terrorism offence.

Despite the greater vulnerability of children to both terrorist groups and counter-terrorism strategies, and despite their additional rights as children, counter-terrorism legislation rarely differentiates them from adults; the words ‘child’, ‘juvenile’ and ‘minor’ are absent from most of the laws reviewed for this report. All the legislation specifies that criminal responsibility begins at an age that would allow children to be charged and convicted of terrorism offences, even if they had been recruited by force or deception. Of the national legislation reviewed in our research, five countries allow prosecution for these offences from the age of seven years,¹¹ the average was ten years.

⁹ The Global Counterterrorism Forum offers this list of structural risk factors for children’s vulnerability to indoctrination: ‘exclusion and discrimination; lack of access to education; domestic violence; lack of social relations; poor economic background and unemployment; prior petty offending; time in juvenile custody; and the appeal of money offered by terrorist groups...’ Global Counterterrorism Forum, Neuchâtel memorandum, 2016, op cit., p. 4.

¹⁰ Convention on the Rights of the Child (CRC), Preamble.

¹¹ Grenada, India, Nigeria, Pakistan, Trinidad and Tobago all allow prosecution for terrorism offences from the age of seven years.

About this report

We have reviewed the counter-terrorism legislation of 33 countries across five continents to assess their effect on children. The sample includes countries from a range of legal traditions and social contexts, including some where armed conflict is ongoing. This report presents our findings. It analyses how terrorism offences are defined, what actions are criminalised, and how these laws affect children in the justice system.

The report begins with an outline of State approaches to countering terrorism, placing this in the context of States' human rights obligations. The main part of the report describes common terrorism prevention measures and the treatment of children accused of terrorism offences, and analyses the implications for their human rights. The report concludes with recommendations for the full integration of human rights obligations into States' counter-terrorism strategies.

State approaches to counter-terrorism: an overview

Defining terrorism

No international definition of terrorism has been agreed; negotiations on a comprehensive Convention on International Terrorism have long been stalled.¹² In the absence of an agreed definition, States use the terms terrorism, extremism and radicalisation without consistency.

Terrorism

National law commonly defines terrorism, though not always clearly. Criteria typically include an action (or threat of an action) intended to cause substantial harm and directed at a government, the public, or an international organisation, combined with the purpose of advancing a political, religious, racial or ideological cause. While simple in principle, such definitions become complicated by the legislation that incorporates them.

Extremism and radicalisation

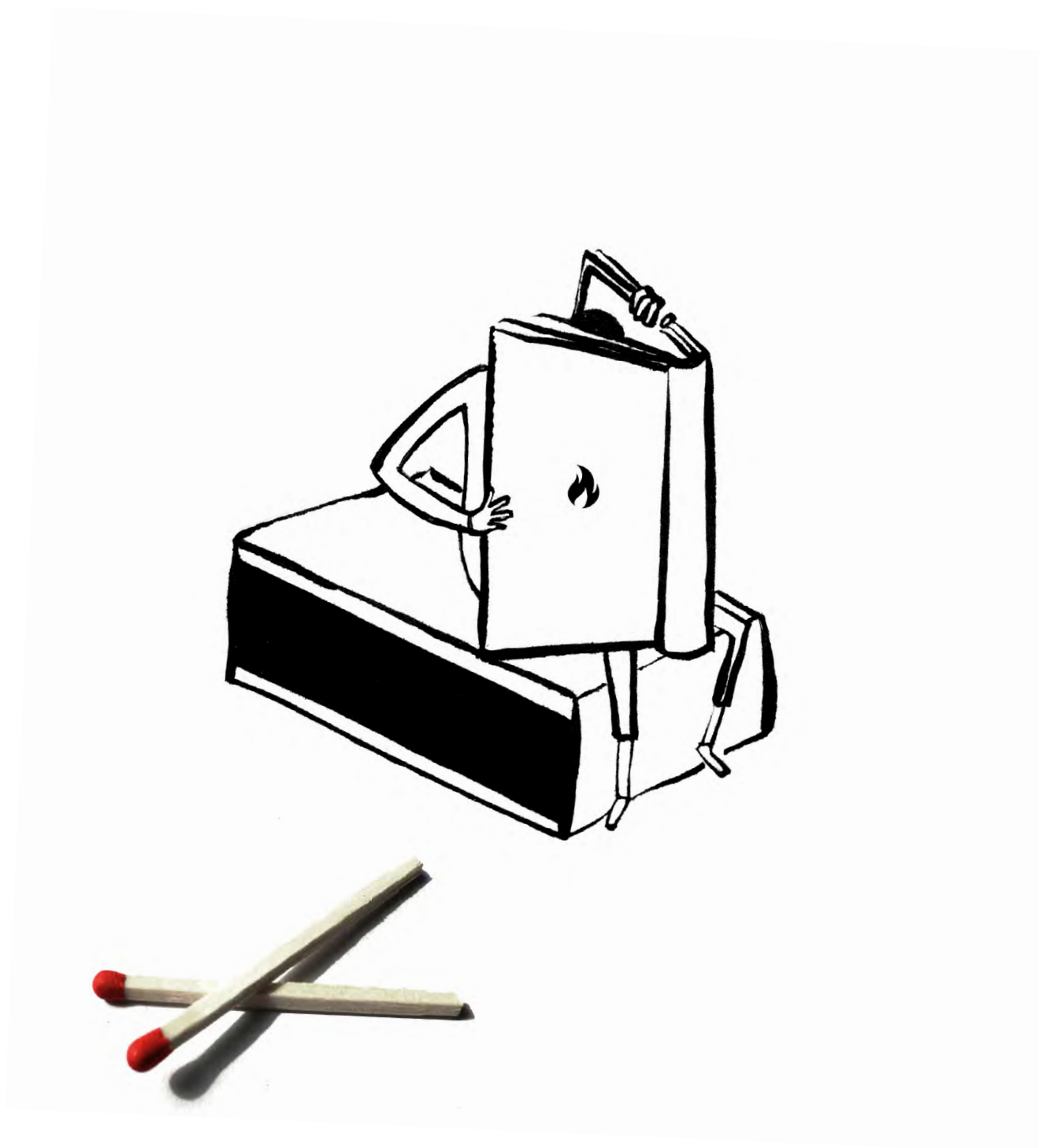
Despite the increasing prominence of ‘extremism’ and ‘radicalisation’ in policy and debate, the terms are vaguely conceptualised and rarely defined in law. This has allowed States broad scope to justify the infringement of rights in the name of countering terrorism.

The *Neuchâtel memorandum* on good practices for juvenile justice in counter terrorism is the leading international standard on criminal justice and children involved in terrorism or at risk of becoming involved.¹³ The guidelines refer to the ‘radicalisation of children to violence’, without defining radicalisation or specifying the nature of the violence. Nonetheless, the Memorandum acknowledges that the process of radicalisation remains poorly understood, requiring more research.¹⁴ The **United Kingdom** is among the few countries to explicitly define radicalisation and extremism. Radicalisation is understood as ‘the process by

¹² The draft convention’s critics, such as the Organisation of Islamic Cooperation, have argued that its working definition is too broad, encompassing ‘the legitimate struggle of peoples under foreign occupation and colonial or alien domination in the exercise of their right to self-determination in accordance with the principles of international law’. European Parliament, ‘Understanding definitions of terrorism’, 2015. Available at: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/571320/EPRS_ATA\(2015\)571320_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/571320/EPRS_ATA(2015)571320_EN.pdf).

¹³ Global Counterterrorism Forum, *Neuchâtel memorandum*, 2016, op cit.

¹⁴ Ibid. For a critical analysis of the concept of “radicalisation” see Shuurmann and Taylor, “Reconsidering radicalization: fanaticism and the link between ideas and violence”, 2018, *New Issues of Perspectives on Terrorism*, Vol. 12, No. 3.



which a person comes to support terrorism and forms of extremism leading to terrorism.¹⁵ Extremism is ‘vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs’. The definition of extremism also includes calling for the death of members of the UK armed forces.¹⁶

National definitions of terrorism offences

Most national definitions of terrorism offences reviewed for this report incorporate four essential features: the nature of the activity; the harm; the purpose or intent; and the exceptions.

Acts, threats, and omissions

The basis of an offence deemed an act of terrorism is an act by an individual or a group. Some States also include the threat of such action,¹⁷ while others include omissions, or failures to act, within the scope of terrorism offences.¹⁸ Some States that do not generally include omissions within their definition of terrorism include exceptions. **Grenada**, for example, does not define omissions within its general definition of terrorism,¹⁹ yet criminalises a failure to disclose information or a failure to cooperate with police in certain situations related to terrorism offences.²⁰

Harm

The definition of the harm that acts of terrorism must cause varies. Legislation typically includes violence against others, serious damage to property, the endangerment of life, grave risks to public health or safety, and/or substantial disruption to infrastructure. Some legislation also includes disruption to electronic systems, financial infrastructure, or maritime navigation.²¹

Purpose and intent

Counter-terrorism laws usually specify that the purpose of terrorist acts is to influence a government, an international institution, or public opinion, in order to advance a political cause. Some States, such as the **United Kingdom**, include religious, racial and ideological causes among the purposes of

¹⁵ UK, HM Government, Prevent Strategy, 2011, p. 108. Available at: <https://www.gov.uk/government/publications/prevent-strategy-2011>.

¹⁶ UK, Prevent Strategy, 2011, op cit., p. 107.

¹⁷ See, for example, Belize Money Laundering and Terrorism (Prevention) Act, Section 2C.

¹⁸ See, for example, Saint Lucia Terrorism Act, Section 2.

¹⁹ Grenada Terrorism Act 2012, Section 2.

²⁰ Ibid., Section 17.

²¹ See, for example, Belize Money Laundering and Terrorism (Prevention) Act 2008, Section 2C.

terrorism.²² Others emphasise one purpose over others, such as **Afghanistan**, which focuses on countering acts of terrorism intended to destabilise the government.²³ Many States allow themselves broad scope to interpret a disruptive act as terrorism. Legislation in **Bhutan**, for example, includes acts intended to ‘subvert the state’, which potentially encompasses any political action opposed to the government.²⁴

Exceptions

Some States exclude certain types of action from their legal definitions of terrorism; more than a quarter of the countries covered by this research explicitly exclude protests and industrial action. **Canada’s** legislation is typical of this approach. Actions ‘that may cause serious interference or serious disruption...’ potentially fall within the definition of terrorism in Canadian law, but the legislation excludes disruption caused by strikes and protests that do not involve violence against others or seriously jeopardise public safety.²⁵ Almost identical provisions appear in the laws of **Guyana**,²⁶ **Jamaica**,²⁷ and **Malaysia**.²⁸

Other States have not excluded protest and industrial action explicitly, but have more narrowly defined the harm within the definition of terrorism to avoid criminalising peaceful protest. The **United Kingdom**, for example, makes no exceptions for protests and strikes, but requires that a terrorist act involve serious violence against a person, the endangerment of life or other serious risk to health or safety, or serious damage to property or disruption of an electronic system.²⁹ By excluding disruption of services or infrastructure more broadly, the need for a standalone exception for protests is avoided.

Criminalising terrorism

Globally, counter-terrorism legislation has created hundreds of new criminal offences since the turn of the millennium. Our research alone has identified more than 250 separate terrorism offences covering a broad range of behaviour: from failing to report potential terrorist activity to authorities, to joining a proscribed group and carrying out an act of terrorism.

²² For example, United Kingdom Terrorism Act 2000, Section 1(1).

²³ Afghanistan, Law on Combat against Terrorist Offences 2008, Article 3(1), as translated into English by the United Nations Organisation on Drugs and Crime.

²⁴ Bhutan Penal Code, Section 329. The broad scope of this intent provision is restricted by the other elements of the offence.

²⁵ Canada, Criminal Code, Section 83.01(1)(b)(ii)(E)

²⁶ Guyana, Anti-Terrorism and Related Activities Act 2015, Section 2.

²⁷ Jamaica, Terrorism Prevention Act, Section 3(3)(c).

²⁸ Malaysia, Penal Code, Section 130B.

²⁹ United Kingdom, Terrorism Act 2000, Section 1.

Incorporation of international conventions

Most states have incorporated into domestic law the core international conventions covering various terrorist activities,³⁰ such as the hijacking of aircraft,³¹ attacks against internationally protected persons,³² financing,³³ and using nuclear materials.³⁴ **Guyana's** Anti-Terrorism Act, for example, includes all offences from the international conventions within the scope of terrorist act.³⁵ Other countries, such as **Afghanistan**, have created their own definitions of terrorism offences that reflect the conventions that they have ratified.³⁶

Criminalisation of acts defined as terrorism in national law

Another approach is to criminalise any act of any kind that falls within the definition of terrorism specified in national law. Approximately half of the States covered by our research have done this, usually in addition to creating terrorism offences specific to certain situations (e.g. aviation). **Malaysia**, has criminalised 'committing terrorist acts', which are any form of behaviour that falls within the national definition of terrorism.³⁷ **Ireland** also holds anyone who commits an action that falls within the definition of terrorism guilty of an offence,³⁸ but uses this definition as a means of setting aggravated sentences.³⁹

Given that terrorism offences normally carry heavy sentences, a shortcoming of this approach is its failure to distinguish adequately the widely varying gravity of behaviour that 'terrorism' encompasses. It may assign similar criminal significance to marginal involvement such as a loose association with a terrorist group, or accessing material online that could be of use to such a group, as to deep and instrumental involvement, culminating in acts of terrorism. In **Malaysia**, for example, a terrorism offence that does not cause death carries a minimum

30 These conventions are: the Convention on Offences and Certain Other Acts Committed On Board Aircraft (1963); the Convention for the Suppression of Unlawful Seizure of Aircraft (1970); the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); the Convention on the Prevention of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); the International Convention against Taking of Hostages (1979); the Convention on the Physical Protection of Nuclear Material (1980); the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988); the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988); the Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991); the International Convention for the Suppression of Terrorist Bombings (1997); the International Convention for the Suppression of the Financing of Terrorism (1999); and the Convention for the Suppression of Acts of Nuclear Terrorism (2005).

31 Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Article 1.

32 Convention on the Prevention of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), Article 2.

33 International Convention for the Suppression of the Financing of Terrorism (1999), Articles 2 and 5.

34 Convention for the Suppression of Acts of Nuclear Terrorism (2005), Articles 2 and 5.

35 Guyana, Anti-Terrorism Activities Act 2015, Sections 2 and 3(1).

36 Afghanistan, Law on Combat Against Terrorist Offences 2008, Articles 10, 11 and 13.

37 Malaysia, Penal Code, Section 130B and C.

38 Ireland, Criminal Justice (Terrorist Offences) Act 2005, Section 6(1).

39 Ireland Criminal Justice (Terrorist Offences) Act 2005, Section 7(1)(c).

sentence of seven years' imprisonment and a maximum of 30 years.⁴⁰ In the **United Kingdom**, a young woman was jailed for life in 2018 for marginal involvement from the age of 15 in a botched terrorist plot.⁴¹

Criminalisation of membership of a proscribed group

Some states criminalise membership of a terrorist group, without regard to whether membership leads to any further criminal activity. In **Afghanistan**, for example, any person who becomes a member of a terrorist organisation is liable to 'medium term imprisonment'.⁴² In other States, the offence of membership requires active participation in the group. **New Zealand** criminalises knowing participation in a terrorist group where membership enhances the group's ability to commit acts of terrorism.⁴³ In this way, the offence requires a degree of complicity that in other areas of law would amount to aiding or abetting. In the **United Kingdom** it is an offence to belong to a proscribed organisation, but it is a defence to the crime if the organisation was not banned when the person joined it (or last professed to be a member of it) or if the individual has not taken part in the activities of the organisation since it was proscribed.⁴⁴

Criminalisation of recruitment for terrorism

Recruitment into terrorist organisations or for acts of terrorism is commonly, though not universally, criminalised in the legislation reviewed for this report. In a formulation replicated elsewhere in the Caribbean,⁴⁵ **Antigua and Barbuda** criminalises recruiting, or knowingly agreeing to recruit, a person into a terrorist group or to participate in an act of terrorism.⁴⁶ In other jurisdictions recruitment is subsumed within a broader offence of terrorist activity. In **Jamaica**, for example, it is an offence to participate in a terrorist group, which may include 'providing, receiving or recruiting a person to receive training in order to facilitate or commit terrorist activity'.⁴⁷

Where a State has not criminalised recruitment explicitly, the activity may still fall within the definition of terrorism. In the **United Kingdom**, for example, it is an offence to encourage terrorism, prepare for terrorist acts, or to train for them.⁴⁸

⁴⁰ Malaysia, Penal Code, Section 130C.

⁴¹ Refer to text box for details.

⁴² Here, 'terrorist organisation' means any real or legal person that has committed an offence under the Act, or is designated as a terrorist organisation by the UN Security Council or by the Afghan National Assembly. Afghanistan, Law on Combat against Terrorist Offences, Sections 91(1) and 3(2).

⁴³ New Zealand, Terrorism Suppression Act 2002, Section 11.

⁴⁴ United Kingdom, Terrorism Act 2000, Section 11.

⁴⁵ For example, see Dominica, Suppression of the Financing of Terrorism Act, Section 5B, as amended by the Suppression of the Financing of Terrorism (Amendment) Act 2011, Section 6.

⁴⁶ Antigua and Barbuda, Prevention of Terrorism Act 2005, Section 13.

⁴⁷ Jamaica, Terrorism Prevention Act, Section 7(3)(a) and (c). Afghanistan takes a similar approach, criminalising recruitment as part of its definition of supporting a terrorist offence; recruiters are punished in the same way as a person who commits the offence for which a person is recruited. See Afghanistan, Law on Combat against Terrorist Offences, Article 19.

⁴⁸ United Kingdom, Terrorism Act 2006, Sections 1 and 5.

Counter-terrorism legislation and children's rights

The duty to promote and protect human rights

The UN Security Council has clarified States' legal duty to uphold the human rights of the public while developing their counter-terrorism strategies:

'States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law.'⁴⁹

The UN Secretary-General has echoed many others in pointing out that anti-terrorism strategies that violate human rights are likely to be counterproductive.⁵⁰ Violations of human rights are a risk factor for terrorism, he said, while a strong commitment to them is preventive, and belongs at the heart of counter-terrorism strategies:^{51 52}

'Terrorism is fundamentally the denial and destruction of human rights, and the fight against terrorism will never succeed by perpetuating the same denial and destruction.'⁵³

In developing their counter-terrorism strategies, States have additional duties in respect of the enhanced rights that children should enjoy under the Convention on the Rights of the Child (CRC), particularly:

- The right to privacy;⁵⁴
- The right to freedom of expression, including to receive and impart 'information and ideas of all kinds';⁵⁵
- The right to be free from discrimination;⁵⁶
- The right to be protected from violence and exploitation;⁵⁷ and the right not to be used for military purposes by armed groups, or by

⁴⁹ UN SCR 1456 (2003).

⁵⁰ UN Secretary-General (UNSG), 'Counter-Terrorism Methods Must Not Compromise Rule of Law, Human Rights, Secretary-General Stresses, as High-Level Conference Concludes', 29 June 2018. Available at <https://www.un.org/press/en/2018/sgsm19120.doc.htm>

⁵¹ UNSG, 'Counter-Terrorism Methods Must Not Compromise Rule of Law, Human Rights', 2018, op. cit.

⁵² UNSG, 'Secretary-General's speech at SOAS, University of London, on "Counter-terrorism and human rights: winning the fight while upholding our values', 16 November 2017. Available at: <https://www.un.org/sg/en/content/sg/statement/2017-11-16/secretary-general%E2%80%99s-speech-soas-university-london-%E2%80%9Ccounter-terrorism>.

⁵³ UNSG, 'Secretary-General's speech at SOAS, University of London', 2017, op. cit.

⁵⁴ Convention on the Rights of the Child (CRC), Article 16.

⁵⁵ CRC Article 13.

⁵⁶ CRC Article 2.

⁵⁷ CRC Article 19.

State military and intelligence agencies;⁵⁸

- The right not to be deprived of liberty unlawfully or arbitrarily;⁵⁹ and the right, if suspected or convicted of a crime, to be treated ‘in a manner consistent with the promotion of the child’s sense of dignity and worth’;⁶⁰
- The right of access to a criminal justice system dedicated to children and their particular needs.⁶¹

Although restrictions to certain fundamental rights may be legitimate in the public interest, any limitation must be lawful, necessary, and proportionate. This was pointed out in relation to surveillance, for example, by the Special Rapporteur on counter terrorism:

‘States may make use of certain preventive measures like covert surveillance or the interception and monitoring of communications, provided that these are case-specific interferences, on the basis of a warrant issued by a judge on showing of probable cause or reasonable grounds; there must be some factual basis, related to the behaviour of an individual which justifies the suspicion that he may be engaged in preparing a terrorist attack.’⁶²

In practice

In practice, however, counter-terrorism strategies have tended to presume a legitimate State interest in restricting fundamental human rights, which are frequently seen as an operational impediment. For example, the **United States** justifies intrusive mass surveillance, which violates the right to privacy of the entire population, on the grounds that it enables intelligence agencies to detect suspected terrorists more effectively.⁶³

The Special Rapporteur on counter terrorism noted in 2006 that the absence of an internationally codified definition of terrorism has allowed States to use a broad understanding of the term to legitimise action unrelated to countering it.⁶⁴ In particular, States may use the counter-terrorism rubric to quell public dissent, sometimes violently, with the spurious justification that this is necessary to prevent atrocities. For example, Human Rights Watch has documented numerous killings by **Israel** of Palestinian civilians including children, which the State has sought to

⁵⁸ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).

⁵⁹ CRC Article 37.

⁶⁰ CRC Article 40.

⁶¹ Ibid.

⁶² UN Human Rights Council (HRC), Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3) 2009a, para. 30. Available at <http://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A.HRC.10.3.pdf>.

⁶³ B Gellman, ‘Surveillance Net Yields Few Suspects,’ Washington Post, 5 February 2006. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/04/AR2006020401373.html>.

⁶⁴ HRC, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, (E/CN.4/2006/98), 2006, para. 27. Available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/98&Lang=E>.

justify publicly as counter-terrorism actions.⁶⁵ In **Malaysia** the government has used anti-terrorism powers to arrest and detain peaceful anti-corruption protesters.⁶⁶ In the **United Kingdom** in 2009, a parliamentary committee criticised the power of police to stop and search individuals without suspicion and its use to stifle peaceful protest⁶⁷ (the law has since been repealed).⁶⁸

The impact on children has been substantial. As this report will show, children around the world have been affected by State authorities that either over-reach their powers or capitalise on the wide scope of action that much national anti-terrorism law affords them.

⁶⁵ For example, see Human Rights Watch, 'Israel/Palestine: Unlawful Israeli Airstrikes Kill Civilians', 15 July 2014. Available at: <https://www.hrw.org/news/2014/07/15/israel/palestine-unlawful-israeli-airstrikes-kill-civilians>.

⁶⁶ Human Rights Watch, 'Creating a Culture of Fear: The criminalization of peaceful expression in Malaysia', 26 October 2015. Available at: <https://www.hrw.org/report/2015/10/26/creating-culture-fear/criminalization-peaceful-expression-malaysia>; J Vasager, 'Malaysia intensifies crackdown on anti-corruption protesters', Financial Times, 19 November 2019. Available at: <https://www.ft.com/content/c28fe546-ae45-11e6-9c37-5787335499a0>.

⁶⁷ UK, Joint Committee on Human Rights, Demonstrating respect for rights? A human rights approach to policing protest, 2009, pp. 24–27. Available at <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/47/47i.pdf>.

⁶⁸ Liberty, 'Overview of terrorism legislation', n.d. Available at: <https://www.libertyhumanrights.org.uk/human-rights/countering-terrorism/overview-terrorism-legislation>.

Terrorism prevention

Monitoring and surveillance of children

From a young age, children are potential targets of counter-terrorism surveillance. Their behaviour at schools and online is increasingly monitored, for example, for signs of interest in terrorism and terrorist groups.

Children are especially vulnerable to exploitation of their personal information by state agencies, whose data-harvesting practices remain largely unregulated in most parts of the world. Their whereabouts and communications can be tracked with ease by police and intelligence agencies. Children are less likely than adults to be aware that their online activity is automatically recorded, and that they have a legal right to privacy.

Monitoring is by nature intrusive; it is not normally subject to the consent of children, and they are often not told about it. It can also be counter-productive. When children are aware that they are being watched, they are likely to adapt their behaviour and self-censor their communications, and their trust in others – parents, their school, the state – may be damaged.

The monitoring of children for counter-terrorism purposes engages their rights, particularly the right to privacy, the right of freedom of expression and, in view of States' focus on "radicalisation" processes in certain social groups, the right to be free from discrimination.⁶⁹ The right to privacy recognises children's sovereignty over their personal information: 'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.'⁷⁰ In the view of the Special Rapporteur on counter terrorism, 'lawful' restrictions on the right to privacy must be prescribed in legislation, 'necessary in a democratic society', necessary to achieve a legitimate aim, and the least intrusive option available to achieve that aim.⁷¹ States do not enjoy unfettered freedom to snoop on citizens in the name of countering terrorism. Unless tightly restricted and strictly necessary, the intrusive monitoring of children's interests and behaviour may amount to an arbitrary interference with the right to privacy.

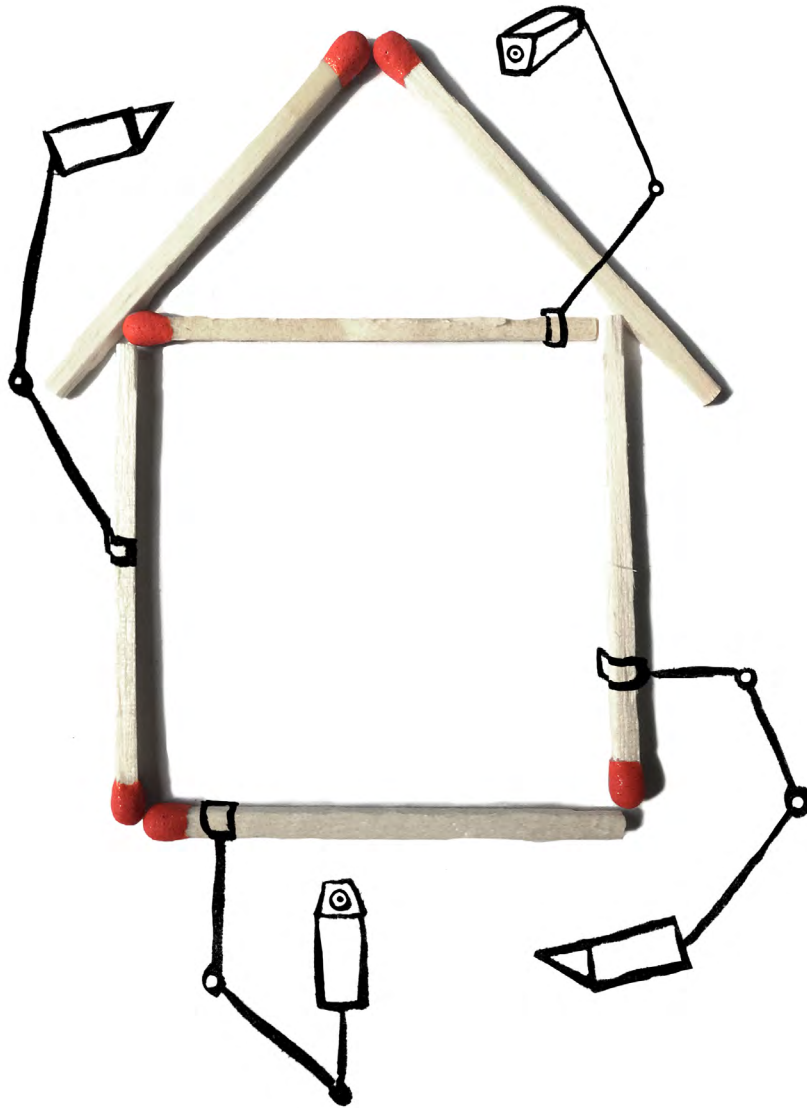
A child's right of freedom of expression includes the 'freedom to seek, receive and impart information and ideas of all kinds.'⁷² Restrictions imposed in the

⁶⁹ CRC Articles 16, 13, and 2, respectively.

⁷⁰ CRC Article 16(1)

⁷¹ UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin (A/HRC/13/37), 2009b, paras 16–17. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/178/04/PDF/G0917804.pdf>.

⁷² CRC Article 13.



context of counter-terrorism strategies, such as proscription of certain online information, must be prescribed in law and necessary to achieve a legitimate aim. Surveillance of children online and at school, and the prohibition of access to certain kinds of online content, can have a chilling effect on this right. Anecdotal evidence from the **United Kingdom**, for example, indicates that children, aware that they are being watched, can become afraid of expressing an interest in certain topics, such as the plight of Palestinians.⁷³

The right to be free from discrimination means, among other things, that children enjoy their rights on an equal basis with other children: ‘States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind...’⁷⁴ It also means that children in certain social groups must not be subject to suspicion or surveillance on grounds of their status as members of those groups.

As the Neuchâtel Memorandum makes clear, counter-terrorism practice that stigmatises children in certain social groups by discriminating against them, and which does not enjoy the community’s support, is more likely to intensify than diminish the conditions in which terrorism flourishes:

‘In particular, prevention strategies should avoid and seek to prevent the stigmatisation of any religion, culture, ethnic group, nationality, or race. This could in turn foster divisiveness and fuel distrust between communities and law enforcement authorities and could even be used as a basis for propaganda by violent extremist groups... Preventive programs generally have a stronger chance of succeeding when developed, coordinated, and implemented in collaboration with community members.’⁷⁵

In the **United Kingdom**, professionals working in schools, child-care services, local government, police, and health services have been under legal obligation since 2015 to ‘have due regard to the need to prevent people from being drawn into terrorism.’⁷⁶ This obligation, part of the Prevent programme, entails a duty to ‘identify children at risk’ and ‘intervene as appropriate.’⁷⁷ The stated aims of the programme are to ensure that children are not targeted, manipulated or recruited by terrorist groups, which accords with States’ obligation to safeguard them against exploitation and violence.⁷⁸ However, as outlined above, the programme can also treat

⁷³ Rights Watch (UK), Preventing Education? Human rights and counter-terrorism policy in schools, 2016, p. 36. Available at: <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf>.

⁷⁴ CRC Article 2.

⁷⁵ Global Counterterrorism Forum, Neuchâtel memorandum, 2016, op cit., p. 5.

⁷⁶ United Kingdom, Counter Terrorism and Security Act 2015, Section 26(1) and Schedule 6.

⁷⁷ United Kingdom, HM Government, *Revised Prevent Duty Guidance*, July 2015, p. 11. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance__England_Wales_V2-Interactive.pdf.

⁷⁸ CRC Article 19.

children as potential suspects, intrudes on their privacy, and can leave them fearful of expressing views seen as controversial.⁷⁹

United Kingdom: Counter-terrorism monitoring of children

At age 14, Rahmaan Mohammadi was referred by his school to the UK's Prevent counter-terrorism programme for wearing a Palestinian scarf and handing out leaflets about the humanitarian emergency in Gaza.⁸⁰ He alleged that the police asked him whether he was Shia or Sunni, telling him that they were 'only looking for certain types of Muslims'. According to Rahmaan, police confronted him with a substantial file on him, telling him that it was not 'active' but could be kept for the rest of his life.

Approximately 1,500 children annually are now referred to the authorities under the UK's Prevent strategy; nearly half of all referrals are aged under 18.⁸¹ Rahmaan's case, which is far from unique,⁸² shows a clear violation of Art 13 of the CRC: the right of freedom of expression. The concentration of referrals among Muslims is also prima facie evidence of a violation of Art 2: the right to be free from discrimination. Approximately 5 percent of the UK population is Muslim and 6 percent is ethnically Asian,⁸³ but 39 percent of children referred to the authorities under Prevent in 2014 and 2015 were recorded as Muslim⁸⁴ and 38 percent were ethnically Asian.⁸⁵

Recommendations:

· States should avoid creating legal obligations based on vague definitions of terms such as "radicalisation" and "extremism"

⁷⁹ Refer to text box for examples.

⁸⁰ Rahmaan was interviewed as part of the a Rights Watch UK investigation, Preventing Education? 2016, op cit., pp. 35-37.

⁸¹ Between March 2014 and March 2016, 3,105 people under the age of 18 were referred to Channel (part of the Prevent strategy) across England and Wales, accounting for 48 percent of all referrals. Information obtained under the Freedom of Information Act and held on record.

⁸² For examples of other cases, see Liberty, *Prevent duty must be scrapped: LEA admits discrimination after teachers call police over seven-year-old boy's toy gun*, 27 January 2017; Rights Watch UK, Preventing Education? 2016, op cit., pp. 32-45.

⁸³ United Kingdom, Office for National Statistics (ONS), 'Full story: What does the Census tell us about religion in 2011?', n.d. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/fullstorywhatdoesthecensustellusaboutreligionin2011/2013-05-16>; ONS, '2011 Census: Ethnic group1, local authorities in the United Kingdom' [spreadsheet], 2013. Available at: <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-and-quick-statistics-for-local-authorities-in-the-united-kingdom---part-1/rft-ks201uk.xls>.

⁸⁴ Breakdown by religion: Muslim (39%); Christian (5%); Sikh (<1%); Jewish (<1%); Buddhist (<1%); Hindu (<1%); none (1%); other (<1%); not known (11%). (Reporting period: March 2014 to March 2016.) Information obtained under the Freedom of Information Act and held on record.

⁸⁵ Breakdown by ethnicity: Asian (38%); White (33%); Black (5%); Mixed (4%); Chinese (<1%); other (7%); unknown (12%). (Reporting period: March 2014 to March 2016.) Information obtained under the Freedom of Information Act and held on record.

- Programmes designed to prevent children being recruited by terrorist groups should be aimed at protecting children remain distinct from the criminal justice system and should be narrowly designed to avoid limiting the right to freedom of expression and information
- Prevention mechanisms should be carefully monitored to ensure they are not applied in a discriminatory manner

Preventing child recruitment by terrorist groups

The recruitment by a non-State armed group of any child under the age of 18, whether or not the child is deployed in any way, violates the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, now ratified by 168 States.⁸⁶ Forcible recruitment for armed conflict, and work of any kind that is likely to harm children, are additionally prohibited by ILO Convention 182 on the worst forms of child labour.⁸⁷ The Convention on the Rights of the Child also prohibits all forms of exploitation prejudicial to any aspect of a child's welfare, and it requires States to ensure that children subject to exploitation get the physical and psychological recovery and reintegration they need.⁸⁸ States therefore have a legal obligation to prevent the association of children with armed groups, including terrorist groups, and the first step is to criminalise recruitment.⁸⁹

The national legislation reviewed in our research largely recognises these obligations. It is less clear about whether children should also be prosecuted for joining a terrorist group, but children's rights principles unambiguously indicate that they should not. In the context of armed conflict, international standards are clear that children who have been associated with armed forces or armed groups including terrorist groups should not be prosecuted, punished or threatened with prosecution or punishment solely for their membership of those groups. In addition, although the Committee on the Rights of the Child has not addressed the treatment of children recruited by terrorist groups directly, it has elaborated States' duties in analogous situations of exploitation. In these situations, the Committee has been clear that children should be treated exclusively as victims. For example, it has recommended that trafficked children who are exploited by criminal groups⁹⁰ to commit offences 'should not be penalised and should receive assistance as victims of a serious human rights violation.'⁹¹

⁸⁶ OPAC, Article 4. Full list of State parties available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=_en.

⁸⁷ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182, Article 3.

⁸⁸ CRC Articles 36 and 39, OPAC Article 6.

⁸⁹ Child Soldiers International, *A Law Unto Themselves? Confronting the Recruitment of Children by Armed Groups*, 2016, p. 7.

⁹⁰ Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, 2007, Principle 8.7.

⁹¹ CRC, General Comment No. 6 (2005): *Treatment of unaccompanied and separated children outside their country of origin* CRC/GC/2005/6, para. 53. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>.



Among the countries in the scope of our research, several criminalise membership of terrorist organisations and none makes exception for children.⁹² This leaves children exposed to the risk of variable sentences—some very harsh—if convicted of association with a proscribed group. In **Bangladesh**, membership is a relatively minor offence carrying a maximum sentence of six months imprisonment,⁹³ while in **New Zealand** it is 14 years and in **Saint Lucia** 15 years.⁹⁴

Recommendations:

- *Recruitment of anyone under the age of 18 by terrorist groups or to participate in a terrorist act should be criminalised*
- *Children should never be criminalised simply for being a member of a prohibited group*
- *States should adopt a rehabilitative model to ensure children are able to disengage from these groups*
- *Children recruited by terrorist groups should be treated primarily as victims*

Using children for counter-terrorism purposes

Children are also used by States for counter-terrorism operations, particularly as spies and informants. When children are used by armed forces or intelligence agencies, the practice falls within the scope of the Optional Protocol on the involvement of children in armed conflict (OPAC), which limits the use of children by states for military purposes. Under OPAC, states must set a minimum age for the use of child recruits for military purposes, which may not be lower than 16. Children must be ‘fully informed’ of what will be involved, including the full range of risks, and the informed consent of parents must be provided in writing.

Irrespective of whether military agencies are involved, the provisions of the CRC still apply. These require that the best interests of the child be a primary consideration in ‘all actions’ concerning them,⁹⁵ and that the child be protected from violence. The exposure of a child to the risks associated with infiltrating a terrorist group (including the risk of being killed) self-evidently puts children in harm’s way, and so cannot meet the

⁹² E.g. Afghanistan, Bangladesh, Ireland, Israel, United Kingdom.

⁹³ Bangladesh, Anti-Terrorism Act 2009, Section 8.

⁹⁴ Saint Lucia, Anti-Terrorism Act 2008, Section 18.

⁹⁵ CRC Article 3(1): ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’ Article 3(2): ‘States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being...’ Article 19(1): ‘States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.’

‘best interests’ requirement. The use of children as spies and informants is therefore highly likely to violate the Convention.

United Kingdom: The use of child spies

In 2018 a **United Kingdom** parliamentary committee reported that children were being recruited and used as spies and informants in surveillance operations against criminal groups, including terrorist groups.⁹⁶ The responsible home office minister justified the use of children as “covert human intelligence sources” (CHIS) in the following way:

‘[Juveniles] may have unique access to information about other young people who are involved in or victims of such offences. For example, it can be difficult to gather intelligence on gangs without penetrating their membership through the use of juvenile CHIS... Much as investigators would wish to avoid the use of young people in such a role, it is possible that a carefully managed deployment of a young person could contribute to detecting crime and preventing offending.’⁹⁷

The government did not know how many children it was using in this way, but the minister argued that there was ‘increasing scope’ for the practice.⁹⁸ In August 2018, the Joint Committee on Human Rights requested more information from the home office about its use of children for these purposes, including how the use adhered to the best interests principle under the CRC.⁹⁹ The government responded refusing to rule out the use of children in dangerous assignments and offering no analysis of the application of the best interests principle.¹⁰⁰

⁹⁶ United Kingdom, House of Lords Secondary Legislation Scrutiny Committee, *Draft Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018; Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018*, 2018. Available at: <https://publications.parliament.uk/pa/ld201719/ldselect/ldsecleg/168/168.pdf>.

⁹⁷ Letter from Ben Wallace MP to Lord Trefgarne, cited *ibid.*, p. 11.

⁹⁸ *Ibid.*

⁹⁹ Parliament.UK, Committee seeks further detail on Covert Human Intelligence Sources, 16 August 2018. Available at: <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2017/juveniles-chis-17-19/>.

¹⁰⁰ Letter from Ben Wallace MP to Harriet Harman QC MP, “*Child spies*” - *Use of juveniles as Covert Human Intelligence Sources (CHIS)*. Available at: <https://www.parliament.uk/documents/joint-committees/human-rights/correspondence/Child-spies-CHIS.pdf>.

Children accused of terrorism in the criminal justice system

Procedural rights

Human rights principles

The Human Rights Committee considers that security detention, in cases where prosecution on a criminal charge is not being considered, will normally amount to arbitrary detention in violation of the International Covenant on Civil Political Rights' right to liberty and security of person.¹⁰¹

Where children are to be investigated with a view to charging with an offence, the CRC recognises their rights. The Committee on the Rights of the Child has clarified in detail that States have an obligation to apply juvenile justice principles in full to all persons under the age of 18.¹⁰²

'States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.'¹⁰³

This obligation gives rise to additional duties on the part of the State. The child has the right to be told 'promptly and directly' of the charge against him or her, and has a right to legal assistance and any other appropriate support.¹⁰⁴ The child's innocence must be presumed until the matter has been determined, which should happen 'without delay'.¹⁰⁵ Meanwhile, the child's privacy must be respected, which precludes publication of their name or other identifying information, and no pressure may be applied

¹⁰¹ HRC, *General Comment No. 35 (2014) on Article 9 (Liberty and security of person)*, CCPR/C/GC/35, 2014, para. 15. Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f3.

¹⁰² CRC, *General Comment No. 10 (2007): Children's rights in juvenile justice*, CRC/C/GC/10, 2007, para. 38. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

¹⁰³ CRC Article 40(1).

¹⁰⁴ CRC Article 40(2).

¹⁰⁵ *Ibid.*

to induce a confession.¹⁰⁶ Throughout, the child's 'best interests' must be a 'primary consideration'.¹⁰⁷

Every child deprived of liberty has a right to challenge the legality of the State's action before a court or other competent, independent and impartial authority. Applying this standard, the Committee on the Rights of the Child requires that a child who is arrested and detained must be brought before a competent authority¹⁰⁸ within 24 hours.¹⁰⁹

Administrative detention

Administrative detention is the deprivation of liberty of a person, initiated or ordered by the executive branch of the government rather than the judiciary, without criminal charges being brought. Two types were found to be common in our research: a) extended pre-charge detention for the purposes of investigation; and b) detention for the purpose of preventing a terrorist offence.

None of the legislation reviewed addressed the application of administrative detention to children, either to safeguard them against it or to recognise the State's additional obligations to guarantee their human rights while detained.

Extended pre-charge detention

In justifying the power to detain suspects without charge pending an investigation into a terrorism offence, States point to the unusually complex nature of such investigations, the need to prevent the detained person interfering with an investigation, and the risk of allowing a suspect at liberty to commit a terrorism offence before the investigation concludes. **Guyana's** legislation is typical of this approach. Normally, the state must bring an accused adult or child before the court within 72 hours of arrest, but counter-terrorism law allows for extended detention on the application of the police, where the purpose is to prevent the commission of a terrorism offence or interference in the investigation of such an offence. The order must be approved by a judge, who must have reasonable grounds to believe that a person is likely to interfere in an investigation, or to prepare, facilitate, or commit a terrorist offence. An initial order can authorise detention for up to 72 hours, but this can then be extended to 14 days. The **United Kingdom** also allows up to 14 days¹¹⁰ pre-charge detention of suspected perpetrators of terrorism offences, with judicial oversight.¹¹¹

106 Ibid.

107 CRC Article 3.

108 CRC Article 37(d).

109 CRC, General Comment No. 10, 2007, op cit., para. 83.

110 Guyana, Counter Terrorism and Related Activities Act 2015, Section 33.

111 United Kingdom, Terrorism Act 2000, Section 41 and Schedule 8, Section 36.

Not all States require judicial approval in order to detain suspects. Of all countries surveyed for this research, Malaysia has the most extensive administrative detention provisions, including extended pre-charge detention for investigation. Under Malaysian law a police officer may arrest, without a warrant, anyone believed to be involved in national security offences.¹¹² A police superintendent or officer of higher rank has the power to extend the initial detention period, without charge, for up to 28 days for the purpose of investigation, without seeking the approval of a court.¹¹³

Preventive detention

The most extensive powers of administrative detention are used when state authorities believe that, otherwise, a person left at liberty would be likely to commit a terrorism offence. In addition to pre-charge detention for investigation, **Malaysia's** Prevention of Terrorism Act permits detention of an adult or child for up to two years where the Prevention of Terrorism Board is satisfied that 'a person has been or is engaged in the commission or support of terrorist acts involving listed terrorist organisations in a foreign country'.¹¹⁴

Nepalese legislation allows preventive detention for broad and vaguely defined purposes, where 'there is reasonable and adequate ground to immediately prevent a person from acting in any manner prejudicial to the sovereignty, integrity or public peace'.¹¹⁵ Under this provision, preventive detention can extend to 90 days in the first instance, up to six months with the approval of the Ministry of Home Affairs, and up to 12 months on the advice of a special Advisory Board.¹¹⁶

Extraterritorial jurisdiction

Extraterritorial jurisdiction is the power of a State to prosecute a person accused of committing an offence beyond its borders. As terrorist groups and the financial networks that fund them become increasingly transnational in their reach, the powers of extraterritorial jurisdiction are becoming a prominent feature of counter-terrorism strategies.

International treaties with a counter-terrorism purpose commonly require or encourage States to establish extraterritorial jurisdiction for specific offences, such as those involving aircraft, for example.¹¹⁷ Certain human rights

¹¹² Malaysia, Security Offences (Special Measures) Act 2012, Section 4(1).

¹¹³ *Ibid.*, Section 4(5).

¹¹⁴ Malaysia, Prevention of Terrorism Act 2015, Sections 8 and 13(1). The Board of Terrorism Prevention is composed of a legally qualified chairperson with at least 15 years of experience, a deputy chairperson, and between three and six other members. Members are appointed and can be removed by the executive.

¹¹⁵ Nepal, Public Security Act 2046, Section 3.1.

¹¹⁶ *Ibid.*, Sections 5 and 7. The Advisory Board is composed of a sitting judge of the Supreme Court and two other sitting or retired members.

¹¹⁷ See, for example, Convention for the Suppression of Unlawful Seizure of Aircraft, Article 4.

treaties, including the Convention Against Torture and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, require the same.

For example, **Afghanistan** has extended its jurisdiction to include ships sailing under its flag, reflecting the demands of the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation.¹¹⁸ **New Zealand** has similarly extended its jurisdiction to aircraft registered in the country, so as to fulfil the requirements of the Convention for the Suppression of Unlawful Seizure of Aircraft.¹¹⁹

With respect to terrorism offences, including those committed by or against children, States have taken a range of approaches. The most common extension of jurisdiction is to all national citizens who commit a terrorism offence, wherever they may be in the world. The **Bahamas**, for example, asserts jurisdiction for any terrorism offence when it is committed by a Bahamian citizen in any country.¹²⁰ Similarly, States commonly assert jurisdiction over terrorism offences committed against their own citizens.¹²¹

Unusually, **Trinidad and Tobago** has established jurisdiction for an offence committed outside its borders if the accused later enters the country and cannot be extradited to a foreign state with jurisdiction for the offence.¹²² This formulation is an attempt to ensure that people within its borders are not able to escape liability because of a lack of an extradition agreement or because of limits on their deportation, such as non-refoulement.

Among the States reviewed, **Israel** is unique in having established extraterritorial jurisdiction on ethnic or religious grounds by asserting its authority to prosecute offences against the Jewish people. The provisions extend beyond terrorism offences to include any foreign offence 'against the life, body, health, freedom or property of a Jew, or the property of a Jewish institution, because it is such.'¹²³

Double jeopardy

In itself, extraterritorial jurisdiction does not violate children's human rights. To the contrary, it is likely to enhance children's right of access to justice, by helping to ensure that perpetrators of crimes against them are held to account. Where two or more States assert jurisdiction for the same offence, however, an accused person, who may be a child, could be prosecuted twice for the same offence. For example, where a child has travelled to another country to join a terrorist group,

118 Ibid., Article 6.

119 Convention for the suppression of unlawful seizure of aircraft, Article 4(1)(a).

120 Bahamas, Anti-Terrorism Act 2004, Section 13

121 See, for example, Bangladesh, Anti-Terrorism Ordinance 2008.

122 Trinidad and Tobago, Anti-Terrorism Act 2005, Section 25.

123 Israel, Penal Code, Section 13(b)(2)

they could be prosecuted in that country, and then again on returning home.

International human rights standards commonly prohibit the trial of a person twice for the same offence. The European Convention on Human Rights, for example, normally prohibits a State from trying a person for a crime for which they have already been finally acquitted or convicted.¹²⁴ Only when there has been a fundamental defect in the proceedings or new evidence of material facts may a case be reopened.¹²⁵

Of the countries reviewed by our research, only **Ireland** has dealt with this issue explicitly in its counter-terrorism legislation. Although Ireland asserts extraterritorial jurisdiction for certain terrorism offences,¹²⁶ an Irish citizen tried for an offence abroad cannot be tried again for the same offence on their return if their initial trial led to acquittal or conviction.¹²⁷

Recommendation:

· States should ensure that their laws prohibit trying a child twice for an offence related to the same acts, even where an initial trial was held outside of the jurisdiction of the State

Sentencing

Custodial sentences are often mandatory for terrorism offences; some countries allow the death penalty, even for children.

Death penalty

Reflecting the categorical prohibition of the death penalty in international human rights law, it has been almost universally outlawed for offences committed by children.¹²⁸ 13 States retain the sentence,¹²⁹ of which five permit its use against children convicted of terrorism offences.¹³⁰ Four of these States have sentenced children to death in the last decade.¹³¹

One common effect of counter-terrorism legislation is to establish

¹²⁴ European Convention on Human Rights, Protocol 7, Article 4.

¹²⁵ Ibid.

¹²⁶ Ireland, Criminal Justice (Terrorist Offences) Act 2005, Section 6(2).

¹²⁷ Ibid., Section 46.

¹²⁸ CRC Article 37(a); International Covenant on Civil and Political Rights, Article 6(5).

¹²⁹ Brunei Darussalam, Islamic Republic of Iran, People's Democratic Republic of Lao, Malaysia, Maldives, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Tonga, United Arab Emirates, Yemen. Full details of the relevant law in these countries is available at: www.crin.org/node/42131.

¹³⁰ Iran, Malaysia, Pakistan, Saudi Arabia, Yemen.

¹³¹ Iran, Saudi Arabia, Yemen, Pakistan.

exceptions to juvenile justice standards, including in some States to general prohibitions on the death penalty for child offenders. In **Pakistan**, for example, the Juvenile Justice System Ordinance (JJSO) explicitly prohibits the death penalty for any offence committed by a child.¹³² However, the provisions of the JJSO are in addition to, and not in derogation of, any other law.¹³³ As a result, the ban on the death penalty for child offenders does not modify legislation, including counter-terrorism laws, that explicitly permits the death penalty.¹³⁴ Pakistan's anti-terrorism legislation has led to execution by hanging of an unknown number of people for offences committed while they were allegedly children, including Muhammad Afzal and Shafqat Hussein.¹³⁵

Pakistan: Execution for crimes committed as children

In 2004, a Pakistani court established to try terrorism offences sentenced Shafqat Hussein to death for killing a child, despite claims that he was still a child himself at the time, aged 14.¹³⁶ UN human rights experts and NGOs condemned the sentence on the grounds that Shafqat's age had not been properly investigated and his school records were seized and not released.¹³⁷ They also cited allegations that he was tortured by the police. After several stays of execution, Shafqat was hanged in 2015.

In 2015, Muhammad Afzal was hanged after a long spell on death row following his sentencing at the age of 16.¹³⁸ The Anti-Terrorism Court was used to expedite the order for his execution, despite the nature of his offences, which were unrelated to terrorism.

Similarly, in **Malaysia** the Child Act prohibits the death penalty for an offence committed by a child,¹³⁹ but the Essential (Security Cases) Regulations 1975 require people accused of security offences to be charged under those

¹³² Pakistan, Juvenile Justice System Ordinance, Section 12(a).

¹³³ Ibid., Section 14.

¹³⁴ Pakistan's Anti-Terrorism Act explicitly provides for the death penalty for acts of terrorism in which death is caused. Anti-Terrorism Act 1997, Section 7(a).

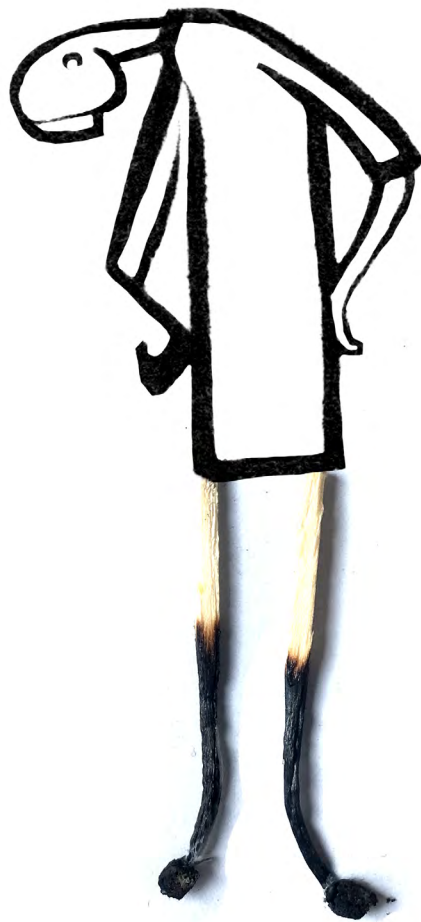
¹³⁵ For further information on the legality and application of the death penalty for child offenders in Pakistan, see CRIN, *Inhuman sentencing of children in Pakistan*, March 2017. Available at: www.crin.org/node/23982.

¹³⁶ J Boone, 'Pakistan hangs Shafqat Hussain despite claim he was a child at time of crime', *Guardian*, 4 August 2015. Available at: <https://www.theguardian.com/world/2015/aug/04/pakistan-hangs-shafqat-hussain-claim-child-crime>.

¹³⁷ Office of the High Commissioner for Human Rights, 'Pakistan must immediately halt execution of child offender Shafqat Hussain – UN rights experts urge', 5 June 2015. Available at: <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16046&LangID=E>.

¹³⁸ Amnesty, 'Two men face execution, one convicted at 16', 2015. Available at: <https://www.amnesty.org/download/Documents/ASA3311012015ENGLISH.pdf>. Amnesty, 'Juveniles amongst 12 prisoners executed overnight in Pakistan', 2015. Available at: <https://www.amnesty.org/en/latest/news/2015/03/12-prisoners-hanged-in-pakistan>.

¹³⁹ Malaysia, Child Act, Section 97.



regulations regardless of age.¹⁴⁰ This applies to the Internal Security Act 1960, which sets the death penalty for offences relating to firearms, ammunition and explosives, the disruption of public security, public order and terrorism.¹⁴¹ Although Malaysia has not carried out an execution of a child offender in recent history, the sentence remains on the statute book.¹⁴²

In **Yemen**, the death penalty is formally illegal for all offences committed by children, but the execution of children is frequent, which is a result, in part, of the the lack of systematic birth registration in the country, and national security offences carry the death penalty in national law.¹⁴³

In several jurisdictions across the Middle East the death penalty for terrorism offences is applied as part of Sharia criminal law. Although there is no official published interpretation of Sharia in **Saudi Arabia**, the death penalty may be applied for political rebellion and sabotage, which often fall within the scope of anti-terrorism laws.¹⁴⁴ As of April 2018, at least five people were on death row for offences committed while under the age of 18 for offences related involvement in protests between 2014 and 2015.¹⁴⁵

Iran, which has codified its application of Sharia law in the Islamic Penal Code, retains the death penalty for *moharabeh*, defined as ‘drawing a weapon on the life, property or chastity of people or to cause terrorism as it creates the atmosphere of insecurity’.¹⁴⁶ Although the offence is not explicitly addressed within separate counter-terrorism legislation it has a clear application in that context.

Recommendations:

- *The death penalty should be immediately prohibited for any offence committed while under the age of 18 and the sentence of any child currently serving this sentence commuted*
- *Where it is in doubt whether a defendant is under the age of 18, they should be presumed to be a child and accorded the full protections of the juvenile justice system*

¹⁴⁰ Malaysia, Essential (Security Cases) Regulations 1975, Section 3.

¹⁴¹ Malaysia, Internal Security Act 1960, Sections 57, 58 and 59.

¹⁴² At the time of writing, Malaysia had announced its intention to introduce a bill to abolish the death penalty, but had not yet done so.

¹⁴³ Yemen, Criminal Code, Articles 125 to 128. For further details, see CRIN, *Inhuman sentencing of children in Yemen*.

¹⁴⁴ Although Saudi Arabia has no codified criminal law, legislation exists alongside Sharia law made up of rules derived from the Quran and the *Sunna* (traditions of the Prophet Muhammad).

¹⁴⁵ See CRIN, *Submission for the Secretary-General’s report on the death penalty*, 2018. Available at: www.crin.org/node/43526.

¹⁴⁶ Iran, Islamic Penal Code, Article 282 and 287.

Extended imprisonment

International human rights standards on detention for children are now well established. That detention for a child may only be used as a last resort and for the shortest appropriate period has become a foundation stone of international juvenile justice standards, enshrined in the Convention on the Rights of the Child (CRC)¹⁴⁷ and reflected in the Beijing Rules,¹⁴⁸ the UN Rules for the Protection of Juveniles Deprived of their Liberty,¹⁴⁹ the Vienna Guidelines, and several other rules and resolutions.¹⁵⁰

This overarching standard is met with a wide range of more specific provisions. The ban on torture, cruel, inhuman or degrading punishment is categorical, prohibiting any sentence that reaches this threshold.¹⁵¹ Life imprisonment without the possibility of parole is explicitly prohibited under the CRC¹⁵² and international standards have since developed to ban all forms of life sentence for offences committed by children. The Special Rapporteur on torture has recognised that all forms of life sentence as well as sentences of an extreme length and mandatory sentences for children amount to cruel, inhuman and degrading punishment and are therefore never permitted.¹⁵³ This clear statement is matched by recommendations from other international human rights mechanisms¹⁵⁴ and human rights courts.¹⁵⁵

These strict limits must be recognised in conjunction with the CRC's requirement of States to establish a rehabilitative model of juvenile justice, seeking to ensure the reintegration and rehabilitation of children in conflict with the law.¹⁵⁶ As in all other actions concerning children, courts

¹⁴⁷ CRC Article 37(b).

¹⁴⁸ Standard Minimum Rules for the Administration of Juvenile Justice, Rule 13.1. Note, the Beijing Rules use stronger language, speaking of detention for the 'minimum necessary period'.

¹⁴⁹ UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 1.

¹⁵⁰ Guidelines for Action on Children in the Criminal Justice System, Guideline 18.

¹⁵¹ CRC Article 37(a); ICCPR Article 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁵² CRC Article 37(a).

¹⁵³ HRC, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/28/68, 2015, para. 74. Available at:

https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session28/documents/a_hrc_28_68_e.doc.

¹⁵⁴ CRC, *General Comment No. 10 (2007): Children's rights in juvenile justice*, CRC/C/GC/10, 2007, para. 77. Available at: <http://www.un.org/ruleoflaw/files/CRC.C.GC.10.pdf>;

HRC, *Resolution: Human rights in the administration of justice, including juvenile justice*, A/HRC/24/L.28, 2013, para. 22; HRC, *Resolution: Rights of the child: access to justice for children*, A/HRC/25/L.10, 2014, para. 8(g); HRC, *Report of the Secretary-General on the Question of the Death Penalty*, A/HRC/C/27/23, 2014, para. 74; HRC, *Resolution: Human rights in the administration of justice, including juvenile justice*, A/HRC/30/L.16, para. 24; HRC, *Resolution: Human rights in the administration of justice, including juvenile justice*, A/HRC/36/L.5, para. 25.

¹⁵⁵ See *Mendoza v. Argentina* [2013], Inter-American Court of Human Rights, Series C No. 260. Summary and full judgment available at: www.crin.org/node/40373.

¹⁵⁶ CRC Article 40(1).

must recognise the child's best interests as a primary consideration when deciding whether to impose a custodial sentence.¹⁵⁷

Despite these standards, almost all of the criminal offences implemented by anti-terrorism legislation examined during our research carry penalties of imprisonment, including for extended periods up to the rest of a person's life.

Life imprisonment

Life imprisonment encompasses a range of punishments, from the most severe in which a person is sentenced to die in prison so long as their sentence stands, to indeterminate sentences which may allow for release on parole under certain conditions. All life sentences allow for the possibility that the convicted person will be detained for the rest of their life.¹⁵⁸

67 countries still retain some form of life imprisonment for offences committed while under the age of 18,¹⁵⁹ of which at least 28 allow life imprisonment for terrorism offences committed by children.

Forms of life imprisonment

The term 'life imprisonment' encompasses a range of sentences under which a person may be detained under the law for the rest of their life, or released on certain conditions after a minimum period of imprisonment.

Life imprisonment without parole precludes, at the time of sentencing, eligibility for release. Short of a pardon, commutation or other form of leniency after sentencing, a person serving such a term will spend the rest of their life in prison.

Life imprisonment with the possibility of parole is the most common type of life sentence. It normally involves a minimum term of imprisonment before a person becomes eligible for release, which is not guaranteed and, if granted, remains subject to restrictions and controls.

Detention during the pleasure of Her Majesty, the courts or the executive are forms of life imprisonment with the possibility of parole for child offenders common in Commonwealth countries.

¹⁵⁷ CRC Article 3(1). For discussion of a fuller interpretation of the application of the detention standards under the CRC, see L Ratledge, 'End Detention of Children as Punishment' in *Protecting Children Against Torture in Detention: Global solutions for a global problem*, Washington College of Law, 2016.

¹⁵⁸ For further information on life imprisonment as a sentence for children, see www.crin.org/life-imprisonment.

¹⁵⁹ For full details, see country profiles produced by CRIN, available at: www.crin.org/node/390.

Indefinite detention sentences are sentences of indeterminate length. They allow for unconditional release without restrictions, as well as indefinite imprisonment up to the end of a person's life.

De facto life sentences are fixed term sentences that are so long that they are, in effect, an order for life imprisonment. A consecutive custodial sentence totalling 100 years, for example, amounts to life imprisonment.

Mandatory life sentences

Life sentences are often mandatory, even for children, for the more severe terrorism offences. They have widely become the substitute for the death penalty in countries that have abolished it.

Guyana is typical of this approach. The state enacted legislation to abolish the death penalty for children in 1953 and established a sentence of Detention during Her Majesty's Pleasure (DHMP) as a compulsory substitute.¹⁶⁰ DHMP is an indeterminate sentence, allowing indefinite detention for the rest of a person's life or conditional release, and allows for the court to recall a released person to prison without further conviction. The sentence must be handed down to a child who commits a terrorist act that causes death.¹⁶¹ Nine other Caribbean states have similarly retained mandatory life imprisonment in lieu of the death sentence, but mandatory life sentences also remain in countries that have since abolished the death penalty for adults as well as children.

In **England and Wales** a life sentence may allow for release after a minimum term of imprisonment. Murder, including by acts of terrorism, has carried a mandatory life sentence for offences committed while under 18 since the abolition of the death penalty for children in 1933.¹⁶² A judge takes a range of factors into account to determine the minimum period that must be served in prison before release on licence can be considered, including the degree of premeditation, which is usually relevant in terrorism offences.¹⁶³ Murder carried out by an adult, aged over 21, for a political, religious, racial or ideological cause, would be a factor indicating a full life term—a sentence that can result in release only in very limited circumstances.¹⁶⁴

¹⁶⁰ The legislation enacted Section 164 of the Criminal Law (Procedure) Act, Cap. 10:01.

¹⁶¹ Guyana, Counter Terrorism and Related Activities Act 2015, Section 3; Criminal Law (Procedure) Act, Cap. 10:01, Section 164.

¹⁶² The mandatory sentence is currently formulated in the Criminal Courts (Sentencing) Act 2000, Section 90.

¹⁶³ United Kingdom, Criminal Justice Act 2003, Schedule 21, Section 10.

¹⁶⁴ *Ibid.*, Schedule 21, Section 4. For discussion of the limited release powers and compatibility with

United Kingdom: Criminalisation of children groomed for terrorism

In 2018 an 18-year-old British girl, was sentenced to life imprisonment for preparing for acts of terrorism in the **United Kingdom** from the age of 15, when she was groomed by recruiters for ISIS and enticed into an online relationship.¹⁶⁵ The defence team had argued that Safaa was ‘an ill child from a damaging home’ who was ‘groomed, radicalised and then sexually groomed’. She was ‘an offender by exploitation’, they said. The judge rejected this, concluding that the defendant ‘acted with open eyes’, and ‘was old enough to make her own decisions and her own choices’. Safaa was sentenced to life imprisonment, including 13 years in prison before becoming eligible for conditional release.

Discretionary life sentences

Other sentencing regimes allow the imposition of life sentences on children at the discretion of the courts, provided that they are above the age of criminal responsibility. **Botswana**, for example, prohibits the death penalty for children but gives courts the power to sentence a child to imprisonment for a term the judge considers appropriate, for any offence that would carry the death penalty for an adult.¹⁶⁶ The offence of committing an act of terrorism carries the death penalty for an adult where the terrorist act results in death,¹⁶⁷ and so courts are empowered to impose any sentence on a child convicted of this offence up to life imprisonment.

The sentencing regime in **England and Wales** allows courts the discretion to sentence a child to life imprisonment for a range of offences for which the same sentence would be available for an adult.¹⁶⁸ There are some restrictions on the use of life imprisonment for children, but provided that the court is satisfied that release of the child would pose a serious risk to the public, the sentence may still be imposed.¹⁶⁹ This means that children can be imprisoned for life for certain terrorism offences, such as the preparation of terrorist acts, training for terrorism, or offences at nuclear facilities, all of which carry

the prohibition on torture, see *Hutchinson v. United Kingdom* [2017] Application No. 57592/08. Available at: <http://hudoc.echr.coe.int/eng?i=001-170347>.

165 D Casciani, ‘Teenager Safaa Boular jailed for life over IS terror plot’, *BBC News*, 3 August 2018. Available at: <https://www.bbc.co.uk/news/uk-45062647>. D Casciani, ‘The radicalisation of Safaa Boular: A teenager’s journey to terror’, *BBC News*, 4 June 2018. Available at: <https://www.bbc.co.uk/news/uk-44359958>.

166 Botswana, Penal Code, Section 74(1). Note, this excludes murder for which a child must be sentenced to detention during the President’s pleasure as required by Penal Code, Section 26(2).

167 Botswana, Counter-Terrorism Act 2014, Section 3.

168 United Kingdom, Criminal Justice Act 2003, Section 226; Powers of Criminal Courts (Sentencing) Act 2000, Section 91.

169 United Kingdom, Criminal Justice Act 2003, Section 226(1).

maximum sentences of life imprisonment for an adult.¹⁷⁰ Safaa Boular is an example of a child given a life sentence by a British court for preparing an act of terrorism.¹⁷¹

Recommendation:

· States should abolish life imprisonment in all forms for any offence committed while under the age of 18

Other examples of extended imprisonment

Life imprisonment is clearly prohibited in international human rights law as a sentence for any offence committed by a child, but sentences of extreme length and other mandatory sentences may also be prohibited as cruel, inhuman or degrading punishment.¹⁷²

Many States impose long maximum sentences for terrorism with little allowance for the lesser gravity of some offences. **Saint Lucia**, for example, has established three levels of maximum sentence for terrorism offences: 25 years imprisonment for the more serious offences, 15 years for less serious offences and 10 years for the least serious.¹⁷³ The least serious offence under the relevant legislation criminalises the arrangement of meetings to support a terrorist group or further its activities, or to host a person at such a meeting who belongs or professes to belong to a terrorist group. As children aged 16 or older are subject to adult sentences in the country, these high maximum sentences may be applied to them. Similar sentencing ranges are common in the legislation reviewed by our research. **Antigua and Barbuda** allows maximum between 15 and 25 years imprisonment for terrorism offences, for example,¹⁷⁴ and **Malaysia** allows for fixed term imprisonment of between seven and 30 years for terrorism offences that do not attract life sentences.¹⁷⁵

Some regimes specifically allow consecutive sentencing in terrorism cases, by which a person is imprisoned for two or more offences and serves each sentence in turn. In **Trinidad and Tobago**, for example, courts can impose consecutive sentencing for a terrorism offence when the act also involves the commission of a crime under another law.¹⁷⁶ For instance, if a person were convicted of a terrorism offence involving a weapon and also convicted of unlawful possession of the weapon, the sentences for both offences would be combined. Accordingly, a convicted person could serve more than the

¹⁷⁰ United Kingdom, Terrorism Act 2006, Sections 5, 9, 10, 11.

¹⁷¹ Refer to text box for details.

¹⁷² HRC, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 2015, op cit., para. 74.

¹⁷³ Saint Lucia, Anti-Terrorism Act 2010, Sections 5 to 19.

¹⁷⁴ Antigua and Barbuda, Prevention of Terrorism Act 2005, Sections 5 to 20.

¹⁷⁵ Malaysia, Penal Code, Sections 130C to 130S.

¹⁷⁶ Trinidad and Tobago, Anti-Terrorism Act 2005, Section 3(2).

maximum sentence of 25 years' imprisonment for a terrorist act.¹⁷⁷

Sentencing children as adults

The sentencing of children as adults, or the use of adult courts, effectively bypasses the additional rights they ought to enjoy as children. **Barbados**, for example, allows children aged 16 or older to be sentenced to the same maximum prison terms as adults. Since acts of terrorism can attract life sentences, children who commit such crimes at age 16 or 17 can be imprisoned for the rest of their lives.

By contrast, **Canada** allows children to be subjected to adult sentences in only two situations: a) where the child indicates that they do not wish to be subject to a youth sentence; and b) where the court is of the opinion that a youth sentence would not be of sufficient length to hold the young person to account for their offending behaviour.¹⁷⁸ In effect this provision allows courts to sentence child offenders to life imprisonment for certain terrorism offences, including the offence of instructing a person to carry out an activity that supports a terrorist group.¹⁷⁹

Recommendations:

- *States should never permit children to be tried or sentenced as adults*
- *States should not enact broad offences to cover terrorist actions where doing so does not enable sentencing and labelling proportionate to the culpability of the child and the seriousness of the offence committed*

Diversion and alternatives to detention

In view of States' obligation to have due regard to children's best interests as a 'primary consideration', the Committee on the Rights of the Child has clarified that 'the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders'.¹⁸⁰ States are further obliged, to ensure that the 'arrest, detention or imprisonment of a child may be used only as a measure of last resort'.¹⁸¹ Accordingly, states should develop systems to provide for children's accountability and rehabilitation. These should, wherever possible, divert them from contact with the criminal justice system and, failing that, from sentences that deprive them of their liberty:

'It is, therefore, necessary—as part of a comprehensive policy for juvenile justice—to develop and implement a wide range of measures to ensure

¹⁷⁷ Although a number of people have been charged with terrorism offences in Trinidad and Tobago since its Anti-Terrorism Act came into force, this research could not identify a judgment that has used consecutive sentencing to punish a convicted child.

¹⁷⁸ Canada, Youth Criminal Justice Act, Section 72.

¹⁷⁹ Canada, Criminal Code, Section 83.21(1).

¹⁸⁰ CRC, General Comment No. 10, op cit., para. 10.

¹⁸¹ Ibid., para. 23.

that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care (art. 40 (4)).¹⁸²

These measures are necessary to ensure that deprivation of liberty is genuinely a last resort; it cannot be the last resort if it also the only resort. They also help to ensure that juvenile justice systems are genuinely rehabilitative in their purpose and practice.¹⁸³

Of the countries examined during our research, almost all had enshrined diversionary measures for children in their criminal justice laws for children, but not one had clearly established such measures as a response to terrorism offences.

The most common approach among the countries reviewed was to establish non-custodial sentencing options for children. **Bhutan**, for example, allows courts broad discretion to order non-custodial measures to assist the reintegration of a child who has committed a criminal offence.¹⁸⁴ Many of the specified options would not be available for terrorism offences, however, because of the way that they are categorised. Community service sentences, for example, are only available for offences categorised as ‘fourth degree’ felony while all terrorism offences are of the ‘first degree.’¹⁸⁵

By tailoring sentences to the nature of the offence, rather than the child’s right to a rehabilitative response, counter-terrorism legislation radically limits courts’ options, which is clearly to the child’s detriment. It is possible, for example, that a child groomed for terrorism could be convicted and sentenced to imprisonment, when disengagement and rehabilitative measures would have been more appropriate for the child and more effective in reducing potential reoffending.

Countries have begun to pilot diversion and rehabilitation programmes for children and young people who have been associated with terrorist groups or groomed by those who are. These measures usually do not, however, target children who may have committed serious offences.

More people per capita have left **Denmark** to join terrorist groups in Syria than any other western-European country except Belgium.¹⁸⁶ In response, the country has developed the Aarhus model for the reintegration of returnees.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Bhutan, Child Care and Protection Act 2011, Section 164.

¹⁸⁵ Ibid., Section 171; Penal Code, Section 329.

¹⁸⁶ International Centre for the Study of Radicalisation, “Foreign fighter total in Syria / Iraq now exceeds 20,000 surpasses Afghanistan conflict in the 1980s”, 26 January 2015. Available at: <https://icsr.info/2015/01/26/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/>.

The model involves cooperation between police, social workers and religious groups and assigns young people returning to the country with trained mentors able to provide day to day help as well as religious and moral debate. Returnees also receive specialised psychological counselling.¹⁸⁷ While the measures have seen many young people returning to education after arriving back in the country, it exists alongside a policy of prosecuting any returnees who are suspected of committing crimes. The measure is therefore limited as a means of addressing the cases of children who have been groomed by terrorist groups to commit criminal offences.

Recommendation:

· States should adopt diversion measures and rehabilitative measures specifically for children who commit terrorist offences

¹⁸⁷ See Radicalisation Awareness Network, *Foreign fighter returnees and the reintegration challenge*, November 2016. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_foreign_fighter_returnees_reintegration_challenge_112016_en.pdf. Jon Henley, “How do you deradicalise returning Isis fighters?” *The Guardian*, 12 November 2014. Available at: <https://www.theguardian.com/world/2014/nov/12/deradicalise-isis-fighters-jihadists-denmark-syria>.

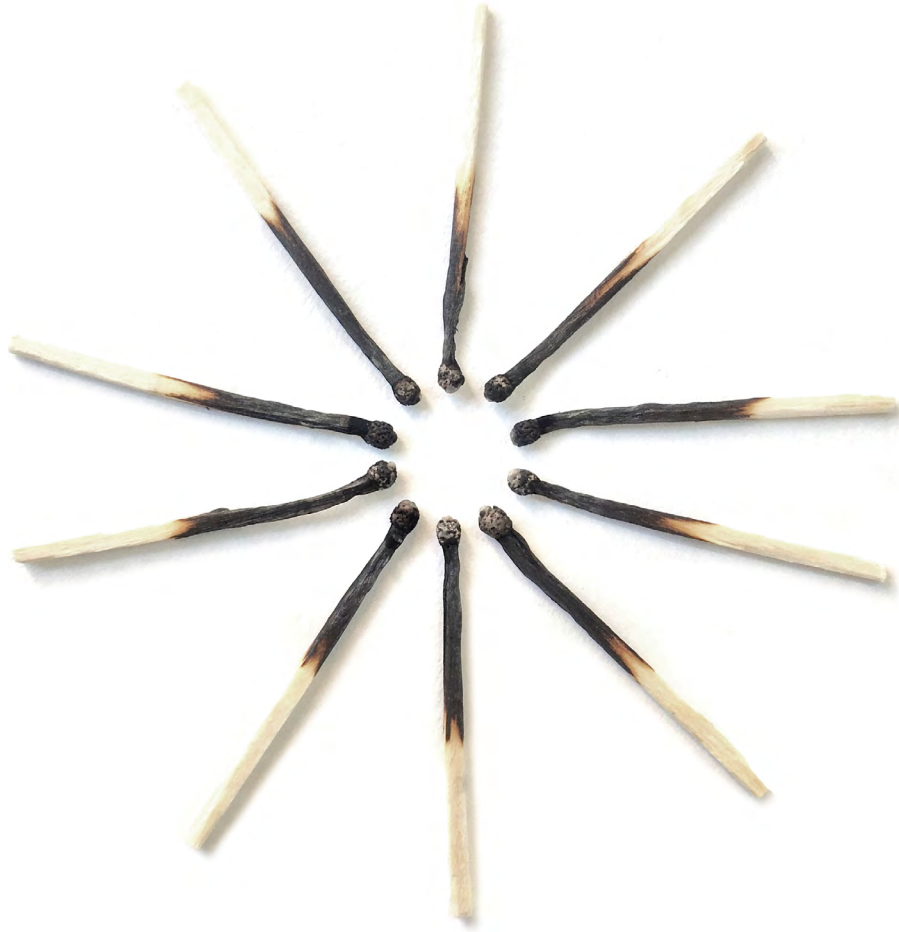
Conclusion

With few exceptions, States are largely failing to embed their human rights obligations into their counter-terrorism strategies and the legislation that underpins them. Many children are now falling foul of anti-terrorism legislation designed to counter adult perpetrators of major acts of terrorism. In particular, the criminalisation of children who are drawn in to terrorist groups – and the harsh punishment that accompanies it – fails to recognise children's vulnerability to manipulation and their consequent diminished culpability. The routine monitoring of children without their consent, online and at school, and the use of children as spies and informants, are increasingly common practices that further violate human rights.

The UN Secretary-General, the UN Security Council and the UN Special Rapporteur on promoting human rights while countering terrorism, have all been clear that counter-terrorism strategies are likely to fail without a commitment to human rights at their core. Unless governments change course, many thousands of children will be caught in the crossfire between States and terrorist groups as the struggle between them escalates in years to come. This can serve no one's interests but terrorists', since the alienation of the young people involved, and of the marginalised social groups to which they frequently belong, is likely to exacerbate the social exclusion on which terrorism feeds.

Viable counter-terrorism measures centred on human rights are available; others must still be developed. There is no need for, or advantage in, the incarceration of children associated with terrorist groups, when diversionary alternatives to custody should be available. Nor is it necessary to scrutinise children's political interests and report them to law enforcement authorities for behaviour deemed suspicious, when professionals such as teachers are already bound by a duty of care for children's welfare. Children have a right to form their own opinions, express themselves freely and without fear, and access information of all kinds. Rather than denying or 'chilling' these rights, children may be best safeguarded by supporting them to develop sufficient political literacy to recognise the indiscriminate violence of terrorist groups for what it is.

The best defence against terrorism is the progressive realisation of human rights for everybody. Counter-terrorism strategies should therefore start with the structural risk factors that radically increase children's vulnerability to recruitment, such as poverty, marginalisation and stigmatisation of certain social groups. These factors, all of which reflect human rights violations in themselves, are routinely overlooked, but no counter-terrorism strategy that ignores them can be effective in the long term.



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