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„National Security vs. Children's Rights in the European
Response to Child Returnees- a Belgian Case Study“

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Angela Bokias Fernandez-Canadas

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Dr. H. C. Jean Zermatten

To my family and friends, whom I love

*Η διπλωματική εργασία είναι ειδικά αφιερωμένη στην γιαγιά μου την Αγγελική.
Σ'αγαπω γιαγιά*

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LIST OF ACRONYMS AND ABBREVIATIONS

Art.	Article
CAPREV	Assistance and care centre for anyone affected by violent extremism and radicalisation
CC	Criminal Code
CRC	Committee on the Rights of the Child
EU	European Union
FTF(s)	Foreign Terrorist Fighters
IPPJ	Public community institution for youth protection
MACR	Minimum Age of Criminal Responsibility
OCAM	Coordination unit for threat analysis
RAN	Radicalisation Awareness Network
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNSCRes	United Nations Security Council Resolution
UNODC	United Nations Office on Drugs and Crime
IS	Islamic State
NSAG(s)	Non-State Armed Groups

1. INTRODUCTION

The subject of foreign terrorist fighters has become the top priority of the policy agenda in Europe, in particular returning foreign terrorist fighters. It is estimated that over 5 000 foreign terrorist fighters have left Europe to join Islamic State and Jabhat Fatah al-Sham, the former Jabhat al-Nusra in Syria and Iraq, many of whom are from Belgium, and that around 30% of the foreign terrorist fighters have now returned to their home countries, for some States nearly half of them have returned.¹ With the collapse of Islamic State, various possibilities arise: returning to their home countries, travelling to a third State, staying in the region to join another terrorist organisation or joining another terrorist group in another conflict area.² Europe can expect the return of a growing number of foreign terrorist fighters, most likely women and children, and although the motivation for returning may be disillusionment, meaning that the aim is peaceful, there is also the possibility of returning as part of Islamic State's strategy in order to carry out terrorist attacks following the intense training and the contacts made, which is not without precedent.³ In consequence, the general tendency regarding foreign terrorist fighters returning would seem to be to primarily consider them as a threat to

¹ T. Mehra, 'Foreign Terrorist Fighters: Trends, Policy Responses and Human Rights Implications', *Security and Human Rights*, vol. 27, Nos 1-2, 2016, pp. 153 and 157. Available from: BRILL, (accessed 18 December 2017); R. Barrett, 'Beyond the Caliphate: Foreign Fighters and the Threat of Returnees', *The Soufan Centre*, 2017, <http://thesoufancenter.org/wp-content/uploads/2017/10/Beyond-the-Caliphate-Foreign-Fighters-and-the-Threat-of-Returnees-TSC-Report-October-2017.pdf>, (accessed 17 January 2017), pp. 10 and 11; Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign Terrorist Fighters and their Families', *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2017), p. 15.

² T. Mehra, 'Foreign Terrorist Fighters: Trends, Policy Responses and Human Rights Implications', *Security and Human Rights*, vol. 27, Nos 1-2, 2016, pp. 156 and 157. Available from: BRILL, (accessed 18 December 2017).

³ Ibid., pp. 157 and 158; Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign Terrorist Fighters and their Families', *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2017), p. 15; B. Boutin et al., 'The Foreign Fighters Phenomenon in the European Union', *International Centre for Counter Terrorism*, 2016, https://www.researchgate.net/profile/Alastair_Reed3/publication/300081992_The_Foreign_Fighters_Phenomenon_in_the_European_Union_Profiles_Threats_Policies/links/5752ebc008ae6807fafc25a7.pdf, (accessed 26 December 2017), p. 9.

national security. Due to this, States face pressure from the international community and the public to adopt rather repressive measures in order to protect national security, and this is done at the risk and peril of human rights. States have been predominantly implementing repressive measures, in particular through far-reaching criminal measures that are punitive in nature, and there has been very little focus on rehabilitation.⁴ Moreover, it would also seem that European States are predominantly reluctant to repatriate those in conflict areas.

It is also known that the number given above includes a large number of children foreign terrorist fighters. Indeed, although there is no universally accepted definition of foreign terrorist fighters, this term is rather defined at national level and a threshold age is also established depending on the State, but always below eighteen years of age. From this follows the question of how child foreign terrorist fighters are treated when they return. Whereas a European practice is already apparent regarding foreign terrorist fighters returning, information on children is significantly lacking. As has been explained above, children also represent a threat to national security and they thus also run the risk of being subjected to 'harsh' treatment and punishment at the risk and peril of their rights and without properly considering their rehabilitation. Moreover, they may also face problems in relation to their repatriation. However, they differ from adults due to their status and they also enjoy very specific protection and rights under international law because they are a vulnerable group. This thus raises the conundrum of how to protect the rights of the child whilst also safeguarding national security.

There are also very young children who have not been counted and who travel with foreign terrorist fighters, which means that the number of individuals leaving for Syria and Iraq is higher. Moreover, it is also known that a large number of children were born in the so-called Caliphate, which also means that the number of returnees expected is

⁴ T. Mehra, 'Foreign Terrorist Fighters: Trends, Policy Responses and Human Rights Implications', *Security and Human Rights*, vol. 27, No 1-2, 2016, pp. 171, 172, 174-177. Available from: BRILL, (accessed 18 December 2017); E. Entenmann et al., 'Rehabilitation for Foreign Fighters? Relevance, Challenges and Opportunities for the Criminal Justice Sector', *The International Centre for Counter Terrorism*, 2015, <https://www.icct.nl/wp-content/uploads/2016/01/ICCT-Entenmann-Heide-Weggemans-Dorsey-Rehabilitation-for-Foreign-Fighters-December2015.pdf>, (accessed 30 December 2017), pp. 10 and 15.

higher as well. This also leads to the question how all other children returning from Syria and Iraq are treated from the perspectives both of the rights of the child but also of national security.

For the purpose of this master's thesis, the term “children returnees” as used by the author refers to all children who have joined a terrorist organisation abroad and have travelled back to their home countries, as well as those still awaiting repatriation.

The objectives of this master's thesis are, on the one hand, to provide a legal basis on the subject of children returnees regarding both the rights of the child and the counter-terrorism perspective and to compile the most relevant current available literature on this subject in order to provide a comprehensive background; and, on the other hand, to study the situation on the ground in order to investigate how children returnees are treated in practice in one specific European country: Belgium. This master's thesis also makes the difficulties encountered apparent. The final goal of this thesis is to identify the issues that this response may raise for children from the perspective of the rights of the child, in particular the child's best interest, while always also taking into consideration national security in order to provide further personal recommendations based on the research conducted and the findings. Moreover, further issues on the broader subject will also be addressed from this perspective in order to provide personal recommendations.

1.1 Research question

The research question that this master's thesis aims to answer is the following:

How is it possible to ensure national security whilst also safeguarding the rights of the child, in particular the child's best interest, in the context of children returnees?

1.2 Methodology

Chapters 2, 3 and 4 provide a background to the subject for subsequent discussion. Chapter 2 provides a legal analysis of the relevant legal instruments and the most important provisions at both international and European level and from the perspectives both of child rights and counter-terrorism. Chapters 3 and 4 are an analysis of the current available literature on the subject of children returnees. Chapter 3 concerns recommendations on how to deal with and take care of child returnees. Chapter 4 addresses the root causes of why children become involved in terrorist or violent extremist groups, why they are recruited and their experience and roles once they have joined such groups.

Chapter 5 presents the case study for subsequent discussion. In this Chapter, Belgian legislation in relation to terrorism is explained. Since children returnees fall under both child protection and juvenile justice systems, the Belgian legal system regarding child protection and juvenile justice are analysed, following which there is also an analysis on the application of these two systems in practice for children returnees. Belgian practice regarding the rehabilitation and reintegration of children returnees is also analysed. Finally, this Chapter also analyses the issue of the repatriation of children returnees.

Chapter 6 sets out personal recommendations and conclusions based on the research conducted and the findings regarding subsequent developments in this area.

Qualitative methods have been used throughout this thesis to research the subject and analyse the information. In particular, for the case study, interviews were conducted with a range of professionals working in specific bodies and coming from different backgrounds.

Given that this subject is currently being widely discussed due to recent developments, the author is aware of the difficulties and limitations that it entails. Firstly, the subject is still in the very early stages. Secondly, it is very sensitive because it touches upon both children and terrorism. Most of the professionals contacted, from different backgrounds, were unable or unwilling to give any information.

2. THE INTERNATIONAL LEGAL FRAMEWORK

The present Chapter lays down the foundations for the subsequent discussion in relation to the research question posed in this master's thesis. The rights of the child as established by the relevant international legal instruments in relation to this question will be set out and explained, as will the counter-terrorism legal framework strictly and directly relevant to the discussion broached by this master's thesis.

Please note that the aspects of international humanitarian and criminal law, which are especially important in relation to the acts or crimes under international law that children may have committed during their participation in the terrorist and violent extremist group, fall outside the scope of this master's thesis and will not be explained or discussed in this context due to space restrictions.

2.1 Rights of the child

2.1.1 The rights of the child in the context of armed conflict

The United Nations Convention on the Rights of the Child (UNCRC) was signed and ratified by Belgium in 1991, which means that it is legally bound by it. Certain provisions of the UNCRC mention children involved in armed conflicts and could be used in this context. According to Article 39, for example, States Parties should take all appropriate measures in order to promote the physical and psychological recovery and social reintegration of children who are victims of, *inter alia*, exploitation; torture or

any other cruel, inhuman or degrading treatment and punishment; or armed conflicts; in an environment promoting the health, self-respect and dignity of the child.⁵

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (hereinafter, the Protocol) was also signed and ratified by Belgium in 2002, which means that it is legally binding for Belgium. The Protocol prohibits the recruitment or use of children under eighteen years of age in hostilities by armed groups that are distinct from the armed forces of a State.⁶ States party to the Protocol are therefore to take legal and all other measures prohibiting and criminalising such acts and in order to prevent the recruitment and use of children.⁷ If children under these States' jurisdiction are nevertheless recruited and used in hostilities contrary to the Protocol, the State concerned should take all feasible measures in order to demobilise or otherwise release the children from service, and should provide them with appropriate assistance for their physical recovery and social reintegration, where necessary.⁸ In relation to this last point, the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups is a non-legally binding document which also addresses child soldiers, and which is more specific concerning the States' obligations regarding the release of children from armed groups, their reintegration into society, their treatment within the justice system, and their monitoring; and how States should proceed.⁹ Although certain parallels can be drawn specifically in relation to the children who are the subject of this master's thesis, this document will not be cited in detail since other documents relate specifically to these children and the principles contained therein are already well known and are constantly repeated.

⁵ Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Article 39.

⁶ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force on 12 February 2002), 2173 UNTS 222, Article 4(1).

⁷ Ibid., Article 4(2).

⁸ Ibid., Article 6(3).

⁹ United Nations International Children's Emergency Fund, The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (adopted February 2007).

2.1.2 Juvenile Justice

The present section focuses on the provisions of four main documents: The UNCRC, General Comment No 10: Children's rights in juvenile justice, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. As already explained, Belgium is a party State to the UNCRC, which was adopted by the Committee on the Rights of the Child (CRC), the body that monitors its implementation. The General Comment is an authoritative interpretation of the UNCRC drafted by the CRC but is not legally binding. Finally, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty are General Assembly Resolutions, which is one of the United Nations main organs, and are non-legally binding instruments that nevertheless have a strong political weight and are recognised amongst the core instruments in the area of juvenile justice.

The UNCRC requires that children in conflict with the law be dealt with by a specialised system, and to establish a minimum age of criminal responsibility (MACR).¹⁰ The UNCRC itself does not specify the MACR below which a child is presumed not to have the capacity to infringe penal law and cannot be held responsible under a penal law procedure for an offence committed.¹¹ According to the CRC, twelve years old is the internationally acceptable MACR, however, when the MACR is set higher, party States should not lower it.¹² The juvenile justice system is applicable for

¹⁰ Convention on the Rights of the Child (adopted on 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Art. 40(3)(a).

¹¹ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted on 25 April 2007), CRC/C/GC/10, [31].

¹² Ibid., [32] and [33]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted on 29 November 1985), A/RES/40/33, Rule 4.

all children who, at the time of the alleged commission of the offence, have not yet reached eighteen years of age.¹³

The UNCRC stipulates that every child alleged as, accused of, or recognised as having infringed the penal law has the right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which takes into account the desirability of promoting the child's reintegration and of the child assuming a constructive role in society.¹⁴ Moreover, this is to be read together with Article 3(1) of the UNCRC in relation to the best interests of the child, which is one of the four core principles of this Convention, and which should be a primary consideration in all decisions taken in the context of the administration of juvenile justice.¹⁵ Indeed, children are to be dealt with in a manner conducive to their well-being and any action taken against the child must be proportionate to their circumstances and the offence committed, on a case by case basis.¹⁶

Accordingly, therefore, the CRC recommends measures for dealing with children in conflict with the law without resorting to judicial proceedings (diversion), whenever appropriate and desirable, and provided that human rights and legal safeguards are fully respected and protected.¹⁷ This is not only limited to children who commit minor offences.¹⁸ National legislation should clearly stipulate the nature and content of the

¹³ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [36].

¹⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Art. 40(1).

¹⁵ Ibid., Art. 3(1); United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [10].

¹⁶ Ibid., [23]; Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Art. 40(4); United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 5.

¹⁷ Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Art. 40(3)(b); United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), [22]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 11.1.

¹⁸ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [25].

diversion measures and in which cases diversion is possible, and the police, prosecution or other agencies dealing with juvenile offenders should be empowered to exercise their discretion in relation to these cases.¹⁹ These measures can only be taken when a) there is compelling evidence that the child committed the alleged offence, b) s/he freely and voluntarily admits responsibility, and c) freely and voluntarily gives his or her consent in writing for such measure after being given all the necessary information or the consent of the parents is obtained.²⁰ The child has the right to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion or on the possibility to review the measure.²¹ Once the diversion is completed, the case is considered closed and there should only be confidential records, which are not to be considered as criminal records.²² Examples of diversion measures are community-based programmes such as community service, temporary supervision and guidance, and other forms of restorative justice such restitution and compensation of victims.²³

Similarly, the CRC also recommends interventions in the context of judicial proceedings once these have been initiated by the competent authority, again, when appropriate and desirable and provided that human rights and legal safeguards are always fully respected.²⁴ In order to do this, the juvenile justice systems should provide a variety of social and/or educational measures to deal with children in conflict with the law.²⁵ Moreover, deprivation of liberty is only to be used as a measure of last resort, including pre-trial detention, and for the shortest appropriate period of time.²⁶ As explained by the CRC, the law should clearly state the conditions required in order to

¹⁹ Ibid., [27]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 11.2.

²⁰ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [27].

²¹ Ibid.

²² Ibid.

²³ Ibid., United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 11.4.

²⁴ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [22].

²⁵ Ibid., [28], [68] and [70].

²⁶ Ibid., [28]; Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Art. 37(b); United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rules 13.1 and 17.1(c).

have recourse to the pre-trial detention of a child, for instance, when it is necessary to ensure his or her appearance at court proceedings or if s/he is an immediate danger to himself or herself or others.²⁷ Alternative measures pending trial could be close supervision, intensive care or placement with a family or in an educational setting or home.²⁸ In the case of alternatives to a court conviction in the pre-trial phase and which would suspend the proceedings if carried out satisfactorily, the same standards apply as for diversion measures as explained above.²⁹

Other possible actions in the context of judicial proceedings include care, guidance and supervision orders; counselling or similar activities; probation; foster care; community monitoring or day report centres; education and vocational training programmes; community service orders; financial penalties, compensation and restitution; intermediate treatment and other treatment orders; other alternatives to institutional care; and early release from detention.³⁰ Indeed, institutional care is a measure of last resort and for the minimum necessary time.³¹ Moreover, it is stated that no child should be removed from parental supervision unless the circumstances of his or her case make it necessary.³²

The CRC emphasises that the reaction to an offence should always be in proportion to the circumstances and the gravity of the offence, as highlighted above; but also the age, lesser culpability, circumstances and needs of the child as well as the long-term needs of society.³³ In the case of severe offences by children, consideration of the gravity of the offence, including in relation to public safety, must always be outweighed by the main

²⁷ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [80].

²⁸ United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 13.2.

²⁹ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [68] and [69].

³⁰ Ibid., [28]; Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Art. 40(4); United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 18.1.

³¹ United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 19.

³² Ibid., Rule 18.2.

³³ Ibid., Rule 17.1(a); United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [71].

aim of safeguarding the well-being and best interests of the child and facilitating his or her reintegration.³⁴ Consequently, a strictly punitive approach does not correspond to the leading principles of juvenile justice as stated above.³⁵

In any case, it has been emphasised by the CRC that all actions taken concerning the child must support his or her reintegration and help them become a constructive member of society; this means that no action can jeopardise the reintegration of the child concerned, through, by way of example, stigmatisation, social isolation or negative publicity.³⁶

Due to the nature of the subject, it is also worth noting the absolute prohibition on capital punishment and life imprisonment without possibility of release for children in conflict with the law.³⁷

In addition to this, it is important to note the right to a fair trial, which includes an important set of rights listed in Article 40(2) of the UNCRC. This entails: the right to non-retroactive juvenile justice; the presumption of innocence; the right to be informed promptly and directly of the charges against him or her in a way that s/he understands and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to the law and in the presence of legal or other appropriate assistance, as well as in the presence of his or her parents or legal guardians, unless not considered in the best interests of the child (thus, parents must be notified immediately upon the arrest of

³⁴ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [71].

³⁵ Ibid.

³⁶ Ibid., [29].

³⁷ Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Art. 37(a).

the child or as soon as possible); the right not to be compelled to give testimony or confess guilt; the right to obtain the participation of witnesses and to examine them; the right to appeal by a higher competent, independent and impartial authority or judicial body if considered to have infringed penal law; the right to have the free assistance of an interpreter if the child cannot speak or understand the language; and to have his or her privacy fully respected at all stages of the proceedings.³⁸ The latter is of special importance in relation to the possible stigmatisation of the child and in view of his or her successful reintegration, and it, therefore, requires no information to be published which could lead to the identification of the child offender, that the trial must be held behind closed doors, that the records of the child should be kept confidential, and that the criminal records should be removed after the child has reached eighteen years of age.³⁹

Moreover, the right to be heard and to effectively participate in the proceedings is also one of the core principles of the UNCRC that is of crucial importance in juvenile justice.⁴⁰ There are additional specific requirements to safeguard this right, however, due to space restrictions, these fall outside the scope of this thesis and will not be covered.

The provisions of Article 37 of the UNCRC are also worth noting, particularly in relation to the pre-trial stage. It is stipulated that the arrest and detention of the child

³⁸ Ibid., Art. 40(2); United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [41], [42], [47]-[67]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rules 7, 8, 10.1, 14.1, 15.1, 15.2 and 20.1.

³⁹ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [64], [66] and [67]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rules 8.1, 8.2, 21.1 and 21.2.

⁴⁰ Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3, Art. 12; United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [43]-[46]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 14.2.

should be in accordance with the law in order for it not to be arbitrary; that the child has the right to prompt access to legal and other appropriate assistance as well as the right to challenge his or her deprivation of liberty before a court or other competent, independent and impartial authority and to a prompt decision on this matter.⁴¹ Indeed, every arrested and detained child should be brought before a competent authority to examine the legality of his or her deprivation of liberty within 24 hours, the legality of the detention is to be reviewed every two weeks, and if alternative measures are not possible the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body not later than thirty days after his or her pre-trial detention takes effect.⁴²

However, Article 37 of the UNCRC stipulates in a general manner that the detention and imprisonment of a child has to be in conformity with the law, in addition to what has been said above and is to be used as a measure of last resort and for the shortest appropriate period of time.⁴³

Concerning children deprived of their liberty, Article 37 of the UNCRC further stipulates that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment; and that every child should be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age.⁴⁴ They are to be separated from adults unless it is not in their best interest to do so.⁴⁵

⁴¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), 15 77 UNTS 3, Art. 37(b) and (d); United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [82] and [83]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 10.2.

⁴² United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [83].

⁴³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, Art. 37(b).

⁴⁴ Ibid., Art. 37(a) and (c).

⁴⁵ Ibid., Art. 37(c); United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [85]; United Nations

The institutional treatment/detention/imprisonment (including at the pre-trial stage) of a child should respect the aim of reintegrating the child into society and the child assuming a constructive role in it. Consequently, juveniles deprived of their liberty should receive the necessary care, protection and all the social, educational, vocational, psychological, medical and physical assistance required in accordance with their age, gender and personality and designed to further their development.⁴⁶ Medical assistance refers to both preventive and remedial treatment and includes mental health care and treatment for substance dependence.⁴⁷ Girls deserve special attention for their personal needs and problems and should be treated fairly and not receive less care, protection, assistance, treatment and training than the boys.⁴⁸

Moreover, children are to be provided with an environment and accommodation in accordance with the above-mentioned principles enshrined in Article 37 of the UNCRC, but which must also give due regard to the needs of the child for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure activities.⁴⁹ Furthermore, the religious and cultural rights of children should also be adequately protected.⁵⁰

As soon as possible following the child's admission into a juvenile facility, s/he should be interviewed individually and a psychological and social report drafted identifying

General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rules 13.4 and 26.3; United Nations General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990), A/RES/45/113, [28].

⁴⁶ United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rules 13.5, 26.1 and 26.2; United Nations General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990), A/RES/45/113, [38]-[40], [42], [43], [45]; United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [89].

⁴⁷ United Nations General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990), A/RES/45/113, [49], [51], [53].

⁴⁸ United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 26.4.

⁴⁹ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [89]; United Nations General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990), A/RES/45/113, [32] and [47].

⁵⁰ United Nations General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990), A/RES/45/113, [4] and [48].

any factors relevant to the specific type and level of care and programme required by the juvenile.⁵¹ A medical report should also be prepared by a medical officer who has examined the juvenile following his/her admission.⁵² These should help in determining the most appropriate placement for the child within the facility and the specific type and level of care and programme required.⁵³ Should special rehabilitative treatment be necessary, and should the length of the child's stay child permit it, the facility's personnel should prepare a comprehensive personalised treatment plan which should include the time-frame, stages, objectives and means.⁵⁴ Their detention should always take place under conditions that fully take into account their particular needs, status and any special requirements due to their age, personality, gender, type of offence, physical and mental health, and which ensure their protection from harmful influences and risk situations.⁵⁵ Thus, the only criterion for the separation of juvenile offenders deprived of their liberty should be the provision of the type of care best suited to the particular needs of that specific child, and the protection of their physical, mental and moral integrity and well-being.⁵⁶

Additionally, every juvenile should maintain contact with the outside world during the time of his or her deprivation of liberty, which is important under Article 37 of the UNCRC and for their reintegration. This means that, save in exceptional circumstances, the child should maintain contact with his or her family through correspondence and visits, but also with friends and other persons or representative of reputable organisations.⁵⁷

⁵¹ Ibid., [27].

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid., [28].

⁵⁶ Ibid.

⁵⁷ Ibid., [59]; Convention on the Rights of the Child (adopted 20 November 1989, entered into force on 2 September 1990), 15 77 UNTS 3, Art. 37(c); United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [89].

It must of course be reiterated that all these detention conditions apply equally to children in pre-trial detention.⁵⁸

Furthermore, in addition to granting special permission to leave the facilities for educational, vocational or other important reasons, semi-institutional arrangements in order to prepare the child for reintegration into society as soon as s/he is ready such as visiting his or her home and family, half-way houses, educational homes, and day-time training centres should also be arranged.⁵⁹ Early conditional release is also recommended.⁶⁰

As a general principle, all children deprived of their liberty should be helped with their reintegration into society through special arrangements, meaning that specific services should be established to help these juveniles re-establish themselves in society by providing them (in so far as possible) with suitable accommodation, employment, clothing and sufficient means to maintain himself or herself; and in order to minimise prejudice against them.⁶¹

Concerning children who have not been deprived of their liberty, it is also important to point out that volunteers, voluntary organisations, local institutions and other community resources should effectively contribute to the juvenile's rehabilitation in a community setting (and, as far as possible, within his or her family environment); and that the necessary assistance such as accommodation, educational or vocational training,

⁵⁸ United Nations General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990), A/RES/45/113, [18].

⁵⁹ Ibid., [59]; United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [89]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rule 29.

⁶⁰ United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rules 28.1 and 28.2.

⁶¹ United Nations General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990), A/RES/45/113, [79] and [80].

employment or any other assistance should be provided in order to facilitate the child's rehabilitation.⁶²

Finally, and as a general remark, the CRC points out the importance of training all professionals, such as police officers, prosecutors, the child's legal and other representatives, judges, probation officers, social workers and others, which should be conducted in a systematic and ongoing manner. These professionals should be well informed about the child's and adolescent's physical, psychological, mental and social development as well as the special needs of the most vulnerable children.⁶³ Law enforcement and the judiciary specifically should also receive appropriate training on the content and meaning of the provisions in the UNCRC relevant to their daily practice in a systematic and ongoing manner.⁶⁴ In the case of children deprived of their liberty, there should also be a number of specialists, such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists and other specialists who should also be adequately trained, notably in relation to international human rights standards and norms, the rights of the child and in particular juvenile justice.⁶⁵

⁶² United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rules 24 and 25.

⁶³ Ibid., Rules 12 and 22.1; United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [40].

⁶⁴ United Nations Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice (adopted 25 April 2007), CRC/C/GC/10, [97]; United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (adopted 29 November 1985), A/RES/40/33, Rules 12 and 22.1.

⁶⁵ United Nations General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted 14 December 1990), A/RES/45/113, [81] and [85].

2.2 Counter-terrorism

2.2.1 International framework

The United Nations Security Council Resolutions (UNSCRes), adopted by one of the United Nations' main organs and which will be discussed subsequently with regard to the subject of this thesis, were adopted under Chapter VII of the UN Charter and are, therefore, legally binding upon all one hundred and ninety-three Member States of the United Nations.

There is no universally accepted definition of 'foreign terrorist fighters'. However, this term is defined in UNSC Resolution 2178 (2014) and refers to:

Individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.⁶⁶

UNSC Resolution 2178 (2014) requires all Member States to establish in their national legislations serious criminal offences sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offence any person who participates in, *inter alia*, the planning, preparation or perpetration of terrorist acts.⁶⁷ This also includes specifically, *inter alia*, their nationals travelling to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training.⁶⁸ The Resolution also stipulates that any measures taken by Member States to

⁶⁶ United Nations Security Council Resolution 2178 (2014), 24 September 2014, p. 2.

⁶⁷ *Ibid.*, [6].

⁶⁸ *Ibid.*, [6(a)].

counter terrorism must comply with all their obligations under international law and in particular international human rights law and underscores the essential importance of respect for human rights, fundamental freedoms and the rule of law.⁶⁹ All of this is reiterated in UNSC Resolution 2396 (2017).⁷⁰ Moreover, UNSC Resolution 2178 (2014) also calls upon States to develop and implement rehabilitation and reintegration strategies for returning foreign terrorist fighters (FTFs) and to cooperate in such efforts in accordance with their obligations under international law.⁷¹ However, children are not specifically mentioned at any point.

UNSC Resolution 2396 (2017) goes a step further since it contains the first reference to children. It is more precise in relation to them, calling upon all Member States to assess and investigate all suspected individuals entering their territory whom they have reasonable grounds to believe they are FTFs and their accompanying family, including children, and to develop and implement adequate risk assessments and take appropriate action concerning their prosecution, rehabilitation and reintegration in accordance with international and domestic law.⁷² Such prosecution, rehabilitation and reintegration strategies must comply with the states' obligations under international law and be tailored to children in accordance with their gender and age, particularly in relation to the various roles they have played possibly as supporters or perpetrators of terrorist acts, and the fact that they may be victims of terrorism should also be duly taken into consideration.⁷³ Local communities, mental health and education practitioners and other relevant civil society organisations and representatives should be consulted as appropriate.⁷⁴ It highlights the importance of a whole of government approach through proactive engagement with civil society organisations for timely and appropriate reintegration and rehabilitation assistance contributing to the well-being of children associated with returning FTFs, which includes access to health care, psychological

⁶⁹ Ibid., p. 1.

⁷⁰ United Nations Security Council Resolution 2396 (2017), 21 December 2017, p. 1 and [17].

⁷¹ Ibid., [4].

⁷² Ibid., [29], and p. 3.

⁷³ Ibid., [30] and [31].

⁷⁴ Ibid., [30].

support and education programmes.⁷⁵ Finally, it reiterates that States should consider engaging with religious authorities, community leaders and other civil society actors with expertise in crafting and delivering effective counter-narratives, where appropriate.⁷⁶

Nevertheless, it is also important to highlight that the UN Security Council recognises, as specifically pointed out in UNSC Resolution 2396, that Member States face a challenge obtaining admissible evidence, both physical and digital, from conflict zones for the prosecution of FTFs.⁷⁷ Consequently, both the above-mentioned Resolutions require Member States to assist others to the greatest extent possible in obtaining the necessary evidence - physical and digital - for the criminal investigations or proceedings in relation to FTFs.⁷⁸ UNSCR Resolution 2396 goes further by stating that Member States should strengthen their international judicial cooperation so as to use the applicable international instruments to which they are parties as a basis for mutual legal assistance and to consider strengthening the implementation of and enhancing the effectiveness of their respective bilateral and multilateral treaties concerning Mutual Legal Assistance in criminal matters related to counterterrorism, and cooperate when possible on the basis of reciprocity or on a case by case basis.⁷⁹

Finally, both the above-mentioned Resolutions call upon Member States to intensify and accelerate the timely exchange of operational information concerning FTFs and their families in compliance with domestic and international law and through national, bilateral and multilateral mechanisms.⁸⁰

⁷⁵ Ibid., [33] and [36].

⁷⁶ Ibid., [35].

⁷⁷ Ibid., p. 3.

⁷⁸ Ibid., [23]; United Nations Security Council Resolution 2178 (2014), 24 September 2014, [12].

⁷⁹ United Nations Security Council Resolution 2396 (2017), 21 December 2017, [24].

⁸⁰ Ibid., [5]; United Nations Security Council Resolution 2178 (2014), 24 September 2014, [3].

2.2.2 European Framework

The Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (2015) (hereinafter, the Additional Protocol) echoes UNSCR Resolution 2178, thus requiring States Parties to make, *inter alia*, when committed intentionally, travelling abroad for the purpose of terrorism a criminal offence; this includes for the purpose of committing, contributing to or participating in a terrorist offence or receiving or providing terrorist training.⁸¹ It therefore supplements the above-mentioned Convention with regard to making terrorism-related acts criminal offences. Moreover, it stipulates that, in implementing its provisions in relation to the criminalisation of terrorist acts, States Parties must respect all of their human rights obligations under international law.⁸² The Additional Protocol does not make any specific mention about children, referring neither to reintegration nor rehabilitation measures.

Lastly, no mention is made regarding the challenge of obtaining evidence and the need for mutual assistance and judicial cooperation between signatory States, specifically concerning foreign terrorist fighters. Nevertheless, the Additional Protocol should be read together with the Convention, which does stipulate that States Parties shall assist others to the greatest extent possible in obtaining evidence in relation to terrorism-related criminal investigations or proceedings, and that States Parties should carry out this obligation in accordance with Treaties or other agreements on Mutual Legal Assistance to which they are a party, or in accordance with their domestic law in the absence of Treaties or agreements.⁸³

The Additional Protocol, however, specifically stipulates each Party must take such measures as may be necessary in order to strengthen the timely exchange between Parties of any available relevant information concerning persons travelling abroad for

⁸¹ Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (adopted 22 October 2015, entered into force on 1 July 2017), Art. 4(1).

⁸² Ibid., Art. 8(1).

⁸³ Council of Europe Convention on the Prevention of Terrorism (adopted 16 May 2005, entered into force on 1 June 2007), Art. 17(1) and (2).

the purpose of terrorism and in accordance with their domestic law and existing international obligations.⁸⁴

Belgium in particular has signed both the Convention and the Additional Protocol but has not ratified them, which means that although it is not legally bound by their provisions, it nevertheless expressed its agreement to comply with them and must, therefore, refrain from acts which undermine the object and purpose of these instruments.⁸⁵

Similarly, at European Union (EU) level, a key document is Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (henceforth, the EU Directive). This EU Directive updates Member States' current legal framework and harmonises it in relation to the criminalisation of acts related to terrorism in line with the provisions of UNSCR Resolution 2178 and the Additional Protocol. EU Directives are binding upon all Member States to which they are addressed, but each Member State needs to subsequently transpose them into national legislation.

First of all, it is important to note that this EU Directive provides a harmonised definition of “terrorist offences” at least at EU level. According to this definition, terrorist offences are, *inter alia*, attacks upon a person’s life which may cause death; attacks upon the physical integrity of a person; kidnapping or hostage-taking; which due to their nature and context may seriously damage a country and are committed intentionally in order to, *inter alia*, seriously intimidate a population; or seriously

⁸⁴ Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (adopted 22 October 2015, entered into force on 1 July 2017), Art. 7(1).

⁸⁵ Ibid., Art. 10(1); Council of Europe Convention on the Prevention of Terrorism (adopted 16 May 2005, entered into force on 1 June 2007), Art. 23 (1) and (2); Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force on 27 January 1980), 1155 UNTS 331, Art. 18(a).

destroying the fundamental political, constitutional, economic or social structures of a country.⁸⁶

Moreover, the EU Directive requires all Member States to make terrorism-related acts, when committed intentionally, criminal offences. Those include, *inter alia*, travelling abroad for the purpose of receiving or providing terrorist training, committing or contributing to the commission of a terrorist offence, or participation in the activities of a terrorist group with the knowledge that such participation will contribute to the criminal activities of the terrorist group.⁸⁷

There are no specific provisions relating to children in particular. There is merely a reference to a long-term proactive and comprehensive approach, which, according to the EU Directive, needs a combination of criminal justice measures and effective de-radicalisation, disengagement or rehabilitation programmes.⁸⁸

It is also stated that the EU Directive respects fundamental rights and freedoms and observes the principles enshrined in the EU Charter of Fundamental Rights, and that it must be implemented in accordance with the rights and principles contained in the various Human Rights Conventions and other human rights obligations under international law.⁸⁹ It is specifically stipulated that the EU Directive ‘shall not have the effect of modifying the obligations to respect fundamental rights and fundamental legal principles, as enshrined in Article 6 of the Treaty on European Union’.⁹⁰

Finally, it stipulates that Member States should ensure the efficient and timely exchange of information considered to be relevant by the competent authorities, *inter alia*, for the prosecution of terrorist offences, between the competent authorities and Union agencies and in accordance with national law and the European Union legal framework.⁹¹ Consequently, Member States should ensure that relevant information gathered by their

⁸⁶ European Parliament and Council Directive 2017/541 of 15 March 2017 on Combatting Terrorism and Replacing Council Framework Decision 2002/475/JHA and Amending Council Decision 2005/671/JHA [2017] OJ L88/6, (3) and (8) and Art. 3(1)(a)(b) and (c) and 3(2)(a) and (c).

⁸⁷ Ibid., (12) and Art. 9(1).

⁸⁸ Ibid., (31).

⁸⁹ Ibid., (35).

⁹⁰ Ibid., Art. 23(1).

⁹¹ Ibid., (24).

competent authorities in the framework of criminal proceedings is made accessible to the respective competent authorities of another Member State to which they consider this information could be relevant.⁹² The EU Directive amends and strengthens the provisions of Council Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences.⁹³

⁹² Ibid., (25).

⁹³ Ibid., Art. 22.

3. OTHER INSTRUMENTS AND GUIDELINES

The following Chapter further lays the foundations for the subsequent discussion on the research question set by this master's thesis. This Chapter contains a compilation of the selected main instruments specifically related to the involvement of children in terrorist and violent extremist groups.

3.1 The Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context

The Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context (hereinafter, the Memorandum) is a non-legally binding document adopted by the Global Counterterrorism Forum under the Initiative to Address the Life Cycle of Radicalisation to Violence.

According to this Memorandum, children investigated and/or charged with terrorism-related offences should preferably and primarily be treated by the juvenile justice system, which has the dual purpose of preserving public safety whilst upholding the rights of the children.⁹⁴ Thus, the rights in the UNCRC and international norms and standards of juvenile justice are also ensured in cases of children involved in terrorism-related offences.⁹⁵ Moreover, the international legal framework as provided by various instruments and standards, notably international criminal law, and the possibility that children may be victims of violations of international law should also be duly taken into

⁹⁴ 'The Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context', *Global Counterterrorism Forum*, 2016, <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>, (accessed 19 January 2018), Good Practices 1 and 5.

⁹⁵ Ibid.

consideration in such cases.⁹⁶ The Memorandum re-emphasises that the aim of the juvenile justice system should be the rehabilitation and reintegration into society of the child while ensuring accountability for his or her acts.⁹⁷

It also states that children's involvement in terrorism-related activities needs to be assessed from the standpoint that their reasoning and cognitive abilities are still developing, so consideration should be given to their vulnerabilities and to their particular capacities, which differ from adults.⁹⁸

The Memorandum supports the recourse to diversion mechanisms for children charged with terrorism-related offences due to the consequences of subjecting children to criminal proceedings, including in order to avoid a criminal record, whenever appropriate and desirable, and at different stages of the process: before the initiation of the proceedings, during the proceedings and as an alternative to incarceration.⁹⁹ In order to do this, the national laws should contain specific provisions for the application of diversion mechanisms and appropriate guidelines should be developed for law enforcement officials, prosecutors and judges to exercise their discretion in relation to the case and decide to divert the child at any stage of the process.¹⁰⁰ Moreover, diversion programmes for these children should be tailored to the offence committed and the child's characteristics, thus, they should include disengagement and de-radicalisation components as well as educational elements, vocational training and psychological support aimed at the child's reintegration into society.¹⁰¹ Once the

⁹⁶ Ibid., Good Practices 1 and 2.

⁹⁷ Ibid., Good Practice 5.

⁹⁸ Ibid., Good Practice 2.

⁹⁹ Ibid., Good Practice 7.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

diversion programme has been successfully completed, the case is to be considered closed and no criminal or other public records should be kept.¹⁰²

Additionally, due to the negative effects upon children of subjecting them to detention, such as stigmatisation, further severance from their community and disruption of their education and social development, which jeopardises their reintegration and rehabilitation, alternatives to the arrest, detention and imprisonment of these children (including at the pre-trial stage) should be considered wherever appropriate and there should always be a preference for the least restrictive means to achieve the aim of the judicial process.¹⁰³ National laws should provide judges with a range of possible alternatives to institutional care and detention.¹⁰⁴ For instance, community-based options for the supervision of children can be a good alternative to detention.¹⁰⁵ Such solutions should also include a de-radicalisation component where appropriate.¹⁰⁶

The Memorandum further states that a juvenile justice system should have a rehabilitative aim whilst respecting the proportionality in between the child's individual circumstances and the gravity of the offence.¹⁰⁷ Thus, the court should also consider the child's situation and needs when sentencing.¹⁰⁸ To this end, it is recommended that psychologists and other experts examine the child's background and situation in order to make individualized recommendations to the courts with regard to the sentencing, so that the child can be properly helped with his or her rehabilitation and reintegration.¹⁰⁹ The sentences should comprise a variety of rehabilitation measures that include

¹⁰² Ibid.

¹⁰³ Ibid., Good Practice 8.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., Good Practice 9.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

educational and vocational components aimed at assisting the child in his or her development, rehabilitation and reintegration.¹¹⁰

In exceptional cases where children are tried in adult courts, it is recommended that international juvenile justice standards should nevertheless be applied.¹¹¹

The Memorandum stipulates that rehabilitation and reintegration programmes should be available to all children involved in terrorism-related activities, whether they have been diverted or are completing or have completed a custodial sentence.¹¹² These programmes, whether provided in the community, through court orders or in detention should have a multi-sector approach involving psychologists, mental health workers, social workers, law enforcement, community leaders, school teachers and families, and should continuously assess the child.¹¹³ Moreover, when appropriate, programmes should strive to restore the link in between children and their families, peers, community and society; and may be tailored to the child's cultural and religious background.¹¹⁴ It is also noted that there are very few support organisations specialising in countering violent extremism, so there is a need to develop more specialised support programmes for children depending on their characteristics and to help them prepare their return to their families and community after having being detained or imprisoned. Finally, it emphasises that post-release support is fundamental for facilitating the reintegration process by promoting continuing education, secure employment and countering stigmatization.¹¹⁵ This also requires the judicial and prison authorities as well as the juvenile support and social services organisations working with children

¹¹⁰ Ibid.

¹¹¹ Ibid., Good Practice 6.

¹¹² Ibid., Good Practice 11.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

following their release to engage in open communication, coordination and collaboration.¹¹⁶

3.2 The ‘Radicalisation Awareness Network’ papers

The Radicalisation Awareness Network (RAN) was launched by the European Commission and connects different professionals from various European States, serving as a platform for sharing knowledge, experience and best practices in order to counter radicalisation leading to violent extremism. The documents are, therefore, non-legally binding.

It is important to first note that the term ‘child returnees’ as per the RAN papers refers to all children who left Europe either with their families or on their own to join a terrorist organisation abroad and who have returned, either with their families or on their own, and all children who were born in terrorist-held territory and who travelled to Europe.¹¹⁷

¹¹⁶ Ibid.

¹¹⁷ Radicalisation Awareness Network (RAN), ‘Responses to returnees: Foreign terrorist fighters and their families’, *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 68; Radicalisation Awareness Network (RAN), ‘Child returnees from conflict zones’, *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), p. 1.

The RAN Manual 'Responses to returnees: Foreign terrorist fighters and their families' (hereinafter, the Manual) recognises that experience in working with children returnees is still very limited in Europe.¹¹⁸

The Manual recommends a risk and needs assessment specifically adapted to children which does not so far seem to have been developed by European states.¹¹⁹ Indeed, this is considered fundamental for the rehabilitation and reintegration of these children.¹²⁰ Any assessment tool must take into account a child's stage of development and age and they must not be included in adult services.¹²¹ It should assess, *inter alia*, the child's physical and mental well-being, level of trauma, level of indoctrination and extremist thinking, attitude towards violence, etc., and there should be separate versions adapted to girls and to boys, given their different experiences.¹²² This would permit a tailor-made approach involving several actors, depending on the services needed, such as child services, social care services, schools, health services, employment services, sports and leisure organisations, religious organisations, etc.¹²³

In relation to the custody of the child, it is recommended by both the Manual and the Issue Paper to entrust him or her to family members and, only as a measure of last resort, to place him or her in an institution or foster care, due to the adverse consequences upon the child.¹²⁴

¹¹⁸ Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign terrorist fighters and their families', RAN, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 69.

¹¹⁹ Ibid., p. 75.

¹²⁰ Ibid.

¹²¹ Ibid., pp. 68 and 69.

¹²² Ibid., p. 75.

¹²³ Ibid., p. 71.

¹²⁴ Ibid., p. 76; Radicalisation Awareness Network (RAN), 'Child returnees from conflict zones', RAN, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), pp. 3 and 13.

In general the Manual recommends normalisation as soon as possible, however, certain factors should be considered such as: parental employment: family stability; having a structured everyday life: access to a private living space; access to education and leisure activities; living in a suitable community; access to peer groups; role models; and a sense of self-determination.¹²⁵

Indeed, schools are considered to be of crucial importance for the rehabilitation of child returnees since it permits them to live a safe and normal day-to-day life, increases interaction with other individuals and exposes them to cultural diversity.¹²⁶ Nevertheless, a risk and needs assessment should be carried out beforehand.¹²⁷ Teachers should be trained to deal with the potential risks posed by child returnees such as trauma reactions; schools should cooperate with different partners able to help them with child returnees, such as childcare, social care, mental health services, trauma experts, physical health services, youth workers, NGOs and organisers of after-school activities to encourage integration; school staff should be specifically trained with regard to violent extremism and the circumstances under which children have lived, and the school management should ensure close monitoring of the child.¹²⁸ Finally, special programmes for child returnees are not advised since they would further isolate the children concerned, however, individual support programmes are encouraged.¹²⁹

The child's social environment, meaning the family, community and peer groups, is therefore considered as crucial for his or her rehabilitation and reintegration.¹³⁰ This is why they should be socialised into an appropriate social network as soon as possible

¹²⁵ Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign terrorist fighters and their families', RAN, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 76; Radicalisation Awareness Network (RAN), 'Child returnees from conflict zones', RAN, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), pp. 2 and 12.

¹²⁶ Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign terrorist fighters and their families', RAN, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 77.

¹²⁷ Ibid.

¹²⁸ Ibid., pp. 77 and 78.

¹²⁹ Ibid.

¹³⁰ Ibid., p. 70.

following their arrival.¹³¹ The RAN Issue Paper 'Child returnees from conflict zones' (hereinafter, the Issue Paper) insists on the important role of the family in rehabilitation and reintegration when it has the potential to be a protective factor, but this depends on the family's resources, social network and dynamics.¹³² Nevertheless, when the family is a risk factor, it advises the placement of the child with a family of the same ethnic origin providing a sense of stability and with adequate support.¹³³ Finally, it also points out the importance of normalisation, but further states that restoring civilian roles, such as employment and schooling for instance, is essential for traumatised children to rebuild confidence.¹³⁴

The Manual also notes the importance of learning to manage emotions for these children, regardless of their age.¹³⁵

The Manual also highlights the importance of family support for the rehabilitation process. This refers not only to support for the families due to the trauma that they have suffered themselves, but also in relation to the child, how to deal with him or her and how to create a safe and stable environment.¹³⁶ This is also reiterated in the Issue Paper when the family is considered a protective factor.¹³⁷

¹³¹ Ibid.

¹³² Radicalisation Awareness Network (RAN), 'Child returnees from conflict zones', *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), pp. 3, 16 and 17.

¹³³ Ibid., pp. 13 and 16.

¹³⁴ Ibid., p. 9.

¹³⁵ Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign terrorist fighters and their families', *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 69.

¹³⁶ Ibid., p. 77.

¹³⁷ Radicalisation Awareness Network (RAN), 'Child returnees from conflict zones', *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), pp. 12, 13 and 16.

Both the Manual and the Issue Paper also point out that, in addition to the trauma already suffered by these children during their involvement with the terrorist group, such as interfamilial violence, sexual abuse, hunger, malnutrition, neglect and abandonment, they can also experience more trauma in relation to their resettlement and integration.¹³⁸ For instance, this can be related to discrimination, social exclusion, instability, parental unemployment and the absence of peer support networks.¹³⁹ Moreover, children may be separated from their families.¹⁴⁰

According to the Issue Paper, it is fundamental in general that all practitioners and any individual in contact with the child or family should understand trauma, its manifestations and consequences upon the child.¹⁴¹ This is considered fundamental in order to design appropriate interventions.¹⁴² A key recommendation of the Issue Paper is to have one assigned key worker who collaborates with the rest of the services needed by the child and their family in order to avoid multiple workers at all costs.¹⁴³

The Manual also points out that it should be assumed that all children returning from Iraq and Syria have been exposed to some level of violence and need intervention to

¹³⁸ Ibid., p. 6; Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign terrorist fighters and their families', *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 69.

¹³⁹ Ibid.

¹⁴⁰ Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign terrorist fighters and their families', *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 69; Radicalisation Awareness Network (RAN), 'Child returnees from conflict zones', *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), p. 9.

¹⁴¹ Radicalisation Awareness Network (RAN), 'Child returnees from conflict zones', *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), pp. 2, 7 and 16.

¹⁴² Ibid.

¹⁴³ Ibid., p. 7.

address that trauma, and that all children must be assumed to have had some level of exposure to extremist ideology.¹⁴⁴ This is reiterated in the Issue Paper.¹⁴⁵

With regard to the so-called “de-radicalisation” programmes, the Manual notes that such programmes have not been developed for child returnees and that directly confronting youths on issues of ideology and identity may lead to an identity crisis; it therefore recommends working on and rebuilding an alternative worldview based on positive and varied day-to-day experiences through the different actors involved, such as family, schools, community and leisure organisations in order to change a child’s view of society and their role and identity within it.¹⁴⁶ It is better to focus on broader reintegration and rehabilitation processes.¹⁴⁷ In relation to precisely this, the Issue Paper specifically points out how children develop their sense of identity and how sensitive they are given that their identity development is in flux and heavily reliant on their experience.¹⁴⁸ Identity transition, therefore, needs to be mindful of the identity opportunities that the involvement in terrorist groups offered children, and that children were involved and recruited into such groups.¹⁴⁹ This identity transition is, however, complex and long.¹⁵⁰ It also specifically recommends replacement role models, a suitable alternative community and an active peer group as essential elements for this

¹⁴⁴ Radicalisation Awareness Network (RAN), ‘Responses to returnees: Foreign terrorist fighters and their families’, *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 70.

¹⁴⁵ Radicalisation Awareness Network (RAN), ‘Child returnees from conflict zones’, *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), pp. 3, 10 and 11.

¹⁴⁶ Radicalisation Awareness Network (RAN), ‘Responses to returnees: Foreign terrorist fighters and their families’, *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), pp. 79 and 80.

¹⁴⁷ *Ibid.*, p. 70.

¹⁴⁸ Radicalisation Awareness Network (RAN), ‘Child returnees from conflict zones’, *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), p. 11.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

aspect too.¹⁵¹ More precisely, the Issue Paper advises that expert psychologists should contribute to the identity and ideology issues together with area experts (such as cultural experts) and that the family could also participate.¹⁵² Lastly, it suggests, especially for older children, using former FTFs as positive role models for this transition.¹⁵³

Finally, the Manual points out that, like child soldiers, children returnees can simultaneously be seen as both victims and perpetrators.¹⁵⁴ Indeed, as explained in the Issue Paper, these children have had multiple roles in the context of war and have dual identities.¹⁵⁵ They cannot be considered able to truly consent to involvement in violent activity and they lack the capacity to fully understand the consequences of their involvement.¹⁵⁶

The Issue Paper specifically recommends early intervention, in particular for children under the age of twelve to maximise the possibility of rehabilitation.¹⁵⁷ In order to do this, the method used to recruit children as well as the recruitment and involvement of children in terrorist groups must be correctly understood by practitioners.¹⁵⁸

¹⁵¹ Ibid., p. 11.

¹⁵² Ibid., pp. 15 and 16.

¹⁵³ Ibid., p. 16.

¹⁵⁴ Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign terrorist fighters and their families', *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 69.

¹⁵⁵ Radicalisation Awareness Network (RAN), 'Child returnees from conflict zones', *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf, (accessed 17 January 2018), pp. 2 and 8.

¹⁵⁶ Ibid., Radicalisation Awareness Network (RAN), 'Responses to returnees: Foreign terrorist fighters and their families', *RAN*, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/ran_br_a4_m10_en.pdf, (accessed 17 January 2018), p. 69.

¹⁵⁷ Ibid., pp. 9 and 15.

¹⁵⁸ Ibid.

Finally, the Issue Paper opines that, with regard to children involved in violence, subjecting them to criminal proceedings entails the risk of further traumatising the child, provoking future recidivism and limiting the opportunities for rehabilitation and reintegration.¹⁵⁹ Rehabilitation should therefore be prioritised so that the child's needs and vulnerabilities are paramount.¹⁶⁰

3.3 The United Nations Office on Drugs and Crimes Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The role of the Justice System

The United Nations Office on Drugs and Crimes (UNODC) Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups (hereinafter, the Handbook) is also a non-legally binding document. It is important to mention that the UNODC has been recognised in UNSCR Resolution 2373 as the UN's main reference body for guidance in this area.

The Handbook establishes a few issues to be considered before establishing the criminal accountability of children alleged to have committed terrorism-related offences. Firstly, it reconfirms that children recruited by terrorist and violent extremist groups should primarily be considered as victims, which, nevertheless, does not prevent holding them accountable for the criminal acts committed during their involvement with the terrorist or violent extremist group.¹⁶¹ In this regard, the Handbook underlines that the international legal framework clearly provides that the recruitment and exploitation of

¹⁵⁹ Ibid., p. 15.

¹⁶⁰ Ibid.

¹⁶¹ United Nations Office on Drugs and Crime, 'Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System', 2017, https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf, (accessed 22 March 2017), p. 75.

children are violations of international law and that children become victims of violence.¹⁶² Furthermore, it also recognises that no children can be regarded to have voluntarily joined a terrorist group due to his or her cognitive abilities as well as to the different forms of coercion and influence brought to bear in the recruitment methods.¹⁶³ Recognising children as victims, therefore, means that children should be provided with the appropriate assistance, including reparations.¹⁶⁴ The Handbook goes as far as to say that this would also mean that prosecution should be a measure of last resort.¹⁶⁵

Secondly, the Handbook recalls the non-punishment principle for victims of human trafficking. Consequently, and in the cases where violence against a child by terrorist and extremist groups is considered tantamount to human trafficking, children should not be prosecuted for offences committed in relation to their trafficking, which is considered to be crucial for the rehabilitation of the child victim.¹⁶⁶ In relation to this, it is important to note the definition of trafficking in persons which, according to the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially women and children is - in accordance with the subject of this master's thesis - the recruitment of persons by means of any form of deception, the abuse of power or of a position of vulnerability for the purpose of exploitation.¹⁶⁷ Exploitation includes sexual exploitation, forced labour or services, slavery or similar practices, and servitude.¹⁶⁸ The recruitment of a child, however, shall always be considered trafficking in persons regardless of whether any of the means stated above have been used.¹⁶⁹

Thirdly, it is stated that a child under the minimum age of criminal responsibility, and not therefore presumed to have the capacity to infringe penal law, cannot be held liable

¹⁶² Ibid.

¹⁶³ Ibid., p. 75.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid., p. 76.

¹⁶⁶ Ibid.

¹⁶⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (adopted 15 November 2000, entered into force on 25 December 2003), 2237 UNTS 319, Art. 3(a).

¹⁶⁸ Ibid.

¹⁶⁹ Ibid., Art. 3(c).

and should exclusively be dealt with by the child protection system instead.¹⁷⁰ There should be no exception due to the nature of the offence.¹⁷¹ The age to be considered is that at the time when the offence was committed.¹⁷²

Fourthly, children are to be dealt with by the juvenile justice system, which serves the dual purpose of protecting public safety and holding the child accountable for the offence committed, but also protecting the rights of the child – in particular the best interests of the child – and promoting his or her reintegration into society.¹⁷³ In this regard, it is also highly recommended for professionals entering into contact with such children to undergo specialised training and to be armed with adequate resources in relation to terrorism-related cases.¹⁷⁴

Finally, it also recalls the Paris Principles which stipulate that children associated with armed forces or groups should not be prosecuted or punished for their mere membership of those armed forces or groups; the same should also apply to children involved in terrorist or violent extremist groups.¹⁷⁵

It is fundamental to first point out in general that the importance of the strict respect of the rights of the child and of the principles of juvenile justice - with regard both to the proceedings and to children deprived of their liberty - as explained above, is repeated and emphasised throughout the Handbook. Nevertheless, only some of these principles will be seen again subsequently. Despite this, it is also worth pointing out, in addition to all the rights set out above, certain specific elements that these rights entail. The Handbook mentions the importance of: adequate interviewing techniques to prevent the

¹⁷⁰ United Nations Office on Drugs and Crime, 'Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System', 2017, https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf, (accessed 22 March 2017), p. 7.

¹⁷¹ Ibid., p. 76.

¹⁷² Ibid., p. 77.

¹⁷³ Ibid.

¹⁷⁴ Ibid., p. 78.

¹⁷⁵ Ibid., p. 80.

child being intimidated, a safe and child-friendly environment, providing the child with all the information needed in order for him or her to be able to effectively participate in the proceedings, methods of restraint and use of force should not cause humiliation or degradation and are to be used for the shortest period of time, adequate disciplinary measures, the absolute prohibition on solitary confinement for children, and preventing violence against children deprived of their liberty.¹⁷⁶

Overall, two points in particular cannot be emphasised too highly: firstly, the Handbook attributes particular importance to the child's right to have his or her privacy fully respected, i.e. not to have information published which could lead to his or her identification and that the trial should be held behind closed doors, which is especially important in terrorism-related offences since it is a particularly delicate subject.¹⁷⁷ Secondly, it warns against using the term “terrorist” for children and thus labelling them, which would gravely compromise their reintegration.¹⁷⁸

The Handbook also recommends the use of diversion and alternatives to detention, the utility of which is increasingly being recognised despite the seriousness of terrorism-related offences.¹⁷⁹ Indeed, it recalls that international standards do not limit the applicability of such measures on the basis of the seriousness of the offence, but the most relevant criteria for assessing the appropriateness of such measures are the individual assessment of the child's personal circumstances and their needs.¹⁸⁰ Diversion measures should be applied at all stages of the judicial proceedings and as alternative measures to arresting the child and should also be considered when sentencing.¹⁸¹ The Handbook stresses the important role diversion can play with regard to the child's reintegration, not only in order to prevent further victimisation and

¹⁷⁶ Ibid., pp. 85, 90, 93, 94, 99, and 101.

¹⁷⁷ Ibid., pp. 94, 138 and 139.

¹⁷⁸ Ibid., p. 136.

¹⁷⁹ Ibid., p. 88.

¹⁸⁰ Ibid.

¹⁸¹ Ibid., pp. 88 and 138.

stigmatisation but also due to the nature of the work and its focus in this respect.¹⁸² For example, it states that community-based programmes and restorative justice could be effective for children involved in terrorism or violent extremism.¹⁸³ It also stresses that there are different types of diversion and alternative measures that include varying degrees of monitoring and accountability and which, therefore, are mindful of the gravity of the offence and can adequately respond to public safety interests.¹⁸⁴ Finally, it also points out that alternatives to formal judicial proceedings should be gender sensitive too.¹⁸⁵

It constantly repeats that deprivation of liberty should be a measure of last resort at all stages of the judicial proceedings and for the shortest appropriate period of time, in accordance with the principles of juvenile justice.¹⁸⁶ According to the Handbook, an effective strategy would be to exclude the detention of children who are merely the victims of recruitment and exploitation by terrorist or violent extremist groups.¹⁸⁷ Specifically, it states that the use of detention for children charged solely with association with a terrorist group should be considered with particular caution since such an offence may be the direct result of their recruitment.¹⁸⁸

Regarding the sentencing specifically, it maintains that the deprivation of liberty should only be used as a measure of last resort, thus, non-custodial sentences should be available in terrorism-related offences as well.¹⁸⁹ This involves, for instance, supervision orders, the prohibition of certain activities and ensuring closer monitoring of the child without removing him or her from their living environment, or, in exceptional circumstances, fostering or residence orders removing the child from his or her family environment.¹⁹⁰ According to the Handbook, short-term fostering orders or residence orders should be used only in exceptional circumstances when it is considered

¹⁸² Ibid., p. 88.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid., p. 100.

¹⁸⁶ Ibid., p. 97.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid., p. 96.

¹⁹⁰ Ibid., p. 96.

that leaving the child in his or her living environment could be lead to further criminal activity.¹⁹¹

The Handbook emphasises the utility of social enquiry reports in order to determine the most appropriate sentence that takes into account both the seriousness of the offence and the child's personal circumstances, and insists on judges paying close attention to the recommendations on sentencing.¹⁹² To that end, and specifically in relation to terrorism-related matters, it recommends that clear guidelines be developed as to their content, style and objectives and that all professionals should be adequately trained.¹⁹³ It specifically highlights the importance of sentencing with regard to the child's rehabilitation, since important aspects that should be considered include, according to the Handbook: the specificities of the recruitment process and the “push” and “pull” factors that were decisive in the child's case in order to better determine their needs; the family relationship, especially the family's role in the recruitment and the identification of positive relationships, and the child's experiences within the terrorist or violent extremist group in relation to violence, exploitation and their relationship of submission or control with other members.¹⁹⁴

It also stresses the importance of the individual assessments adapted to children in order to select the most appropriate intervention and upon admission to a custodial facility - where applicable - but also in order to design a reintegration plan (as will be explained below).¹⁹⁵ This assessment can help to properly assess the personal circumstances that led the child to become involved with the terrorist or violent extremist group and also help gauge the level of the child's involvement in the group.¹⁹⁶

It is fundamental to ensure that the measures taken in relation to children alleged to have committed a terrorism-related offence guarantee an appropriate balance between

¹⁹¹ Ibid.

¹⁹² Ibid., p. 95.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid., p. 139.

¹⁹⁶ Ibid.

accountability and reintegration.¹⁹⁷ Contact with their families and the outside world should therefore be encouraged, and special attention should be paid to identifying a positive network for the child with the view to facilitating his or her reintegration.¹⁹⁸ Moreover, children should have access to a variety of measures, which include, the educational, vocational, health and psychosocial support and which may be more challenging for children deprived of their liberty than for children for whom diversion or alternative measures have been applied.¹⁹⁹ It is also highlighted that the personnel in contact with the child must be carefully selected and trained in order to have a positive relationship with the child based on the strictest respect of the rights of the child, ensuring fairness, high standards of conduct and open communication.²⁰⁰ In the case of children deprived of their liberty, human rights restrictions or degrading treatment may promote or strengthen grievances which could then lead to adherence to violent extremism or antisocial behaviour.²⁰¹ Finally, the Handbook suggests early release schemes and semi-institutional arrangements as fundamental mechanisms in order to ensure that the children return to the society as soon as possible and when they are ready.²⁰²

As a general remark, the Handbook stresses that, when it is deemed necessary to separate children deprived of their liberty, this separation should be based on the individual assessments and not the offence committed or ideology.²⁰³ Moreover, it states that programmes with positive behavioural skills, dialogue and efforts to increase trust should also be provided in order to develop healthy dynamics.²⁰⁴

In relation to children deprived of their liberty, the Handbook states that the continuity of care is also especially important when transiting to life in the community.²⁰⁵ It therefore makes specific recommendations highlighting key aspects. Children should be

¹⁹⁷ Ibid., p. 140.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid., p. 142.

²⁰² Ibid., p. 140.

²⁰³ Ibid., pp. 101 and 141.

²⁰⁴ Ibid., p. 102.

²⁰⁵ Ibid., p. 142.

prepared for return to the community as soon as possible. There should be appropriate mechanisms in order to ensure effective coordination between the management of the custodial facility and the services and agencies responsible for the child's supervision upon release, which includes the transmission of the child's records in order to facilitate his or her care and support for at least six months upon release.²⁰⁶ A reintegration plan should be prepared for and with the child and involving the child's parents or legal guardians and the services or agencies responsible for the child's supervision upon release.²⁰⁷ Moreover, information should be provided to the child and his or her family on support and assistance services.²⁰⁸ Finally, practical and psychosocial support should be provided during the six months after the child's release in order to ensure his or her successful reintegration.²⁰⁹ For instance, appropriate accommodation should be provided if the family is not in a position to guarantee it, ongoing support and financial assistance should also be provided in order to facilitate access to education and training after the child's release, and special attention should be paid to supporting a positive network for the child and avoiding him or her regaining contact with persons that may have played a role in the child's involvement with the terrorist or violent extremist group.²¹⁰

The Handbook also addresses the rehabilitation and reintegration of children recruited by terrorist and violent extremist groups specifically which, it stresses, should be the primary focus of any action taken by public authorities for the children concerned.²¹¹ The reintegration of children is a multidimensional process, thus, such programmes should address health concerns, provide educational and vocational opportunities, and prepare the child's return to their family and the community.²¹² Programmes and services for children should take into consideration the individual child's needs and

²⁰⁶ Ibid., p. 142.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid., pp. 106 and 114.

²¹² Ibid.

rights, the families' and communities' expectations and needs and the characteristics of the environment in which the reintegration process is to take place.²¹³ All of these elements are strongly interdependent, so they should all be addressed in order to achieve a successful reintegration process.²¹⁴ The Handbook therefore highlights that reintegration programmes need to be based on individual assessments of the child's needs and be flexible in order to provide an adequate response tailored to the child's experience, which can vary greatly from child to child, rather than a one-size-fits-all approach.²¹⁵ Individual assessments should provide an in-depth understanding of the child's personal circumstances, i.e. his or her age, level of development and personal experience in relation to his or her involvement in the group, and should consider the possibility of secondary victimisation.²¹⁶ According to the Handbook, it is especially important to solicit and take into consideration the child's personal views by conducting interviews, which should be limited and carried out by qualified personnel.²¹⁷ Following the assessment, a comprehensive and clear long-term reintegration strategy should be developed for the child.²¹⁸ The various services that best respond to the child's needs and specific circumstances should be identified and there should be coordinated support.²¹⁹ The plan established should set clear objectives and have sound progress indicators, which should be flexible and periodically reviewed in order to best respond to the child's evolving circumstances.²²⁰ Health concerns refer to addressing the impact of recruitment, violence and conflict on the child's physical and mental well-being through child-sensitive measures.²²¹ For instance, any physical injuries suffered, sexually transmitted diseases, malnutrition, possibly substance dependence, post-traumatic stress disorder, or depression.²²² Providing educational and vocational training means equipping the child with the necessary skills in order to be self-sufficient and

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid., pp. 110, 114 and 119.

²¹⁶ Ibid., p. 114.

²¹⁷ Ibid., p. 114.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid., pp. 106, 107 and 114.

²²² Ibid., p. 107.

should be based on his or her needs and aspirations as well as on the social and economic environment where s/he is being reintegrated.²²³ This is especially important as it facilitates access to future economic opportunities, since a child with no prospects of education or employment could again resort to criminal activity.²²⁴ Finally, preparing the child's return to their family and community refers to addressing any stigma and taking initiatives based on the child's needs and those of their family and community in order to rebuild the child's social network.²²⁵ Therefore, this also means providing support to the child and their family members.²²⁶

It is emphasised that rehabilitation measures should not be delayed, disregarded or set aside since this is a violation of the rights of the child and would be conducive to future grievances and crime, and it also jeopardises the child's successful reintegration into society.²²⁷

The situation of girls is also specifically addressed since their experience tends to be different to that of the boys. Girls require specific attention when it comes to their reintegration because they tend to be subjected to sexual violence, forced marriage and slavery by terrorist and violent extremist groups.²²⁸ Reintegration programmes need to integrate gender-related specificities, in particular gender-related risks and needs.²²⁹

According to the Handbook, the selection and training of specialised personnel is fundamental for the reintegration programme since the professional background needs to be tailored to the children's specific rehabilitation needs.²³⁰ Abilities that are especially important include child-sensitive communication and language; the capability to identify situations of distress, the consequences of violence (including trauma) and

²²³ Ibid., p. 106.

²²⁴ Ibid., p. 115.

²²⁵ Ibid., p. 106.

²²⁶ Ibid., p. 115.

²²⁷ Ibid., p. 108.

²²⁸ Ibid., p. 108.

²²⁹ Ibid., p. 120.

²³⁰ Ibid.

other risk factors; respect for confidentiality rules; and an understanding of cultural norms and forms of expression.²³¹

Finally, reintegration programmes need to be constantly monitored and evaluated.²³²

Concerning the so-called “de-radicalisation” programmes, the Handbook prefers intervention promoting disengagement from violence, which focuses on behavioural aspects and attempts to modify forms of interaction and behaviour.²³³ It stresses once again that there should be an individualised approach based on personal motivation as well as the “push” and “pull” factors that made the child join the terrorist or violent extremist group, and the programme should be flexible in order to be adaptable to the child.²³⁴ In order for these disengagement programmes to be effective, and according to the Handbook, the child's participation should be voluntary; the credibility of the staff involved should be ensured so they are able to create a strong relationship with the child, meaning that they should treat the children properly, have in-depth knowledge about the group the child had joined and independence from government could also be a strong asset. The programme must strengthen critical thinking, encourage dialogue and acceptance of diversity and challenge the use of violence; there should also be psychological and counselling services in order to address grievance, trauma, rebuild self-esteem, promote a sense of self-control and strengthen coping mechanisms. Finally, the children taking part in these programmes should be guaranteed access to other services provided in the context of reintegration programmes, as explained above.²³⁵ There should be clear indicators and constant monitoring in order to assess the programme's effectiveness.²³⁶

²³¹ Ibid.

²³² Ibid., p. 121.

²³³ Ibid., pp. 116 and 140.

²³⁴ Ibid., p. 116.

²³⁵ Ibid., p. 116.

²³⁶ Ibid., p. 140.

4. THE ROOT CAUSES OF CHILDREN BECOMING INVOLVED IN TERRORIST GROUPS

This Chapter also provides the necessary background for the later discussion on this subject. It is important to first highlight that it is well accepted throughout the available literature that there is limited research on the roles that children have played and what has happened to them during their association with non-state armed groups (NSAGs) and in particular with Islamic State (IS), which is the main focus of this master's thesis due to recent developments. The available research relies on the few testimonies obtained, some of them from youths or adults, and the internet, since access to these children is limited and it is difficult to obtain evidence from conflict areas. There is also very little evidence to clearly demonstrate how and why children become associated with, are used by and leave NSAGs. Nevertheless, the available literature often identifies recurrent factors, draws parallels with the literature on child soldiers and utilises useful insights from other fields.

4.1 The Root causes

With regard to the root causes of children's association with terrorist or violent extremist groups where the child may be considered to exercise some agency, it is important to first note that there is no single factor, but rather various factors that lead to their association with such groups, and that the process is highly personal. Moreover, most of the available literature is not specific to children, or is rather specifically centred on children from conflict areas, however, certain elements could also apply to the issue of children travelling to conflict areas.

At a structural level, the national, regional or global conditions predisposing such association can be the presence of a conflict.²³⁷ Although the conflict may be situated far away from their home countries, children may experience it differently since the internet, and particularly social media, has helped overcome distance.²³⁸ This conflict provides a further explanation for their own struggles, and extremist groups exploit their feelings of injustice in their home countries, but also justify their involvement by presenting it as both a religious and a social obligation.²³⁹

Poor integration is another cause. There are a large number of migrants from Muslim countries living in Europe and, according to research, in many European countries, they have lower educational levels, live in low socio-economic status neighbourhoods and face difficulties in getting properly paid jobs or entering the labour market.²⁴⁰ Moreover, they also feel that they are poorly integrated in the political domain and under-represented in public institutions and organisations, so there is a perceived discrimination.²⁴¹ They feel discriminated against and rejected by society as they experience discrimination, marginalisation and are victims of negative stereotyping and prejudices.²⁴² The increased islamophobia also renders matters worse.

International relations, States' foreign policies and military interventions are an additional element: Muslims feel that the West is at war with Islam.²⁴³

²³⁷ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 44.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, p. 31; Radicalisation Awareness Network (RAN), 'The Root Causes of Violent Extremism', RAN, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, (accessed 1 February 2018), p. 3.

²⁴¹ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, pp. 31 and 32.

²⁴² Ibid., p. 32; Radicalisation Awareness Network (RAN), 'The Root Causes of Violent Extremism', RAN, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, (accessed 1 February 2018), p. 3.

²⁴³ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, p. 32; Radicalisation Awareness Network (RAN), 'The Root Causes of Violent Extremism', RAN, 2016, <https://ec.europa.eu/home->

At a social level, one of the contributing causes can be the youth identity crisis that results in alienation as young people do not feel they belong to their parents' society, while at the same time feeling rejected by the society in which they live.²⁴⁴ This can be either because they feel rejected by the group to which they want to belong or because they do not know which group to join.²⁴⁵ They therefore find a satisfactory identity with the *Ummah*²⁴⁶ around the world, and the more they invest in this identity and their friends adopt it, the stronger the identification.²⁴⁷ Once part of the group, they adopt intergroup emotions, which means that they are affected by conditions that may not affect them personally but that affect their group members.²⁴⁸

A poor relationship with or absence of family, or violence within the family can also prompt children to join NSAGs.²⁴⁹

Relative deprivation also has a role to play in predisposing children to join NSAGs. This is a discrepancy in between what people believe they are entitled to and what they

affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, (accessed 1 February 2018), p. 3.

²⁴⁴ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, p. 41; Radicalisation Awareness Network (RAN), 'The Root Causes of Violent Extremism', RAN, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, (accessed 1 February 2018), p. 3.

²⁴⁵ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, pp. 40 and 41.

²⁴⁶ *Ummah* is an Arabic word meaning 'community'; it is distinguished from *Sha'b* which means a nation with common ancestry or geography. Thus it can be said to be a supra-national community with a common history.

²⁴⁷ Ibid., Radicalisation Awareness Network (RAN), 'The Root Causes of Violent Extremism', RAN, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, (accessed 1 February 2018), p. 3.

²⁴⁸ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, p. 42.

²⁴⁹ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), pp. 50 and 51.

actually receive, which can in turn lead to a feeling of deprivation.²⁵⁰ This can be in comparison to other people or in relation to people's own expectations.²⁵¹

Moreover, community leaders have a strong influence over whether or not children join such groups.²⁵² Peer networks are also recognised as being highly influential and, particularly in the case of adolescents, peers influence risk-taking behaviour seeking instant gratification, they can encourage impulsive reactions, exercise pressure in order to incite anti-social behaviour, and they can also amplify the tendency to buck against authority and the desire for assertiveness and authority which characterise this age group.²⁵³ Extremist groups attempt to harness and promote such behaviour.²⁵⁴ Moreover, it has also been found that children are more likely to join NSAGs if their peers or relatives have already done so.²⁵⁵ It is also clear that some teenagers have also played a role in the subsequent travel of family or friends to join NSAGs. There is a human tendency to seek out people who share our beliefs and interests, and social network prompt people to adopt the attitudes of others in the same network, so friendship bonds are critical and influential network members can exercise strong influence.²⁵⁶

²⁵⁰ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, p. 47; Radicalisation Awareness Network (RAN), 'The root Causes of Violent Extremism', *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, (accessed 1 February 2018), p. 3.

²⁵¹ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, p. 47.

²⁵² O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 52.

²⁵³ Ibid., p. 53; R. Littman, 'Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups', *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), pp. 3 and 4.

²⁵⁴ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 53.

²⁵⁵ R. Littman, 'Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups', *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 3.

²⁵⁶ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, pp. 43-45.

Virtual networks through the internet, in particular social media, are strongly influential and particularly important with regard to FTFs.²⁵⁷ This particularly applies to adolescents who feel lonely and unhappy with their lives.²⁵⁸ Messages of strength, meaning and acceptance delivered by IS and its supporters for instance can thus be very appealing for those seeking purpose in their lives and meaningful group identities.²⁵⁹ The internet enables connection and interaction between like-minded people, and facilitates becoming a member of a virtual social group and obtaining the relevant documentation, which can be widely disseminated and accessed online.²⁶⁰

At an individual level, it has been noted that personality traits, personality disorders or mental illness cannot determine the likelihood of joining a NSAG.²⁶¹

Personal experience is very relevant when joining such groups. Emotions are the driving forces behind such decisions. These can be, by way of example, anger and aggression, frustration, loss of meaning, guilt, shame, humiliation, exclusion and a strong sense of injustice.²⁶²

Although some individuals may be motivated by revenge, it would appear that children are primarily motivated by positive and prosocial reasons, which include the need to

²⁵⁷ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), pp. 53 and 128.

²⁵⁸ *Ibid.*, p. 53.

²⁵⁹ *Ibid.*, p. 54.

²⁶⁰ T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, pp. 45 and 46.

²⁶¹ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 56.

²⁶² T. Veldhuis and J. Staun., *Islamist radicalisation: A Root Cause Model*, The Hague, Netherlands Institute of International Relations Clingendael, 2009, pp. 55-58; Radicalisation Awareness Network (RAN), 'The Root Causes of Violent Extremism', *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, (accessed 1 February 2018), p. 3.

belong, to protect their in-group and the quest for significance in their lives.²⁶³ In particular with regard to the quest for significance, such children see joining NSAGs as contributing to the greater good, expressing solidarity and acquiring status, which also gives them power, and provides them with a sense of meaning in their lives, the feeling that they matter to the world and that they are respected.²⁶⁴ Numerous extremist groups take advantage of feelings of humiliation and frustration.²⁶⁵ Adolescents in particular face difficulties at this age finding out who they are, where they belong and what they want out of life, and NSAGs provide a ready-made community, a new identity for them and the opportunity to be part of a particular cause, which is hugely appealing.²⁶⁶ Sometimes, boys and girls are also influenced not only by the status they can acquire but also by the promise of romance and marriage.²⁶⁷ With respect to education, it is considered that it can act both as a resilience factor and as a facilitator.²⁶⁸ For instance, it is often argued that the higher the level of education, the less likely it is that a child will become involved in a NSAG, however, the evidence in this regard is mixed.²⁶⁹

It has been found that ideology is not necessarily a motivating factor for joining a terrorist group but becomes important at the indoctrination stage and/or for engagement in violence and NSAGs utilise religious ideology in order to justify this behaviour.²⁷⁰ Moreover, ideology is often tangled up with other influential factors that lead to joining

²⁶³ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 57.

²⁶⁴ Ibid., pp. 57 and 242; R. Littman, 'Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups', *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 3.

²⁶⁵ Ibid.

²⁶⁶ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), pp. 58 and 242; R. Littman, 'Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups', *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 2.

²⁶⁷ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 58.

²⁶⁸ Ibid., p. 59.

²⁶⁹ Ibid.

²⁷⁰ Ibid., pp. 62, 63 and 238.

NSAGs.²⁷¹

The term “radicalisation” is considered to be very problematic.²⁷² This is because, according to the research conducted, it has been found that radicalisation comes about after joining the NSAGs, and that it cannot thus be differentiated from indoctrination or *post facto* justification.²⁷³ It could thus be said that “radicalisation” comes afterwards, at a later stage. Moreover, it is argued that it remains an underdeveloped concept, with no consensus on its meaning, and empirically undersupported; it is therefore recommended to rather focus on the existing evidence on human behaviour and group dynamics in order to understand why children join NSAGs and how to reintegrate these children.²⁷⁴ Furthermore, there is no consensus on what de-radicalisation programmes should comprise and there is no evidence that de-radicalisation efforts are necessary or effective.²⁷⁵ Accordingly, programmes focusing on ideology or de-radicalisation are not recommended as children would be further stigmatised and alienated, making reintegration more difficult.²⁷⁶ Such specific programmes should rather form part of larger holistic programmes addressing children's risk and their reintegration needs and should only include ideological components as and when required for the successful reintegration of a specific child after doing a risk and needs assessment, and provided that it does not further stigmatise him or her.²⁷⁷ It is largely agreed that reintegration

²⁷¹ Ibid., p. 238.

²⁷² Ibid., p. 64.

²⁷³ Ibid., R. Littman, ‘Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups’, *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 7.

²⁷⁴ O. Siobhan and K. Van Broeckhoven, ‘Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict’, *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), pp. 238 and 253.

²⁷⁵ Ibid., p. 251; R. Littman, ‘Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups’, *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 9.

²⁷⁶ O. Siobhan and K. Van Broeckhoven, ‘Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict’, *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 251; R. Littman, ‘Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups’, *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 9.

²⁷⁷ O. Siobhan and K. Van Broeckhoven, ‘Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict’, *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 255.

programmes for children should rather focus on their economic and social reintegration, education and mental health.²⁷⁸

Finally, it should be noted that factors at the individual level may also vary according to gender and age.²⁷⁹

It is argued that for children around the mid-teens or young adults, their motivations and the factors leading to their association with a terrorist group mirror those of adults, in particular for those who have travelled alone or in small groups of friends, whereas children in their early teens and younger are brought by their guardians and cannot be considered to have had any agency in the decision.²⁸⁰ Thus, the former can be said to have made a more conscious choice to support or participate in violence.²⁸¹ This, therefore, provides evidence of the often underestimated agency of children in joining NSAGs.²⁸²

Although there is scarce literature on women joining IS, it is also argued that, even it is highly personal, their motivations to join IS are, in fact, similar to those of their male counterparts, the oppression of Muslims and a religious obligation to support *jihad*²⁸³ being the most relevant.²⁸⁴ This, therefore, challenges the attitude of seeing women as

²⁷⁸ R. Littman, 'Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups', *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 9.

²⁷⁹ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 65.

²⁸⁰ J. Cook and G. Vale, 'From Daesh to Diaspora: Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>, (accessed 30 July 2018), pp. 30-32.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ *Jihad*: Arabic meaning a struggle or a fight against the enemies of Islam

²⁸⁴ A. De Guttery, F. Capone and C. Paulussen, *Foreign Fighters under International Law and Beyond*, The Hague, ASSER PRESS, 2016, pp. 100-107; E. Bakker and S. de Leede, 'European Female Jihadists in Syria: Exploring an Under-Researched Topic', *International Centre for Counterterrorism*, 2015,

passive agents and victims. Nevertheless, at the same time, to what extent young girls have truly made a conscious choice to join a NSAG has also been questioned, as will be explained below.

Finally, it should also be noted that IS also uses excitement and adventure as well as romance and true friendship in the name of “sisterhood” in order to lure young men and women into joining the group.²⁸⁵

4.2 *Why are children recruited?*

It is also interesting to discuss the reason why children are recruited by NSAGs. Specifically for IS, children have a particularly high strategic and tactical value. Nevertheless, this also holds true for other NSAGs. Children are considered as the lion cubs of the so called “Caliphate” and IS strictly ensures that children are indoctrinated with extremist ideology as early as possible. Thus, they do not just serve the present needs of the so-called “Caliphate”, but they will also secure its survival in the long term once they grow up.²⁸⁶ In particular those born in the so-called “Caliphate” or who joined IS at a very young age are seen as more “pure” and also as having greater chances of achieving martyrdom than the current generation.²⁸⁷ Especially children born in the so-called “Caliphate” are considered as saved from the corruption affecting children born in countries with secular states and are thus deemed to be stronger than the current fighters because they have a superior understanding of Islam due to the school curricula,

<https://icct.nl/wp-content/uploads/2015/05/ICCT-Bakker-de-Leede-European-Female-Jihadists-In-Syria-Exploring-An-Under-Researched-Topic-April2015.pdf>, (accessed 1 September 2018), pp. 5 and 6.

²⁸⁵ Radicalisation Awareness Network (RAN), ‘The Root Causes of Violent Extremism’, *RAN*, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_root-causes_jan2016_en.pdf, (accessed 1 February 2018), p. 4; A. De Guttery, F. Capone and C. Paulussen, *Foreign Fighters under International Law and Beyond*, The Hague, ASSER PRESS, 2016, pp. 105 and 106.

²⁸⁶ N. Benotman and N. Malik, ‘The Children of Islamic State’, *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), p. 27.

²⁸⁷ *Ibid.*, p. 28.

and are more brutal fighters since they have been trained in violence from a very young age.²⁸⁸

For other NSAGs, children are also recruited out of necessity and are seen as substitutes for adults.²⁸⁹

The immaturity of children is also a strong asset for the recruiters since they obey orders more easily, but are also fast to commit, demonstrate loyalty very quickly, are particularly enthusiastic and are easy to indoctrinate because they do not have strong conceptions and beliefs that recruiters need to change or alter.²⁹⁰ Furthermore, they cannot fully understand the danger of combat, they feel less fear, they have an underdeveloped sense of right and wrong and are easily manipulated.²⁹¹

4.3 Roles and experiences within the terrorist groups

Children's experiences within NSAGs can vary greatly, nevertheless, certain information is available concerning their life within the group. Concerning girls in particular, the "pearls" of the so-called Caliphate, it is important to first highlight that

²⁸⁸ Ibid.

²⁸⁹ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 245.

²⁹⁰ N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), p. 27; O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 113.

²⁹¹ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 45.

they remain somewhat hidden and barely any information is available since IS rarely includes images in propaganda videos and publications.²⁹²

The majority of children aged up to four years old are expected to have been born in IS-held territory or to have been brought there by their parents and restricted to purely non-violent roles as citizens of the so-called Caliphate.²⁹³ In particular IS, however, uses the whole family in the early indoctrination of the child, since they are very easily susceptible to indoctrination from people they know, love and respect, which also holds true for their teachers.²⁹⁴

For IS, schools are the key to the indoctrination of children and in their controlled areas, school attendance where the rigid IS curriculum is taught is compulsory for all children, so as to control their education. Teachers are killed should they refuse to cooperate.²⁹⁵ Children coming from the West are obliged to attend special schools so as to follow the required religious education and Arabic lessons and move on to physical and military training where they are taught how to fight and use weapons and explosives, once they have completed their academic education.²⁹⁶ Children aged approximately from five to fourteen have been widely publicised in IS propaganda and in the international media undergoing indoctrination and training for their participation in acts of violence and

²⁹² J. Cook and G. Vale, 'From Daesh to Diaspora: Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>, (accessed 30 July 2018), p. 33.

²⁹³ Ibid., p. 30.

²⁹⁴ N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), pp. 27 and 33.

²⁹⁵ Ibid., p. 29.

²⁹⁶ Ibid., p. 31; J. Cook and G. Vale, 'From Daesh to Diaspora: Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>, (accessed 30 July 2018), pp. 33 and 34.

abuse.²⁹⁷ Children attend military training in camps from the age of ten and this is where they are desensitised to violence and taught the necessary skills to best serve their State and take up the fight.²⁹⁸ They are exposed to abuse and violence as part of their training and they are encouraged to watch public decapitations of criminals and traitors so that blood and death seem normal and even like a game and fun to children.²⁹⁹ Although the use of drugs or alcohol is not without precedent in the case of child soldiers, there is little evidence that IS uses drugs or alcohol or encourages their consumption in order to make children able to perform their duties.³⁰⁰ Girls are taught how to cook, clean, and support their husbands in order to become good wives and mothers.³⁰¹ However, girls are not just taught homemaking skills at school but also receive the necessary religious education.³⁰²

Children perform numerous combat and non-combat roles.³⁰³ They are assigned specific roles for which they are better suited than adults, both physically and mentally.³⁰⁴ Children usually perform tasks that adults either cannot or are less able to do, and they take on specific roles or assignments due to the fact that children, and particularly girls,

²⁹⁷ J. Cook and G. Vale, 'From Daesh to Diaspora: Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>, (accessed 30 July 2018), p. 31.

²⁹⁸ N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), p. 37.

²⁹⁹ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), pp. 72 and 129.

³⁰⁰ *Ibid.*, p. 69.

³⁰¹ N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), p. 37.

³⁰² J. Cook and G. Vale, 'From Daesh to Diaspora: Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>, (accessed 30 July 2018), p. 33.

³⁰³ N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), pp. 27 and 41.

³⁰⁴ *Ibid.*, p. 41.

attract less suspicion.³⁰⁵ These roles or assignments include being human shields, messengers, guards, spies, preachers, recruiters, spokespersons, promoters, soldiers - which includes fighting on the frontline, manufacturing explosives, detonating bombs and becoming snipers or manning checkpoints -, executioners, torturers and suicide bombers.³⁰⁶ Children also take on supporting roles such as cooking, cleaning weapons, digging trenches and carrying injured fighters and corpses.³⁰⁷

Girls are taught how to look after their husbands, keep their house and bring up their children with IS ideology.³⁰⁸ According to IS rules, girls are to remain hidden and can only leave the house in exceptional circumstances.³⁰⁹ Their role is to build the *ummah*, have children, educate them in IS ideology and send them into battle.³¹⁰ Consequently, children undertake highly gendered roles and their experiences within the NSAGs differ. Indeed, IS has been actively recruiting both girls and boys as they are both essential due to their specific roles in the State building process. The scant literature available is more focused on women, whose commitment to the

³⁰⁵ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), pp. 45, 112 and 113; J. Cook and G. Vale, 'From Daesh to Diaspora: Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>, (accessed 30 July 2018), p. 34.

³⁰⁶ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 130; J. Cook and G. Vale, 'From Daesh to Diaspora: Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>, (accessed 30 July 2018), p. 34; N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), pp. 27, 41, 42 and 44.

³⁰⁷ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 130.

³⁰⁸ N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), p. 44.

³⁰⁹ Ibid.

³¹⁰ Ibid., O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 130.

cause, motivation and roles should not be underestimated.³¹¹ There is no evidence of girls undertaking combat roles in the case of IS, however, the fact that women or girls can also take up combat roles in the event of an emergency and receive military training in order to so do. Although not the first option, women and girls fighting is not unprecedented.³¹² It is legitimate for girls to be married from the age of nine and at the latest sixteen/seventeen with far older adult men.³¹³

It is also argued, however, that some young western girls recruited by IS may have been victims of trafficking due to the techniques used for their recruitment and their experience upon arrival in IS held territory.³¹⁴ In reality, these girls do not know the extreme violence perpetrated by the group and the possibility that they may be subject or contribute to it.³¹⁵ Girls can be subject to forced marriage and are also often raped or abused.³¹⁶ Nevertheless, boys can also be subject to sexual assault, abuse and rape.³¹⁷ Once they join IS, girls might not only be subject to forced marriage, but they can also find themselves in a situation where an agreed marriage becomes domestic servitude or

³¹¹ E. Bakker and S. de Leede, 'European Female Jihadists in Syria: Exploring an Under-Researched Topic', *International Centre for Counterterrorism*, 2015, <https://icct.nl/wp-content/uploads/2015/05/ICCT-Bakker-de-Leede-European-Female-Jihadists-In-Syria-Exploring-An-Under-Researched-Topic-April2015.pdf>, (accessed 1 September 2018), pp. 5, 6 and 9.

³¹² Ibid., p. 8; A. De Guty, F. Capone and C. Paulussen, *Foreign Fighters under International Law and Beyond*, The Hague, ASSER PRESS, 2016, p. 117.

³¹³ N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), p. 45; J. Cook and G. Vale, 'From Daesh to Diaspora: Tracing the Women and Minors of Islamic State', *International Centre for the Study of Radicalisation*, 2018, <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>, (accessed 30 July 2018), p. 33.

³¹⁴ A. Binetti, 'A New Frontier: Human Trafficking and ISIS's Recruitment of Women from the West', *Georgetown Institute for Women, Peace & Security*, 2015, <https://giwps.georgetown.edu/wp-content/uploads/2017/10/Human-Trafficking-and-ISISs-Recruitment-of-Women-from-the-West.pdf>, (accessed 16 December 2017), p. 1.

³¹⁵ Ibid., p. 3.

³¹⁶ N. Benotman and N. Malik, 'The Children of Islamic State', *The Quilliam Foundation*, 2016, https://www.globalgovernancewatch.org/library/doclib/20160317_TheChildrenofIslamicState.pdf, (accessed 17 November 2017), pp. 27 and 45; O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), pp. 131 and 246.

³¹⁷ O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), pp. 131 and 246.

sexual slavery.³¹⁸ The reality is that they may also be victims of domestic violence and that, although attempts are made to hide it, there are honour killings, stonings, beheadings, female genital mutilation and a life of constantly being pregnant and giving birth under primitive conditions.³¹⁹ Moreover, IS uses its systematic campaign of sexual slavery and mass rape of enemy women as a tool of torture.³²⁰

Children adhere very easily and fiercely to their new group identity.³²¹ Once part of the group, children are more influenced by their love for their group than hatred for another group and will engage in behaviour that will help their group survive and thrive, thus behaving in a way that can be described as “us vs. them”.³²² They identify strongly with their group and see them as family, which is why they become more willing to fight, are extremely violent when facing a threat and are willing to die for them.³²³ Indeed, NSAGs such as IS deliberately attempt to break and replace the children’s ties to their families.³²⁴ Moreover, in NSAGs, the strong connection between its members facilitates

³¹⁸ A. Binetti, ‘A New Frontier: Human Trafficking and ISIS’s Recruitment of Women from the West’, *Georgetown Institute for Women, Peace & Security*, 2015, <https://giwps.georgetown.edu/wp-content/uploads/2017/10/Human-Trafficking-and-ISISs-Recruitment-of-Women-from-the-West.pdf>, (accessed 16 December 2017), p. 3.

³¹⁹ *Ibid.*, p. 4.

³²⁰ *Ibid.*

³²¹ R. Littman, ‘Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups’, *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 5; O. Siobhan and K. Van Broeckhoven, ‘Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict’, *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 69.

³²² R. Littman, ‘Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups’, *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 5; O. Siobhan and K. Van Broeckhoven, ‘Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict’, *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 57.

³²³ R. Littman, ‘Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups’, *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 5; O. Siobhan and K. Van Broeckhoven, ‘Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict’, *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 69.

³²⁴ O. Siobhan and K. Van Broeckhoven, ‘Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict’, *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 128.

the dehumanisation of those outside the group and NSAGs make strong efforts to make violence normative and dehumanise enemies.³²⁵ Since violence is common and encouraged in NSAGs, and even rewarded, and since children are very keen to engage in such behaviour, their participation in violence is seen as normal and as desirable group behaviour.³²⁶

³²⁵ R. Littman, 'Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups', *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 6; O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 69.

³²⁶ R. Littman, 'Children and Extreme Violence: Insights from Social Science on Child Trajectories Into and Out of Non-State Armed Groups', *United Nations University*, 2017, <http://collections.unu.edu/view/UNU:6290#viewAttachments>, (accessed 2 December 2017), p. 6; O. Siobhan and K. Van Broeckhoven, 'Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict', *United Nations University*, 2018, https://collections.unu.edu/eserv/UNU:6409/Cradled_by_Conflict.pdf, (accessed 21 March 2018), p. 68.

5. MEASURES IMPLEMENTED BY EUROPEAN STATES REGARDING CHILDREN RETURNING FROM SYRIA OR IRAQ

In order to have precise examples of measures specifically applicable to children returning from Syria or Iraq and of how they have been dealt with and taken care of, so as to be able to subsequently discuss the situation and formulate recommendations, the present Chapter contains a case study on Belgium.

5.1 Case study on the treatment of children returning from Syria and Iraq: Belgium

First and foremost, please note that the present master's thesis aims solely to cover the French community of Belgium and will, therefore, deal only with the French community and specifically the Brussels-Capital region, since all the information obtained on this issue concerns Brussels.

It is equally important to highlight that the forfeiture of parental authority will not be covered in this master's thesis partly due to space restrictions, but also because this falls slightly outside the scope of this thesis and is a measure that has not so far been taken with regard to returnees.

5.1.1 Belgian Legislation on terrorism

According to the Belgian Criminal Code (CC), murder, torture, inhuman or degrading treatment or punishment, kidnapping as well as destruction or massive degradation,

inter alia, constitute a terrorist offence if due to the nature and context it may seriously harm a country and is committed intentionally, *inter alia*, to destroy the existing political, constitutional, economic or social structures of a state or seriously intimidate a population.³²⁷ It defines a terrorist group as a structured association of more than two persons, established in time and acting for the commission of terrorist offences.³²⁸

The following section covers only those acts which could be attributed to children FTFs in accordance with the known roles that they have played. The Belgian CC criminalises travelling abroad, *inter alia*, for receiving or providing terrorist training; the commission of a terrorist offence as defined above; and the participation in the activities of a terrorist group knowing, or when the person ought to have known, that such participation could contribute to the commission of an offence by the terrorist group.³²⁹ This is penalised with a prison sentence of from five to ten years and a fine of from one hundred to five thousand euros (when committed by an adult).³³⁰

5.1.2 The Belgian system and legislation regarding juvenile justice

Regarding the French community and the Brussels-Capital region, a specific system is in place with regard to children in conflict with the law. They fall under the child protection justice system (*justice protectionnelle*).³³¹ The objectives of such an administration of juvenile justice are education, accountability and social reintegration, as well as the protection of society.³³² It thus aims to make children aware of the

³²⁷ Code Pénal 1867, Art. 137 [1] and [2(1), (3), and (4)].

³²⁸ Ibid., Art. 139.

³²⁹ Ibid., Art. 140sexies (1); 140quinquies; and 140 [1].

³³⁰ Ibid., Art. 140sexies.

³³¹ Speech by P. Rans, ‘World Congress on Justice for Children, Strengthening Justice Systems for Children Challenges, including disengagement from Violent Extremism’, UNESCO, Paris, May 2018; Interview with Madeleine Guyot, Brussels, 24 April 2018.

³³² Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié d’infraction et à la réparation du dommage causé par ce fait 1965, preliminary title (3).

consequences of their acts.³³³ As it will be seen subsequently and in the following sections, a child in conflict with the law is also considered as a child in danger due to either his or her family or due to their own behaviour, thus, the Youth Court measures are always guided by the need to protect the child.

There is a Crown Prosecutor (*le Procureur du Roi*) in each borough; competence is determined by the place of residence of the person concerned or the place where the person concerned was found; the Crown Prosecutor acts as public prosecutor (*le ministère public*) at the Court of First Instance.³³⁴ The Youth Court has jurisdiction over the cases concerning children who reside in their borough or who are found there.³³⁵ The Court receives requisitions from the Crown Prosecutor regarding individuals pursued for an act which qualifies as an offence and which was committed before they reached the age of eighteen.³³⁶ The latter, therefore, refers the case to the Youth Court in order for it to make the necessary investigations and possibly sentence the child to provisional custody measures, where appropriate.³³⁷ These investigations should acquaint the Youth Court with the personality of the child and the environment in which s/he is raised, and permit it to determine his or her best interest and the necessary measures for his or her education and care.³³⁸ It can also subject the child to a social study to be performed by the competent social service and a medico-psychological examination in the case where the information submitted to it is not considered sufficient.³³⁹

³³³ Ibid.

³³⁴ Code Judiciaire 1967, Art. 150 [1] and 2; Code d'Instruction Criminelle 1808, Art. 23; Interview with Pierre Rans, Brussels, 4 July 2018.

³³⁵ Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié d'infraction et à la réparation du dommage causé par ce fait 1965, Art. 44 [1] and [2].

³³⁶ Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié d'infraction et à la réparation du dommage causé par ce fait 1965, Art. 36(4).

³³⁷ Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié d'infraction et à la réparation du dommage causé par ce fait 1965, Art. 45(2)(a).

³³⁸ Ibid., Art. 50.

³³⁹ Ibid.

The Youth Court can sentence the child to provisional custody measures during the judicial proceedings in accordance with the child's personality and maturity, his or her living environment, the seriousness of the acts, the circumstances in which they were committed, and the damage and consequences for the victim; the previous measures taken against the child and his or her behaviour during those, the security of the child and national security, as well as the benefit for the child concerned.³⁴⁰ Nevertheless, these provisional custody measures can only be taken for the shortest possible period of time and when there is enough serious evidence of culpability and the aim of the measure cannot be reached in any other way.³⁴¹ These provisional custody measures can be maintained or taken until the individual has reached twenty years of age.³⁴² Finally, the Youth Court can always decide to modify the measure taken in relation to the child if it considers it appropriate or following the Crown Prosecutor's request or that of the services or institutions concerned.³⁴³

These provisional custody measures entail leaving the child in his or her living environment subject to supervision by the competent social service or to certain conditions, which are to be supervised by the competent social service.³⁴⁴ The former can be applied to children under twelve years of age, whereas the latter can be applied to children aged twelve and above.³⁴⁵ To carry out the above-mentioned investigations, in some instances the Youth Court can combine the measure of leaving the child in his or her living environment subject to supervision by the competent social service with the conditions of carrying out community service in accordance with his or her age and capacities.³⁴⁶ The conditions for leaving the child in his or her living environment could be regularly attending an ordinary or special school, following educational or medical guidelines provided by an educational or medical health centre, participating in one or more training or awareness modules on the consequences of their acts and their impact

³⁴⁰ Ibid., Arts. 52 al. 5 and 37 [1] (1)-(6).

³⁴¹ Ibid., Art. 52 al. 6.

³⁴² Ibid., Art. 52 al. 9.

³⁴³ Ibid., Art. 60.

³⁴⁴ Ibid., Art. 52.

³⁴⁵ Ibid., Arts. 37 [2] al. 2 and 37 [2bis] al. 1.

³⁴⁶ Ibid., Art. 52 al. 4.

on potential victims, taking part in one or various sports or social or cultural activities; not being in contact with certain people or visiting determined places which are related to the act which qualifies as an offence, not engaging in certain specific activities, respecting the prohibition on going out, or respecting whatever other conditions or prohibitions have been imposed by the Court.³⁴⁷

Alternatively, the Youth Court can sentence the child to other measures. These include entrusting the child to a trustworthy person or placing the child in an appropriate institution for their care, education and instruction or professional training.³⁴⁸ They also include entrusting the child to a public community institution for the protection of youth (*institution communautaire publique de protection de la jeunesse*) (IPPJ), according to the placement criteria.³⁴⁹ Indeed, the Court can only order the placement of a child aged twelve years old and above in an open IPPJ and, *inter alia*, who has committed an act which qualifies as an offence which would be sentenced to three years of imprisonment or a heavier sentence if perpetrated by an adult; for whom the measure or measures ordered are being revised due to a failure to comply with them; or for whom the measure is being revised, pending which s/he is in a closed IPPJ.³⁵⁰

Similarly, the Youth Court can only place a child aged fourteen and above into a closed IPPJ who has, *inter alia*, committed an act which qualifies as an offence which would be sentenced to five to ten years of imprisonment or a heavier sentence if perpetrated by an adult; for whom the measure or measures ordered are being revised due to a failure to comply with them; or who are aged between twelve and fourteen years old and, *inter alia*, whose behaviour is particularly dangerous.³⁵¹ The Youth Court can only sentence the child to a provisional custody measure in a closed institution if all of these conditions are met: there is compelling evidence of culpability; the child's behaviour represents a danger to him or herself and to others; and there are serious reasons to fear

³⁴⁷ Ibid., Arts. 52 and 37 [2bis] (1) and (4)-(10).

³⁴⁸ Ibid., Arts. 52 and 37 [2] (7).

³⁴⁹ Ibid., Art. 37 [2] (8).

³⁵⁰ Ibid., Art. 37 [2quater] al. 1 (1), (4) and (5).

³⁵¹ Ibid., Art. 37 [2quater] al. 2(1) and (5) al. 1 and 2.

that, *inter alia*, s/he will commit new offences if released or will fail to attend the Court proceedings.³⁵²

The decision rendered must specify the duration for which the child must remain there and whether they are to be placed in a closed or open institution.³⁵³ Taking the child into custody is not a measure of first resort in general, and open institutions are to be preferred to closed ones.³⁵⁴

In the final judgment, the Youth Court can reprimand the child and allow him or her to stay in his family environment while urging the family to look after him or her more closely and educate them better.³⁵⁵ The Court can also subject the child to the supervision of the competent social service, to an intensive educational support or to the individualised supervision of an educator, or subject the child to community service adapted to his or her age and capabilities.³⁵⁶ Finally, The Youth Court can entrust the child to a trustworthy person or place the child in an appropriate institution for their care, education and instruction or professional training; or place the child in an IPPJ.³⁵⁷ However, a child aged less than twelve years old can only be subjected to the first three measures and, as mentioned above, taking a child into State custody is not a measure of first resort.³⁵⁸

A particularity of the Belgian juvenile justice system is the '*dessaisissement*'. In certain instances, when the case of a child aged sixteen or above at the time of the act is referred to the Youth Court for an act which qualifies as an offence and the Court considers that a custody, preservation or education measure is inadequate it can '*dessaisir*' itself - i.e. declare itself incompetent and refer the case back to the Crown

³⁵² Ibid., Art. 52quater al. 2.

³⁵³ Ibid., Art. 37 [2] (8).

³⁵⁴ Ibid., Art. 37 [2] al. 3.

³⁵⁵ Ibid., Art. 37 [2] (1).

³⁵⁶ Ibid., Art. 37 [2] (2)-(4).

³⁵⁷ Ibid., Art. 37 [2] (7) and (8).

³⁵⁸ Ibid., Art. 37 [2] al. 3.

Prosecutor in order for it to subsequently refer the case to a specific Chamber within the Youth Tribunal or the '*Cour d'Assises*'.³⁵⁹ The specific Chamber within the Youth Tribunal which takes over the case comprises three judges, two of whom are juvenile judges in order to still partly maintain a juvenile justice approach, and applies the common criminal law and criminal procedure.³⁶⁰ The children are placed in a specific centre for children '*dessaisir*' which is the IPPJ in St Oubert.³⁶¹ Nevertheless, and *inter alia*, in order for the Youth Court to '*dessaisir*' itself, the child must have been subject to one or more provisional custody measures by the Youth Court as described above.³⁶² The Youth Court must always motivate its decision to '*dessaisir*' itself, which should be based on the child's personality, his or her environment and his or her degree of maturity.³⁶³ Moreover, the Youth Court can only '*dessaisir*' itself of the case once a social study and a medico-psychological exam have been carried out, the latter with the aim of assessing the child's personality, his or her environment and maturity.³⁶⁴ However, the nature and seriousness of the act are also taken into consideration, where appropriate, in order to assess the child's personality.³⁶⁵

A new law came into force on the first of January 2019 in the French community; after this there should also be a new '*Ordonnance*' for the Brussels-Capital region, which is expected to follow the same lines.³⁶⁶ This new law essentially mirrors the previous one from 1965 with certain changes, some of which are important and of relevance to the scope of this master's thesis.

³⁵⁹ Ibid., Art. 57bis [1]; Intervention of P. Rans, 'World Congress on Justice for Children, Strengthening Justice Systems for Children Challenges, including disengagement from Violent Extremism', UNESCO, Paris, May 2018.

³⁶⁰ Ibid., Interview with Madeleine Guyot, Brussels, 24 April 2018.

³⁶¹ Interview with Madeleine Guyot, Brussels, 24 April 2018.

³⁶² Ibid., Art. 57bis [1] al. 1.

³⁶³ Ibid., al. 2.

³⁶⁴ Ibid., Art. 57bis [2] al. 1 and 2.

³⁶⁵ Ibid., Art. 57bis [2] al. 2.

³⁶⁶ Interview with Pierre Rans, Brussels, 4 July 2018.

Firstly, it reinforces the priority of maintaining the child within his or her living environment. The Youth Court has various options in relation to the custodial provisional measures to which it can sentence the child during the judicial proceedings. These measures can entail subjecting the child to the supervision of the youth protection service; requiring the child to perform community service, however, only in view of carrying out the necessary investigations; or subjecting the young person to support or guidance, meaning, to an intensive educational support, to the psychological, social or educational support of an authorised family support service, or to the guidance of a mental health centre or a professional from an authorised psycho-medico-social service.³⁶⁷ The Court can also leave the child in his or her living environment subject to certain conditions, which may be not to be in contact with certain people or places related to the act which qualifies as an offence; not to engage in certain activities; respecting the prohibition on going out, which cannot exceed three months; and respecting whatever other conditions or prohibitions the Court has imposed.³⁶⁸ The Youth Court has to specify the duration of these conditions and they are to be supervised by the youth protection service.³⁶⁹ Finally, the Youth Court can decide to remove the child from his family environment, respecting, however, the hierarchy established.³⁷⁰ The Youth Court can decide to entrust the child to, and in this order of priority: firstly, a family member or relatives; secondly, a foster family; thirdly, an appropriate institution for his education and care; and finally, to a public institution.³⁷¹ Nevertheless, only supervision, accompaniment and guidance measures are possible for children aged less than twelve years old.³⁷² The minimum age for a child to be placed in an IPPJ in an open regime has been increased to fourteen years old and above at the time of the commission of the act which qualifies as an offence.³⁷³ The Youth Tribunal

³⁶⁷ Projet de décret portant le code de la prévention, de l'aide à la jeunesse et de la protection de la jeunesse 2018, Arts. 101 [1] al. 1 and [2] and 120 al 1(1), (3) and (4).

³⁶⁸ Ibid., Arts. 101 [1] al. 1(4) and 121 al. 1.

³⁶⁹ Ibid., Art. 121 al. 2.

³⁷⁰ Ibid., Art. 101 [1] al. 1(5).

³⁷¹ Ibid., Art. 122 al. 1.

³⁷² Ibid., Art. 101 [4].

³⁷³ Ibid., Art. 124 [2].

has to specify the duration of the provisional measure.³⁷⁴ Moreover, it is precisely stipulated that all the other above-mentioned measures are to be prioritised over removing the child from his family environment.³⁷⁵

Secondly, this new law has added specific provisions in relation to acts which qualify as a terrorist offence. It is thus now possible for the Youth Court to order a custodial measure in a closed IPPJ for a child aged fourteen or above who committed an act which qualifies as a terrorist offence.³⁷⁶

Regarding the ‘*dessaisissement*’ for children aged sixteen and above, the Youth Court can ‘*dessaisir*’ itself only when two conditions are met. The first is that the child must have already been placed in a closed IPPJ by a final judgment for a previous act; the second is that the child must have committed, *inter alia*, an act which qualifies as a terrorist offence and which would be sanctioned by five years of imprisonment or a heavier sentence if it were committed by an adult.³⁷⁷ Despite this, and as an exception, the Youth Court can ‘*dessaisir*’ itself without having met the first condition, *inter alia*, when the act for which the child is pursued would be sanctioned by a ten to fifteen year prison sentence or a heavier sentence had it been committed by an adult.³⁷⁸

5.1.3 The Belgian legislation and system regarding child protection

For the French community, it is the *Décret relatif à l’Aide à la Jeunesse* de 1991 that applies to, *inter alia*, any child whose health or safety is endangered or whose educational conditions are jeopardised by his behaviour, or that of his family or

³⁷⁴ Ibid., Art. 101 [1] al. 4.

³⁷⁵ Ibid., Art. 101 [1] al. 2.

³⁷⁶ Ibid., Art. 124 [3] al. 1.

³⁷⁷ Ibid., Art. 125 [1] al. 1.

³⁷⁸ Ibid., Art. 125 [1] al. 2.

relatives.³⁷⁹ In the Brussels-Capital region, the *Ordonnance relative à l'aide à la jeunesse* de 2004 applies together with the *Décret relatif à l'Aide à la Jeunesse* de 1991. Indeed, voluntary aid is considered to fall under the aegis of the Community, so in this case, the French Community; whereas imposed aid is considered to fall under the aegis of the region, in this instance, Brussels-Capital.³⁸⁰ The '*Ordonnance*' applies to children residing in this region or children found in this region without a known residence in Belgium.³⁸¹

There is a Youth Assistance Service (*service d'aide à la jeunesse*) in every borough, with a Youth Assistance Counsellor (*conseiller de l'aide à la jeunesse*) directing the service.³⁸² This Counsellor is therefore responsible for providing the help needed to minors residing in their borough or minors who have been found in their borough whose residence is unknown.³⁸³

The Counsellor reviews all requests for help in relation to the child and his or her family or relatives,³⁸⁴ and directs those concerned to the appropriate service (*service de première ligne*); and supports them in taking the necessary steps to receive the help needed.³⁸⁵ Moreover, the Counsellor can design an assistance programme, which can be changed at any moment, and which can consist in placing the child in an authorised service of the community or in a host family; or in providing aid while the child stays with his or her family (*aide en ambulatoire*).³⁸⁶ This is considered to be voluntary aid.³⁸⁷ According to the law, it is compulsory to first attempt to provide voluntary aid before imposing aid.³⁸⁸ The intervention of the Youth Court is usually avoided and there

³⁷⁹ *Décret relatif à l'aide à la jeunesse* 1994, Article 2(2).

³⁸⁰ Interview with Pierre Rans, Brussels, 4 July 2018.

³⁸¹ *Ordonnance relative à l'aide à la jeunesse* 2004, Art. 3(1) and (2).

³⁸² *Ibid.*, Art. 31.

³⁸³ *Décret relatif à l'aide à la jeunesse* 1994, Art. 32 [1] al. 1 and 3.

³⁸⁴ *Ibid.*, Art. 36 [1].

³⁸⁵ *Ibid.*, Art. 36 [2] (1) and (2).

³⁸⁶ Interview with Madeleine Guyot, Brussels, 24 April 2018.

³⁸⁷ *Ibid.*, Interview with Pierre Rans, Brussels, 4 July 2018.

³⁸⁸ Intervention of P. Rans, 'World Congress on Justice for Children, Strengthening Justice Systems for Children Challenges, including disengagement from Violent Extremism', UNESCO, Paris, May 2018.

is also an attempt to avoid coercive measures in relation to parents or measures that entail strong intervention.³⁸⁹

The Youth Tribunal can only intervene when the health or security of a child is currently and seriously endangered and voluntary aid has either failed or been refused.³⁹⁰ This is considered to be the case when the child's psychic or physical integrity is endangered either because s/he has regularly engaged in behaviour that is seriously endangering his or her emotional, social or intellectual development; or because the child is the victim of serious negligence, ill treatment or sexual abuse that directly and seriously threatens him or her.³⁹¹ The Counsellor notifies the Crown Prosecutor, in order for it to refer the case to the Youth Court.³⁹² It is important to point out that children considered in danger also fall under child protection justice (*justice protectionnelle*).³⁹³

The Youth Court can either as a provisional measure or in a final judgment give a pedagogical instruction to the person/s exercising parental authority or who have custody of the child; subject the child to the supervision of the competent social services under certain conditions, such as regularly attending a regular or special school, following the pedagogical and medical directives of an educational or mental health guidance centre or regularly meeting the social worker responsible.³⁹⁴ It can also order psychosocial, educational and therapeutic guidance for the young person, family and/or relatives; impose an educational project upon the child, family or relatives; require the child to attend a semi-residential service; place the child in an emergency centre where necessary; place the child in an orientation and observation centre, in a family or with a trustworthy person, or (in exceptional circumstances) temporarily place the child in an appropriate open institution for his or her care, education, instruction and professional

³⁸⁹ Interview with Madeleine Guyot, Brussels, 24 April 2018; Interview with Pierre Rans, Brussels, 4 July 2018.

³⁹⁰ *Ordonnance relative à l'aide à la jeunesse* 2004, Art. 8.

³⁹¹ Ibid.

³⁹² Interview with Pierre Rans, Brussels, 4 July 2018.

³⁹³ Intervention of P. Rans, 'World Congress on Justice for Children, Strengthening Justice Systems for Children Challenges, including disengagement from Violent Extremism', UNESCO, Paris, May 2018.

³⁹⁴ Ibid., Interview with Madeleine Guyot, Brussels, 24 April 2018.

³⁹⁴ *Ordonnance relative à l'aide à la jeunesse* 2004, Arts. 10 [1] and 11 [1].

training.³⁹⁵ The measure can last for six months but can be renewed.³⁹⁶ Moreover, the measure imposed can always be amended following a request from the Crown Prosecutor or the child's family or relatives.³⁹⁷ Finally, the measures can be prolonged until the child has reached twenty years of age.³⁹⁸

The Youth Court can also order a provisional measure in relation to the child in urgent cases when the psychic or physical integrity of the young person is currently and directly endangered and when it is proven that the interest of the child does not allow waiting for the organisation and implementation of a negotiated voluntary aid.³⁹⁹ The Crown Prosecutor can require an urgent measure since it has the monopoly on referral.⁴⁰⁰ In this case, the Youth Court can order the child to be put in an emergency centre; in an orientation and observation centre; in a family or with a trustworthy person; or (in exceptional circumstances) temporarily put the child in an appropriate open institution for his or her care, education, instruction and professional training.⁴⁰¹ The measure can last for 30 days and can be renewed once.⁴⁰² The Youth Assistance Counsellor is notified by the Youth Tribunal where the latter has taken an urgent measure, and the Youth Assistance Counsellor simultaneously attempts to provide voluntary aid before the end of this period.⁴⁰³ In the case where voluntary aid is successfully arranged, both the Crown Prosecutor and the Youth Tribunal are notified and, if the arranged voluntary aid is also approved by the Youth Tribunal, the urgent measure taken ceases and the voluntary aid is then implemented by the Counsellor.⁴⁰⁴ In cases where voluntary aid could not be arranged, both the Crown Prosecutor and the Youth Court are notified and the latter can either prolong the urgent measure or, should this be considered unnecessary, it can notify the Crown Prosecutor in order for the latter

³⁹⁵ Ibid., Art. 10 [1].

³⁹⁶ Ibid., Art. 11 [1].

³⁹⁷ Ibid., Art. 11 [2].

³⁹⁸ Ibid., Art. 11 [5].

³⁹⁹ Ibid., Art. 9.

⁴⁰⁰ Intervention of P. Rans, 'World Congress on Justice for Children, Strengthening Justice Systems for Children Challenges, including disengagement from Violent Extremism', UNESCO, Paris, May 2018.

⁴⁰¹ *Ordonnance relative à l'aide à la jeunesse* 2004, Art. 12 [1].

⁴⁰² Ibid., Art. 12 [2].

⁴⁰³ Ibid., Art. 12 [3].

⁴⁰⁴ Ibid., Art. 12 [4] al. 1 and 2.

to refer the case back to it on the grounds that the health or security of a child is currently and seriously endangered and the voluntary aid has either failed or has been refused.⁴⁰⁵

It is the Youth Court that also ensures the implementation of the measures that it orders.⁴⁰⁶ All measures prioritise maintaining the young person in his or her family environment, however, when the interest of the young person requires removing him or her away from the home environment, the measures must ensure appropriate social, educational and developmental conditions for his or her age and needs.⁴⁰⁷ Finally, it is also important to note that the Youth Assistance Counsellor cannot take any measure placing the child outside of his or her family environment without the consent of the person/s who has or have parental authority - should they have the capability to give such consent - and no measure can be taken by the Counsellor without the child's consent if s/he is twelve years old or above or, if this is not the case, of the person/s who is/are responsible for the child.⁴⁰⁸

The new law mentioned above that came into force on the first of January 2019, and after which there should also be a new 'Ordonnance' for the Brussels-Capital region, which is expected to follow the same lines, is also relevant to child protection. It essentially also mirrors the previous laws from 1991 and 2004 but introduces certain changes. For the purposes of this master's thesis, however, it is important to note that the new law emphasises the priority given to maintaining the child within his family environment, and establishes a hierarchy to be followed by both the Counsellor and the Youth Court. Firstly, the child should be entrusted to a family member or relative;

⁴⁰⁵ Ibid., Arts. 12 [4] al. 4 and 5.

⁴⁰⁶ Intervention of P. Rans, 'World Congress on Justice for Children, Strengthening Justice Systems for Children Challenges, including disengagement from Violent Extremism', UNESCO, Paris, May 2018.

⁴⁰⁷ *Ordonnance relative à l'aide à la jeunesse, 2004*, Art. 9.

⁴⁰⁸ *Décret relatif à l'aide à la jeunesse 1994*, Art. 7.

secondly, to a foster family; and finally, to an adequate institution for his or her education or care.⁴⁰⁹

5.1.4 Belgian practice regarding children returning from Syria or Iraq

In Belgium, a FTF is a Belgian resident but without necessarily having Belgian nationality, above twelve years old who has joined a terrorist organisation abroad.⁴¹⁰ Nevertheless, at the time of writing, it is still unclear whether in reality the threshold is set at ten or twelve years old; this is expected to be precisely determined in the near future, and this uncertainty has been apparent in all the interviews conducted.⁴¹¹ The Federal counterterrorism fusion centre is called the Coordination Unit for Threat Analysis (OCAM) and is responsible for collecting all information regarding, *inter alia*, children who are currently in Syria or Iraq and those who have returned to Belgium. A so-called returnee is an individual on the OCAM's FTF list who went to Syria or Iraq and has left the fighting area.⁴¹² Although this list includes five categories, only two are of interest for this master's thesis: principally those presumed to have returned and to a lesser degree those presumed to still be in Syria or Iraq, who will be discussed in a different section.⁴¹³ The data concerns adults and children aged twelve years old and above, whereas children aged below twelve years old are associated with an adult.⁴¹⁴

⁴⁰⁹ *Projet de décret portant le code de la prévention, de l'aide à la jeunesse et de la protection de la jeunesse 2018*, Arts. 25 al. 1 and 3 and 42 [1] and [2].

⁴¹⁰ T. Renard and R. Coolsaet, Egmont Paper 101 'Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/02/egmont.papers.101_online_v1-3.pdf?type=pdf, (accessed 12 March 2018), p. 19.

⁴¹¹ Interview with Madeleine Guyot, Brussels, 24 April 2018; Interview with Pierre Rans, Brussels, 4 July 2018.

⁴¹² T. Renard and R. Coolsaet, Egmont Paper 101 'Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/02/egmont.papers.101_online_v1-3.pdf?type=pdf, (accessed 12 March 2018), p. 19.

⁴¹³ *Ibid.*

⁴¹⁴ Interview with Pierre Rans, Brussels, 4 July 2018.

With regard to the specific situation discussed in this master's thesis and in relation to the Brussels-Capital region in Belgium, the agreement concluded in the French community with the OCAM is that the latter should report the announcement of a return to the local '*parquets*', meaning the Crown Prosecutors, as well as to the Youth Assistance Service so that they can prepare to receive the child.⁴¹⁵ The case is referred to the Crown Prosecutor youth section which has the power to take decisions and direct the case, also with regard to terrorism.⁴¹⁶ Children aged twelve and above can be referred to the Youth Court when they are considered to have committed an act which qualifies as a terrorist offence, or, if this is not the case, s/he is considered to be a child in danger and can be directed to the Youth Assistance Service.⁴¹⁷ The Crown Prosecutor can also make recommendations to the Youth Court as to what measures to take in relation to these cases.⁴¹⁸ Those aged below twelve years old are considered as children in danger.⁴¹⁹

Nevertheless, there is a problem in relation to territorial competence since, normally and as previously explained, it is determined by the residence of the individuals who have parental authority over the child and which in some cases is non-existent, or otherwise the place where the child is found. Thus, normally families returning from Syria or Iraq to Belgium arrive at the airport in Zaventem, which means that it is the Crown Prosecutor of that borough which is automatically competent and to which the case is referred. Due to this, there is also an attempt to distribute the cases by also trying to find out whether there are grand-parents living in Belgium and whether the family intends to

⁴¹⁵ Ibid.

⁴¹⁶ Ibid., *Circulaire 2015 relative à l'approche judiciaire concernant les FTF*.

⁴¹⁷ *Circulaire 2015 relative à l'approche judiciaire concernant les FTF*; Interview with Pierre Rans, Brussels, 4 July 2018.

⁴¹⁸ Interview with Madeleine Guyot, Brussels, 24 April 2018; Interview with Pierre Rans, Brussels, 4 July 2018.

⁴¹⁹ *Circulaire 2015 relative à l'approche judiciaire concernant les FTF*; Interview with Pierre Rans, Brussels, 4 July 2018.

also settle there, or the place where the family was intending to settle once they return to Belgium, for instance.⁴²⁰

According to the information received, which was subsequently confirmed by the OCAM's data as of May 2018, there are two children returnees considered as FTFs: one girl and one boy; and both have returned to Brussels.⁴²¹ There are also a large number of children returnees who do not fall within the FTF category due to their young age, details of whom were not available until recently; this group mainly consists of very young children. It is estimated that twenty children have returned to Belgium, fourteen aged under three years old upon their return, and that ten cases were handled by the French community.⁴²² In relation to the numbers, it is important to note that these are merely estimates. Nonetheless, it is important to also note the possibility that there may be even more children who have returned but who are unknown to the Belgian authorities since the families returned by different means.⁴²³

The author will first explore the situation of children returnees considered as FTFs and subsequently the situation of children aged below twelve years of age. It is important to first note, however, that no new bodies have been set up to deal with such cases in Belgium, meaning that children returnees are dealt with by the already existent institutions, services and systems.⁴²⁴

⁴²⁰ Interview with Pierre Rans, Brussels, 4 July 2018.

⁴²¹ Ibid. Interview with Madeleine Guyot, Brussels, 24 April 2018; Interview with Christophe Marchand, Brussels, 17 June 2018; T. Renard and R. Coolsaet, 'Children in the Levant: Insights from Belgium on the dilemmas of repatriation and the challenges of reintegration', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/07/SPB98-Renard-Coolsaet_v2.pdf?type=pdf, (accessed 12 July 2018), pp. 5 and 6.

⁴²² T. Renard and R. Coolsaet, 'Children in the Levant: Insights from Belgium on the dilemmas of repatriation and the challenges of reintegration', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/07/SPB98-Renard-Coolsaet_v2.pdf?type=pdf, (accessed 12 July 2018), pp. 5-7.

⁴²³ Interview with Pierre Rans, Brussels, 4 July 2018.

⁴²⁴ Interview with Madeleine Guyot, Brussels, 24 April 2018.

Firstly, children returnees considered as FTFs fall under child protection justice (*justice protectionnelle*).⁴²⁵ There is very little experience of such children.⁴²⁶ Indeed, and as mentioned above, there have been just two cases so far. The first case concerns a boy who at the time he went to Syria in 2013 was fifteen years old and who joined Jabhat Al-Nusra for a little over two months.⁴²⁷ He was accused of an act which qualifies as participation in the activities of a terrorist group once he returned to Belgium and was, therefore, referred to the Youth Court which ordered his conditional maintenance in his family environment as a provisional measure in 2014.⁴²⁸ Although the Crown Prosecutor suggested the placement in an IPPJ, this was refused by the judge.⁴²⁹ In its final judgment in 2017, the Youth Court found him guilty of an act which qualifies as participation in the activities of a terrorist group and reprimanded him.⁴³⁰ He has progressed very favourably since his return and is currently appealing against the decision.⁴³¹ More information concerning this case is unavailable.

The second case concerns a girl who went to Syria in 2017 aged fourteen and who managed to leave after five months.⁴³² She gave birth to her baby in Turkey and was repatriated to Belgium, where she was placed in an IPPJ in a closed regime with a prohibition upon contacting her relatives, who were also radicalised, by the Youth Court as a provisional measure.⁴³³ She has recently been put in a mother and baby unit (*maison maternelle*), where she should soon be joined by her baby.⁴³⁴ She has been separated from her baby since her return because babies cannot stay with their mothers whilst they are in an IPPJ.⁴³⁵ The case concerning the baby will be discussed later. The girl was already previously accused of an act which qualifies as participation in the activities of a terrorist group since she was considered to have been radicalised, she was

⁴²⁵ Ibid. Interview with Pierre Rans, Brussels, 4 July 2018.

⁴²⁶ Interview with Pierre Rans, Brussels, 4 July 2018.

⁴²⁷ Interview with Christophe Marchand, Brussels, 17 June 2018.

⁴²⁸ Ibid.

⁴²⁹ Ibid.

⁴³⁰ Ibid.

⁴³¹ Ibid.

⁴³² Interview with Pierre Rans, Brussels, 4 July 2018.

⁴³³ Ibid.

⁴³⁴ Ibid.

⁴³⁵ Ibid.

wearing a headscarf, she had contact with her sister who was in Syria, there was a warning from her school and she had radicalised friends.⁴³⁶ The Youth Tribunal therefore ordered her conditional maintenance in her family environment as a provisional measure; the conditions were to attend school regularly, not to go out at night, the obligation to attend a centre for the prevention of radicalism, and she was prohibited from leaving Belgium.⁴³⁷ However, the girl was allegedly still in contact with radicalised persons, disseminating hate messages and was suspected of planning to leave for Syria.⁴³⁸ There was thus a new instruction from the Public Prosecutor to place her in a closed IPPJ, which was approved by the Youth Court but revised following an appeal due to her young age, after which maintenance in her family with intensive monitoring by the SAMIO service was ordered.⁴³⁹ The girl was initially responding favourably but later stopped cooperating.⁴⁴⁰ She was in a relationship with a radicalised boy and was presumed pregnant, which she contested, so there was a fear that she was going to leave for Syria.⁴⁴¹ Exactly what she has been charged with is unknown, other than an act which qualifies as participation in a terrorist group and further information on the case is unavailable.

In the case of children returnees considered as FTFs, there is in principle a high vigilance and instructions to place the child in a closed IPPJ, however, such children are dealt with on a case by case basis based on the available information.⁴⁴²

So far, there has been just one case where a child was immediately '*dessaisi*' *in absentia* after announcing his return to Belgium, although he has still not returned.⁴⁴³

There are no cases of children aged twelve years and over who have **not** been found to have committed an act which qualifies as a terrorist offence and who have been directed to the Youth Assistance Service at the time of writing. Travelling abroad to a conflict

⁴³⁶ Ibid.

⁴³⁷ Ibid.

⁴³⁸ Ibid.

⁴³⁹ Ibid.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid.

⁴⁴² Ibid.

⁴⁴³ Ibid.

zone for terrorist purposes is already considered a terrorist offence. Nevertheless, the terrorist intent must be proven. Moreover, despite the fact that the roles that girls and boys usually play, also depending on their age, during their association with the terrorist or violent extremist organisation are known from the evidence available - although there is insufficient evidence - , girls and boys can only be prosecuted provided that there is proof, and children must also be heard in this regard.⁴⁴⁴ Indeed, there is an issue regarding evidence: it is not easily obtained and the events took place abroad, and concerning the evidence that is available, it is often uncertain whether or not it is real.⁴⁴⁵ This refers to photos or video footage, for instance. Consequently, obtaining evidence of the acts committed by boys, specifically during their participation in the terrorist or violent extremist group and in particular demonstrating their participation in combat, which proves their involvement beyond reasonable doubt, is similarly problematic. Even though these acts can be surmised from the available evidence - it nevertheless remains insufficient for successful prosecution.⁴⁴⁶

Secondly, there is a specific policy for children aged below twelve years of age. For such children the emergency measures mechanism is immediately triggered.⁴⁴⁷ There is an agreement in the Brussels-Capital region with the SOS Enfants team at the St Pierre hospital. According to this mechanism, the child is to stay in the St Pierre hospital overnight, following which the case is referred to the Youth Court in order for it to order an urgent measure.⁴⁴⁸ The Youth Court can either order the child to be placed in a nursery (*pouponnière*) for thirty days, or to prolong the child's stay at the same hospital if there is no space at the nursery (*pouponnière*); or to return the child to his or her family environment, should it be sufficiently safe.⁴⁴⁹ Usually, the child stays with his or her grandparents.⁴⁵⁰ Once the emergency measure has been taken, the case is referred

⁴⁴⁴ Ibid.

⁴⁴⁵ Ibid.

⁴⁴⁶ Ibid.

⁴⁴⁷ *Circulaire 2015 relative à l'approche judiciaire concernant les FTF.*

⁴⁴⁸ Interview with Pierre Rans, Brussels, 4 July 2018.

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

back to the Youth Assistance Counsellor in order to attempt to arrange voluntary aid.⁴⁵¹ In the case where an agreement for voluntary aid is reached, the arrangement has to be submitted to the Youth Court for approval.⁴⁵² If an agreement for voluntary aid is not reached, the Youth Assistance Counsellor notifies the Crown Prosecutor in order for the latter to refer the case to the Youth Court which will impose a measure.⁴⁵³ Since children mostly return with their mothers, no measure can be taken by the Youth Assistance Counsellor without the mother's consent - should she have the capacity to grant her consent.⁴⁵⁴ In general, the measures taken can entail leaving the child in his or her family environment, placing the child in a nursery, placing the child in prison or a mother and baby unit (*maison maternelle*) with the mother, or supervising the mother and the child in the maternal environment.⁴⁵⁵ The child cannot stay with his or her mother who is in an IPPJ, whereas s/he can stay with his or her mother in prison up to the age of three years old.⁴⁵⁶

Accordingly, therefore, in relation to the case of the baby of the fourteen-year-old who is currently in a mother and baby unit, the baby was placed by the Crown Prosecutor with SOS Enfants in the St Pierre hospital for twenty four hours as soon as she arrived with her mother.⁴⁵⁷ The case was referred to the Youth Court for an emergency measure and it ordered the placement of the child with SOS Enfants in the St Pierre hospital and prohibited contact with the father.⁴⁵⁸ Following this, the case was referred to the Youth Assistance Counsellor, however, no arrangement was concluded.⁴⁵⁹ Thus, the case was referred to the Youth Court on the grounds that the health or security of a child is currently and seriously endangered and that voluntary aid had been refused.⁴⁶⁰ The Youth Court ordered the provisional placement of the child with SOS Enfants in the St

⁴⁵¹ Ibid.

⁴⁵² Ibid.

⁴⁵³ Ibid.

⁴⁵⁴ Ibid.

⁴⁵⁵ Ibid.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

Pierre hospital and allowed her mother to visit under supervision.⁴⁶¹ Afterwards, the Youth Court ordered the placement of the child in a nursery and allowed the mother to visit under supervision.⁴⁶² The baby's grandparents were not considered capable of taking care of the child and providing a secure and stable life for the child because they were considered to have difficulties taking care of their children since both the fourteen-year-old girl and her older sister had been radicalised and they had difficulties collaborating with the services provided, which ended with the former being in an IPPJ and the latter in prison.⁴⁶³

Another case concerns a woman who went to Syria to follow her husband who had joined the Islamic State.⁴⁶⁴ She gave birth to her baby in 2016 and was remarried to a jihadi fighter following her husband's death, and got pregnant again.⁴⁶⁵ The woman left Syria shortly afterwards and went to Turkey with her two children, where she was repatriated to Belgium.⁴⁶⁶ Once there, she gave birth to another baby.⁴⁶⁷ Her three children were firstly placed with SOS Enfants in the St Pierre hospital for twenty four hours, after which the case was referred to the Youth Court for it to order an emergency measure.⁴⁶⁸ The last baby was placed in prison with her mother and the case was referred to the Youth Assistance Counsellor in order to find an adequate arrangement, whereas the baby's older brother and sister were placed with their maternal grandfather and remained there.⁴⁶⁹ The mother and the youngest child are to be placed in a mother and baby unit, which was approved by the Youth Court, thus ending the provisional measure taken.⁴⁷⁰

⁴⁶¹ Ibid.

⁴⁶² Ibid.

⁴⁶³ Ibid.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid.

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid.

5.1.5 Belgian practice in relation to the rehabilitation and reintegration of children returning from Syria or Iraq

The French community of Belgium is considered to be lagging behind with regard to the rehabilitation of children returning to Belgium from Syria or Iraq.⁴⁷¹ As already highlighted above, no new specifically dedicated institutions or procedures have been set up in Belgium, meaning that children returnees are dealt with by the already existent institutions, services and systems, meaning that they are taken care of by the usual actors, and not by dedicated actors specifically specialised in deradicalisation and counterterrorism. Consequently, the prevailing policy is to treat these children just like any other child in danger or in conflict with the law, yet in a manner that is tailored to their specificities.⁴⁷²

In relation to children in danger, the Commissioner for Child Rights of the French Community (*Délégué général de la Communauté française aux droits de l'enfant*), has expressed a strong concern for the children aged below twelve years of age since it is uncertain whether or not they are being monitored and how, as this would depend on the services with which they are in contact and the respective arrangements.⁴⁷³ In particular, the Commissioner expressed even greater concern with regard to the post-traumatic stress disorder issue, as it is urgent for both the child and his or her family or whoever has custody to receive the help needed in order to be able to handle the specific situation.⁴⁷⁴ At this point it is also uncertain whether or not the people in contact with the child are properly trained.⁴⁷⁵ There is no evidence on the issue of rehabilitation as it was not possible to obtain an interview either from a lawyer responsible for dealing with cases of very young children returning from Syria or Iraq or from someone at the Youth Assistance Service, and none of the individuals interviewed were able to answer.

⁴⁷¹ Interview with Madeleine Guyot, Brussels, 24 April 2018.

⁴⁷² Ibid., Interview with Pierre Rans, Brussels, 4 July 2018.

⁴⁷³ Interview with Madeleine Guyot, Brussels, 24 April 2018.

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

With regard to children in conflict with the law, their rehabilitation and reintegration would also seem to focus on their positive aspects and giving them a chance to reintegrate into the society by providing them with the necessary skills.⁴⁷⁶ Accordingly, and as an example, the Commissioner for Child Rights of the French Community has pointed out that he himself lacks information relation to what is done specifically for those children returning from Syria or Iraq, and that he has been provided with very vague information which is not convincing concerning the IPPJs in particular.⁴⁷⁷ They have been told that everyone was trained and that specific measures has been taken but they have also noted that the staff did not appear to be properly trained or suitable.⁴⁷⁸

There is a Centre for the assistance and care of anyone concerned by violent extremism and radicalism (CAPREV) in the French community, which has been competent for both children and adults since its establishment in January 2016 by the Government.⁴⁷⁹ A collaboration protocol is being negotiated between the general administration of the Youth Assistance Service and CAPREV at the time of writing.⁴⁸⁰ This document specifies how CAPREV is to collaborate in the different situations for which they are called upon in relation to children in contact with the Youth Assistance Service and how its members are to cooperate with the professionals involved depending on the institution or service, as well as its objectives, however, it is not yet available.⁴⁸¹ It is important to specify, however, that when talking about the children in contact with the Youth Assistance Service, this refers to all services and institutions for all children, meaning, those in danger and those in conflict with the law who fall under the protection justice system (thus in danger and in need of protection).

⁴⁷⁶ Interview with Pierre Rans, Brussels, 4 July 2018.

⁴⁷⁷ Interview with Madeleine Guyot, Brussels, 24 April 2018.

⁴⁷⁸ Ibid.

⁴⁷⁹ Interview with Alice Jaspart, Brussels, 12 June 2018.

⁴⁸⁰ Ibid.

⁴⁸¹ Ibid.

CAPREV has, nevertheless, already intervened in a number of cases concerning children.⁴⁸² It was initially reluctant to share any information whatsoever concerning individual cases, requested so as to have specific examples of interventions, as they feared that this could adversely affect their work which is heavily based on confidentiality and developing a relationship of trust with the children they deal with in order to create a strong bond with them.⁴⁸³ Nevertheless, they did agree to share some general information. The association is contacted on a voluntary basis and normally requires the children to contact them themselves, to vouch for their willingness to ask for help.⁴⁸⁴ However, the Youth Assistance Service can also contact them when needed, as long as the child is informed and agrees to it.⁴⁸⁵ They have a multidisciplinary approach, so their team is composed of psychologists, lawyers, social workers, educators, a criminologist and a political scientist; who either work in collaboration or else a principal and a secondary contact person are assigned to the child.⁴⁸⁶ Following the call, they meet the child in order to discuss what could be put into place for him or her depending on his or her personal circumstances.⁴⁸⁷ They thus offer an individual and personalised service, meaning that their starting point is what the child shares with them and the aid provided evolves according to what the child shares and requests, which varies greatly from child to child.⁴⁸⁸ Their role is also to collaborate with the staff of the specific service or institution by discussing with the child what is put into place for him or her and how that is going in order to possibly suggest an alternative or improved approach.⁴⁸⁹ Their work focuses solely on reintegration, however, the radicalisation issue is not overlooked and is not “taboo”.⁴⁹⁰ The reasons that made them leave to go to Syria or Iraq are discussed in order to see whether it would be possible to see things differently and how the factors influencing them can be analysed in a way that promotes

⁴⁸² Ibid.

⁴⁸³ Ibid.

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ Ibid.

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

a change in them.⁴⁹¹ However, they only ever accompany the child in their own reflections.⁴⁹² For instance, there are children for whom religion alone played an important role and they may have questions in this regard, in which case the association will direct them to a Muslim counsellor and subsequently discuss with the child what s/he has learnt.⁴⁹³

In relation to possible post-traumatic stress disorder, if s/he appears to be suffering from PTSD, the child will be directed to the appropriate professional.

It has also been stressed that the association relies heavily on confidentiality and building up a relationship of trust with their children, so nothing shared by the child during the meeting is repeated in order to create a bond with the child and help him or her in their reintegration. Thus, the children have complete freedom to open up and discuss, for example, images they have seen and still continue to see in their dreams, and the association will respect their confidence and do no more than accompany them in their reflections.⁴⁹⁴

As a final remark, all the aid provided by the association is carried out very discretely so as to avoid stigmatising the child.⁴⁹⁵

Finally, there is a service whose name has not been given that claims to do needs and risk assessments for children returning from Syria or Iraq, however, at a meeting with the Commissioner for Child Rights of the French Community, they were completely unclear as to how they proceeded and what it entailed, and they were very reluctant to provide more detailed information.⁴⁹⁶ No other interviewee knew of any risk and needs

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Ibid.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid.

⁴⁹⁶ Interview with Madeleine Guyot, Brussels, 24 April 2018.

assessment being carried out. There are the just the usual assessments conducted upon admission to certain facilities, such as IPPJs.⁴⁹⁷

5.1.6 Belgian practice in relation to the repatriation of children from Syria or Iraq to Belgium

During the interviews conducted in the course of April, May and July 2018, it was stated that it was estimated that around 140 (one hundred and forty) children were still in Syria or in Iraq: seven boy and four girl FTFs as well as 137 (one hundred and thirty-seven) aged less than twelve years old. Moreover, according to the numbers received by the Commissioner for Child Rights of the French Community, 104 (one hundred and four children) were born in the so-called Caliphate.⁴⁹⁸ According to OCAM's latest figures, as of May 2018, it is estimated that there are 162 (one hundred and sixty-two) children still in Syria or Iraq, of which 149 (one hundred and forty-nine) are aged below twelve years old while thirteen are aged above twelve years old.⁴⁹⁹ Moreover, it is estimated that 80 % of the children aged below twelve years old were born there and that 20 % travelled to the region with their parents, thus, the vast majority are very young children who have not been educated and have not received military training whilst in the so-called Caliphate.⁵⁰⁰ However, it is important to point out, as was done by all the interviewees, that these are estimates and so not necessarily correct.

With regard to the repatriation of children who want or whom their family wants to return to Belgium, the Belgian government decided in December 2017 that those aged less than ten years old will be granted an automatic "*laisser-passer*", provided that the

⁴⁹⁷ Ibid.

⁴⁹⁸ Ibid., Interview with Pierre Rans, Brussels, 4 July 2018.

⁴⁹⁹ T. Renard and R. Coolsaet, 'Children in the Levant: Insights from Belgium on the dilemmas of repatriation and the challenges of reintegration', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/07/SPB98-Renard-Coolsaet_v2.pdf?type=pdf, (accessed 12 July 2018), pp. 4 and 5.

⁵⁰⁰ Ibid., p. 4.

connection with Belgium can be proven, whereas the right to return of children aged ten and above will be examined on a case by case basis.⁵⁰¹ However, it is also unclear at the time of writing whether the threshold is in fact set at ten or twelve years old. Indeed, Madeleine Guyot from the office of the Children's Rights Commissioner of the French Community explained during the interview that they had been receiving contradictory information for months because they were sometimes told age ten and sometimes age twelve.⁵⁰² She also explained that when she attended a meeting with representatives from OCAM and State security, the former stated that the threshold was set at ten or twelve years old but that they were unsure and the latter stated that the threshold was twelve.⁵⁰³ These authorities are therefore obviously in the dark themselves, since there is this uncertainty: they do not know whether it is accidental or deliberate or whether it could actually be the result of a misunderstanding between the various levels of authority, or between various bodies at the same level of authority.⁵⁰⁴ A meeting had been arranged with the OCAM director but no further information has been received since.

Since March 2017, the Belgian government has established six criteria for the assessment of the cases of children aged ten and above:

There first needs to be an evaluation of the threat that the minor represents;
It must be checked whether a dossier concerning the minor has already been
opened by the Crown Prosecution youth section; The range of options
available for his or her effective supervision once he or she has returned to

⁵⁰¹ 'Les jeunes enfants des combattants djihadistes à l'étranger pourront revenir en Belgique', *BELGA*, 22 December 2017, <http://www.dhnet.be/actu/belgique/les-jeunes-enfants-des-combattants-djihadistes-a-l-etranger-pourront-revenir-en-belgique-5a3d13eccd7083db8b25e811>, (accessed 24 April 2018); T. Renard and R. Coolsaet, Egmont Paper 101 'Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/02/egmont.papers.101_online_v1-3.pdf?type=pdf, (accessed 12 March 2018), p. 38.

⁵⁰² Interview with Madeleine Guyot, Brussels, 24 April 2018.

⁵⁰³ Ibid.

⁵⁰⁴ Ibid.

Belgium must be considered; Establish whether the child is aged sixteen (which allows the “*dessaisissement*”); Establish whether or not the minor is still accompanied by a parent; Find out to what extent s/he has been indoctrinated or has received military training.⁵⁰⁵

The Belgian government thus considers that children aged less than ten or twelve are victims and that those aged ten or twelve years old and above are more dangerous because they have been engaged in the conflict for longer, they are more conscious of the acts committed and have been indoctrinated and educated to use violence for longer.⁵⁰⁶ They can thus constitute a threat to national security.

Concerning children aged less than ten years old, and specifically those who were born in the so-called Caliphate and who, therefore, do not have documents proving their nationality, they are to undergo a DNA test, but it is also unsure whether such tests are to be carried out where they have sought the protection of the Belgian embassy or consulate in Belgium.⁵⁰⁷ Nevertheless, the Belgian government is very restrictive regarding this matter and the DNA test alone does not automatically establish the Belgian affiliation.⁵⁰⁸ Citizenship is automatically granted when the DNA tests of a child born from a Belgian mother are positive, but positive DNA test results of children born of a Belgian father are not sufficient alone since the marriages in the so-called

⁵⁰⁵ ‘Des mesures supplémentaires pour contrôler les returnees mineurs’, *BELGA*, 1 March 2018, https://www.7sur7.be/7s7/fr/32684/Menaces-terroristes-en-Belgique/article/detail/3378296/2018/03/01/Des-mesures-supplementaires-pour-controler-les-quot-returnees-quot-mineurs.dhtml?utm_medium=rss&utm_content=7sur7beinfosportetshowbiz24/247/7plusde350mises%C3%A0jourquotidiennes, (accessed 24 April 2018); C. Carpentier, ‘La Belgique durcit le ton à l’égard des returnees mineurs’, *Sudpresse*, 1 March 2018, <http://www.nordeclair.be/197990/article/2018-03-01/la-belgique-durcit-le-ton-legard-des-returnees-mineurs>, (accessed 24 April 2018).

⁵⁰⁶ Interview with Madeleine Guyot, Brussels, 24 April 2018.

⁵⁰⁷ Ibid.

⁵⁰⁸ T. Renard and R. Coolsaet, Egmont Paper 101 ‘Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands’, *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/02/egmont.papers.101_online_v1-3.pdf?type=pdf, (accessed 12 March 2018), p. 38.

Caliphate are not recognised by the Belgian administration or if the father did not officially recognise the child.⁵⁰⁹ An additional problem could be cases where the parent(s) have passed away.⁵¹⁰ This could therefore lead to children being stateless.

The Belgian government, however, is not taking the necessary steps to repatriate these children. No measures have been taken to get the children back and the government has not yet reached an agreement concerning how these repatriations should take place. This means that it is usually the families who have to identify their children in the detention camps in Syria or Iraq and it is up to the families themselves to bring them to the nearest Belgian embassy or consulate at their own risk, usually by attempting to get to Turkey.⁵¹¹

It is claimed that no Belgian children are detained in Iraq.⁵¹² Many grandparents have contacted the Commissioner for Child Rights of the French Community and are attempting to locate their grandchildren in Syria in order to bring them back to Belgium but they were told by the Belgian authorities to find a solution themselves and to contact the Red Cross.⁵¹³ It would therefore seem that the Belgian government does not want to take any risks, however, the Commissioner for Child Rights suspects that there

⁵⁰⁹ T. Renard and R. Coolsaet, 'Children in the Levant: Insights from Belgium on the dilemmas of repatriation and the challenges of reintegration', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/07/SPB98-Renard-Coolsaet_v2.pdf?type=pdf, (accessed 12 July 2018), pp. 5-6.

⁵¹⁰ Ibid.

⁵¹¹ T. Renard and R. Coolsaet, Egmont Paper 101 'Returnees: Who are they, why are they (not) coming back and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/02/egmont.papers.101_online_v1-3.pdf?type=pdf, (accessed 12 March 2018), p. 38; Interview with Thomas Renard, Brussels, 23 April 2018; Interview with Madeleine Guyot, Brussels, 24 April 2018; T. Renard and R. Coolsaet, 'Children in the Levant: Insights from Belgium on the dilemmas of repatriation and the challenges of reintegration', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/07/SPB98-Renard-Coolsaet_v2.pdf?type=pdf, (accessed 12 July 2018), p. 6.

⁵¹² T. Renard and R. Coolsaet, 'Children in the Levant: Insights from Belgium on the dilemmas of repatriation and the challenges of reintegration', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/07/SPB98-Renard-Coolsaet_v2.pdf?type=pdf, (accessed 12 July 2018), p. 5.

⁵¹³ Interview with Madeleine Guyot, Brussels, 24 April 2018.

must certainly be repatriations taking place secretly.⁵¹⁴ Nevertheless, increasing pressure is being exerted on the government in this regard, not only by the families of these children who are here in Belgium, often grandparents, through specific associations; but also by the Commissioner for Child Rights of the French Community, for instance.⁵¹⁵ There are also signs from the Government suggesting that Belgium may decide to adopt a more proactive role in relation to this issue, however, what progress may be made remains to be seen.⁵¹⁶

⁵¹⁴ Ibid.

⁵¹⁵ Ibid.

⁵¹⁶ T. Renard and R. Coolsaet, 'Children in the Levant: Insights from Belgium on the dilemmas of repatriation and the challenges of reintegration', *Egmont Institute Brussels*, 2018, http://www.egmontinstitute.be/content/uploads/2018/07/SPB98-Renard-Coolsaet_v2.pdf?type=pdf, (accessed 12 July 2018), p. 6.

6. DISCUSSION, RECOMMENDATIONS AND CONCLUSIONS

In view of the research question which this master's thesis endeavours to answer, namely, *how is it possible to ensure national security whilst also safeguarding the rights of the child, in particular the best interest of the child, in the context of children returnees?* In light of this research and in relation to the case study on Belgium specifically, the following main points arise and are of serious concern or particularly important in the author's view. The author will first cover the specific points that emerged from the case study and then go on to address the broader issue.

6.1 The case study

First of all, it is fundamental to officially establish a clear threshold over which a child can be considered as an FTF in Belgium promptly in order to guide practice and avoid discrepancies. From the experience on the ground, the professionals interviewed were unsure whether this was set at ten or twelve. According to the author, twelve years old is the only acceptable threshold in accordance with the UNCRC and the CRC.

Concerning children considered as FTFs, the author is satisfied with the findings, which show that all children thus far have been dealt with by the Youth Court and that each instance was genuinely handled with high vigilance but on a case by case basis, and that a punitive and repressive approach did not prevail. However, the author would like to point out that it is very early to draw conclusions due to the dearth of existing cases and it is very difficult to determine how the law will be applied in practice to the children concerned. The author also agrees with the focus on the positive aspects of the children and on providing them with the necessary skills in terms of vocational or educational training in order for them to reintegrate into society, rather than providing “de-radicalisation” programmes, as will be further discussed below. This is in line with the

UNCRC and other international instruments presented herein, and the main aims and principles of juvenile justice, as well as in accordance with the other documents cited. These stipulate that children in conflict with the law whether deprived of their liberty or not should receive all the necessary care, protection and assistance (social, educational, vocational, psychological, medical and physical) according to their age, sex and personality in order to reintegrate into society and assume a constructive role in it. Nevertheless, the author is seriously concerned about the rehabilitation aspect of the judicial proceedings due to an absolute lack of information. Without rehabilitation, national security cannot be ensured in the long term and the rights of the child, in particular their best interest, cannot be safeguarded. Children returnees are dealt with by the already existing services, systems and institutions, and they are not treated any differently from any other child in conflict with the law but still “with regard to the specificities of their cases”. It is very uncertain what the latter actually entails due to a lack of information. These children are in a particular situation due to the context in which they have been found to have committed an offence and specific support on an individual basis is, therefore, required in accordance with the findings of this work. Thus, it is fundamental that the children receive the necessary assistance in order to be rehabilitated and to be able to successfully reintegrate into society. Girls, in particular, as stressed in the UNCRC, and in the other international instruments and documents cited in this thesis, need and warrant special attention, in particular in this context. Moreover, children should be strictly monitored. Consequently, assessments adapted to children - both girls and boys - and to their situation should be carried out as recommended in the documents presented herein, regardless of what assistance they are going to receive or which service or institution they will enter upon the decision of the Youth Court, in order to ensure that their rights, specifically their best interests are genuinely safeguarded and that national security is ensured. Such assessments, as recommended by the Handbook, should take into consideration the factors that led to the child joining the terrorist group, the family relationship, the role of the family in joining the terrorist group, their experience once they had joined, and the identification of a positive network. Moreover, it should also assess their physical and mental well-being, trauma level, degree of indoctrination, attitude toward violence, etc., as

recommended in the RAN papers. It is vital that the assessment as well as the information on how such children should be treated be made available to all the relevant professionals in order to ensure that children are properly taken care of. Notwithstanding the child's right to have his or her privacy fully respected, especially in this context of children involved in terrorism so as not to compromise their reintegration, the author would like to point out that information on the treatment of these children should nevertheless be shared amongst the relevant professionals (only). A long-term reintegration strategy should then be devised and the appropriate team set up, whether within the institution or service, or outside it. The child should be closely monitored and the programme should be flexible should it need tweaking. All the professionals involved should be in constant coordination. It is also fundamental to ensure that all professionals in contact with the child are adequately trained, as required by the rules on juvenile justice, and to ensure the respect of those rules and principles even for cases related to terrorism. This should also apply to identifying the child's specific issues or reactions to situations in accordance with the recommendations contained in the documents cited. According to these recommendations, a multidisciplinary team receiving adequate training should be in charge of these children. They should be specially trained in relation to the specific context of children FTFs and it is also important that they are supported by experts in the relevant fields, such as radicalisation, terrorism, extremism, the specific culture and related matters. The credibility of the professionals is essential.

Regarding children returnees aged less than twelve years old, the author is also satisfied with the findings on the specific procedure followed, which show an attempt to maintain the child within his or her family environment and to ensure normalisation as soon as possible when the situation permits it. Nevertheless, the author is also gravely concerned by the total lack of information on the measures taken to assist, support and monitor all of the persons involved in the care of the child, especially grandparents, as well as the child himself or herself. There is no evidence whatsoever that they, and their families, are receiving any kind of specifically adapted support or monitoring in order to

ensure the child's complete rehabilitation and reintegration. Without the proper measures, national security and the rights of the child, especially his or her best interests, cannot be ensured. However, the measures taken must not jeopardise their reintegration. For this reason, special programmes are not recommended. The families and the child should receive individualised support that is specifically adapted to the context in order to ensure the child's complete rehabilitation and reintegration. Indeed, the author strongly agrees with the recommendations in the RAN papers that interventions or support should be provided even for very young children returnees and as early as possible, because all children should be assumed to have been exposed to some level of violence and extremist ideology as demonstrated in this work and should, therefore, be strictly monitored in order to ensure their successful rehabilitation. This is in accordance with their rights, especially their best interests, and national security in the long term. Children returnees are expected to be dealt with by the already existing systems, services and bodies. There are no specific examples available as to the measures taken for their rehabilitation and reintegration. This could thus lead to them either not being treated at all or ineffectively or insufficiently. It is, therefore, fundamental to always conduct an assessment as already explained above. Following this, a long term-reintegration plan should be established, and the appropriate professionals appointed. The latter need to be in constant coordination. All those in contact with the child should be properly trained in order to ensure their credibility, including family and teachers, and supported by all the experts in the relevant fields as explained above. It is also urgent to make the information on the treatment of these children available to all the relevant professionals in order to ensure that the children are properly cared for. Finally, the child and all those involved should be closely monitored and the programme should be flexible should changes need to be made.

The author is also particularly concerned with regard to the repatriation of children. During the research on the ground, the lack of coordination between different bodies and actors became extremely evident since none of the interviewees were sure whether ten or twelve was the threshold age. This therefore leads to irregularities in practice.

Nevertheless, the author is strongly against establishing a threshold. In particular, the author is strongly against establishing a threshold which determines the age from which a child is to be assessed, but where the basis of the assessment is the protection of national security, since these children are considered “more dangerous”. Such a threshold favours national security and cannot be considered to take into consideration all the rights and the best interests of the child, which include their rehabilitation and reintegration, and would thus lead to a disproportionate treatment of the children concerned. According to the author, all children for whom Belgian nationality is established should be repatriated to Belgium. Moreover, the Belgian State should take more proactive steps to repatriate Belgian children from Syria and Iraq and provide proper help to the families attempting to bring their children back. It should also reach an agreement very soon with regard to how repatriations are to take place and make this clear and public. Pressure should be further exerted on the Belgian government to this end. All of this is in line with the States’ obligations under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict according to which all States Parties should take all the feasible measures in order to demobilise or release the children from service and to provide them with the appropriate assistance for their physical recovery and social reintegration.

In the Brussels-Capital region, much more effort should be focused on the rehabilitation, reintegration and monitoring of children returnees and specific action should be taken. The process is so far progressing very slowly, and it lags far behind. During the research on the ground, the author encountered great difficulties in finding professionals from different fields and organisations willing or able to discuss the subject. Indeed, it has been found that there is little information on what has happened to the children upon return, and discrepancies in the scant information available, and it also felt as if the subject was taboo. Consequently, at national level, it is all the more important to conduct more in-depth research and raise awareness of this subject among all the relevant parties so as to bring about better coordination and cooperation.

6.2 The broader issue

For reasons both of ensuring national security and also of safeguarding the rights of the child, especially their best interests, the author disagrees with the utilisation of diversion measures and does not recommend them in such cases. According to the author, the cases of children FTFs should always be referred to the Youth Court in the first place, even on the grounds of participation in terrorist activities, due to the context of these cases. Indeed, only through the initiation of proceedings can the Youth Court have the appropriate resources in order to proceed to make further necessary investigations for evidence and to assess the entire case in relation to evidence and the profile of the specific child, providing security in ensuring that the decision made by the juvenile judge is the best for that particular case. This further ensures that the rights of the child, especially the best interests of the child, are protected whilst also ensuring national security. However, care should be taken to avoid further traumatising the child. Furthermore, the Youth Court should be provided with the necessary training and tools specifically in relation to this context. It is fundamental for the child to be heard in this matter as well and to take an active part as per the rules on juvenile justice. Following this, the Youth Court can choose from a variety of interventions in the context of judicial proceedings, or detention as a measure of last resort, on a case by case basis and in accordance with the principles of juvenile justice and the rights of the child. The author does recommend interventions in the context of judicial proceedings as per the UNCRC and other international instruments on juvenile justice as well as in accordance with the other documents presented herein. The author would also like to recall at this point that no action taken concerning the child should jeopardise him or her becoming a constructive member of society in accordance with international instruments on juvenile justice. Moreover, the use of deprivation of liberty for children should be considered with particular caution. This ensures the proper handling of the many different profiles of returnees. Perhaps this can be best done if the special assessment adapted to the child and to his or her situation as already mentioned is conducted upon the first contact with the Youth Court, by adapting the usual assessment that the Youth Court carries out, and

allowing the judge to be assisted by an interdisciplinary team, as recommended in the Neuchâtel Memorandum. The author recommends always favouring the rights of the child, in particular their best interests, over national security, due to the fact that they are a vulnerable group, but with special caution. The case by case approach is fundamental.

Children, including FTFs, should always be considered principally as victims as per the UNCRC and the Protocol, but also as recommended by the various documents cited. This is the reason why their rehabilitation and reintegration should be the main priority. Considering children as victims is fundamental in order to ensure that their rehabilitation and reintegration is the key priority. Indeed, it is fundamental to recall in any case that the international legal framework clearly provides that the recruitment and exploitation of children are violations of international law and that they become victims of violence. However, the author disagrees that no child can be regarded as having voluntarily joined the terrorist group because of their cognitive abilities since they lack capacity to fully understand the consequences of such involvement, and the forms of coercion and influence in the recruitment methods. Children can be considered as both victims - due to what they have experienced, as explained in this work - and perpetrators. Children's agency can be underestimated and assuming this would be dangerous. This is the reason why adequate assessment as explained above should be conducted by the Youth Court on a case by case basis in order for each case to be scrutinised individually. The juvenile justice system already considers that children's reasoning and cognitive abilities are still developing, and considers their vulnerabilities and that their capacities differ from those of adults. It can be argued that children around their mid-teens or young adults had the same motivations as explained in this work as adults and can be considered to have made a conscious choice, despite the circumstances such as the recruitment methods -which should also be taken into account - whereas children in their early teens are brought by their guardians and cannot be considered to have had some agency in the decision or they can be considered to at least have had lesser agency. This also applies to girls, who are often seen as victims; this

assumption can be dangerous since, as we have seen, their motivations, commitment and roles should not be underestimated. However, in some cases, children may truly be victims. The elements explained in this thesis should, therefore, also be considered to establish their lesser culpability, where they are found to have had some agency in the decision. The children's immaturity, as shown in this work, is exploited by terrorist groups and proves that, sometimes, children cannot be considered to have voluntarily joined the group. Such elements are, for instance, their particular enthusiasm, the fact that it is much easier to indoctrinate them, and that they are easily manipulated. These are to be taken into account and added to the terrorist group's exploitation of the children's feelings. Moreover, the importance of the peer network in influencing risk-taking behaviour aimed at instant gratification, encouraging impulsive reactions, exercising pressure in order to incite anti-social behaviour, and which is also able to amplify the tendency to buck against authority and the desire for assertiveness and authority which characterise this age group should also be factors which are taken into consideration. Another important element to consider is their experience within the terrorist group. Indeed, as shown, this varies greatly. Although certain children may have taken on their role voluntarily, others may have found that their expectations were not met once they had joined the group. Children may have been victims of trafficking due to the techniques used for their recruitment and their experience upon arrival. The use of boys in particular in combat roles, for example, could be considered as exploitation due to the violence they experience and the relationship with members of the group, indeed it could be comparable to trafficking for the purpose of forced labour or servitude. It should not be forgotten that boys too can be subject to rape and abuse. As demonstrated earlier in this paper, girls may be subject to forced marriage, find themselves in a situation of domestic servitude or domestic slavery, and are often raped and abused. In particular, IS employs its systematic campaign of sexual slavery and mass rape of enemy women as a tool of torture. The possibility that children are victims of trafficking as explained in this work should not be overlooked either and its implications, as explained in the Handbook, should be properly considered. Their exposure to constant fear and psychological pressure should also be seriously taken into account. Finally, due account should be taken of the fact that these children are victims

of violations of international law. According to the author, all of the above-mentioned elements need to be considered in order to ensure that each and every type of children returnee is handled properly and that their rights and best interests are protected, whilst ensuring national security.

The author disagrees with “de-radicalisation” programmes. Firstly, because it is uncertain what these programmes should entail and there is very little evidence that they provide results and are effective. Secondly, because, on the basis of the research conducted, in Europe, these have only been developed for adults and cannot, therefore, be applied to children. Thirdly, it is a very problematic term because there is no consensus on its meaning, and it is underdeveloped and undersupported. Fourthly, and most importantly, as shown and explained throughout this paper, and as also proved in the documents presented with recommendations, the ideology element and indoctrination was not the key factor in children joining terrorist groups abroad, meaning that it cannot necessarily be considered as the motivating factor, but it played a later role in indoctrinating and thus “convincing” children and justifying their involvement in terms of a both religious and social obligation. “De-radicalisation” can therefore be considered unnecessary and would only lead to an identity crisis and further stigmatising the child. The religious element or ideology should only be considered should it be genuinely needed following the assessment of the child for his or her proper rehabilitation and reintegration, for religious guidance and understanding. Reintegration programmes for all children returnees should indeed concentrate on providing children with the necessary skills for them to be able to play a constructive role in society and to reintegrate them when ready through education or vocational training as well as ensuring their effective rehabilitation. Three elements need to be considered in these reintegration and rehabilitation programmes: the needs of the child, the needs of the family and the needs of the community, as recommended in the various documents presented. As per the recommendations explained, programmes should rather be based and built on the evidence provided here in relation to the root causes and in relation to children’s and human behaviour, which help understand why they joined a

terrorist group. The transition needs to be mindful about the individual reasons behind joining and the opportunities offered. They should rather aim to promote the renunciation of violence by attempting to modify the child's view of society and by focusing on changing his or her behaviour and how they interact with others. The programmes should thus encourage dialogue and the acceptance of diversity, challenge the use of violence and seek to re-build self-esteem, a sense of self-control and coping mechanisms. The aim should be rather to change the child's view of society through positive steps, as well as of their role and identity in it. Indeed, all of this corresponds to what has been identified and pointed out in this work in relation to the specific reasons behind children joining terrorist groups and which have to do with their feelings of injustice in their home countries, marginalisation, discrimination and rejection by their society, as explained in this paper. These feelings can thus cause an identity crisis, frustration and humiliation. This is particularly the case for children, due to their quest for meaning, their need to belong, the difficulties they encounter in the search for identity in relation to who they are and where they belong, and the search for what they want from their life. The terrorist group therefore provided them with purpose in their life by pursuing a specific cause and a greater good, the power which comes with status, acceptance and solidarity through becoming part of a ready-made community, a meaningful group identity, and the feeling that they are respected and that they matter to the world. Consequently, programmes should be mindful of these elements and the opportunities that joining terrorist groups offered to these children in order to provide positive alternative opportunities. *Inter alia*, role models should be replaced with alternative community and peer group role models. The environment is fundamental for rehabilitation.

At an international level, further research focused on the children in question would be very welcome.

This master's thesis has presented the legal basis under which children returnees are to be dealt with and has also compiled the relevant available literature and provided a comprehensive background to the subject. Moreover, it has studied the situation on the ground in relation to the treatment of children returnees in Belgium and has identified the problems that that response represents from the perspective of the rights of the child and how it is possible, by following specific recommendations, to ensure the respect of these rights, specifically that the child's best interests are served, whilst also protecting national security.

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ANNEX 1: BASIC QUESTIONNAIRE

1/ At what age are children considered FTFs returnees?⁵¹⁷

2/ Once children return, what happens to them once they are back? What procedure is followed in relation to their possible care or possible prosecution? What system is put into place for those considered as FTFs and conversely, for those who aren't, and for those who have reached the MACR and those who haven't? Is there any follow-up with regard to their rehabilitation?

3/ Is a risk assessment tailor-made for children carried out? If so, what does the risk assessment involve?

4/ Are any data available on the number of children who have returned and the estimated number of children remaining in Syria or Iraq? Are there any data on what happened to them upon their return?

5/ For those facing prosecution, what are the charges against them (both girls and boys) and of what have they been found guilty? What are the main charges they face (both girls and boys) and of what have they been found guilty? Are there cases of 'ordinary crimes' under criminal law with an aggravating factor when there is a terrorist intent, or of 'lesser terrorist crimes'? What happens if children cannot be prosecuted due to a lack of evidence?

6/ What types of sanctions have been imposed on children (both girls and boys)? Is detention, including pre-trial detention, used systematically or often?

7/ What about rehabilitation programs for children? Are there rehabilitation programs specifically adapted to children and to their situation? What do they involve? When and how are children taking part in these programmes?

⁵¹⁷ The above questionnaire served as a basis for the interviews conducted by the author, however they were not limited to its contents and depended on the flow of the discussion. Full transcripts of the interviews conducted are not annexed to this work, but recordings are available upon request.

8/ Is the fact that these children may have been victims of trafficking (especially girls) or of exploitation for terrorist purposes properly taken into account?

9/ Do you consider that in Belgium there is a sharper focus on the threat to national security that these children represent, or rather that the rights of the child prevail? Are these children seen more as victims or as perpetrators?

10/ What about the repatriation of these children?

ABSTRACT (English)

Recent developments in Europe have seen a significant number of individuals travelling to a State other than that of their residence or nationality in the last years, sometimes taking their families with them, in order to join terrorist groups abroad in conflict zones as foreign terrorist fighters. Due to this and to the neutralisation of terrorist groups such as Islamic State, a large number of those individuals are expected to return to their home States, among which an important number of children who decided to join the terrorist group, who were brought there by their parents, or who were born within the terrorist group. As information on children returnees is significantly lacking, the present master's thesis, which is one of the first academic texts to address this subject, aims to, on the one hand, provide the legal basis and a comprehensive background to the issue of children returnees by adopting an interdisciplinary approach. On the other hand, this thesis aims to study the situation on the ground in a specific European state: Belgium, in order to attempt to resolve how to reconcile the need of securing national security with that of safeguarding the rights of the child in this context and to provide personal recommendations based on both the case study and the findings on the broader issue.

ABSTRACT (Deutsch)

Jüngste Entwicklungen in Europa zeigen eine steigende Anzahl an Individuen, die in den letzten Jahren und z.T. gemeinsam mit ihren Familien in einen Staat eingereist sind, der nicht ihrem bisherigen Wohnort oder ihrer Nationalität entspricht, um sich dort in Konfliktzonen terroristischen Organisationen als ausländische terroristische Kämpfer anzuschließen. Aufgrund der Zerschlagung von terroristischen Gruppierungen wie dem Islamischen Staat wird erwartet, dass eine große Zahl dieser Individuen in ihr Heimatland zurückkehren wird. Unter ihnen befindet sich ein gewichtiger Anteil an Kindern (Minderjährigen), die sich aus eigenem Antrieb der terroristischen Organisation angeschlossen haben, die von ihren Eltern dorthin gebracht worden sind oder aber dort geboren und innerhalb der terroristischen Gruppierung aufgewachsen sind. Da ein Mangel an Informationen über minderjährige Rückkehrer besteht, verfolgt die vorliegende Masterthesis, die sich als einer der ersten akademischen Texte überhaupt mit dieser Thematik befasst, einen interdisziplinären Ansatz, um sowohl eine Rechtsgrundlage zu schaffen als auch einen umfassenden Hintergrund zum Thema der Rückkehr minderjähriger ausländischer terroristischer Kämpfer bereitzustellen. Zudem soll anhand der beispielhaften Darstellung der Situation in Belgien als spezifisches europäisches Land der Versuch unternommen werden, den Bedarf nach nationaler Sicherheit mit der Einhaltung der Rechte Minderjähriger in Einklang zu bringen. Auf Grundlage der breiten Analyse sowie der Erkenntnisse aus der Fallstudie erfolgen abschließend persönliche Empfehlungen der Autorin.