



OPERATIONAL GUIDELINES FOR PROFESSIONALS INTERACTING WITH CHILDREN IN CONFLICT WITH THE LAW DURING COVID-19

June 2020



BUREAU
INTERNATIONAL
DES DROITS DES ENFANTS
INTERNATIONAL
BUREAU
FOR CHILDREN'S RIGHTS
OFICINA
INTERNACIONAL
DE LOS DERECHOS DEL NIÑO
المكتب الدولي لحقوق الطفل



Introduction

What is the problem?

The spread of COVID-19 and the associated series of evolving measures implemented by various governments to slow down the spread of the disease have had an enormous impact on every aspect of our lives. Most, if not all such measures are aimed at protecting human health and life. And yet, there are certain groups of individuals across the globe whose life continues to be at risk - risk that is unnecessary and preventable. One such group are children in conflict with the law. Whether such children are just now making their first contact with their respective country's legal system, are currently in detention, or are in the process of reintegration, authorities have not been able to focus sufficiently on this group to adapt relevant processes and practices to ensure these children's unique circumstances are not exposing them, the professionals who interact with the children, their families and their communities to unnecessary or heightened risk during the COVID-19 crisis.

Who is affected?

Children in conflict with the law are not solely affected by the lack of organized and effective effort to adapt the current processes to which they are subjected to the unique circumstances of the COVID-19 pandemic. The repercussions of this failure are rapidly and progressively felt by their families, the community and the professionals who interact with them. The consequences are real and immediate - COVID-19 has been shown to have devastating and too often fatal effect.

Who can help and how?

Unlike children, their families and their communities at large, the professionals interacting with children in conflict with the law have the unique ability - and responsibility - to exercise good judgment and adapt, to the extent possible, current processes and behaviors in their specific spheres of work and influence such that the ultimate outcome for this social group (and a great many others connected to this group by way of family, community or professional ties) is improved.

To assist the professionals handling the cases of children in conflict with the law during the COVID-19 crisis, Terre des hommes Foundation ("Tdh") and The International Bureau for Children's Rights ("IBCR") partnered with Penal Reform International ("PRI") and The International Association of Youth and Family Judges and Magistrates ("IAYFJM"), pro bono volunteers from the law firm Baker & McKenzie LLP, as well as with various professionals, including those working in the field in Europe, Latin America, Africa Asia and the Middle East (most notably in Burkina Faso, Mali, Romania, Albania, Myanmar, Jordan, Lebanon, Colombia and Ecuador), to compile three sets of clear, short and practical operational guidelines.

In preparing these operational guidelines, Terre des hommes, IBCR and their partners recognized that the variety of regulatory regimes and the unique features of each jurisdiction, the difference among the specific functions inherent to the professionals' positions in different legal regimes, and the distinction in COVID-19 related measures among various countries make it impossible to adopt a "one size fits all" approach. Instead, the operational guidelines combine globally recognized best practices with specific recommendations as to how such practices may or should be adapted during the COVID-19 crisis, and should be read and considered within the context of the professionals' specific legal and regulatory circumstances.

The operational guidelines are divided into three chapters addressing the following three broad categories of professionals who interact with children in conflict with the law:

Security Forces: this category encompasses personnel in public agencies whose principal functions are the prevention, detection and investigation of crime and the apprehension of alleged offenders, such as law enforcement professionals in any particular jurisdiction. This category includes professionals who would have initial contact with the child as he or she enters into conflict with the law.

Legal Professionals: this category includes all individuals who have the legal obligation to advocate for or recommend actions that will ensure the fundamental rights of the child are considered (e.g., advocates/attorneys in common law systems, prosecutors in civil law systems, heads of child and family welfare courts, magistrates, investigative judges, executive judges, and persons with similar roles).

Social Workforce: this category includes the individuals responsible for assessing, planning, and monitoring the child's case, recommending or providing services and programs, and maintaining contact with the child and, where applicable, its family and / or the community, such as social and case workers.

The operational guidelines recommend that each professional aim for an **interdisciplinary approach**, which means that the professional should be generally aware of the nature, function and objectives of professionals belonging to one of the other two general categories, and aim to collaborate with such other professionals as much as possible to synergize, streamline and improve the progress of a child's case. Therefore, the three individual chapters are intended to be **complementary**.

Lastly, the operational guidelines emphasize the importance of re-integration and stand for the proposition that re-integration may occur at various stages of the child's case and not only after release (e.g., at the first conflict with the law, the Executive Forces professionals may choose to divert children who have committed minor offences and forego adjudication and / or detention). Thus, it is of the utmost importance for professionals to continuously consider and recognize milestones and opportunities to commence re-integration, and to adapt the existing re-integration practices to the reality of the COVID-19 crisis (e.g., by implementing alternative

methods of contact such as virtual programs and services) to ensure the continued viability of the re-integration process.

Terre des hommes and pro bono volunteers from Baker & McKenzie LLP also produced a Policy and Practice Brief which summarized the global legal precedents to be considered when evaluating the legality of detaining children under circumstances such as the COVID-19 crisis. The Policy and Practice Brief focused on international legal instruments and regional mechanisms relevant to evaluating the specific circumstances of children in these settings, and provided a set of policy recommendations (illustrated by practical examples) for rapid response actions to realize children's fundamental human rights, which served as the basis for developing these operational guidelines.

Acknowledgements:

We would like to acknowledge and thank all those who have helped us in preparing this document.

Project Coordinators:

Angela Vigil (Baker & McKenzie LLP)
Cedric Foussard (Terre des hommes)

Main Contributors:

Guillaume Landry
Marta Gil Gonzalez
Yann Colliou
Jennifer Cannan
Shirley Chen
Nicole Ford
Airi Hammalov
Murtuza Hussain
Maleena Paal
Zlatomira Simeonova
Sahar Zomorodi

Expert group:

Ann Skelton
Philip Jaffé
Ton Liefwaard
Marije Jeltens

Special thanks to:

Jenni Cadola
Chris Graveson
Lourdes Carrasco Colom
Sylvain Fournier
Patricia Hajjali
Wakilou Senou
Mahamadi Oubda
Leyla Fasseaux
Jehad Arafat
Jelena Vujanovic
Farah Ishaqat
Taghrid Qtaichat
Obadaa Taeem
Meilaa Khateeb
Hedayatullah Rameen
Abdullah Eskander
Malak Jumaa
Hanif Sayed
Martin Swinchatt

Table of contents

| | |
|--|----|
| Operational Guidelines for Security Forces..... | 2 |
| PROS IN CRISIS: Operational Recommendations for Legal Professionals in Relation to Children Deprived of Liberty During the COVID-19 Pandemic..... | 11 |
| Operational Guidelines: Social Workforce..... | 23 |

Operational Guidelines for Security Forces



Operational Guidelines for Security Forces

Access to Justice for Children and Youth in Times of COVID-19

Diverting children from judicial proceedings and facilitating reintegration

Summary and Index

These operational "how to do it" guidelines provide practical principles of action for security forces handling children and youth who:

- Enter into contact with the law and thereby with security forces (pre-trial); or
- Due to the COVID-19 emergency, have been released from detention and are in the process of reintegration (post-sentence).

The operational guidelines complement different technical notes compiled by inter-agency efforts and organisations focusing on children deprived of liberty during COVID-19, as well as child protection case management guidance (Terre des hommes and interagency ones), where children in detention are one of the specific vulnerable groups to pay attention to.

States, ministries and agencies are encouraged to reach out to technical partners for support in contextualising regulations and plans according to each State.

These operational guidelines are organised as follows:

- Part 1 – Role of security forces during COVID-19 health emergency
- Part 2 – Interdisciplinary approach with other professionals during COVID-19 health emergency
- Part 3 – Essential principles of action during COVID-19 health emergency

Part 1 – Role of security forces during COVID-19 health emergency

Security Forces

For the purposes of these guidelines, the term "security forces" will be used for law enforcement in any particular jurisdiction, as various terms may be applicable (e.g., police, gendarmeries, national guards and/or State security services). Security forces should be understood to mean personnel in public agencies whose principal functions are the prevention, detection and investigation of crime and the apprehension of alleged offenders.¹ Security forces is defined herein by i) basic responsibilities, which include, maintenance of public order and security; prevention and detection of crime; and provision of help and assistance to those in need of it; and ii) basic powers, which include, arrest; detention; search and seizure; and use of force and firearms.² The definition of "security forces" does not include "defence forces," which include armed forces, militia and volunteer corps.³ Private agencies may have in some context similar roles to security forces and should therefore be inspired by these guidelines.

Children and young people come into regular contact with security forces whether they are victims of or witnesses to violence, or in conflict with the law. The role of security forces as the primary entry point of the juvenile justice system is fundamental to the respect, protection and implementation of the rights of the children who come in contact with the law.

During the COVID-19 health emergency, the experience of children in contact with the law in relation to their interaction with security forces has changed. Security forces must adapt their existing approaches and action to take into account this new reality. This will enable them to better protect children and protect themselves.

When **apprehending** or **arresting**⁴ a child, extra care must be applied to accommodate the expectations of physical distancing and risks of transmission. Security forces should remember to:

- **Limit direct contact** with children and use such contact only if the child presents a risk to his or her own security or to the security of others;
- **Handcuffs** should never be used with children, and the use of force is only a last resort, not a common tactic, when interacting with children;
- **Child-friendly language and communication techniques** are more important than ever (e.g., using simple phrases, providing information in an easy to read format, using a calm tone, using open questions, etc.), as

¹ United Nations Department of Economic and Social Affairs Statistics Division, Series F No. 89, Manual for the Development of A System of Criminal Justice Statistics; https://unstats.un.org/unsd/publication/SeriesF/SeriesF_89E.pdf

² Police and Security Forces - 30-09-1999 Article, International Review of the Red Cross, no. 835, by Cees De Rover; <https://www.icrc.org/en/doc/resources/documents/article/other/571q3h.htm>

³ Article 1 of the Hague Regulations; https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule4

⁴ Arrest means the act of apprehending a person for the alleged commission of an offence or by the action of an authority. Arrest has also been defined as the act of depriving the liberty of someone in accordance with the law with charges against him/her. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988; <https://www.globaldetentionproject.org/wp-content/uploads/2016/06/The-Body-of-Principles-for-the-Protection-of-All-Persons-under-Any-Form-of-Detention-or-Imprisonment.pdf> and Human Rights Standards in Arrest and Detention, UN Peacekeeping PDT Standards, Specialized Training Material for Police 1st edition 2009; <http://repository.un.org/bitstream/handle/11176/387368/STM+Human+Rights+Standards+in+Arrest+and+Detention.pdf?sequence=6>

they can increase the chances of peaceful resolution of situations and reduce the risks of physical contact; and

- Apply all rules applicable in this pandemic context, including **washing hands** regularly, **keeping a distance** of at least 2 arms lengths with children and wearing a non-medical **mask** or face covering.
- Ideally, if supplies are available, children should be **tested for COVID-19 prior to detention** in order to prevent contact between infected children and others.

It is a fundamental principle of children's rights that **detention**⁵ should only be used as a last resort. In the context of COVID-19, it is even more critical to drastically review and change all detention practices when security forces come into contact with a child. Confining children to prison cells or other forms of detention significantly increases the risk of transmission for children, security forces and others in contact with children. Police directives, procedures and practices must clearly suspend detention practices at the pre-trial level. Suspecting a child of having committed an offence or a crime is **NOT** enough for depriving a child of liberty. Particularly in these COVID-19 times, one must only use detention if there is grave risk that society and/or the child him-/herself is in danger.

Diversion

For the purposes of these guidelines, diversion means the conditional channelling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable many - possibly most - to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record.⁶ Security forces dealing with juvenile cases should be empowered to dispose of such cases, at their discretion, without needing formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in United Nations Standard Minimum Rules for the Administration of Juvenile Justice.⁷

Security forces must use **alternative measures to detention**, which are the foundation for enacting an effective **diversion** strategy. These are measures that may be imposed that involve non-custodial measures or do not otherwise require the deprivation of liberty.⁸ Diversion does not mean to systematically pardon all children for all possible offences or crimes they may have committed; it is rather an occasion to take **proportionate action** to generate a learning opportunity for the child in order to avoid recidivism while reducing the burden of lengthy court procedures for minor, non-violent and first or simple offences. In the context of COVID-19, diversion is a critical strategy to maintain interaction with children in contact with the law, while adapting the response to reduce health

⁵ Detention is a period of temporary custody prior to a trial or hearing, following the lawful powers of arrest by security forces or following the decision of a judge or other legal authority. See Human Rights Standards in Arrest and Detention, UN Peacekeeping PDT Standards, Specialized Training Material for Police 1st edition 2009; <http://repositary.un.org/bitstream/handle/11176/387368/STM+Human+Rights+Standards+in+Arrest+and+Detention.pdf?sequence=6>

⁶ UNICEF - Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56037.html

⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), UN General Assembly, A/RES/45/33, 29 November 1985; <http://www.un.org/documents/ga/res/40/a40r033.htm>

⁸ Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56038.html

risks and detention hazards. The alternatives should also be revised to the extent possible to be done virtually or with minimal physical contact with others so that the alternative can be accomplished timely and safely.

Examples of such alternatives include:

- **Warning** – requires notifying the child and his or her family about the alleged offence or minor crime, ensuring that they commit to prevent entering into conflict with the law again;
- **Apology** – requires a written or verbal apology to the victim/survivor;⁹
- **Community Service** – requires that the child dedicate a certain number of hours of work to benefit the community;¹⁰
- **Education/Training** – requires the child to participate in certain educational and training activities to develop a skillset that is productive to society;¹¹
- **Supervision** – requires placing the child under the supervision and guidance of a specified individual to monitor the child's behaviour and provide guidance, for instance a member of the social workforce;¹²
- **Residency Requirements or House Arrest** – requires the child to reside at a certain address or within a particular area;
- **Criminal Mediation** – requires a decision by a neutral third party, the public prosecutor and the child as to a mutually acceptable agreement as an alternative measure to criminal proceedings; and
- **Monetary Consequences or Bail** – requires formalising an agreement where a monetary penalty is agreed upon with the victim instead of depriving the suspect of liberty so long as a balance is reached between disincentivising the behaviour and the amount being prohibitive of being an alternative. This should only be used in limited scenarios because most children do not have revenue and it is not productive to burden the household income, especially for low income households.

Even in legal systems where security forces have limited power to make determinations in diverting cases involving children, it is possible to **change practices** in the current pandemic and support such special allocation of power to the security forces. Even when a prosecutor has the authority to divert cases, it must be remembered that security forces provide the information and context in order for the prosecutor to facilitate diversion. In some contexts, it is also possible for security forces to interview the child and proceed with his or her release under the care of his or her parent and in coordination with social services. Hence, security forces must be encouraged to increase their knowledge of alternative measures and act in a way that facilitates the diversion of cases, including in their reporting to prosecutors.

Diversion and alternative measures to detention are embedded in a **community-based policing strategy** that encourages the public to act as partners with security forces in preventing and managing crime as well as other aspects of security and order based on the needs of the community.¹³ In the context of COVID-19, such

⁹ Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56369.html

¹⁰ Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56369.html

¹¹ Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56369.html

¹² Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56369.html

¹³ United Nations Department of Peacekeeping Operations Department of Field Support Ref. 2018.04; <https://police.un.org/sites/default/files/manual-community-oriented-policing.pdf>

community-based policing strategies become even more relevant in order to ensure that interactions between children and security forces are safe and effective.

Reintegration

For the purposes of these guidelines, reintegration means providing children who were in conflict with the law or deprived of liberty the resources and tools, both **economic** and **social**, necessary for the gradual re-entry into society. It is a holistic process that begins at first contact with the justice system and involves coordination between other professionals, the child and family members to develop short and long term transition plans. Measures consist of revenue-generating activities, vocational and educational development, as well as social, psychosocial, mediation, cultural and recreational activities. It also includes encouraging and promoting contact with friends, family and the community to which released children return.¹⁴

For children who have been sentenced and deprived of liberty, release is currently considered the best option to protect them and others from the pandemic. It means that a certain number of girls and boys may be released and **reintegrated** in their communities.

Social Reintegration focuses on the aspects of returning to a community in a way that provides the young person a sense of belonging and the means to be a productive member of the community. This means the child is able to live a life free from abuse, violence, neglect and exploitation and be free from the stigmatisation and discrimination that could compromise reintegration and could contribute to further conflict with the law. These goals can be accomplished with:

- Community policing programmes that promote **child participation** by including those who have been released, siblings, peers and youth who have been in contact with the law before. All can share their experience and discuss security issues and participate in discussions and planning around mitigation strategies.¹⁵
- Community support that includes **sensitisation** and **awareness training** for security forces on mental health and related psychosocial issues, as well as COVID-19-specific health and prevention issues.¹⁶ In turn, these skills should allow security forces to contribute in efforts of raising community awareness and proactively preventing stigmatisation and discrimination against such children. Because the pandemic appears to increase specific types of violence against children, including domestic and sexual violence, it is important to pay particular attention to the vulnerabilities and risks that released children may face from their peers, families and communities based on status and marginalisation.

¹⁴ Custodial and Non-Custodial Measures Social Reintegration; https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/4_Social_Reintegration.pdf; Integrated Disarmament, Demobilization and Reintegration Standards; https://www.unndr.org/uploads/documents/IDDRS_4.30%20Reintegration%20WEB.pdf

¹⁵ IDDRS Framework Modules 5.20 - Youth and DDR, Chapter 7 - Youth and security; <https://www.unndr.org/uploads/documents/IDDRS%205.20%20Youth%20and%20DDR.pdf>

¹⁶ It is important to note that six core competencies have been identified globally at central to child-friendly policing practices. These are 1) knowledge, promotion and implementation of children's rights; 2) knowledge and application of the rules of ethics and professional conduct; 3) knowledge of children; 4) interaction and communication with children, their families and communities; 5) collaboration with all formal and informal stakeholders towards a coordinated intervention, and 6) efficient use of working tools adapted to children. These core competencies should be at the centre of any capacity building and adaptation to the COVID-19 pandemic. See International Bureau for Children's Rights: <http://www.ibcr.org/wp-content/uploads/2016/06/Fifth-workshop-Africa-english-1.pdf>

- Members of security forces may serve as role models and **mentors** for reintegrated youth. This means their own ethics, behaviour and approaches are critical to inspire trust and leadership¹⁷
- Security forces can help keep track of reintegrated youth to monitor their progress and be proactive in **coordinating action** with other actors in the child protection system, such as the social workforce.¹⁸
- Security forces can also help build **public confidence** by providing opportunities to regularly share matters of concern.¹⁹

Economic Reintegration focuses on enhancing the ability of the child to support its immediate and long terms needs. This means the child is able to access education, vocational training and revenue-generating activities, possibly all at the same time.²⁰ Support provided to released children and related programmes should be safe and secure. This means that security forces should work with communities, family, and the children themselves towards:

- Supporting **community-policing strategies** that prevent and mitigate risks of physical, psychosocial and emotional violence committed by the child or against the child. These strategies can also prevent and mitigate any discriminatory approaches, discourse and practices that may generate tension and problems where security forces would need to intervene. This includes reaching out to children who have been released to establish contact and trust and supporting raising awareness with the child, his or her family and community and with those involved in economic reintegration to build connection, reduce stigma and support resilience and participation;
- Ensuring workplaces, training programmes and living arrangements are **safe and secure** for the child as well as the families, communities and other children involved;²¹ and
- Including children who have been released to help build and contribute to a **community support network** with family, training programme staff, employers, social workers, etc., to ensure a secure community.²²

Examples include:

- **Posting information** posters or online information to share awareness and concerns regarding health and security with the community; and
- Holding virtual or physically distant **meetings** with released youth and their families and other professionals to **discuss reintegration and transition plans**, including economic challenges imposed by COVID-19.

¹⁷ IDDRS Framework Modules 5.30 - Children and DDR, Chapter 9.1 - Psychosocial support and special care; <https://www.unddr.org/uploads/documents/IDDRS%205.30%20Children%20and%20DDR.pdf>

¹⁸ IDDRS Framework Modules 4.50 - UN Police Roles and Responsibilities, Chapter 9 – Coordination; <https://www.unddr.org/uploads/documents/IDDRS%204.50%20UN%20Police%20Roles%20and%20Responsibilities.pdf>

¹⁹ IDDRS Framework Modules 4.50 - UN Police Roles and Responsibilities, Chapter 11 – Building up public confidence; <https://www.unddr.org/uploads/documents/IDDRS%204.50%20UN%20Police%20Roles%20and%20Responsibilities.pdf>

²⁰ Integrated Disarmament, Demobilization and Reintegration Standards https://www.unddr.org/uploads/documents/IDDRS_4.30%20Reintegration%20WEB.pdf

²¹ IDDRS Framework Modules 4.30 - Reintegration, Chapter 9. Economic Reintegration; https://www.unddr.org/uploads/documents/IDDRS_4.30%20Reintegration%20WEB.pdf

²² Fifth Workshop on the Integration of the Six Core Competencies on Child Friendly Policing into the Training and Practise of Police Officers and Gendarmes in Africa; IBCR November 2013; Fourth and Fifth Competencies.

Part 2 – Interdisciplinary approach with other professionals during COVID-19 health emergency

There are three primary areas of intersection between security forces and other professionals sharing responsibilities in the overall justice system for children, especially justice professionals, health personnel and social work force. During the pandemic, the mechanisms of interaction may be impacted or changed. Security forces should be proactive to maintain, activate or enhance these areas for collaboration and coordination, while having the best interests of the child in mind. Even as conditions improve, security forces should continue to consider improvements to interdisciplinary interactions, as the pandemic may re-emerge in the coming months.

The first interdisciplinary approach is **coordination**, whereby security forces need to understand, promote and respect the respective roles and responsibilities of each category of professionals involved with children in contact with the law and learn how to efficiently share information in order to best meet the rights and needs of each child.

- Professionals should consider and use various **alternative forms of communication** with youth and with each other to prevent spreading COVID-19 by direct contact (e.g., phone calls, text messages and emails).
- It is even more relevant in this pandemic context to **avoid duplicating efforts**, including conducting numerous interviews which may not only bring risks of revictimisation but also risks of spreading the virus. Coordination of interviews with the social workforce for instance helps ensure the best interests of children.
- Ensure that the coordination is conducted **as early as possible** in the process, ideally at the planning level and using virtual types of meetings as often as possible, to anticipate situations and risks and best assign tasks in order to optimise collaboration between and among services providers and to address the needs and rights of each child entering into contact with the law.

The second interdisciplinary approach is the creation or adaptation of existing **referral pathways**. These are systematic procedures allowing **all** children to receive equal access to the care and services they need. For example, if a child is in need of medical attention, such referral pathways would allow any member of the security forces to know how to properly transfer the case to medical services in a way that is timely, effective and protective.

- Referral pathways may need to be **altered** to add an initial step to check for COVID-19 symptoms and/or conduct testing. Distinct courses of actions should be anticipated and detailed according to the symptoms and levels of risks for each intervention so that the child, his or her family and the security forces are all reducing the risk of transmitting the virus.
- An alternate referral pathway should be **included in the event reintegration is not possible** due to infected residents at a facility or ill or vulnerable family members.

The third interdisciplinary approach is the creation or adaptation of existing **Standard Operating Procedures (SOPs)**. These include specific sequencing of actions and requirements that have been formalised between various sectors (for instance between security forces and the social workforce, justice personnel or medical staff), such that each knows their own and others' expected actions in a particular situation. SOPs are meant to professionalise and standardise the interaction and collaboration between two or more sectors around a particular situation. **New or revised SOPs** may be necessary for various alternatives in relation to COVID-19 (e.g., protecting youth and professionals from infection, using different diversion options to lessen contact between individuals or implementing options with smaller groups or taking into account public health advice and integrating them in the sequence of actions previously applicable).

Part 3 – Essential principles of action during COVID-19 health emergency

- Security forces must maintain physical distancing and adhere to all other health advisories to the maximum extent possible, in all stages of intervention with all children, including victims and witnesses of crimes as well as children in conflict with the law.
- Security forces must promote hand washing measures and wearing masks at the entrance and hand disinfection when leaving the security services.
- Security forces must inform and educate all children they come into contact with about the seriousness of COVID-19 and the need to follow safety practices such as physical distancing.
- Security forces must apply public orders and policies that are silent as to their application to children in a way that protects the best interests of the child.
- Security forces must use detention and deprivation of liberty as only a rare "last resort." They must use and promote diversion and alternative measures to detention as often as feasible and revisit the feasibility of each alternative option and coordinate with other actors to make these options more generally used.
- In rare cases when deprivation of liberty is the only option to protect the security of the child or others, security forces must limit the detention time to the shortest time period possible. Following detention, security forces must ensure that youth have a safe place to return.
- Security forces must coordinate to have testing available so that detained children with symptoms can be tested. If anyone tests positive, proper healthcare procedures must be followed to ensure that timely medical attention is received and also that youth testing positive are quarantined.
- Security forces must ensure that practices and procedures are in place so that children are not placed in isolation or solitary confinement, regardless of the circumstances specific to any child. A child cannot be put in solitary confinement for quarantine purpose.
- Security forces must understand their role and responsibility when a child is reintegrated after being released from deprivation of liberty, which includes providing social and economic support.
- Security forces must expand their community policing approach to actively support both the social and economic reintegration of all children by taking into account the added stigma and concerns arising from the pandemic.
- Security forces must engage in preventive actions (e.g., community policing strategies) with children and their families, communities and members of the social workforce involved in the reintegration plan to avoid security risks to children or by children that would compromise their reintegration and lead them to potentially enter into conflicts with the law.
- Security forces must revisit their coordination mechanisms, referral pathways and standard operating procedures in order to ensure they are adapted to the challenges associated with the COVID-19 pandemic.
- Security forces must ensure they are in a position to build constructive relationships using appropriate communication strategies with children and support their meaningful participation in all actions they undertake in this health emergency.

PROS IN CRISIS: Operational Recommendations for Legal Professionals in Relation to Children Deprived of Liberty During the COVID-19 Pandemic



PROS IN CRISIS: Operational Recommendations for Legal Professionals in Relation to Children Deprived of Liberty During the COVID-19 Pandemic

Protect the Rights of Children Deprived of Liberty during the Time of Pandemic

Detained children are at high risk of losing certain essential rights during the COVID-19 pandemic. In order to guarantee that these children's rights are protected and preserved, governments and applicable authorities should immediately release children to a safe environment with their families or appropriate caretaker. Realistically, there are certain circumstances in the COVID-19 context, such as reduced social services or the implications of national emergency status, which may complicate the release, but they do not change the fundamental need to assure that no child is deprived of liberty under circumstances that are a danger to their health and welfare, and to ensure their detention is not arbitrary and that they are detained for the shortest appropriate period of time. This guide provides practical considerations and arguments for legal professionals responsible for advocating on behalf of detained children during the pandemic and those who may have the opportunity to decide how those children's rights are upheld. The primary role of the legal professional should be to advocate for and/or facilitate releasing detained children in the majority of circumstances, with particular consideration given to factors affecting the health and safety of children through reintegration into their communities and reunification with their caregivers.

| | |
|--|---|
| <p>Legal Professionals</p> | <p>For purposes of these guidelines, the term "legal professional" covers all individuals who have the legal obligation to advocate for, or recommend actions that will ensure the fundamental rights of the child are considered. Included within the scope of the term "legal professional" are advocates/attorneys in common law systems, prosecutors in civil law systems, heads of child and family welfare courts, magistrates, investigative judges, executive judges, and persons with similar roles. While the precise titles may vary depending on the specific legal system at issue, in all instances, the same basic principles outlined below should apply.</p> |
| <p>Essential principles of action</p> | <ul style="list-style-type: none"> - Essential Principle One: Child's Right to Participate <ul style="list-style-type: none"> ▪ Children have the right to participate in their own proceedings if they want to be present and/or be heard.¹ <p style="margin-left: 40px;">Every child has a right to be heard. Even in the circumstances of a pandemic, an in-person meeting should be strongly preferred to safeguard the rights of the child in criminal proceedings.² However, in the time of social distancing or due to the rules in certain jurisdictions, the child's right to be heard may not involve an in-court appearance from the child.</p> |

¹ See United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. IV, Sec. M; [Safeguarding the Right to a Fair Trial During the Coronavirus Pandemic: Remote Criminal Justice Proceedings](#) Fair Trials, p. 6, and Convention on the Rights of the Child ("CRC"), art. 12.

² *Id.* at 4-6

Consider alternative means such as teleconference to ensure the child has a voice in this process.

In common law systems, lawyers are obligated to make it possible for children to be "present" in whatever way (live or virtual) is possible in a legal proceeding.

In any proceeding (live or virtual) regarding a child's welfare or behavior, decision-makers should be informed as to whether the child has been given the opportunity to be present, be heard or to share information.

Systems should not allow children to languish in detention without knowing why they are there or whether the detention is just. Instead, detention of children should be considered as a last resort. The COVID-19 crisis makes that an even more essential and immediate need.³

Children deprived of their liberty have the right to free legal representation.⁴ Children's access to legal representation should be maintained in this period of distancing, including by use of technologies.

– Essential Principle Two: Communication

- Communication between legal professionals and family members (or other appropriate guardian) can educate justice system actors about important bases for successful release, alternative detention, etc. Having an open line of communication with a child's family (with appropriate permission from the child) can be a valuable tool.
- Children benefit from increased communication between all actors in the system – social workers, security forces, legal professionals, physical and mental health resources and others. The more the team can share about the life circumstances of the child, the better a multi-disciplinary team will understand and address the child's needs and help prevent unnecessary detention.
- Children have the right to have access to a lawyer/legal representation. If it is not possible for the lawyer to visit the child due to health risks, the authorities have to compensate for this by providing regular communication via telephone and/or video, free of charge.

– Essential Principle Three: Confidentiality

- While facilitating communication between all actors, lawyers for children will have a unique role in the child justice system because the child enjoys a privilege of confidentiality with his or her lawyer as any adult client would enjoy. Assuming the child is competent to direct counsel, that relationship with counsel guarantees the right to confidential communications with his or her lawyer.
- A lawyer may not violate that confidentiality by sharing information from the child that is provided in confidence with any other person (the court, parents, caretakers, counselors, etc.) without express permission from the child client.

³ See CRC art. 40 2 (b) (iii) and General Comment No 24 on Children's Rights in the Child Justice System (2019) CRC/C/GC/24 ("GC 24"), para. 85-91.

⁴ See CRC art. 40 2 (b) (iii) and 37 (d) and GC 24, para. 51.

These guidelines assume preservation of this vital relationship between a lawyer and a child client under even the most unusual circumstances, such as the health dangers under the current pandemic.

- Fundamental rights, such as the right to representation of counsel when liberty is at stake, are inalienable.⁵
- Essential Principle Four: Prioritize Access to Justice
 - Ensure that cases involving a child victim, child witness or child in conflict with the law are handled in priority over any other types of cases.
 - Remain flexible to digitized court processes and keep courts open for at least some time during court days to allow access by counsel/advocates. At the same time, consider "streamlining" access for cases involving children (through opening emergency courts or otherwise), while postponing "non-priority" categories of cases (e.g., civil matters, business disputes).
 - In general, a child, or her/his advocate should be informed of any changes to a jurisdiction's court procedure and management of the judiciary due to COVID-19 that negatively affect the normal processing of a child's case or opportunities for regular review of detention. Legal action that challenges any arbitrary, unreasonable or disproportionate measures should be considered, either for individuals or for groups/categories of child detainees.
 - Encourage and facilitate the ability of court officials to go to the centers where children are detained and hold hearings there.
- Essential Principle Five: Advocate for the Release of all Children in all Circumstances.
 - Detention should only be used as a **last resort**. Where a child cannot be released, facility conditions must be sufficient to meet relevant minimum international standards with respect to child/staff ratios, access to necessary services, etc.⁶
 - Systems should limit the use of detention at all stages (pre-trial, during trial, and post-trial) and prioritize the use of alternative measures wherever possible to ensure the mental and physical health of the child and his or her general welfare in a time of crisis. No child who commits non-violent or administrative offenses should be held in detention under the current health crisis unless it is absolutely necessary as a measure of last resort. Security forces and prosecutors should choose diversion, alternatives to pre-trial detention, or simply connect children to whatever social services are needed to address the issues that caused them to come in conflict with the law. Non-custodial measures will have the corresponding benefit of protecting public health and safety by reducing the number of people in detention facilities.
 - The release recommendation applies to all children regardless of health status—in other words, children testing positive for COVID-19, children with COVID-19 symptoms, asymptomatic children, and children who have tested

⁵ See Rule 7, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*.

⁶ See also GC 24, para. 92-95.

| | |
|--|---|
| | <p>negative for COVID-19, should all be subject to the same release advocacy recommendations.</p> <ul style="list-style-type: none"> ▪ Request COVID-19 testing for children upon release, in order to inform the family as to their health situation. ▪ A child's deprivation of liberty starts with arrest or apprehension, which is considered to be a form of deprivation of liberty in some jurisdictions. Minor infringements of the law, including special provisions relating to public emergency, should not result in arrest. If children are to be charged, they may be given written notices, directed towards diversion programs or summoned to appear at court at a later date. ▪ Children awaiting trial should be prioritized for release given that they have not been found guilty. Pretrial detention should be completely avoided where possible. If pretrial detention is required, it should be subject to regular review and its duration limited by law.⁷ ▪ Populations of children given sentences should be candidates considered for early release. ▪ For children serving indeterminate sentences, consideration should be given to approaching the court or public official for consideration of early release due to the crisis. ▪ Children should only be detained for the shortest appropriate period of time, and reviews should take place on a regular basis to determine whether detention is still appropriate.⁸ |
| <p>General Considerations when Preparing for a Child's Case</p> | <ul style="list-style-type: none"> - Accomplish the objective of releasing children through petitions, motions, letters for release to Ministry, and similar submissions. Advocate for expansive use of technology to keep cases moving while preserving due process. - It is critical to assess whether the relevant jurisdiction has resorted to derogation of a child's rights during the current pandemic. No rights of children can be derogated unless a state of emergency has been declared. Even if a state of emergency has been declared, any derogation must be in accordance with the Human Rights Committee's "Statement on derogations from the Covenant in connection with the COVID-19 pandemic." Even if rights are limited, it should be done in a manner that is reasonable, justifiable and proportionate. Certain rights are non-derogable. - Where necessary, a child should have someone to advocate, orally or in writing/digitally, for them before courts or other system actors to urge them to take the steps necessary "for the prevention, treatment and control of epidemic, endemic, occupational and other diseases," and most importantly, for the child's right not to be arbitrarily detained.⁹ <ul style="list-style-type: none"> ▪ The argument against arbitrary detainment is very important for children in pre-trial detention. Detainment of a child should be the last resort, and it is not |

⁷ See GC 24, para. 98.

⁸ See CRC art. 37(b).

⁹ See Article 12(2)(c) of the International Covenant on Economic, Social and Cultural Rights; CRC at Article 37.

a mandatory step in the law. Once a child is being held longer than the relevant legal time period, or is not being brought to court because courts are not functioning, then his or her detention becomes arbitrary.

- Advocates, prosecutors, defenders, and other legal professionals should establish a collaborative plan to advocate for swiftly reducing the numbers of children in detention centers. For example, advocates should provide a list of pre-trial detention cases and offer an argument for non-custodial measures to replace detention. Next, they should turn to the remaining group of cases and advocate for amnesty, early parole and/or commuting sanctions with community service programs as an alternative.¹⁰
- In all cases, decision-makers should be open to arguments based on local law as well as international human rights principles derived from treaties and conventions to which the state is a party with the UN. Preparing a general collaborative strategy will improve efficiency; however, legal professionals should remain open to different arguments for children in different circumstances.
- Considerations made and arguments presented should focus on children's rights. Where a "legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen."¹¹ For example, if there is an executive order for release of adults in detention, it may be a reasonable interpretation of that order that it should apply equally to children in detention.
- During this time, no actions taken by law enforcement should punish or harm children that do not or cannot abide by COVID-related government orders.¹²
- Legal services, security forces and social services should be concerned with redirecting children, finding children emergency care and services, and ensuring their basic needs are met.
- Where helpful and if applicable, legal professionals should utilize templates to organize arguments.¹³

General Assessment and Arguments

- Legal professionals advancing or receiving arguments for the release of children should note the injunction of Article 37(b) of the CRC lawfully and arbitrarily, which may easily occur under a health crisis where courts are not functioning properly. Children's detention should also always be the last resort, and then for the shortest appropriate period of time. Children may never be lawfully detained for longer than the legally stipulated time period merely for the state's convenience – to do so renders an initially lawful detention unlawful due to its arbitrariness.
 - Arguments by the state that such measures are in the best interests of children should also be countered as it will rarely be in the best interests of a child to be detained, and arbitrary detention is clearly a violation of rights that cannot be justified by a reference to best interests.

¹⁰ See also UNICEF, "Protection of Children during the Coronavirus Disease (COVID-19) Pandemic: Technical Note" (

¹¹ Alliance for Child Protection in Humanitarian Action, *Minimum standards for child protection in humanitarian action*, p. 41.

¹² See "COVID-19 and street connected children's rights," published by the Consortium for Street Children (Mar. 24, 2020).

¹³ See *COVID19 crisis: Template application for the urgent release from pre-trial detention*, Legal Experts Advisory Panel, Apr. 2, 2020.

- Public defenders and prosecutors should ensure communication and visitation rights of the child are established or preserved. A goal of the child justice system is to support the safe rehabilitation and reintegration of youth into society. Detention without adequate communication, resources, and health and safety measures during this pandemic could jeopardize this objective. If family cannot visit a child, or if isolative measures are the only mechanism to ensure health and safety in detention, detention cannot be a proper condition for children.
- At diversion stage:
 - In systems where diversion is an option, this should be the presumptive approach even before a child has been accused of a criminal offense.¹⁴
 - "A child is diverted when he or she is alleged as or accused of having infringed the penal law but the case is dealt with without resorting to formal trial by the competent authority."¹⁵
 - Prioritizing diversion at all stages of the system is especially important during the pandemic. Where detention of children can be prevented through diversionary measures, it should be. Some diversion programs may be offered by digital means if the child population affected have the hardware and software to participate. Alternatively, diversion programs may be deferred until after the immediate crisis when they may be resumed with the required health and safety measures in place.
- At pre-trial stage:
 - Under the CRC, children are entitled to a presumption of innocence until proven guilty.¹⁶ Thus, children should not be detained as a general practice, and those who must be prior to trial should be urgently considered for release.
 - Legal professionals should advocate for children to be prioritized for any executive orders for the release of prisoners. Any such executive orders for sentenced prisoners should be matched by similar measures for the release of awaiting trial prisoners, with children once again being prioritized. See also "Application of Public Orders" below.
 - All parties should consider immediate pre-trial release even if there is no executive order or if the order doesn't specifically enunciate application to children.¹⁷
 - The argument for **pre-trial** release of children during the COVID-19 crisis is especially strong, based on the conditions under which children are detained, clothed, fed, have access to hygiene, access to health care, access to mental health care and have the opportunity to interact with their family, visitors and other children. In some jurisdictions, COVID-19 conditions which bar access

¹⁴ See GC 24, para. 15, 16; United Nations Office of the Special Representative of the Secretary General on Violence Against Children: "Promoting restorative justice The Special Representative of the Secretary-General on Violence against Children for children". See art. 40 (3) (b) and GC No 24 par. 13-18.

¹⁵ *Id.*

¹⁶ CRC Article 40(2)(b)(i).

¹⁷ See *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Art. III.

to education can be a basis of argument that detention is a violation of rights and contrary to the child's best interest.¹⁸

- At trial stage:
 - Lawyers should argue that their client should be present during all court proceedings to ensure the right to a fair trial and discuss with their client whether presence via telephone or video can substitute the right to be present at trial.¹⁹ During trial, in any form, confidential communication, including discussion on health status, between the lawyer and the child must be guaranteed.
- At post-trial stage:
 - Focus on the child's rights for any "failure to protect confined youth from a likely COVID-19 outbreak."²⁰ "Children should be provided with a physical environment and accommodation conducive to the reintegrative aims of residential placement."²¹ If the COVID-19 crisis conditions do not allow for any rehabilitative procedures, it cannot be fulfilling its purpose or meeting the best interest of children. If the COVID-19 conditions do not allow for rehabilitative procedures, then the children detained in such conditions are experiencing a limitation of their rights in terms of CRC Article 37(c) which requires that they are dealt with in a manner that takes into account the needs of persons of their age.
- At all stages:
 - Diversion should be considered at any stage prior to or during criminal proceedings, and non-custodial measures should be considered as an alternative to detention at every stage of the process.
 - When considering alternatives to pre-trial children, options may include commuting sanctions into a community service program, house arrest, electronic monitoring, probation check-in or other restrictions on freedom of movement that are not full deprivations of liberty.²² During the pandemic, there may not be as many alternative care arrangements available, and some professionals who assist with these arrangements may not be available in person. It will be especially important to work with other disciplines (e.g., social work) to determine how to best place a child in the community until regular resources are available. See section below on multi-disciplinary engagement for additional details.

¹⁸ See CRC art. 3 & 28 &.

¹⁹ CRC art. 40 (2) (b) (iii)

²⁰ See *generally*, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

²¹ GC 24, para. 95(b)

²² See CRC Art. 40 (4); GC 24, para. 19.

Application of Public Orders

- It is critical for advocates/defenders to understand whether public orders for release or alternative/at-home custody apply to children. Although the nature of the pandemic places older prisoners and those with co-morbid conditions at heightened risk, arguments can be made regarding the mental health risks for children, and the clear priority that international law accords them.²³
 - If orders are silent on application to children, consider whether those orders should be extended to children. An important objective of child justice systems is to support rehabilitation. Rehabilitation and restorative justice are still possible while COVID-19 protective measures are in place, through the use of online interaction and other technologies. Where this is not possible, deferment of diversion measures can be arranged.²⁴

The rationale for release or home-based custodial arrangements is especially applicable to children.²⁵
 - When one of the primary objectives during a pandemic is to lower detention center population, early release for children who have served partial sentences can be a viable solution.
 - Broad pardons, amnesties, and general mass release orders should be considered by decision-makers.
 - Courts and other decision-makers should have a duty to carefully review general release orders and determine whether they are required, or authorized, to release children from detention facilities.
 - Courts and other decision-makers should be open to hearing all arguments and evidence that alternative/at-home custody arrangements are in the best interest of the child, and examine how these arguments are bolstered when, not only fundamental liberties are at risk, but also, when incarceration would heighten the risk that a child would become ill from COVID-19.
- Understand and discuss with clients whether public orders for release apply to children in child welfare facilities (e.g., group homes, orphanages, etc.).
 - Depending on circumstances, sometimes there should be consideration of when a child should be released from a child welfare facility under the same rationale of a release order directed at other detention facilities (dependent on alternative arrangements being available, e.g., with family).
 - Social distancing measures should apply within all facilities to protect the health of children. Where those measures are not implemented, public orders interpreted in the best interest of the child, may require releasing children from the welfare facility.
- Understand whether public orders for release create a permanent or temporary resolution.
 - Sometimes release should be permanent, because a temporary release that will result in re-incarceration may be more harmful to the child in the long-run.
 - Failure to abide by orders should not be grounds for re-incarceration, especially for street connected children.

| | |
|---|---|
| | <ul style="list-style-type: none"> - Public orders aim to re-integrate children into society and implement alternative measures to re-incarceration. Thus, a public order should not be read to have the effect of re-detaining children or detaining new children. <ul style="list-style-type: none"> ▪ Temporary orders that results in re-incarceration at some unknown time in the future may be more harmful to the physical and mental health of children. |
| <p>Application of region or facility-specific measures and arguments</p> | <ul style="list-style-type: none"> - The release of the child should always be done in a way which ensures his or her safety and health. It is the responsibility of authorities and States to ensure that these conditions are met. Region-specific measures enacted during the pandemic should consider how to safely release the child, and only in the most extreme circumstances should release be delayed during the pandemic. <ul style="list-style-type: none"> ▪ Prosecutors, advocates and judicial officers should first consider fundamental children's rights principles that guarantee against deprivation of liberty. If, for example, children can cause harm to themselves or to others, then limited timebound detention can be considered as a last resort. - If release is not possible or would endanger the child more than detention due to regional or local situations, all legal and judicial officers should ensure increased health/safety measures (sanitation, distancing, etc.) for those who must remain in custody. Ensure the child's right to the highest attainable standard of health per the CRC, and that facilities are equipped with proper healthcare resources and safety measures to protect detained children.²⁶ <ul style="list-style-type: none"> ▪ All facilities housing children should meet this standard by addressing both physical and mental wellbeing. ▪ Review guidelines from relevant health authorities and ensure facilities meet these requirements at a minimum. Guidelines from relevant health authorities may not be stringent enough to provide the highest attainable standard of health for detained children in particular locations. Children with pre-existing conditions (asthma, respiratory illness, etc.) are more likely to become seriously ill or die from COVID-19. If some children in the juvenile justice system in your jurisdiction are from poorer communities, they are more likely to have chronic illnesses such as asthma and diabetes and may be more at risk of serious illness from COVID-19. ▪ Social distancing mandates are meant to protect all citizens in the wake of COVID-19, and courts should have a duty to monitor such facilities and make individual orders as necessary to protect the safety and health of children inside these facilities. While general visitation may have to be limited due to the pandemic, courts and facilities should prioritize establishing safe methods for children to visit and/or maintain contact with their families.²⁷ |

²³ See GC 24, para. 82.

²⁴ See "Restorative justice and COVID-19: responding restoratively during/to the crisis," European Forum for Restorative Justice.

²⁵ See GC 24, para. 82.

²⁶ See "Interim Guidance: COVID-19: Focus on Persons Deprived of Liberty," Inter-Agency Standing Committee, March 2020.

²⁷ See CRC Article 37(c).

| | |
|--|--|
| | <ul style="list-style-type: none"> ▪ Children require the provision of equal and timely access to basic preventive health services and education about COVID-19. ▪ Children deserve regular screening programs and access to essential medications. At a minimum, it should be guaranteed that "the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."²⁸ ▪ A child always has the right to be free from discrimination.²⁹ ▪ The child's right to control one's health and body, including sexual and reproductive freedom to make responsible choices, must be maintained. <p>– In extreme circumstances where juvenile detention facilities do not have an accurate accounting of the identities of every child in their care, emergency measures must be taken to advocate for the release of any child arrested or detained for non-violent offenses and "lost" in facilities, or children who have stayed longer than the complete sentence for the maximum crime for which they were detained.³⁰</p> |
| <p>Education and Multidisciplinary Engagement for Released Children</p> | <p>– Many children benefit from reintegration plans that protect the health and safety of any vulnerable population of children. Review jurisdiction-specific laws and inform the child of his or her rights upon re-entry.</p> <ul style="list-style-type: none"> ▪ Inform the child of any laws related to his or her ability to find employment or housing. ▪ Explain the conditions of release and what the child must do in education, probation, community service, restricted movement, etc. ▪ Explain the child's obligations to the court out of custody and obligation to report to court/probation check-ins. <p>– Request that considerations of the child's release are understandable by giving directions orally and in writing (digital/internet communication rather than paper).</p> <ul style="list-style-type: none"> ▪ Establish a written plan at the outset of the release, which will establish regular milestones and check-ins to ensure that re-integration of the child is successful. ▪ With the child's permission, share it with the caretaker and/or family. <p>– Work together with other disciplines (social work, security forces, etc.) to ensure the child has access to all resources needed to establish successful re-integration.</p> <ul style="list-style-type: none"> ▪ Evidence of the child's best interest may come from social workers, caseworkers, etc. Where children are in non-custodial care or with new |

²⁸ CRC art. 3.

²⁹ CRC art. 2; see also United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. I, Sec. 4.

³⁰ See United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. IV, Sec. D; CRC art. 3(3); *The Standard Minimum Rules for the Protection of Prisoners*, Rule 13.

caregivers, ensure the shelter meets all relevant health and safety requirements.

- Homeless and street-dependent children, despite their unique circumstances, should never be discriminated against and unnecessarily detained only because they lack services. The greatest needs must be addressed with the greatest services. Child protection services, NGOs, and civil society organizations may be helpful to secure shelter for these children.
- Public education is critical. It is helpful to all children to educate communities and deliver information about the needs, challenges and successful methods to address children reintegrating into society.
- Post-release obligations on children and youth can be carried out through remote means. For example, "supervision of fulfilment of obligations set by a court (installation of electronic monitoring (EM) devices, alcohol and drug testing) [may be] carried out during home visits instead of at the office and probation staff wear personal protections."³¹

³¹ See Council of Europe, *COVID-19 Related Statement by the Members of the Council For Penological Co-Operation Working Group* (Apr. 17, 2020).

Operational Guidelines: Social Workforce



Operational Guidelines: Social Workforce

Access to Justice for Children and Youth during COVID-19

Child Protection Case Management to support the reintegration of children in conflict with the law: a must in the COVID-19 pandemic

Introduction

These Operational Guidelines are intended to provide practical "how to" recommendations and principles of action for the Social Workforce during the COVID-19 pandemic to support children and youth in conflict with the law who:

- have been deprived of liberty¹;
- due to the COVID-19 pandemic have been released² or are in the process of being released from detention; or
- were already in the process of reintegration³ through non-custodial measures and their reintegration plans require modification due to the COVID-19 pandemic.

"Social Workforce" is a broad term which encompasses a range of different professionals⁴. For the purposes of these Operational Guidelines, the term includes social workers, case workers, and similar workers (para-social workers) who work with children in conflict with the law. It should be noted that probation officers⁵ (part of

¹ In addition to pre-trial detention situations, for the purposes of these Operational Guidelines deprivation of liberty refers to at least 6 other detention situations included in the United Nations Global Study of Children Deprived of Liberty, 2019, available at <https://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>

² The legal grounds for pandemic release of detained children during the COVID-19 pandemic vary greatly among different countries.

³ **Reintegration of children in conflict with the law** means the re-establishment of roots and a place in society for children who have come into conflict with the law, such that they feel part of, and accepted by, their families and their communities. Reintegration is a social, economic and political process, and includes such measures as low intensity counselling, family coaching, vocational training, community service, education resources, therapy groups, cultural and leisure activities, provision of reintegration kits, etc. Reintegration does not cover only the post-release stage but should be an approach to be concretely implemented since the first contact of the child with the justice system, while in detention and (if the child is released) implemented by way of diversion or mechanisms alternative to detention. Reintegration measures should be tailored to the individual circumstances of the child's case. During the current health pandemic, reintegration must be tailored to accommodate the relevant COVID-19 safety measures, but its main goal should be preserved as much as possible.

As a reference guidance on reintegration of children in conflict with the law, see Terre des hommes publication "Give me a chance, but a real one. How to improve the Reintegration of Children in Conflict with the Law, An analysis of the concept, key standards and practices in the MENA region", March 2020, available at <https://www.tdh.ch/en/media-library/documents/a21-mena-reintegration-children-conflict-law-give-chance-real-one>

⁴ As defined in the Guidelines to Strengthen the Social Service Workforce for Child Protection, UNICEF, February 2019, available at <https://www.unicef.org/media/53851/file/Guidelines%20to%20strengthen%20social%20service%20for%20child%20protection%202019.pdf>, referring to the definition of the Social Workforce provided by the Global Social Service Workforce Alliance (GSWA), available at <http://www.socialserviceworkforce.org/defining-social-service-workforce>

⁵ For specific information regarding the role of probation officers during COVID-19, the Confederation of European Probation (CEP) has published certain measures and protocols on how probation services in Europe should operate during the COVID-19 outbreak, available at: <https://www.cep-probation.org/covid-19-measures-and-protocols-in-probation>

the justice apparatus as such) play a unique role in the care of children in conflict with the law and, therefore, coordination between them and the social workforce is necessary.

These Operational Guidelines focus on the role of social workforce in both applying the Child Protection Case Management System to support the reintegration of children with the law and in its adaptation during the COVID-19 pandemic. These Operational Guidelines follow and connect **Child Justice, Child Protection Case Management**⁶ and **Child Protection in Emergencies**⁷ technical guidance and approaches.

Social workforce, security forces and legal professionals are cornerstones of Child Justice Systems across the world. All three groups of professionals should strive to follow and implement a **co-operative and interdisciplinary approach**⁸ when working with children in conflict with the law, and especially during the unique circumstances of the COVID-19 pandemic. To this end, operational guidelines have also been developed for security forces and legal professionals, and included as separate, but complementary, chapters in this publication.

These Operational Guidelines also **complement numerous technical notes**⁹ compiled by different interagency organizations pertaining to children deprived of liberty during COVID-19 which focus on the "what to do," as well as guidance on child protection case management, where children in detention are one of the specific vulnerable groups requiring particular attention.

Finally, these Operational Guidelines should be **contextualized** in accordance with local regulations, professionalism of the social workforce personnel in country and the specific COVID-19-related measures enacted by national and sub-national authorities.

⁶ **Child Protection Case Management** as a comprehensive and tailored, individualised approach: *A way of organising and carrying out work to address an individual child's (and their family's) needs in an appropriate, systematic and timely manner, through direct support and/or referrals, and in accordance with a project or programme's objectives.* (Interagency guidelines for Case Management & Child Protection. Global Child Protection Working Group <https://alliancecpa.org/en/child-protection-online-library/inter-agency-guidelines-case-management-and-child-protection;>)

⁷ On the thematic **Child Protection in Emergencies**, Terre deshommes counts with 3 guidance documents: (i) Thematic Policy (available at: https://www.tdh.ch/sites/default/files/b2cfd8b0-a91a-4406-88fa-c68cfece4dbb_tdh_pol-thema2013_criseshuma_en_light_original.pdf), (ii) Operational Methodological Manual (available at: https://www.tdh.ch/sites/default/files/tdh_manuel-ope2013_criseshuma_en_interactif.pdf) and (iii) Programme Guidance (available at: https://www.tdh.ch/sites/default/files/tdh_manuel-prog2013_criseshuma_en_interactif.pdf).

⁸ During COVID-19, Child Justice more than ever requires strong coordination and cooperation among the different professionals involved in the treatment and well-being of children in conflict with the law. The principle of interdisciplinarity in Child Justice calls for co-management and co-responsibility by legal professionals, social actors and security forces involved in processes pertaining to children in conflict with the law at all stages of the legal process, including after the case is judicially closed (the follow-up phase). Interdisciplinarity is essential for decision-making and implementing decisions regarding children's cases, and it is *sine qua non* for a safe and sustainable reintegration pathway for them. During the COVID-19 pandemic, even when the reintegration process is adapted to the circumstances, interdisciplinarity is to be seriously considered and applied.

⁹ Other relevant technical notes compiled by different organizations include: (i) Technical Note: COVID-19 and Children Deprived of their Liberty by the Alliance for Child Protection in Humanitarian Action (<https://alliancecpa.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty>), (ii) IASC Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty (<https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty-developed-ohchr-and-who>), (iii) WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention (http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1), (iv) Terre des hommes Lausanne Foundation - Accelerate release of children from detention; Protect Children from COVID-19 (<https://www.tdh.ch/en/statements/release-children-detention-covid-19>), (v) Case Management Preparedness and Response to COVID-19 - Rapid Contingency Considerations by Terre deshommes (<https://covid.childhub.org/en/child-protection-multimedia-resources/case-management-preparedness-and-response-covid-19-rapid>).

The role and key objectives of the social workforce interacting with children in conflict with the law during the COVID-19 pandemic

- The social workforce has two main, interrelated **objectives** in working with children in conflict with the law, which should be maintained and appropriately adapted in the context of the COVID-19 pandemic:
 - ensuring the wellbeing of the child – this means ensuring the child's psychosocial wellbeing, resilience and treatment, while using appropriate safeguards to prevent or diminish the risk of exposure of the child to COVID-19; and
 - maximizing the chances of reintegration having a positive impact on the child – through a strengths-based approach, support and accompaniment, family involvement, ensuring access to essential and dignified services, and addressing concerns systematically applying the **best interests of the child** throughout the process.
- The Social Workforce plays an **essential role** during COVID-19 with children in conflict with the law, including:
 - full accompaniment of the child during all the stages of the judicial process, including court appearances or equivalent;
 - managing all case information and case progress and maintaining continuous communication with the child, family and the relevant legal professionals;
 - coordinating necessary complementary processes and services and being responsible for convening and informing any other parties involved in the case as needed (including other professionals, such as security forces, judges, prosecutors, educators, health and mental health professionals, etc.). Service coordination includes (but is not limited to) community mobilization, family tracing and reunification, and the identification of foster or alternative care for the child when required.
 - providing lay counselling to the child and his or her family, which is particularly important during the COVID-19 pandemic given the disruption to in-person interaction and partial or total unavailability of family contact;

Mali & Mauritania

Interdisciplinary protocols to organize and support the reintegration and follow-up for children who are either in detention or released due to the COVID-19 pandemic have been signed by judicial authorities, social workforce, detention center staff, service providers and Terre des hommes. In Mali, a Committee for Monitoring and Reintegration of Children in Contact with the Law (COSURE) was set up after the signing of the protocol on 3 April 2020. So far, 52 children have been released and are being supported through this Committee. In Mauritania, the protocol signed between Terre des hommes and the Ministry of Justice on 9 April 2020 set the steps for ensuring minimum social services as well as working conditions for social workers, to provide assistance and follow-up services to children kept in detention, as well as to those who have been released.

Jordan

The case management system and its forms have been adapted to adjust to the COVID-19 pandemic, particularly regarding children released from prison where the reintegration plans have been individually assessed and adjusted by social and case workers.

Gaza

Family group conferencing activities are being organized through long-distance services (videoconferencing and phone follow-up) by social workers assisting with the reintegration of children released due to the COVID-19 pandemic. These activities remain not only crucial for ensuring that families are supportive, participate in the reintegration process and understand the situation of the child, but also for the child to express him/herself, hold responsibility and reach agreements with the social worker and his/her family members pertaining to his/her reintegration milestones. It is the social worker who prepares the parties by phone before the sessions take place and who oversees communicating and coordinating the information

- ensuring tailor-made reintegration plans during the COVID-19 pandemic, which must include child and family participation, as well as follow-up mechanisms;
- providing social reports to justice actors regarding the judicial review of the case (with a view to sustain the child's release); and
- undertaking an important advocacy role by identifying and lobbying for innovative solutions to expedite the release of children from remand or detention and sustain this measure in the aftermath of the COVID-19 pandemic.

with the caseworker and the judicial authorities (probation officer and judges assigned to the case).

Colombia

In Colombia, a follow-up mechanism (online/phone) has been put in place to manage messages, punctual flow of information and health sensitization activities with youth who started their post-release reintegration plans before the COVID-19 pandemic arose. These activities, factored into the adapted reintegration plan during COVID-19, also serve to provide youth whose reintegration process has been impacted with lay counselling and support while maximizing wellbeing during the pandemic.

Myanmar

Following the amnesty granted by the Myanmar President on 17 April 2020 to mark New Year celebrations, 172 children deprived of liberty in the so-called "Training Schools", over 80% of whom were charged with drug-related crimes, were released. Since their release, case and social workers at Terre des hommes, in coordination with competent authorities in-country, have initiated and adapted case management approaches for the COVID-19 pandemic, the process of family reintegration (nuclear and kinship) and identification of services available to guarantee rehabilitation/treatment according to the individual needs assessed.

Operational guidance for the social workforce in their interaction with children and youth in conflict with the law during COVID-19

A child protection case management approach is not only still suitable, but remains essential during the COVID-19 pandemic; however, specific adaptations must be made to address disrupted services and the limitations imposed on the justice and legal sectors during this time. Below are two key adaptations to the case management approach to be considered by social workforce professionals:

- Mainstream the reintegration approach with regard to all the different steps of the case management process (adapted to the pandemic circumstances and overseen by the social workforce assigned to it) not only during the COVID-19 pandemic, but also during its aftermath.

- Maintain (or establish), to the extent possible, alternative pathways and services for case management responses for children in conflict with the law when the usual formal channels have been disrupted by COVID-19 measures or were non-existent before the pandemic arose.

COVID-19 and the measures that national and local governments have put in place to mitigate its spread may have disrupted pre-existing child protection systems or services; therefore, new protocols may need to be implemented by the social workforce to handle child cases appropriately during the COVID-19 pandemic. For example, many detention centers were not connected with child protection case management systems before the COVID-19 measures were put in place, which means that children were not registered within them – a situation that makes it more difficult for the social workforce to identify and work with children who are either kept in detention or released. Making efforts to collaborate with and strengthen child protection and case management systems (pre-existent and adapted, or alternative, if they are not functioning or did not exist) during and in the immediate aftermath of the COVID-19 pandemic is considered to be crucial.

Taking into account these proposed adaptations, and adapted prevention and safety measures for remote or in-person support¹⁰, below are the proposed core steps for managing cases of children in conflict with the law during the COVID-19 pandemic (i.e., child protection case management steps or CP CM Steps¹¹):

| CP CM Step | How to do it during the COVID-19 pandemic? |
|--|---|
| Identification & registration | <ul style="list-style-type: none"> - Work with detention staff/security forces/justice authorities to identify cases where the child is to be kept in detention even during COVID-19 and advocate for release due to the pandemic's negative effects. A contextualized interdisciplinary action protocol, led by the social workforce and allocating decision-making powers and responsibilities among the key actors involved, should be established or adapted to the pandemic's conditions. - Review children's files with special focus on the latest social inquiry report¹² carried out and the judicial stage of the case in order to identify/register the case for release. |

¹⁰ Children in conflict with the law are considered particularly sensitive cases during COVID-19. A flow chart to guide and support decision-making on case management support (either through personal interactions or remotely) depending on the specific risk attribution for each child's case is available here: <http://socialserviceworkforce.org/resources/child-protection-case-management-covid19-decision-making-essential-personal-interactions>

¹¹ Interagency case management standard forms (to be adapted according to the applicable national/sub-national context) for each CP CM step have been finalised by the Case Management Task Force and globally available at: <https://alliancecpha.org/en/child-protection-hub/case-management-task-force>; http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG_.pdf

¹² A social inquiry report (or equivalent) is a document usually created and updated by a social worker/probation officer. It contains the child's personal information, as well as details regarding the child's background, family and community environment, the child's case, including circumstances of the case, judicial stages, reintegration plan recommendations, services to be received, follow-up on measures and services agreed, etc. The social inquiry report is a crucial document as it would eventually be reviewed and considered by the judicial authorities while adjudicating the child's case.

| CP CM Step | How to do it during the COVID-19 pandemic? |
|-------------|--|
| | <ul style="list-style-type: none"> - Determine individualized risk attribution against prioritization criteria during COVID-19 and vulnerability factors of the child and his/her eventual receiving by family (if the case is to be proposed for release). - Take in and/or register cases that are not part of the child protection case management system where possible, or, alternatively, establish a registration system (at least with all the detention centers centralized within one public authority – e.g., Ministry of Justice, Ministry of Social Affairs or homologue). - Obtain informed consent of the child/family before registration of the case. - Consider internal capacities and the appropriate ratio of children's cases per social/case worker during COVID-19 pandemic (the recommended caseload is no more than 25 cases per social/case worker,¹³ and even less depending on the complexity of the cases and reintegration processes). |
| Assessment | <ul style="list-style-type: none"> - A social worker's assessment of a child's case should encompass risk and protective factors, and address to the maximum extent possible the following factors¹⁴: <ul style="list-style-type: none"> (i) family/caregivers: assess vulnerability, willingness and capacity to accept / care for the child and meet the child's basic needs, etc.; (ii) community and detention facility capacities and conditions: assess weaknesses, strengths, support required, and, presently, additionally assess of collateral child protection risks and concerns due to the COVID-19 pandemic;¹⁵ (iii) basic needs of the child: food and non-food items (e.g., shelter, hygiene products), primary health and mental health specialized services, livelihood, psychological and educational needs; (iv) status of the judicial case; and (v) status of the development (achievements and challenges) of the reintegration plan, if any. - Assessment is to be registered, kept with the child's file, and updated in the social inquiry report or similar document. |
| Case Plan/s | <ul style="list-style-type: none"> - Based on the assessment and any pre-existing case plan (where applicable), consider developing two case plans: <ul style="list-style-type: none"> (i) short-term plan to be implemented during the COVID-19 pandemic ("reintegration in transition plan"); and |

¹³ As advised in the Child Protection Minimum Standards: Standard 18 available at: [Child Protection Minimum Standards. Standard 18: Case Management](#)

¹⁴ As advised in the Child Protection Minimum Standards: Standard 14 - Applying a socio-ecological approach to child protection programming, available at: https://allianccepcha.org/en/CPMS_home

¹⁵ Examples of "collateral child protection risks and concerns" include separation of children from their caregivers, rejection by the child's family, social exclusion, sexual and gender-based violence, neglect, psychosocial distress, abuse (physical or emotional) and child labor. They are listed in the Terre des hommes Child Protection Case Management Preparedness and Response Guidance available at <https://covid.childhub.org/en/child-protection-multimedia-resources/case-management-preparedness-and-response-covid-19-rapid>.

| CP CM Step | How to do it during the COVID-19 pandemic? |
|--|---|
| | <p>(ii) medium/long-term plan for the aftermath of the COVID-19 pandemic.</p> <p>Both plans should be connected and subject to review as the pandemic circumstances change.</p> <ul style="list-style-type: none"> - The "reintegration in transition" plan should be developed with the child and the family (use conference calls if staff movement and access to remand and detention facilities is restricted due to the pandemic; high risk cases to receive physical support when safety allows—prioritize appropriately) and at a minimum should include: <ul style="list-style-type: none"> ▪ services to be provided to the child; ▪ allocation of the commitments/responsibilities of the parties involved in the plan (including obtaining consent from the child and family); ▪ information, resources and communication channels (including contact between children, family and lawyers for those in detention); and ▪ referral and follow-up mechanisms for the social worker assigned to each case and the other key professionals involved in the case plan (e.g., security forces/prosecutor/judges/lawyers). - The medium/long-term plan should be the pre-existing reintegration plan (where it exists) updated to include: <ul style="list-style-type: none"> ▪ the "reintegration in transition" plan during the COVID-19 pandemic (its results, pending issues to be addressed, etc.); and ▪ a proposal for the continuation of required services in the aftermath of the pandemic that should also include the legal/judicial pathways that the case may be subjected to once judicial activity is reactivated. |
| <p>Implementation of the case plan (reintegration plan)</p> | <ul style="list-style-type: none"> - Map/identify other key actors (such as security forces and legal professionals assigned to each case, health professionals, education actors, etc.) for coordination and to transfer key information for the cases that require such other actors' follow-up. - Identify channels for coordination with other social workforce professionals and other disciplines (remote or, when safe and appropriate, in person), to allow the exchange of information during all phases of the case, including in relation to best practices, challenges, solutions, referrals, and service updates. - Determine the services available to children in conflict with the law and the manner in which such services are provided (e.g., consider preventive safety measures in |

| CP CM Step | How to do it during the COVID-19 pandemic? |
|-------------------------------|--|
| | <p>case of face-to-face interaction or the possibility of providing support remotely).¹⁶ Restorative justice services¹⁷ should be considered when feasible.</p> <ul style="list-style-type: none"> – Consider providing remote lay counselling directly by the social worker to the child and his or her family as part of the accompaniment provided. – Ensure the availability of Personal Protective Equipment (PPE), information materials on COVID-19 measures and modalities of dissemination of the same to children, families and others involved in the child's case. Ensure the safety of the child and family before in-person interaction whenever possible. – Determine the availability of communication means (for the child and/or family) in case these are needed for follow-up purposes. – Supervise the provision of basic and complementary services identified in the "reintegration in transition plan" in accordance with availability and need (this can be provided progressively, as agreed in the plan). – Whenever possible, provide services directly or by referral (e.g., services related to health, mental health and psychosocial support, education, livelihood; including food items/cash/non-food items, legal services). At a minimum, such services should include counselling and representation, as well as restorative justice. – Implement remote modalities whenever suitable and possible,¹⁸ and use physical outreach only in high-risk cases and to the extent allowed pursuant to local COVID-19 measures. – Update the case plan and/or social inquiry report on a weekly basis. |
| Follow-up & review | <p>Follow up:</p> <ul style="list-style-type: none"> – with the child/family/service providers throughout the case management process (remotely and/or in person), implementing any required review process; |

¹⁶ Terre des hommes has developed a series of info sheets on COVID-19 to help guide the most suitable child protection service modality, the most appropriate technology, including a decision flowchart, ethical considerations, and specific elements regarding informed consent and data protection. The info sheets are available at: <https://childhub.org/en/child-protection-multimedia-resources/infosheet-covid-19-child-protection-services-choosing-modality>

In addition, several guidelines regarding providing services via distance modalities during the COVID-19 crisis have been developed. Some examples include: Guidance for Child Protection Case workers to share with Children or Caregivers on COVID-19 Preventive Safety Measures when doing Case Management Work, available at: <http://socialserviceworkforce.org/resources/guidance-child-protection-case-workers-share-children-or-caregivers-covid-19-preventive>; Child Protection Case Management Guidance for Remote Phone Follow-up in COVID-19, available at: <http://socialserviceworkforce.org/resources/child-protection-case-management-guidance-remote-phone-follow-covid-19>; Remote Psychological First Aid during the COVID-19 Outbreak, available at: <http://www.socialserviceworkforce.org/resources/remote-psychological-first-aid-during-covid-19-outbreak>; Child Protection Case Management – COVID-19 Decision-Making on Essential Personal Interactions, available at: <http://www.socialserviceworkforce.org/resources/child-protection-case-management-covid19-decision-making-essential-personal-interactions>

¹⁷ The European Forum for Restorative Justice, among others, has published some insights and recommendations on how to adapt restorative justice practices during COVID-19: <https://www.euforumrj.org/en/restorative-justice-and-covid-19-responding-restoratively-during-to-crisis>

¹⁸ Refer to footnote 16. In addition, a comprehensive list of resources can be found on the web page of the Global Social Service Workforce Alliance, under the Resources section, available at: <http://www.socialserviceworkforce.org/resources>

| CP CM Step | How to do it during the COVID-19 pandemic? |
|---------------------|---|
| | <ul style="list-style-type: none"> - with prosecutors/judges/lawyers involved with the case, in the event judicial review of the case is renewed. <p>Review and re-evaluate the following aspects of the case plan(s) in the context of evolving COVID-19 measures:</p> <ul style="list-style-type: none"> - case risk attribution; - any challenges and achievements; - how support services are being provided (including gaps in the provision of support services and progressive availability of services); - how the child and other key actors are honoring commitments agreed to in the case plan(s). <p>Update the social inquiry report (or equivalent):</p> <p>Written updates reflecting the progress of the case plan are necessary, especially if there is subsequent judicial review of the case.</p> <p>Redistribute the caseload within the social workforce network as needed:</p> <p>It is recommended to redistribute the caseload every two weeks.</p> |
| Case Closure | <ul style="list-style-type: none"> - Close the "reintegration in transition" plan if and when the COVID-19-related risks of the case have been adequately addressed, and the child/family can be safely transitioned to medium/long-term solutions. <p>While criteria for case closure can vary per context/case, at a minimum it is recommended to consider the following non-exhaustive list:</p> <ul style="list-style-type: none"> ▪ There is a supportive household with no health risk issues, and with safety measures in place and working; ▪ Health risks at detention facilities pertaining to COVID-19 are at the lowest level and safety measures are in place allowing for face-to-face services; ▪ There is positive assessment of MHPSS support received by the child; ▪ There is minimum family income (through livelihood support or pre-existing); and ▪ Adequate legal counselling and judicial follow-up in the case is possible (both in cases where the child is released and where the child remains in detention). <ul style="list-style-type: none"> - Transition to the medium/long-term reintegration plan: when COVID-19 measures are sufficiently relaxed to allow it, and after a review and update to its implementation conditions based on the results of the "reintegration in transition" plan. - Close the medium/long-term reintegration plan: criteria for closure will vary depending on the stated objectives of the plan. This phase should include a follow-up within 1 to 3 months after closure. |

Two cross-cutting elements of the major actions to be led by the social workforce during the COVID-19 pandemic are:

| Information management | Monitoring, evaluation, learning & accountability |
|---|--|
| <ul style="list-style-type: none"> ✓ Record only the essential information/data and share only with relevant professionals. Data Protection procedures remain applicable: confidentiality is crucial in the context of COVID-19; breaching confidentiality can expose children to increased harm and risks (e.g., stigma from the community). ✓ Adaptation of safe fast-tracking procedures (which should comport with any applicable local COVID-19 measures or guidelines) that require only essential and straight-forward information on the child case. ✓ Case management forms: in case they are available and can be adapted, the recommendation is to keep those; in case they are not available, standard case management forms that may be customized according to the applicable context are available (<i>refer to footnote 11</i>). | <ul style="list-style-type: none"> ✓ Use appropriate information/data gathered to portray analysis, trends and solutions to improve preparedness, enhance non-custodial measures for children (e.g. sustainability of the release after the COVID-19 pandemic) and child justice system improvements. ✓ Set-up adapted accountability mechanisms (e.g., complaint mechanisms) for children and families (applicable also in the aftermath of the COVID-19 pandemic). |

Essential principles of action for social workforce personnel during the COVID-19 pandemic

- A special effort should be made during the COVID-19 pandemic to apply **child safeguarding standards and measures**.¹⁹ Such child safeguarding measures must be tailored to reflect any applicable local COVID-19-related safety measures and guidelines and should reflect the **deontological and ethical principles** for the social workforce²⁰.

Commonly, detention facilities for children and youth either do not employ or do not systematically apply safeguarding measures specifically geared toward the needs of children. Such safeguarding measures are critical for preparedness and responsiveness in the disruptive context generated by COVID-19 (and in its aftermath).

¹⁹ Terre des hommes has prepared a comprehensive Child Safeguarding Policy that can be used as guidance, available at <https://www.tdh.ch/en/media-library/documents/child-safeguarding-policy>

²⁰ The minimum principles to be followed in any action involving children are: **do no harm, confidentiality, accountability, consent child/family, adherence to ethical behavior, best interest of the child and non-discrimination**. See Child Protection Case Management Principles, p. 16-19, available at: http://www.cpcnetwork.org/wp-content/uploads/2014/08/CM_guidelines_ENG.pdf and Ethical Guidance for Social Workers, available at: <https://www.basw.co.uk/covid-19-pandemic-%E2%80%93-ethical-guidance-social-workers>

- It is essential that **gender and diversity** considerations (including its intersectionality) are applied by the social workforce personnel in their interaction with children in order to overcome existing biases, prejudices, discrimination, and challenge inequalities in the distribution of power²¹, all of which are exacerbated during the COVID-19 pandemic. All children are entitled to flourish and fully exercise their rights at all times, including during the pandemic.
- It is imperative that social workforce professionals dealing with children in conflict with the law during the COVID-19 pandemic are aware of situations that may threaten their own **safety and security** and make judicious choices informed by available ethical decision-making guidance²².
- During COVID-19, social workforce supervising personnel should:
 - Identify appropriate and available means of communication with and regular support for social/case workers;
 - Create space (in-person or remotely) for case management meetings, as well as for individual meetings to discuss social workers' wellbeing, including signs of stress and means of self-care; and
 - Give social/case workers the time to talk about their concerns, needs, and their ideas.

²¹ Terre des hommes, Gender & Diversity Policy, available at https://www.tdh.ch/sites/default/files/201802_pol_gender_diversity_v1_en_0.pdf

²² Ethical decision-making in the face of COVID-19: International Federation of Social Workers, available at <https://bettercarenetwork.org/sites/default/files/2020-04/Option-A-Ethical-Decision-making-in-the-face-of-COVID-19.pdf>; Social Service Workforce Safety and Wellbeing during the COVID-19 Response - Recommended Actions, available at <http://www.socialserviceworkforce.org/resources/social-service-workforce-safety-and-wellbeing-during-covid-19-response-recommended-actions>

Baker McKenzie.



The materials and content provided on this report are for general information only and are not intended as legal advice. Although we strive to provide accurate and up to date legal information, we cannot promise it is error free or that it is suitable for your specific concerns. Therefore, you should contact an attorney to obtain legal advice for any issue specific to your situation. If you use the materials and information provided on this report or links to other websites, it does not create an attorney-client relationship between us or any providers of information you find on this report, and we take no responsibility for any information linked to this report.

The materials and content are provided as-is with no warranty of any kind. We disclaim all express and implied warranties, including the implied warranties of merchantability, fitness for particular purpose. Under no circumstances will we or our contributors be liable for any consequential, indirect, incidental, special or punitive damages or lost profits, whether foreseeable or unforeseeable, under any legal theory. Some states do not allow the exclusion of implied warranties or the limitation of incidental or consequential damages, so the above limitation and exclusions may not apply to you.

Baker McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

© 2020 Baker & McKenzie LLP and Terre des Hommes
All rights reserved.