

**DETENTION  
OF CHILDREN  
IN THE TIME  
OF COVID-19**

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# 1. INTRODUCTION

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As the world continues to grapple with the impact of COVID-19, there is increased recognition of the profound effects that this public health emergency is having on all spheres of children's lives, including on their protection from violence, their mental health and their access to justice. The ripple effects of the pandemic – both positive and negative – on access to justice, especially for children, can be seen in countries across the world. Such access is a prerequisite for protecting and upholding the human rights of all people, including children, and is key to achieving the Sustainable Development Goals (SDGs), particularly for building peaceful, just and inclusive societies as called for in SDG 16.

For far too long, we have witnessed the use of detention of children in conflict with the law as anything but a 'last resort' globally, with countless children in detention for minor or 'status' offences, and many held for long periods before ever seeing a lawyer or receiving a fair trial. As COVID-19 threw the world into crisis, UNICEF drew attention to the unique vulnerability of detained children – highlighting the increased risks of contracting the virus in confined and overcrowded spaces – and called for their immediate release. And during those first months of the pandemic, an unprecedented release of children from detention did occur around the world. This figure has continued to grow, with over 45,000 children across 54 countries released from detention by governments and authorities since March 2020.



**MORE THAN 45,000 CHILDREN HAVE BEEN  
RELEASED FROM DETENTION SINCE THE  
BEGINNING OF THE COVID-19 PANDEMIC**

## 2. DETENTION OF CHILDREN DURING COVID-19

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UNICEF and partners have advocated for decades for the rights of children deprived of their liberty, especially children in conflict with the law. The 2019 UN Global Study on Children Deprived of Liberty spotlighted the situation of children around the world deprived of their personal liberty in the administration of justice and those living in prisons with their primary caregivers, in migration-related detention, in institutions or detained in the context of armed conflict or on national security grounds.<sup>1</sup> The study found these children among the most vulnerable, invisible and forgotten groups in societies, routinely denied family care and access to justice and often unable to challenge the legality of their detention. Of even greater concern, it found that children were being tried and detained at increasingly younger ages and held for longer periods of time in inhumane conditions. In response, the report provided detailed recommendations for much needed changes.

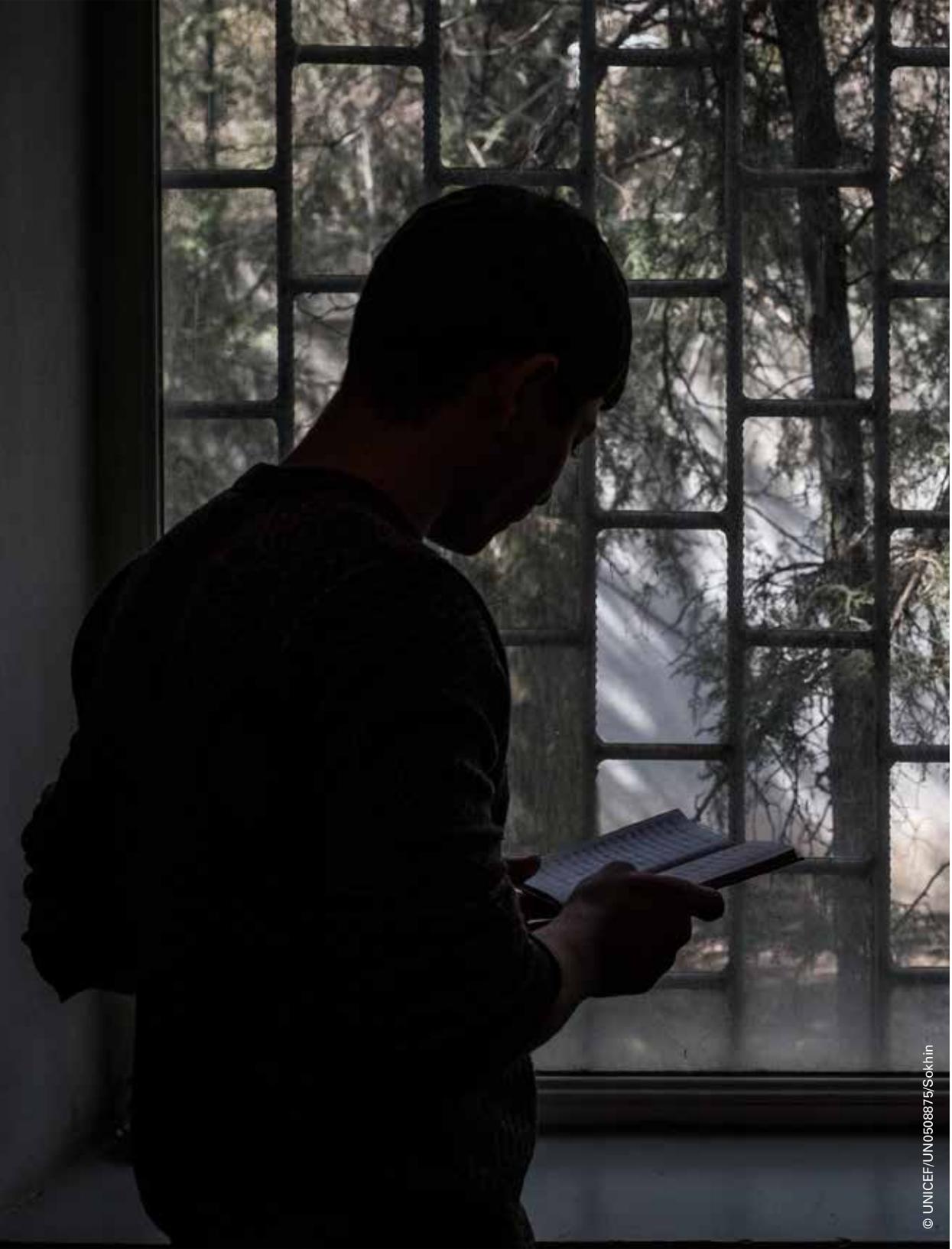
In April 2020, as COVID-19 swept the globe, leading child rights organizations, academics and UN agencies released technical guidance on concrete steps that authorities could take during the pandemic to respect and protect the rights of children deprived of their liberty.<sup>2</sup> This included issuing an immediate moratorium on admitting children to detention facilities and refraining from the arrest and detention of children for minor offences and violation of curfew orders. It recommended that governments and other relevant authorities should also release all children who could safely return to their families and provide an appropriate alternative for those who could not. If sustained, such measures could become steps towards making the justice system more child-friendly and gender-responsive, thereby fulfilling the rights of every child who comes into conflict with the law.

These early efforts contributed to the successful release of 11,600 children from detention between

May and June 2020. These results were achieved using alternative measures (including parole, amnesty and conditional release, with additional initiatives prohibiting new admissions of children into detention) and programmatic adaptations including high-level advocacy, technical assistance to governments and courts – e.g., case reviews, digitizing processes and other mechanisms (virtual courts, online learning and training for justice professionals) – and post-release support and monitoring.<sup>3</sup>

What became evident during this period was that respecting, protecting and fulfilling the rights of children in the justice system could not be overlooked in crisis situations. Child justice systems<sup>4</sup> should be resilient enough to withstand crises and continue to deliver essential services. Evidence from the COVID-19 pandemic – along with previous infectious disease outbreaks – suggests that such crises exacerbate existing child protection violations and lead to new risks. In addition to the adverse impacts of detention and incarceration on their well-being, children are more likely to contract the virus when detained in confined and overcrowded spaces. They are also more vulnerable to neglect, abuse, violence and exploitation, especially if staffing levels or care are undermined by the pandemic or containment measures. Children in detention facilities often have inadequate access to clean water and sanitation and to nutrition and medical care, creating conditions for the spread of infectious diseases.

Disruptions to child protection and child justice services and systems due to lockdowns can also cause delays in court proceedings and in access to legal aid and representation, meaning that children can face long(er) periods deprived of liberty and separated from their families.



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### 3. STATE OF THE JUSTICE SECTOR DURING COVID-19

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Understanding the current status of justice for children is essential to call attention to the immediate and long-term measures that need to be put in place to ensure the safety and well-being of all children amidst the pandemic's continuing fallout.

The available data reveal a mixed picture of how COVID-19 has impacted access to justice for children in conflict with the law. On the one hand, 84 countries reported the release of children from detention; however, only 54 of these countries provided specific data on the number of children released – which means the actual number released globally is even higher than indicated here. On the other hand, diversion and alternative measures to detention have been less commonly employed by governments. Establishing processes and programmes for diversion from the justice system and non-custodial measures typically requires mid- to long-term investment. This means that countries that already had such processes or programmes in place prior to the pandemic were able to leverage them more easily afterwards.

But beyond this, ending the detention of children requires child justice systems to work in concert with national child protection and allied systems to break existing negative cycles through prevention and early identification of children who are at risk instead of only focusing on children who come into conflict with the law. If a child is alleged to have offended, he or she should be diverted as early as possible from the justice system. This includes avoiding arresting her/him, putting more emphasis on pre-trial processes, prioritizing restorative justice approaches and the use of non-custodial measures, providing rehabilitation and post-release support and expanding the availability of legal representation and legal aid to ensure that every child is treated humanely and with dignity. More broadly, child justice systems must be aligned with relevant international human rights standards and instruments. This results in a system that is child-friendly and gender-responsive and operates in the best interests of the child, considering specific circumstances including the child's age- and gender-specific needs. This approach can have a transformative impact on a child's life.

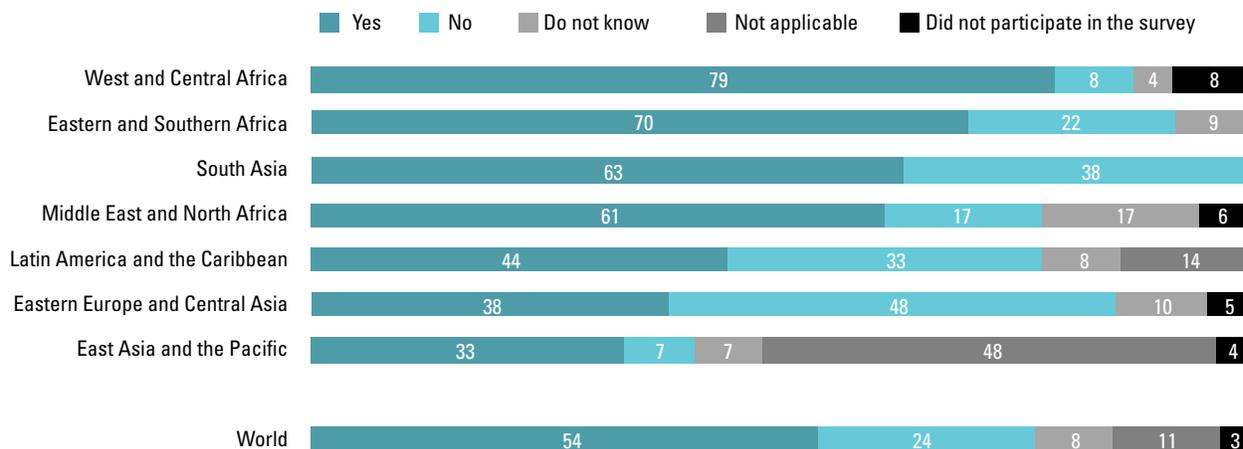
Findings presented in Figures 1 and 2 are derived from a UNICEF survey among its network of 157 country offices to collect information on disruptions in service provision at the national level and across different sectors as a result of the coronavirus. These programme countries – including all 138 low- and middle-income countries plus 19 high-income countries – are home to 90 per cent of the world's population of children.

The country offices were asked whether the government had released any children from detention and, if so, how many and whether alternatives to detention had been put in place since the start of the COVID-19 pandemic. As of 31 October 2021, 152 country offices had provided responses to questions pertaining to justice for children. Thus, the results reflect the situation in 97 per cent of the programme countries, which are home to around 2 billion children.

Although every effort was made to document and verify the numbers, the availability and quality of data from service providers remain weak in many countries, compromising the ability to accurately report on the number of children released from detention. In fact, while 84 countries reported the release of children from detention, only 54 of them provided specific data on the number of children released.

## IN MORE THAN HALF OF COUNTRIES, GOVERNMENTS HAVE RELEASED CHILDREN FROM DETENTION SINCE THE START OF THE PANDEMIC

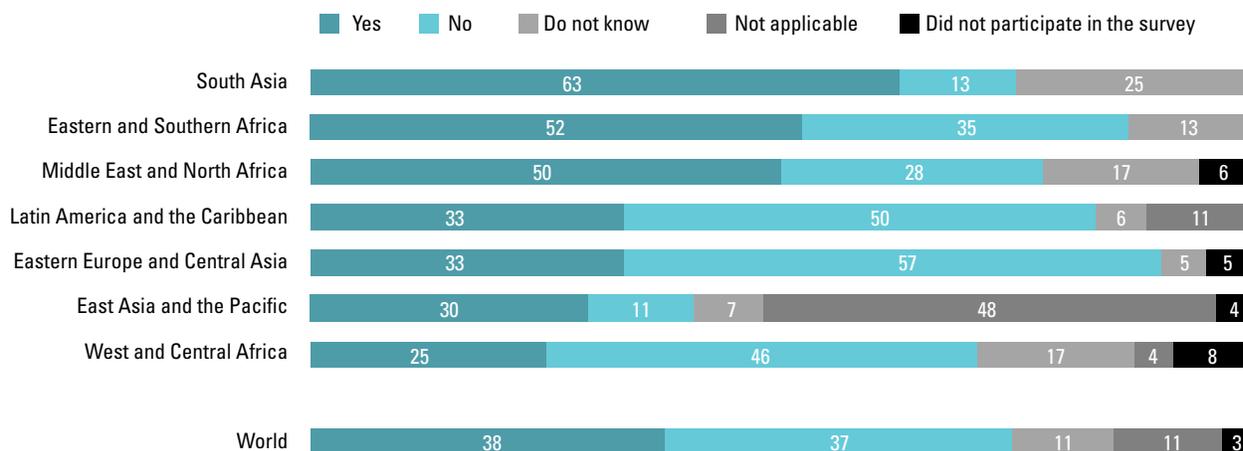
**Figure 1. Percentage distribution of countries, by whether the government has released children from detention since the COVID-19 pandemic started**



Notes: The 'not applicable' category includes situations where there were no (or very few) COVID-19 cases and related containment measures that would have impacted or necessitated a change in service delivery within the justice sector. Figures have been rounded and do not add up to 100 per cent.

## ONE THIRD OF COUNTRIES REPORTED THAT THE GOVERNMENT HAD PUT IN PLACE ALTERNATIVES TO DETENTION IN RESPONSE TO THE PANDEMIC

**Figure 2. Percentage distribution of countries, by whether the government has put in place alternatives to detention since the COVID-19 pandemic started**



Notes: The 'not applicable' category includes situations where there were no (or very few) COVID-19 cases and related containment measures that would have impacted or necessitated a change in service delivery within the justice sector. Figures have been rounded and do not add up to 100 per cent.



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## 4. WHERE TO GO FROM HERE? CONTINUING CHALLENGES

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### **Reaching the most vulnerable**

Some groups of children continue to be excluded from release measures in response to COVID-19, including those in immigration detention, in military detention or detained due to national security concerns or alleged association with armed groups. These are among the most vulnerable children in detention.

### **Lack of data**

Lack of data remains a major bottleneck, with few countries able to provide data during the pandemic. This not only includes data disaggregated by

sex, age, race/ethnicity and disability for alleged offenders but also extends to child victims and witnesses and to children being released from immigration detention. Child justice data face numerous challenges, including the confidential and/or sensitive nature of the statistics as well as a lack of capacity to collect, compile and analyse data. As a result, policy decisions are often based on very limited information about the scope of the problem and the impact of interventions. Though these issues existed pre-COVID-19, the pandemic has highlighted the critical need to redouble efforts to strengthen data systems.

In early 2021, UNICEF published 'Achieving Justice for Children: Review of innovative data initiatives around the world' and 'Assessing Administrative Data Systems on Justice for Children: A tool for country-level self-evaluation'.<sup>5</sup> The review of innovative data initiatives examined sources of administrative data on justice for children in four UNICEF programme countries (Jordan, Montenegro, United Republic of Tanzania and Uruguay) plus Canada. The self-evaluation tool involves in-depth country assessments to identify the various sources of administrative data on justice for children and evaluate the strengths and weaknesses of these sources. It also includes recommendations on how to improve the quality and use of administrative data relevant for children in contact with the justice system.

A more recent publication, 'Estimating the Number of Children Deprived of Liberty in the Administration of Justice', provides an overview of the availability of administrative records of such children and presents global and regional estimates using existing country-level data.<sup>6</sup> It also discusses data challenges and includes suggestions on how to strengthen available records.

With these publications, UNICEF is redoubling its efforts to support countries to overcome data gaps on children in and released from detention, child victims and witnesses and alleged offenders. This challenge is not new and was highlighted in the 2019 UN Global Study on Children Deprived of Liberty.<sup>7</sup>

### **Post-release support programmes**

There is an ongoing need for the establishment and integration of effective post-release support programmes in child justice systems around the world. Post-release programmes (also known as aftercare or re-entry programmes) are proven to help children successfully reintegrate into their families and communities and avoid reoffending. This is even more important amid the pandemic as we see thousands of children being released, often into environments where families are under socio-

economic pressures, education has been halted and support services have been curtailed due to lockdown measures.

### **New risk**

A risk that emerged amid the pandemic is the increased arrest and detention of children who violate curfew orders or movement restrictions during this time, which threatens to reverse progress made so far in reducing the global numbers of children in detention.



In Indonesia, UNICEF supported the Director General of Corrections in the Ministry of Law and Human Rights to facilitate intersectoral collaboration to ensure children's safe release and put in place appropriate measures to support those who had been released, including through the development of a 'Protocol on Release and Rehabilitation of Children'.<sup>8</sup>

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## 5. REIMAGINING JUSTICE FOR CHILDREN: A NEW WAY FORWARD FOR A BRIGHTER FUTURE

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These results and challenges offer a chance to re-think approaches, release more children, end the detention of children and bring about wider justice reforms for children. Every child has the right to live free from violence, exploitation and abuse. Now is the moment to reflect on these results and the lessons learned and to reimagine justice for children.

To drive progress for a more just, inclusive and peaceful society, UNICEF calls for six interconnected actions, with non-discrimination (regarding gender, gender identity and sexual orientation, race/ethnicity, disability, age and nationality) as an overarching principle:

**1. Every child knows and can claim his or her rights:** Invest in legal rights awareness for children in justice and welfare systems, particularly over-represented groups – children with disabilities, indigenous and ethnic minority children, children discriminated against due to gender, gender identity and sexual orientation and children on the move – to claim their rights and to become justice-reform advocates. Support reforms that recognize children’s legal standing and their right to be heard.

**2. Every child can access free legal aid, representation and services:** Expand free legal aid for children and build national cadres of specialized lawyers and paralegal services. Integrate social work and child specialization within the justice sector and ensure intersectoral coordination and collaboration. Support strategic litigation on justice for children for broader policy impact.

**3. Every child in conflict with the law can be diverted:** Prioritize prevention and early intervention in child offending – including through the child protection system, community engagement and stronger linkages with allied systems – and increase support to children in street situations and youth experiencing homelessness. Promote the global

implementation of restorative justice approaches as the standard, scale up diversion and integrate mental health and psychosocial support throughout juvenile justice systems.

**4. Every child is protected from detention:** End the detention of children in conflict with the law through legal reforms (including of the minimum age of criminal responsibility), the provision of child protection services, the use of non-custodial measures and therapeutic approaches, the elimination of inhumane and degrading treatment and conditions and the strengthening of post-release reintegration support. End the unlawful and arbitrary detention of children, immigration detention of children and detention due to alleged association with armed groups or for national security reasons. Prioritize the use of alternatives to detention in cases where children live with a detained or imprisoned caregiver.

**5. Every child survivor of sexual violence, abuse or exploitation receives justice:** Embed child-friendly and gender-sensitive justice processes and procedures and strengthen cooperation between justice, child protection and allied systems to respond to violence, abuse and the exploitation of children. Remove limitation periods for sexual offences against children and establish redress schemes for survivors of child sexual violence, abuse and exploitation. Support the development of comprehensive legal frameworks to protect children from online or technology-facilitated sexual abuse and exploitation.

**6. Every child can access alternative dispute-resolution mechanisms and child-friendly courts:** Support specialized children’s courts and virtual and mobile courts, as appropriate. Increase investment in traditional/informal justice, transitional justice and alternative dispute-resolution mechanisms to make them child-friendly and gender-responsive and provide remedies for violations of children’s rights to protection, as appropriate.





## ENDNOTES

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- 3 United Nations Children's Fund, 'Access to Justice for Children in the Era of COVID-19: Notes from the field', UNICEF, New York, December 2020, <[www.unicef.org/media/92251/file/Access-to-Justice-COVID-19-Field-Notes-2021.pdf](http://www.unicef.org/media/92251/file/Access-to-Justice-COVID-19-Field-Notes-2021.pdf)>, accessed 2 November 2021.
- 4 In this paper, the phrase 'child justice system' is used as per the Committee on the Rights of the Child, 'General Comment No. 24 (2019) on Children's Rights in the Child Justice System, CRC/C/GC/24, 18 September 2019, <<https://undocs.org/CRC/C/GC/24>>, accessed 2 November 2021. The Committee uses this term in place of 'juvenile justice', and it is defined as "the legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders".
- 5 United Nations Children's Fund, 'Achieving Justice for Children: A review of innovative data initiatives around the world', UNICEF, New York, 2021, <<https://data.unicef.org/resources/achieving-justice-for-children/>>, accessed 2 November 2021; United Nations Children's Fund, 'Assessing Administrative Data Systems on Justice for Children: A tool for country-level self-evaluation', UNICEF, New York, 2021, <<https://data.unicef.org/resources/assessing-administrative-data-systems-on-justice-for-children/>>, accessed 2 November 2021.
- 6 United Nations Children's Fund, *Estimating the Number of Children Deprived of Liberty in the Administration of Justice*, UNICEF, New York, 2021, <<https://data.unicef.org/resources/children-indetention-report>>, accessed 14 November 2021.
- 7 Nowak, *United Nations Global Study on Children Deprived of Liberty*.
- 8 Gugus Tugas Percepatan Penanganan COVID-19 [COVID-19 Response Acceleration Task Force], 'Protokol pengeluaran dan pembebasan anak melalui asimilasi dan integrasi, pembebasan tahanan, penanggulangan penahanan dan bebas murni [Protocol cross-sector release of juvenile prisoners through assimilation and rehabilitation, release from pre-trial detentions and full release]', Gugus Tugas Percepatan Penanganan COVID-19, Indonesia, 2020.

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for every child