



# JUSTICE FOR CHILDREN

*Manual*



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## Manual

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# CONTENTS

	INTRODUCTION TO THE JUSTICE FOR CHILDREN MANUAL ....	3
CHAPTER 1	PRINCIPLES OF JUSTICE FOR CHILDREN .....	6
CHAPTER 2	CHILDREN AT RISK.....	17
CHAPTER 3	ARREST.....	32
CHAPTER 4	DIVERSION .....	42
CHAPTER 5	VICTIMS AND WITNESSES .....	54
CHAPTER 6	TRIAL AND SENTENCING .....	73
CHAPTER 7	DETENTION.....	92
CHAPTER 8	INDEPENDENT MONITORING MECHANISMS.....	107
CHAPTER 9	REINTEGRATION .....	118
CHAPTER 10	PUTTING JUSTICE FOR CHILDREN IN TO PRACTICE .....	127

# INTRODUCTION TO THE JUSTICE FOR CHILDREN MANUAL

The Justice for Children Manual grew out of a larger UNICEF project aiming to improve the lives of children in the country. The concept 'justice for children' is broader than the traditional focus on juvenile justice as it encompasses not only children in conflict with the law, but also children at risk of coming in to conflict with the law and children in contact with the law as victims or witnesses.

This 'justice for children' framework has been developed in recent years through a number of important international initiatives including the following:

- The Economic and Social Council Guidelines on Justice Matters involving Child Victims and Witnesses of Crime adopted in 2005;
- The Guidance Note on Justice for Children issued by the UN Secretary General in 2008
- Model Law on Justice in Matters involving Child Victims and Witnesses of Crime (2009)
- Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice adopted on 17 November 2010

The topic of justice for children covers many issues including: child protection, crime prevention, law enforcement, trial procedures, sentencing and rehabilitation. It is a key area of social policy, dealing with a growing number of vulnerable children who are often marginalised from society. How these children are treated by the justice system is a critical factor in determining how they will be reintegrated into their families, schools and communities.

While legal reform is necessary in many countries, our experience has led us to understand that law and policy is not the only answer to achieving justice for children. The strength and ability of justice, support and protection systems and those who work within them is the key to effective and fair implementation of the principles of justice.

The Justice for Children Manual is a tool designed to strengthen the capacity of those involved in working with children involved in the justice process. It aims to be a comprehensive reference guide for those working in a range of professions or agencies within the Justice for Children framework.

Based on international and regional standards, the Manual provides a practical approach to Justice for Children issues, which is illustrated by examples of good practice from other countries. It has 10 chapters, each covering an important aspect of Justice for Children and is set out as follows:

- Chapter 1 Principles of Justice for Children**
- Chapter 2 Children at Risk**
- Chapter 3 Arrest**
- Chapter 4 Diversion**
- Chapter 5 Victims and Witnesses**
- Chapter 6 Trial and Sentencing**
- Chapter 7 Detention**
- Chapter 8 Independent Monitoring Mechanisms**
- Chapter 9 Reintegration**
- Chapter 10 Putting Justice for Children in to Practice**

Each chapter is structured in the following way:

- Outlining the learning objectives;
- An overview of the essential principles relevant to that area of Justice for Children as stated by international and regional guidelines and standards;
- The application of these principles in practice throughout the justice process;
- Questions for further discussion, including short case studies to invite debate and dialogue.

Throughout each chapter there are also examples of good practice from other countries to identify how the application of the principles behind Justice for Children works in real life situations.





# CHAPTER 1

## PRINCIPLES OF JUSTICE FOR CHILDREN

### CONTENTS

- Learning Objectives
- Essential Principles
- Definitions
- Overview of International and Regional Standards
  - A. General child rights
  - B. Criminal justice
  - C. Victims and witnesses
- Cross-cutting Principles of Justice for Children
  - D. Best interests
  - E. Protection
  - F. Right to be heard
  - G. Non-discrimination
- Application Methods
  - H. Inter-agency working
  - I. Restorative justice
- Issues for Discussion
- Case Studies
- References and further reading



## LEARNING OBJECTIVES

After completing this chapter you should be able to:

- Explain the concept of Justice for Children and which children fall under its remit;
- Identify the primary provisions of domestic, regional and international standards that serve as the foundation of Justice for Children;
- List the basic, cross-cutting principles of Justice for Children, which will be applied throughout the Manual.

## ESSENTIAL PRINCIPLES

- A.** Children shall benefit from all the human rights guarantees available to adults. (*Universal Declaration of Human Rights; Convention on the Rights of the Child*)
- B.** In all actions concerning children, the **best interests** of the child shall be a primary consideration. (*Convention on the Rights of the Child, Article 3*)
- C.** Every child has the right to **express his or her views freely** in all matters affecting him or her, including judicial and administrative proceedings, either directly or through an appropriate body or representative. These views shall be given due weight in accordance with the age and maturity of the child. (*Convention on the Rights of the Child, Article 12; Guidance Note of the Secretary-General: UN Approach to Justice for Children*)
- D.** States will respect child's rights **without discrimination** of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status and will take measures to ensure that all children are protected against all forms of discrimination. A gender sensitive approach should be taken in all interventions. (*Convention on the Rights of the Child, Article 2; Guidance Note of the Secretary-General: UN Approach to Justice for Children*)
- E.** States should ensure the child such **protection** as is necessary for his or her well-being. All children shall be protected from any form of hardship while going through state and non-state justice processes and thereafter and States shall implement appropriate measures to ensure this. (*Convention on the Rights of the Child; Guidance Note of the Secretary-General: UN Approach to Justice for Children*)
- F.** Close **co-operation between different professional** should be encouraged in order to obtain a comprehensive understanding of the child, as well as an assessment of his/her legal, psychological, social, emotional, physical and cognitive situation. (*Council of Europe Guidelines on Child-friendly Justice*)
- G.** Children in conflict with the law, including recidivists, have the right to be treated in ways that promote their **rehabilitation and reintegration**, and the child assuming a constructive role in society. (*Committee on the Rights of the Child, General Comment No.10*)
- H.** **Restorative justice** programmes, including mediation, should be available at every stage of the criminal justice process. They should be completely voluntary for both victim and offender and either can withdraw consent at any time. (*Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, No.6*)

## DEFINITIONS

### Child

International standards specify that a child is any person under the age of 18.

“A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” (*Convention on the Rights of the Child, 1989; Council of Europe Guidelines on Child-friendly Justice, 2010*)

### Juveniles

Juveniles are considered to be persons who have not fully matured or developed and *at a minimum* include children up to the age of 18 but sometimes to the age of 21.

### Young adult

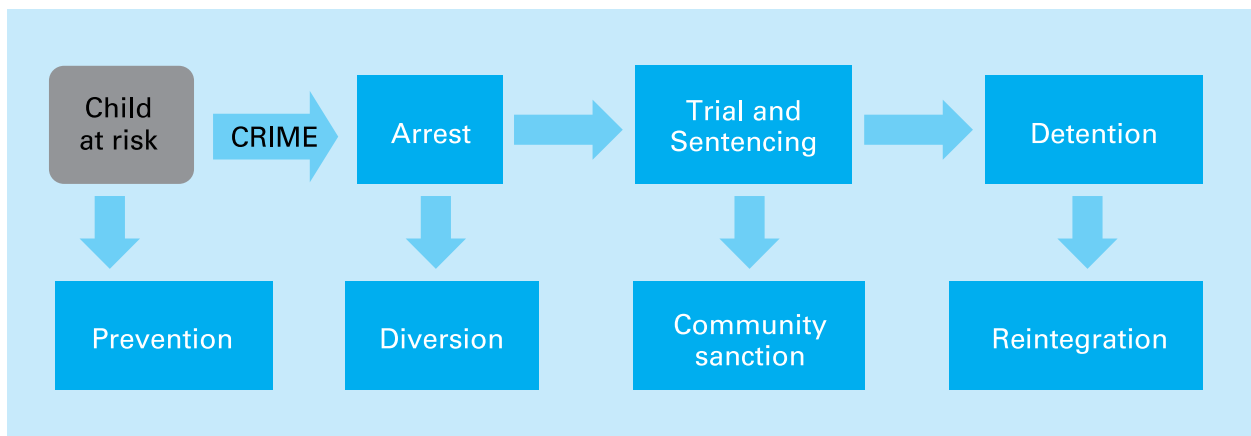
Young adult is a term used to refer to those who have reached the legal age of majority (usually 18 or 21 years) but may not be fully matured in other respects. Recent research indicates that full mental (including emotional) capacity is often not attained until the age of 25.

### Justice for Children

The concept of “Justice for Children” covers children in conflict with the law (i.e. alleged as, accused of, or recognised as having infringed the penal law), children who are victims or witnesses of crime, and children who may be at risk of entering in to justice systems (either due to their social circumstance or because they have committed an act that would be considered criminal if they were above the age of criminal responsibility). It can be seen as an overarching concept that works for the benefit and best interests of all children who come in to contact with justice and related systems. It includes aspects such as prevention, diversion, rehabilitation, assistance services and protection measures.

The concept of Justice for Children differs from the term ‘juvenile justice’ in that it does not just cover children who come in to conflict with the law, but all children who are affected by the judicial process. The path of a child in conflict with the law through the judicial process is shown below.

### The Judicial Process



## OVERVIEW OF INTERNATIONAL AND REGIONAL STANDARDS

### A. General Child Rights

#### 1. Universal Declaration on Human Rights 1948

Sets out the fundamental rights that all human beings are entitled to without discrimination. It has influenced and been the basis for the adoption of numerous other human rights instruments, standards and guidelines.

#### 2. European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

Identifies the inalienable rights and freedoms of every human being and compels signatories to guarantee and protect these rights without discrimination. It has 14 Protocols amending some of the original articles or adding additional rights and safeguards. Violations of the rights set out in the Convention are handled by the European Court of Human Rights, and any individual (including a child) or group of individuals can bring a case against their signatory State to the court, stating the violation of their rights under the Convention.

#### 3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment 1984 (and its Optional Protocol 2002)

The Convention against Torture bans torture and other cruel, inhuman or degrading treatment or punishment under all circumstances and obliges States to take measures to ensure its prevention. It requires States to investigate and prosecute any allegations of torture and provide training to all law enforcement and military personnel in torture prevention. It established the Committee against Torture that monitors implementation of the Convention and requires States to report on how it is being implemented. The Optional Protocol requires the establishment of national preventative mechanisms to prevent torture, including visiting places of detention and receiving allegations of abuse and investigating these. It also sets up the Subcommittee on the Prevention of Torture which has the remit to visit all places of detention in signatory States.

#### 4. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987

Based on Article 3 of the ECHR, it further strengthens the protection for people against torture, inhuman or degrading treatment or punishment and establishes the European Committee against Torture (CPT) which has the remit to visit all places of detention and report to States on their findings.

#### 5. Convention on the Rights of the Child 1989

The CRC is the most widely ratified Convention, being ratified by all but two States worldwide. It states a wide range of children's rights set out in the CRC and obliges ratifying States to protect these. States must report on their implementation of the rights at regular intervals to the Committee on the Rights of the Child who subsequently deliver 'Concluding Observations' on the situation in said country. A further 13 'General Comments' have been published by the Committee on the Rights of the Child giving a more detailed interpretation on some of the child rights in the Convention. Of these, **General Comment No.10 (2007)** deals with the treatment of children in conflict with the law.

#### 6. Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice 2010

Guidelines for treatment and measures in place to protect the rights of all children who come in to contact with justice systems either as offenders, victims, witnesses or a third party to proceedings (i.e. custody cases). It outlines general principles and specific guidelines for each stage of the judicial process.

## B. Criminal Justice

### 1. Standard Minimum Rules for the Treatment of Prisoners 1955

Set of non-binding rules that set out the principles to ensure that all those deprived of their liberty are still treated with humanity and dignity.

### 2. Code of Conduct for Law Enforcement Officials 1979

Rules that ensure the performance of duties by law enforcement officials are carried out in a humane manner and respect the human rights of those who come into contact with them.

### 3. UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (“Beijing Rules”)

Set of principles regarding the administration of juvenile justice including issues such as juvenile courts, the age of criminal responsibility, prosecution of juveniles, sentencing and standards for juveniles if incarcerated.

### 4. UN Guidelines for the Prevention of Juvenile Delinquency 1990 (“Riyadh Guidelines”)

Sets out standards for the prevention of juvenile delinquency including the protection of children who are deemed at risk of juvenile delinquency and implementing measures that can negate these risks. Promotes the role that various sectors of society such as the family, community, media, and education system have on the prevention of young people at risk of juvenile delinquency.

### 5. UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (“Havana Rules”)

Set of principles that apply to every juvenile deprived of their liberty in any facility or institution and promotes their development and well-being. Sets out standards for material conditions of detention, protection of juveniles whilst in detention, and educational, vocational and work programmes, among other things.

### 6. UN Standard Minimum Rules for Non-custodial Measures 1990 (“Tokyo Rules”)

Set of rules on how to administer non-custodial sanctions and the safeguards that need to be in place for those sentenced to these measures.

### 7. Guidelines for Action on Children in the Criminal Justice System 1997

Guidelines on how to implement the principles of the Convention on the Rights of the Child and other international standards relating to the administration of juvenile justice (discussed above).

### 8. UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002

Discusses the use and principle of restorative justice programmes, how and when they should be used in the criminal justice system, how they operate and who should be involved.

### 9. UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 2010 (“Bangkok Rules”)

Complements and goes beyond the Standard Minimum Rules for the Treatment of Prisoners to ensure women’s rights and needs are adequately met.

## C. Victims and Witnesses

### 1. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1988

Suggests and promotes measures to be taken to uphold the rights of victims and improve their access to justice, social assistance, redress and compensation.

### 2. Council of Europe Framework Decision on the standing of victims in criminal proceedings 2001

Outlines victim's rights in criminal proceedings such as assistance, protection, mediation (where appropriate), redress and outlines how each State should ensure that these rights are met and how this is best done.

### **3. UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime 2005**

Guidelines on the treatment of child victims and witnesses of crime and measures that should be taken to ensure their rights are fulfilled and they are fully protected from hardship throughout the judicial process.

## **CROSS-CUTTING PRINCIPLES OF JUSTICE FOR CHILDREN**

These are the basic principles that underpin the Justice for Children concept and should be taken account of in all actions where children are affected. The application of these principles can be seen in each chapter of the Manual.

### **A. Best Interests**

In all actions where children are directly, or indirectly, involved or affected by the justice system the best interests of the child should be a primary consideration. Therefore, in every action taken thought must be given to how the action will impact on a child, or groups of children, to ensure their best interests are met. The other general principles: protection, the right to be heard and non-discrimination, are all relevant in determining what the best interests of a child, or group of children, are.

While a child's best interests are of primary consideration, they must also be considered and balanced with any conflicting human rights of other children, groups of children, or adults.

### **B. Protection**

The principle of protecting a child's well-being and development is connected to that of their best interest. It reiterates the need for additional measures and protections due to a child's vulnerability and a State's duty to provide this protection. Protecting a child's well-being does not solely encompass protecting a child from harm, for example, by inspecting facilities where children are held or legislating against the use of corporal punishment. It also takes a more active approach and means implementing actions to enable a child's healthy development. This could mean the provision of vocational and educational training within child detention centres, and putting in place safeguards to restrict anything that might hinder such development.

### **C. Right to be Heard**

The right to be heard ensures that every child who is capable of forming a view is able to express him/herself freely and fully in any matter that may affect him/her. It also means that they should have this view taken in to consideration at all times, with due weight given to their age and maturity. Children must be able to express their views, opinions, and concerns and to actively participate throughout the judicial process (in accordance with their best interests and through a representative where necessary).

In order to ensure this right, the child must receive adequate information about the process, the choices they have and possible consequences of these choices. The methodology used to question children and the environment where this questioning takes place must be child-friendly and adapted to the needs of each child.

One issue is assessing the child's age and maturity and the weight that should be given to their views, opinions, concerns, and testimony whilst in the judicial process. (For further discussion on this, see Chapter 5: Victims and Witnesses).

## D. Non-Discrimination

The principle of non-discrimination means that no distinction, restriction, exclusion or preferential treatment should be given to any child based on race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

However, it does not mean that affirmative action cannot be taken to ensure that all children's rights are met equally. For example, countries may have to give differential treatment to some children, or groups of children, in order to eliminate conditions that can cause or maintain discrimination. States are required to ensure that all children are not discriminated against and active measures should be put in place to ensure that every child has equal opportunities.

This is of particular relevance when dealing with girls, and other vulnerable groups, where special measures may need to be taken to ensure that their rights are equally upheld and respected. For example, special healthcare and hygiene needs for girls whilst in detention; equal access for all children to education and vocational programmes; or the use of an interpreter, and providing translated information, for children with a different language are of primary importance.

At every stage of a child's contact with the justice system, as well as when forming legislation and policy, thought must be given to the situation of the child. It must be ensured that all children have their rights upheld and are offered appropriate services without discrimination. Each situation must be handled with sensitivity and an understanding of the issues that a child, or group of children, may face due to their sex, age, race, disability etc.

## APPLICATION METHODS

### A. Inter-agency Working

The Council of Europe's Guidelines of the Committee of Ministers on Child-friendly Justice highlights the need for a multi-disciplinary approach to ensuring the best interests of children are met. Close cooperation between professionals working with children should be encouraged in order to get a full understanding of a child and his or her needs. Whilst establishing an inter-agency approach to working with children, it is important to ensure that confidentiality relating to a child and their circumstances is upheld.

Effective inter-agency collaboration should guarantee that a child gets full access to the services or assistance they require, do not have continuous (or different, or contradictory) assessments taken or have more interventions than his or her situation requires.

The concept of Justice for Children involves a range of state bodies and institutions, professionals, agencies, and civil society organisations, which all need to take a collaborative approach to guarantee a child's rights are upheld.

### B. Restorative Justice

When a person commits a crime he or she harms the community as a whole, as well as any individual victims. Criminal justice systems which focus on punishment and retribution do little to acknowledge these harms. They also often fail to identify or acknowledge the problems and issues that led the offender to commit the crime in the first place.

The basic principle of restorative justice is that it promotes the concepts of justice, reparation and rehabilitation over those of retribution and punishment. Restorative justice aims to resolve conflict and repair harm in a number of situations by encouraging those who have caused harm to acknowledge the impact of what they have done and give them an opportunity to make reparations. It also offers those who have been the victim of harm the opportunity to have harm acknowledged and amends made<sup>1</sup>. Restorative justice programmes aim to achieve these results by encouraging those affected by an offence, including the victim and the offender, to discuss what happened and to reach a consensus regarding an appropriate sanction or consequence. While sanctioning is an aspect of restorative justice, the focus of the proceedings is on redressing the harm done by the offence, healing the victim or community and ensuring the reintegration of the offender.

### UN definition: Restorative Justice<sup>2</sup>

A restorative process is any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.

Restorative justice, as discussed by the United Nations Office on Drugs and Crime (UNODC), is based on the following ideas:

- Any response to an offence should repair as much as possible the harm suffered by the victim(s).
- Those causing the offence should be brought to understand that the offensive behaviour is unacceptable and the impact that it had on the victim and community.
- An offender can, and should, take responsibility for his or her actions.
- Victims should play a part in the justice system and have the opportunity to express their needs or concerns, and to participate in determining how best the offender can make reparations.
- The community has a responsibility to contribute to the justice process.

Restorative justice can be particularly effective within the juvenile justice system. Due to a child's continuing development psychologically, restorative justice measures are likely to have an increased impact on a juvenile offender as well as providing a valuable education response.

Restorative justice is a broad concept that can be utilised pre-trial, pre-sentencing, and post-conviction as well as in a range of non-justice scenarios (such as conflict management in schools or with children at risk). Information on the practical application of restorative justice principles such as victim-offender mediation and family group conferencing can be found in the chapters on Diversion (Chapter 4) and Sentencing (Chapter 6).

## ISSUES FOR DISCUSSION

- A. How is the Justice for Children concept different from the traditional concept of 'juvenile justice'? What is it designed to achieve?
- B. Discuss some of the reasons why you think:
  - a. children at risk,
  - b. children in conflict with the law, and
  - c. children who are victims or witnesses, may need additional attention paid to protect their human rights.

<sup>1</sup> Goldson, B. (2008) Dictionary of Youth Justice

<sup>2</sup> UNODC (2006) Handbook on Restorative Justice Programmes

- C. Should the international and regional standards discussed in this chapter be viewed as goals and aspirations rather than as real commitments upon which individual countries should be judged?
- D. Should children in conflict with the law and children who are victims and witnesses be treated differently during the judicial process?

## CASE STUDIES

- A. A 15 year old male has been arrested for a residential burglary with his 21 year old uncle. They were caught at the premises and taken to the police station. In the resulting criminal justice process, what do professionals (police/prosecutors/social workers/judges) need to be aware of for the 15 year old? What should they do to ensure that the principles of Justice for Children are applied?
- B. You are a social worker and have a case load of 15 children who are all in contact with the criminal justice system at different stages. Only one of these children is a girl. In what ways do you need to ensure that she is particularly looked after? How do societal expectations of the way she should behave affect her differently from the boys in your care?
- C. You are a lawyer representing a 12 year old child who is a witness in a trial. He seems nervous and intimidated by the whole process. When questioned he talks in a quiet voice and says very little. His mother has told you that the situation is traumatising him and he is having difficulties sleeping at night. She has suggested he be withdrawn as a witness. How do you balance the child's right to be heard with his/her right to be safeguarded from harm?

## REFERENCES AND FURTHER READING

Goldson, B. (2008) *Dictionary of Youth Justice*

UNICEF (2007) *Implementation Handbook for the Convention on the Rights of the Child: 3<sup>rd</sup> Edition*

UNODC (2006) *Handbook on Restorative Justice*







# CHAPTER 2

## CHILDREN AT RISK

### CONTENTS

Learning Objectives

Essential Principles

Country Context

Application

A. The importance of prevention

B. Vulnerable children

C. Safeguarding

D. Providing services to vulnerable to children at risk

E. Avoiding stigmatisation

F. Incapacity to commit crime

G. Design programmes based on research

H. Voluntary Participation

I. Community based services

J. Parenting programmes

K. Programmes for children

L. Whole family approaches

M. Institutionalisation as a last resort

N. Multi-agency co-operation

Issues for Discussion

Case Studies

References and further reading

## LEARNING OBJECTIVES

After completing this chapter you should be able to:

- Provide a definition of who is a 'child at risk' and a 'child in need of care and protection';
- List the main international guidelines on prevention;
- Explain why it is important to establish a national plan for the prevention of children involved in crime (UN policy indicator);
- Explain the difference between different prevention policies and their strengths and weaknesses.

## ESSENTIAL PRINCIPLES

- A. The need for and **importance of delinquency prevention** policies, which facilitate the socialisation and integration of all children, should be recognised. (*Riyadh Guidelines, No. 5; Committee on the Rights of the Child, General Comment No.10*)
- B. Specific protection and assistance needs to be granted to more **vulnerable children**, such as migrant children, refugee and asylum seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions. (*Council of Europe Guidelines on Child-friendly Justice*)
- C. Those who are demonstrably endangered or at social risk and are in need of special care and protection need **safeguarding**. (*Riyadh Guidelines, No 5*)
- D. Government agencies should take special responsibility and **provide necessary services** for homeless or street children. (*Riyadh Guidelines, No.38*)
- E. Any prevention policies, programmes or studies of crime prevention should **avoid criminalising** and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others. (*Riyadh Guidelines*)
- F. States must seek to promote the establishment of a minimum age below which children shall be presumed **not to have the capacity to infringe the penal law**. (*Convention on the Rights of the Child, Article 40; Committee on the Rights of the Child, General Comment No. 10*)
- G. **Programmes to prevent delinquency** should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly. (*Riyadh Guidelines, No. 48*)
- H. Participation in plans and programmes should be **voluntary**. Young persons themselves should be involved in their formulation, development and implementation. (*Riyadh Guidelines, No. 50*)
- I. **Community-based services** and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist. (*Riyadh Guidelines, No. 32; Committee on the Rights of the Child, General Comment No.10*)
- J. **Specialised prevention programmes** and educational materials, curricula, approaches and tools should be developed and fully utilised. (*Riyadh Guidelines, No.24*)
- K. Measures should be taken and programmes developed to provide families with the opportunity to **learn about parental roles and obligations** as regards child development and child care, promoting positive parent-child relationships, sensitising parents to the problems of children and young per-

sons. (*Riyadh Guidelines; Committee on the Rights of the Child, General Comment No.10*)

- L. Governmental and **social efforts to preserve the integrity of the family**, including the extended family, should be pursued; society has a responsibility to assist the family in providing for the care and protection of children. (*Riyadh Guidelines, No.12*)
- M. The **institutionalisation of young persons should be a measure of last resort** and for the minimum necessary period. (*Riyadh Guidelines, No.46*)

- N. There should be close **interdisciplinary co-operation** between national, State, provincial and local governments, with the involvement of the private sector representative citizens of the community in preventing child offending/ (*Riyadh Guidelines, No.9*)

### Country Context

- There is a State Council for the prevention of juvenile delinquency within the Ministry of Justice and there has been some activity in developing a National Strategy for the prevention of juvenile delinquency, but the outcome is yet to be seen.
- Currently, few prevention programmes exist in the community. Those that do are often partial, not continuous and not sustainable. For example, there are police officers within the Police Unit for Prevention and in each police station there is an officer responsible for activities designed to prevent offending by children. However their activities are limited, and consist largely in liaising with schools, “day centres” for street children, local governments and the community. Unfortunately their activities are of very modest character.
- Local councils for the prevention of juvenile delinquency (within the municipalities), while foreseen in law, have not been established yet. However, a local NGO initiative is trying to assist in the establishment of at least 10 local councils in 10 municipalities, and this process is ongoing.
- There have been some attempts to develop parenting programmes; however, they are still in an initial phase so the impact is yet to be seen. The Centres for Social Work piloted a project which established 10 educational centres for group work with parents of children with problematic behaviour or disorders such as hyperactivity, in order to teach parents to identify problems at an early stage and respond appropriately to them. Unfortunately, because of lack of funding they were discontinued.
- The legal definition of children at risk according to the current Juvenile Justice Law is confusing as it mainly focuses on the age of criminal responsibility and not the behaviour of the child. For instance, children at risk of becoming offenders are children aged 7-14, (14 is the age of criminal responsibility). These children can be subject to so-called measures of aid and protection administered by the Centers for Social Work (CSW). According to the Juvenile Justice Law the CSW are obliged to establish specialised teams to carry out this diversion function. One measure that the CSW can use is so-called “mediation”, which in practice is primarily focused on paying reparation to the victim.
- Currently, the welfare institutions that provide care and protection to children cover all categories of children, mixing children of different ages, behaviours and vulnerabilities.

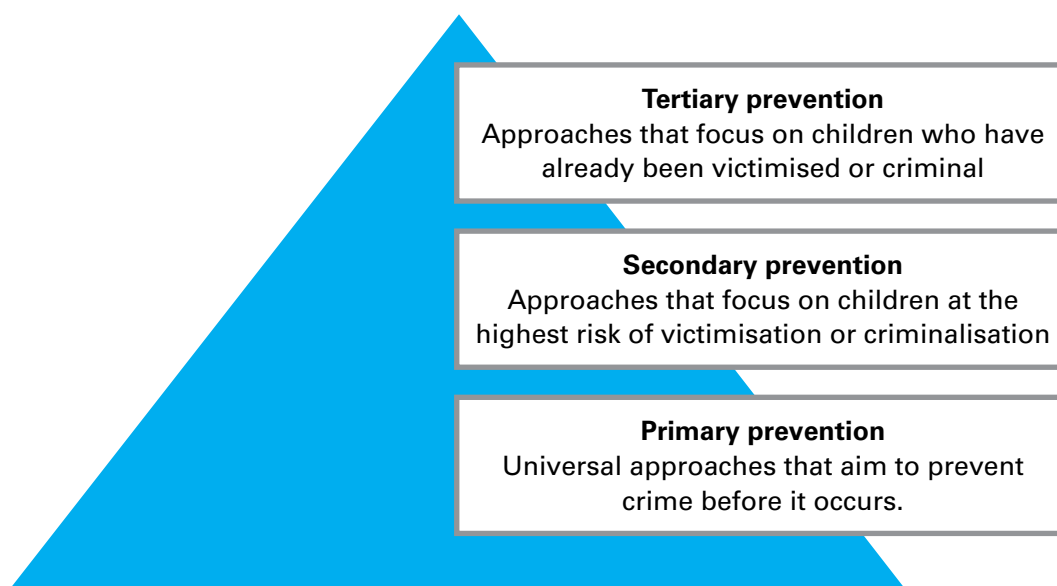
## APPLICATION

### A. The importance of prevention

The most effective means of reducing the numbers of children in conflict with the law is prevention. Indeed, 'of all known interventions to reduce juvenile delinquency, preventive interventions that focus on child delinquency will probably take the largest "bite" out of crime.'<sup>1</sup>

The Committee of the Convention on the Rights of the Child General Comment No. 10 draws attention to the need for countries to consider prevention when tackling the issue of child criminality, stating that 'a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings'. This is because preventing crime is better for the children, their families, their communities and society as a whole.

Prevention can be seen as having three tiers:



This chapter concentrates on secondary prevention: approaches that focus on children at the highest risk of victimisation or criminalisation.

### B. Vulnerable children

Children *at risk* of coming into conflict with the law are identified by the characteristics they share with children *in conflict with the law*. Their family background and current behaviour lead professionals to judge their potential for future criminality. Generally, the most common characteristic of children who are at risk of coming into conflict with the law is their vulnerability.

Children who are at risk of coming into conflict with the law tend to display certain traits, termed 'risk factors', that lead professionals to believe that they may commit crime in the future. The majority of these risk factors can be countered by fostering more positive traits, or 'protective factors'. At the basis of prevention is the attempt to tackle risk factors by fostering protective factors in the children's lives. The table below gives examples of common risk and protective factors:

<sup>1</sup> Loeber et al., 1991, in Cipriani, 2009

RISK FACTORS	PROTECTIVE FACTORS
<b>Family factors</b>	
<ul style="list-style-type: none"> <li>• Low family socio-economic status</li> <li>• Parents, siblings or other family members with offending and anti-social behaviour</li> <li>• Harsh and inconsistent parenting</li> <li>• Poor parent-child relationships</li> <li>• Early victimisation (physical, sexual and other abuse)</li> <li>• Violence in the home</li> <li>• Passive or condoning attitudes to anti-social and criminal behaviour</li> </ul>	<ul style="list-style-type: none"> <li>• High socio-economic status</li> <li>• Parents who provide pro-social role models</li> <li>• Consistent parental support and supervision</li> <li>• Strong bonds to parents</li> <li>• No early trauma or abuse</li> <li>• Safe home</li> <li>• Clear moral guidance from parents regarding anti-social and criminal behaviour</li> </ul>
<b>School Factors</b>	
<ul style="list-style-type: none"> <li>• Weak attachment to school</li> <li>• Low educational achievement</li> <li>• Organisational weakness in the school</li> <li>• Aggressive behaviour and bullying</li> </ul>	<ul style="list-style-type: none"> <li>• Strong bonds to teachers.</li> <li>• Strong educational attainment</li> <li>• Well functioning school</li> <li>• Good relationships with classmates</li> </ul>
<b>Community factors</b>	
<ul style="list-style-type: none"> <li>• Lack of attachment to the local community</li> <li>• Ready availability of drugs</li> <li>• Disadvantaged area</li> <li>• High turnover of the population</li> <li>• Gangs operating in the area</li> </ul>	<ul style="list-style-type: none"> <li>• High community involvement</li> <li>• Drug free neighbourhood</li> <li>• High socio-economic area</li> <li>• Stable population</li> <li>• No gang networks operating</li> </ul>
<b>Individual/Peer factors</b>	
<ul style="list-style-type: none"> <li>• Association with delinquent peers</li> <li>• Substance abuse</li> <li>• Aggression and impulsivity</li> <li>• Attitudes sympathetic to offending</li> </ul>	<ul style="list-style-type: none"> <li>• Pro-social peers</li> <li>• Social skills</li> <li>• Self control</li> <li>• Attitudes against offending</li> </ul>

It is important to note that although the term 'children at risk' is often used to describe young children, there is no age limit to this term. Children of any age could be considered at risk of committing crime or display the characteristics of those at risk.

## C. Safeguarding

The majority of children at risk of coming into conflict with the law are also usually deemed in need of care and protection.

### UN definition: Child in need of care and protection:

A child who (a) has been, is, or is at risk of being abused, neglected, abandoned or exploited; and (b) lacks anyone with parental authority who is willing and able to provide protection from the abuse, neglect, abandonment or exploitation. (UNICEF Child protection system mapping and assessment toolkit)

Children at risk may be in situations where they:

- Are on the streets or have unstable living environments;
- Are associating with older, criminal peers or have family members in the criminal justice system;

- Are involved in the commercial sex industry or prostitution or trafficking
- Have experienced war, conflict or violence.

They are also likely to come from troubled backgrounds and will have experienced one or more form of abuse. Such abuse could include neglect, physical abuse, psychological/emotional abuse and sexual abuse. There is also evidence to suggest that experience of domestic violence in the home is a risk factor for young people committing crime.

#### Definitions: Child Abuse (World Health Organisation Handbook on Child Abuse)

*Neglect:* Neglect is the inattention or omission on the part of the care-giver to provide for the development of the child in all spheres: health, education, emotional development, nutrition, shelter and safe living conditions, in the context of resources reasonably available to the family or caretakers and causes, or has a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. This includes the failure to properly supervise and protect children from harm as much as is feasible. (WHO, 1999)

*Physical Abuse:* Physical abuse of a child is that which results in actual or potential physical harm from an interaction or lack of interaction, which is reasonably within the control of a parent or person in a position of responsibility, power, or trust. There may be single or repeated incidents (WHO, 1999).

*Sexual abuse:* Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society. Child sexual abuse is evidenced by an activity between a child and an adult or another child who by age or development is (WHO, 1999) in a relationship of responsibility, trust or power the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of a child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials. (WHO, 1999)

*Emotional abuse:* Emotional abuse includes the failure to provide a developmentally appropriate, supportive environment, including the availability of a primary attachment figure, so that the child can develop a stable and full range of emotional and social competencies commensurate with her or his personal potential, and in the context of the society in which the child dwells. There may also be acts towards the child that cause or have a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. These acts must be reasonably within the control of the parent or person in a relationship of responsibility, trust or power. Acts include restriction of movement, patterns of belittling, denigrating, 'scapegoating', threatening, scaring, discriminating, ridiculing, or other non-physical forms of hostile or rejecting treatment (WHO, 1999).

## D. Providing services to children at risk

All children have a right to be protected from harm. Although the family is the preferred place for all children, sometimes relationships between a child and its family can break down. When this is the case, the Riyadh Guidelines state that community-based services which offer appropriate counselling, guidance and recreational activities to children and their families should be available. It is especially important that these services are available to all children without discrimination, including children of families of indigenous, migrant and refugee families.

International standards emphasise that Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative. For example, it is recommended that Government agencies take special responsibility and provide necessary services for homeless or street children. Also, special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

Owing to the prevalence of, and harm that leads from, domestic violence, the Riyadh Guidelines recommend that measures and strategies to prevent domestic violence against and affecting children should be developed. Domestic violence is often a risk factor that is apparent in the backgrounds of vulnerable children and those who find themselves in conflict with the law.

### E. Avoiding stigmatisation

As it is generally the prediction of criminality, rather than an actual criminal act that is a characteristic of children at risk of coming in to conflict with the law, it is important to be extremely mindful of the stigmatisation that a child may experience from being in a prevention programme. The international standards assert that when preventing crime, the needs of the child must be paramount. Indeed, any prevention policies, programmes or studies of crime prevention should avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others. For example, the Riyadh Guidelines ask countries to consider that ‘youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.’ In turn, it asserts that prevention policies and measures should be especially aware that labelling a child as “deviant”, “delinquent” or “pre-delinquent” often can contribute to the development of a pattern of such behaviour.

### F. Incapacity to commit crime

Some children at risk may display behaviour that is ‘anti-social’ or impacts negatively on those in their society. These children are especially vulnerable as they are considered particularly at risk of having this behaviour escalate into criminal activity. They may even carry out acts that would have been criminal if they were of the age of criminal responsibility. Nevertheless, these children are at much greater risk of continuing these activities as they get older. Research suggests that ‘the most difficult juvenile offender cases involve children who are very likely to have exhibited problem behaviour or committed offences when they were younger’<sup>2</sup>. In fact, the earlier the anti-social behaviour begins, the more likelihood there is of the child becoming serious, violent and chronic offenders.

#### Definition: Anti social behaviour

Anti-social behaviour involves nuisance, incivility, disorderly or offensive and/or ‘pre-criminal’ behaviour, which cumulatively undermine the quality of life of the wider community or which cause, or are likely to cause, ‘harassment, alarm or distress’ to people. (Goldson, 2008)

What to do with children who commit grave acts or anti social acts that would be criminal if they were of the age of criminal responsibility is crucial. Article 40 (3) of the Convention on the Rights of the Child requires States to seek to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. This means that children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Although it is possible that very young children have the capacity to infringe the penal law, if they commit an offence when below the minimum age of criminal responsibility, the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. The General

<sup>2</sup> Cipriani, 2009



Comment No. 10 recommends that for these children special protective measures can be taken, if necessary, in their best interests.

The General Comment No. 10 demands that children below the age of criminal responsibility should have their human rights and legal safeguards fully respected. In this regard, States should inform the Committee in their reports in specific detail how children below the minimum age of criminal responsibility (MACR) set in their laws are treated when they are recognised as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above MACR. (For a more in-depth discussion on the age of criminal responsibility, see Chapter 3: Arrest)

*Example: Canada: Snap Outreach Project*

The SNAP outreach project for those under 12 years old takes a multi-systems approach to children younger than the age of criminal responsibility who have acted in an anti-social way. The project is a central hub for all referrals and responses to children engaging in anti-social behaviour across Toronto. All agencies including the city police and fire departments, children's aid societies, school boards, and other children's service agencies work together from this centralised point. After initial screening, the children learn cognitive behaviour skills in structured groups, while their parents learn effective family and child management strategies. The children can also receive mentoring partners, counselling, in-home academic tutoring, school advocacy and teacher consultations. Evaluations demonstrate the positive effects of the programme and it has been widely replicated.<sup>3</sup>

*Example: Turkey: Protection, Care and Rehabilitation Centres*

In 2006, the Social Services and Child Protection Agency established 'protection, care and rehabilitation centres'. There are presently six such centres for children below the age of criminal responsibility. Most of the children are placed in the centre for theft and for involvement with drugs (mostly glue and thinner). Those with substance abuse problems are placed in a special rehabilitation facility before admission to the centre. Most come from a violent home environment and have poor social skills, and many are on medication for psychosocial problems. The staff include social workers and educators. Residents attend school in the community, but receive remedial education and participate in cultural activities in the centre.<sup>4</sup>

## G. Design programmes based on research

The Riyadh Guidelines emphasises that any programmes to prevent delinquency should be 'planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly'. Research published in 2006 by the European Union found that the following types of programmes were showing 'a promising impact':

- Developmental crime prevention;
- School safety initiatives;
- After-school activities;
- Situational crime prevention;
- Therapeutic interventions, including Multi-systemic Therapy, Family Functional Therapy and Aggression Replacement Training (among others);
- Mentoring;

<sup>3</sup> European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

<sup>4</sup> UNICEF (2010) Good practices and promising initiatives in juvenile justice in the CEE/CIS region: A UNICEF catalogue of practices documented through the Juvenile Justice Critical Mass initiative

- Targeted policing of high risk children and of areas where they are known to commit crimes; and
- Restorative justice.

In contrast, they found that measures which were *not* effective at preventing child crime (at secondary or tertiary prevention level) included:

- Child curfews;
- Scared straight programmes, where at-risk children are shown round adult prison facilities and interact with some adult inmates with the purpose of deterring them from future offending behaviour;
- Probation;
- Imprisonment;
- Boot camps; and
- Trying juveniles in adult courts.<sup>5</sup>

In designing a programme, international standards suggest that it should:

- Have a clear analysis of the problem to be addressed and the resources available;
- Have well-defined responsibilities for agencies, institutions and staff;
- Have mechanisms for the appropriate co-ordination between governmental and non-governmental agencies;
- Be monitored and carefully evaluated to measure success;
- Have the involvement of national, State, provincial and local governments as well as the private sector, labour, child-care, health, education, social, law enforcement and judicial agencies;
- Be non-stigmatising;
- Use child participation in the planning and running of the prevention programme; and
- Incorporate the relevant training for all staff at all levels.

## H. Voluntary Participation

When designing a prevention programme it is important to remember that they are not a method of punishment. They should be voluntary for all those involved as this produces lasting results. In addition, it is recommended that programmes are designed with the involvement of the children and their families that take part. This way they are more likely to feel trusted making more of an impact on their behaviour and overall outcomes.

## I. Community based services

All children have the right to grow up in circumstances that do not put them at risk of coming into conflict with the law. The Convention on the Rights of the Child states that all children should have their rights upheld in terms of having an adequate standard of living, a high standard of health and access to health care, access to good education, protection from all forms of physical or mental violence, injury or abuse, and from economic or sexual exploitation. As such, government legislation should ensure that no child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

A general emphasis should be placed on prevention policies that facilitate the successful socialisation of all children. However, it is those children who fall through these societal structures that are most in need of help. For instance, those who drop out of school or otherwise do not complete their

<sup>5</sup> European Crime Prevention Network 2006, A Review of good practices in Prevention Juvenile Crime in the European Union

education are more likely to be at risk than those who are attending school. The focus of prevention programmes should be vulnerable children who may fall through these societal safeguards.

The Riyadh Guidelines state that prevention programmes are best developed by community-based services rather than formal agencies of government. The successful prevention of child crime involves the whole community and children and young people should play an active role in prevention, working in partnership with the rest of society. Successful prevention programmes could involve all strata of civil society and the government.

*Example: Hungary: "Loafers"*

"Loafers" is a community-based and multi-agency approach to provide useful leisure activities for youth at risk. Another focus is school-based social and life skill training, combined with large scale awareness and information campaigns such as in the Beccaria Model Project for Crime Prevention.<sup>6</sup>

*Example: USA: Communities that Care*

Communities That Care (CTC) is a programme of the Center for Substance Abuse Prevention. It is a coalition-based prevention operating system that uses a public health approach to prevent behaviours such as violence, delinquency, school drop-out and substance abuse. Using strategic consultation, training, and research-based tools, CTC is designed to help community stakeholders and decision makers understand and apply information about risk and protective factors, and programmes that are proven to make a difference in promoting healthy youth development. It focuses on strengthening protective factors that can buffer children from problem behaviours and promote positive youth development. It engages all community members who have a stake in healthy futures for young people and sets priorities for action based on community challenges and strengths. Clear, measurable outcomes are tracked over time to show progress and ensure accountability.<sup>7</sup>

## J. Parenting programmes

Evidence suggests that prevention programmes that focus on parents and other family members are the most effective for younger children<sup>8</sup>. Indeed the General Comment no. 10 emphasises Articles 18 and 27 of the Convention on the Rights of the Child, which confirm the importance of the responsibility of parents for the upbringing of their children. It also emphasises the need for State parties to provide assistance to parents or guardians in order to better carry out their parental responsibilities. These measures, say the General Comment 'should not only focus on the prevention of negative situations, but also, and even more, on the promotion of the social potential of parents'. Parenting programmes can take the form of parent training to enhance parent-child interaction and home visitation programmes, which can start at a very young age of the child.

*Example: Sweden: Community Parent Education Programme*

The Swedish National Institute of Public Health initiated a pre-school, family based interactive prevention programme, COPE, 'Community Parent Education Program'. The programme consists of about 15 group sessions and can comprise up to 30 parents with one or two group leaders, aiming to promote positive behaviour in children, and to teach them how to set boundaries and to avoid conflicts, but also to improve co-operation between parents and pre-school children. A 2009 evaluation indicated that the programme was effective in reducing conduct problems, hyperactivity, impulsivity, daily problem behaviour, parent stress and lack of perceived parental control.<sup>9</sup>

6 European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

7 <http://www.preventionaction.org/prevention-news/communities-care-under-us-spotlight>

8 Cirpriani, 2009

9 European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the

*Example: United Kingdom: Webster-Stratten Parent Training Programme*

This programme includes parent training and child skill training which aims to foster pro-social behaviour and interpersonal skills using, for example, video modelling, with the parents receiving weekly sessions with a therapist for 22-24 weeks. Around 140 children aged 3-8 who showed signs of antisocial behaviour and their parents were allocated to experimental or control groups. Parent reports showed that the antisocial behaviour of the experimental group decreased, while that of the control group did not change.<sup>10</sup>

## K. Programmes for children

Intervention programmes work best for children when they are implemented simultaneously in the home and the school. Child focused prevention programmes which involve education and positive activities are a common way of preventing anti-social behaviour. The Riyadh Guidelines emphasise that educational systems are in a unique position to help children who are at social risk. In particular, attention should be given to children who find it difficult to comply with attendance codes, and to "drop-outs".

*Example: Austria: Out the Outsiders*

The Austrian programme Out the Outsiders aims - using multi-media, role play and life-skill training - to develop the young person's personality by learning how to resist peer-pressure and build his/her own boundaries.<sup>11</sup>

*Example: Finland: "Boys in the Forest"*

A Finnish programme "Boys in the Forest", was designed as an "emotional experience in a therapeutic peer group", and is based on the learning of self confidence and responsibility. The children undertake regular activities in forms of hikes, camps, climbing, canoeing etc, in order to strengthen socially deprived boys' (aged 7-15), emotional resources, their self-control, their social skills and their ability to deal with emotional experiences.<sup>12</sup>

*Example: Austria: Peer Mediation*

In Austria, peer-mediation is used to solve conflicts by a pupil who, in the course of a voluntary class, has been trained as a so-called dispute helper or dispute guide mediator to resolve conflicts in an age appropriate manner. Simultaneously, all pupils are encouraged to take responsibility for their actions and to resolve conflicts in a constructive, non-violent manner. The role of the teacher is limited to the training of the pupil as a mediator and to acting as coach. Older pupils undertake the mediation of the problems of the younger ones. Mediators are contacted by putting a slip of paper into a post box, or by directly talking to the desired mediator. Sometimes anonymous requests received by mail are also considered. This peer mediation has resulted in excellent feedback from pupils, parents, and teachers.<sup>13</sup>

## L. Whole family approaches

Preventative approaches that involve the whole family are more likely to lead to sustained improvement in the behaviour of children. The Riyadh Guidelines support a societal approach to assisting the family in providing care and protection and in ensuring the physical and mental well-being of children.

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European Union; Thorell, L. (2009) The Community Parent Education Program: Treatment Effects in a Clinical and Community-based Sample.

10 European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

11 European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

12 European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

13 European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

*Example: United Kingdom: Youth Inclusion and Support Panel (YISP)*

The YISPs are for children between 8 to 13 years. The service has been developed with an emphasis on the prevention of involvement in crime or anti social behaviour. In order for children to be accepted for a YISP assessment, they must meet four or more of the risk factors listed in the request for referral for. The participation in a YISP assessment is voluntary, therefore both the young person and their parent's/carer's consent must be gained and a signed agreement sent with the request for referral. Once the referral has been accepted an assessment will be completed relating to the child or young person's mental health, risk status, vulnerability, substance misuse and parenting. The YISP is completely aligned with other children's services processes to avoid duplication for families and ensure they receive a joined up service. The YISP assessment is a multi-agency intervention and information regarding the family will be shared with other agencies.<sup>14</sup>

*Example: Sweden: Functional Family Therapy*

Functional Family Therapy (FFT) is a family-based prevention and intervention programme that has been applied successfully in a variety of contexts to treat a range of high-risk youths and their families. This approach draws on a multi-systemic perspective in its family-based intervention efforts. FFT targets youth between the ages of 11 and 18 from a variety of ethnic and cultural groups, but also provides treatment to younger siblings of referred adolescents. FFT is a short-term intervention — including, on average, 8 to 12 sessions for mild cases and up to 30 hours of direct service (e.g., clinical sessions, telephone calls, and meetings involving community resources) for more difficult cases. In most cases, sessions are spread over a 3-month period. Regardless of the target population, FFT emphasises the importance of respecting all family members on their own terms.<sup>15</sup>

## M. Institutionalisation as a last resort

In very exceptional circumstances, children may have no families to live with, or their families may be a danger to their wellbeing. It is recommended that measures are taken to attempt to improve the standard of care provided to children by their family. However, where this does not work, and where there is no one to step in and look after the child, government has to make alternative provisions. The Riyadh Guidelines state: 'where a stable and settled family environment is lacking, community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered'.

In some extreme cases the last resort may be institutional care. Institutional care should only ever be considered after all other attempts at caring for the children in a family or community environment have failed and should always be for the shortest possible period. In order to safeguard children's best interests, the Riyadh Guidelines state that criteria authorising institutional care should only be limited to the following situations:

- a. Where the child or young person has suffered harm that has been inflicted by the parents or guardians.
- b. Where the child or young person has been sexually, physically or emotionally abused by the parents or guardians.
- c. Where the child or young person has been neglected, abandoned or exploited by the parents or guardians.
- d. Where the child or young person is threatened with physical or moral danger due to the behaviour of the parents or guardians.

<sup>14</sup> Goldson, B (2008) Dictionary of Youth Justice. Willan

<sup>15</sup> European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

- e. Where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile nor non-residential community services can meet the danger by means other than institutionalisation.

In any consideration to place a child in residential care, their best interests should always be paramount. Further, the institution designed for their care should ensure their rights and needs are upheld and the children are offered the necessary open environment to flourish.

*Example: United Kingdom: Childhood First Homes*

Childhood First is a charity that provides residential care, special education and family support to young people aged twelve to eighteen. They have 4 residential facilities set in beautiful settings with large grounds. They treat children who present severe emotional and behavioural problems as a result of attachment difficulties usually rooted in early life trauma and use 'Integrated Systemic Therapy'. This approach focuses on healing trauma and enabling healthy attachments and relationships, young people achieve exceptional outcomes in every aspect of their lives. They create a therapeutic environment in which they work with the children enabling them to live together, learn and develop. "We place much emphasis on caring and thoughtful relationships and creating a sense of belonging".<sup>16</sup>

## N. Multi-agency co-operation

The General Comment No. 10 emphasises that States should fully promote and support the involvement of children, in accordance with Article 12 of the Convention on the Rights of the Child, and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social workers), in the development and implementation of prevention programmes. As the quality of this involvement is a key factor in the success of these programmes.

*Example: Poland: Multi-agency Prevention*

In Poland, a 10-year programme initiated by the Ministries of the Interiors, Education and Sport, Social Policy, Health and Justice as well as the Chief Headquarters of the Police, aims to prevent anti-social behaviour and juvenile delinquency. It implements and evaluates different modules: procedures for teachers and schools to communicate with the police in situations when children are in danger of delinquency, drug-addiction, alcoholism or prostitution; support for those working with the young at risk of anti-social or criminal behaviour, providing emergency intervention in the family; and an alternative probation project for youth staying in rehabilitation institutions and reformatories. Annual reports about the programme's effectiveness are submitted to the Council of Ministers.<sup>17</sup>

*Example: United Kingdom: Family Intervention Project*

The Family Intervention Project (FIP) provides the most 'at risk' families with high level, intensive support to make positive changes in their lives. A number of different agencies support families through a change process to a point where they are able to function effectively without intensive support and with a view to keeping families together where possible. One central agency acts as a broker for all other services targeted at the family. They provide a whole family assessment and support plan and provide them with intensive support/intervention utilising a range of models and approaches with regular review meetings, ongoing assessment and a planned exit. Each family's key worker models transparency and honesty, is straight-talking, and challenging. The agency also provides follow up and post-intervention support.<sup>18</sup>

<sup>16</sup> <http://www.childhoodfirst.org.uk/>

<sup>17</sup> European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

<sup>18</sup> UK Department for Education (2008) Family Intervention Projects: An Evaluation of their Design, Set-up and Early Outcomes - Brief

## ISSUES FOR DISCUSSION

- A. Why it is important to ensure that prevention is part of a country's justice for children strategy?
- B. What are some of the factors that may contribute to a child being at risk of coming into conflict with the law? In what ways are they similar or different to children who are at risk of becoming victimised?
- C. The Convention on the Rights of the Child says there should be an age below which children cannot be said to have committed a crime. Why does it require this?
- D. Some prevention programmes concentrate on the individual child, some on the parents, and some on the whole family. What are the pros and cons of the different methods?
- E. When designing a prevention programme how can you ensure that the programme itself does not stigmatise the participants so that they are more likely to commit crime rather than less likely?
- F. How can professionals ensure child participation in developing and designing prevention programmes?

## CASE STUDIES

- A. You are a police officer out on patrol at 2am in the morning. You come across a boy aged around 9 years old who is hanging around on a street corner. You know that he lives nearby as you found him in the same place last week and took him home to his father. Why do you think he continues to abscond from home? How would you look in to this situation and what measures would you take to ensure he is protected?
- B. You are a social worker and there is a large family who live in your town – they consist of a mother, father, three brothers and two sisters. None of the children ever seem to have new clothes and their hygiene levels are poor. The older ones are aggressive and the youngest ones are subdued. You rarely see the mother or the father out and about. Neighbours have reported that they sometimes hear arguments coming from the house. Do you think there is a need to establish if these children are safe or not? If so, how would you go about doing this?
- C. You are a school teacher and there is one particular boy aged 11 who is always troublesome in class. He does not seem to concentrate on the lessons and can be abusive to you if he does not understand something. Last week he pinched two girls for no reason at all and you sent him to the headmaster. The boy reminds you of his brother who is 5 years older and whom you used to teach. You know that his brother is now in trouble with the law. You do not want the same thing to happen to this boy. What do you do?
- D. A twelve year old girl was found dead in a park near the local school. She died of stab wounds and the incident appeared to be related to a gang. Three other girls, also aged 12 were arrested in connection with the death. They admitted being in a fight which escalated and resulted in the stab wound to the victim. Once they realised that she was hurt they did not know what to do and all ran away. The age of criminal responsibility is 14 in your country and yet all these girls are aged 12 to 13. What do you do with them?

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- [www.childhoodfirst.org](http://www.childhoodfirst.org)
- [www.preventionaction.org](http://www.preventionaction.org)







# CHAPTER 3

## ARREST

### CONTENTS

#### UN policy indicator:

1. Children in conflict with the law: Number of children arrested during a 12 month period per 100,000 of the population
3. Children in pre-sentence detention: Number of children in pre-sentence detention per 100,000 child population
4. Duration of pre-sentence detention: Time spent in detention by children before sentencing
7. Separation from adults: Percentage of children in detention not wholly separated from adults
10. Pre-sentence diversion: Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme

Learning Objectives

Essential Principles

Country Context

Application of Principles

- A. Age of criminal responsibility
- B. Age-determination
- C. Children should be treated equally
- D. Rights of children on arrest
- E. Importance of fair initial contact
- F. Ensure the child understands
- G. Parents and guardians
- H. Legal representation
- I. Protection of identity
- J. Need for specialist training
- K. Diversion
- L. Pre-trial assessment

Issues for Discussion

Case Studies

References and further reading

## LEARNING OBJECTIVES

After completing this chapter you should be able to:

- Explain why it is important for police officers to respect and protect the human rights of children;
- List the main international guidelines on arrest;
- Explain how children who are suspected of committing a crime should be treated.

## ESSENTIAL PRINCIPLES

- A.** **The age of criminal responsibility** for juveniles shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. (*Beijing Rules, No.4; Committee on the Rights of the Child, General Comment No. 10*)
- B.** If there is no **proof of age** and it cannot be established that the child is at or above the MACR, the child shall not be held criminally responsible (*Committee on the Rights of the Child, General Comment No. 10*)
- C.** States have to take all necessary measures to ensure that all children in conflict with the law must be **treated equally**. (*Committee on the Rights of the Child, General Comment No. 10*)
- D.** Basic procedural **rights** such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings. (*Beijing Rules No. 7, Council of Europe Guidelines on Child-friendly Justice, No.1*)
- E.** **Contacts** between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case. (*Beijing Rules, No.10*)
- F.** Information and advice should be provided to children in a manner adapted to their age and maturity, **in a language which they can understand** and which is gender and culture sensitive. (*Council of Europe Guidelines on Child-friendly Justice, No.1*)
- G.** Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the **parents or guardian shall be notified** within the shortest possible time thereafter. (*Beijing Rules, No.10*)
- H.** Throughout the proceedings the juvenile shall have **the right to be represented** by a legal adviser or to apply for free legal aid where there is provision for such aid in the country. (*Beijing Rules, No.15*)
- I.** The **privacy and personal data of children** who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. (*Council of Europe Guidelines on Child-friendly Justice, No.2; Beijing Rules, No.8*)
- J.** In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be **specialty instructed and trained**. In large cities, special police units should be established for that purpose. (*Beijing Rules, No.12*)

- K. Diversion:** Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. (*Beijing Rules, No.11; Convention on the Rights of the Child, Article 40; Committee on the Rights of the Child, General Comment No. 10*)
- L. The presumption of innocence** is fundamental to the protection of the human rights of children in conflict with the law as it is for adults. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. (*Committee on the Rights of the Child, General Comment No.10*)
- M. The background and circumstances** in which the child is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority. (*Beijing Rules, No.16*)

### Country Context

- Under the Juvenile Justice Law (2007/2009), the age of criminal responsibility is set at 14 years. Children aged 7 -14 years who commit offences or are at risk of offending are referred to the social welfare institutions (i.e. Centers for Social Work) by the public prosecutor.
- The police can call a juvenile for a so called “informative talk” and keep him/her for a maximum of 4 hours.
- A juvenile taken into police custody must be taken before a judge not later than 12 hours from the moment of apprehension.
- The Juvenile Justice Law does not specifically require the presence of a lawyer during questioning of children by the police.
- The juvenile judge decides after the first hearing whether the child will be remanded in custody after receiving a social inquiry report prepared by the CSW. The child may be remanded in custody if it is seen as necessary to ensure their presence throughout the justice process.
- The police have specialised teams for the investigation of offences committed by juveniles. There are nine police stations in the capital, each with two or three officers trained to work with children exclusively. Outside the capital there are two or three specialised investigators in each of the nine regions but there are not necessarily specialised officers in each police station.
- Diversion by the police is not prohibited but nor is it explicitly encouraged. As a result it rarely occurs in practice.
- No incidents of abuse or physical violence of juveniles by the police have been officially reported. However, some sources (defence lawyers and children in institutional care) have stated that occasional slaps and psychological pressure and violence to obtain confessions has been used by the police.
- Due to the current (2010/2011) problems of payment for lawyers, the right of the child to have them present at the stage of police procedure is not always respected.
- There are few facilities for children while in pre-trial detention. There is no free telephone communication and a strict procedure for visits. The rationale for this is that the duration of pre-trial is so short that it is not possible for anything to be done. The name used by juveniles for this facility (the pre-trial prison in Skopje) is the “Black gate”.
- Currently amendments to the Juvenile Justice Law are being prepared to align it with the Code on Criminal Procedure (that will enter into force in 2012).

## APPLICATION OF PRINCIPLES

### A. Age of criminal responsibility

Children can only be arrested if they are of the age of criminal responsibility. Article 40 of the Convention on the Rights of the Child requires States Parties to 'seek to establish a minimum age below which children shall be presumed not to have the capacity to commit a crime'. This minimum age means that only children at or above the minimum age of criminal responsibility at the time of the commission of an offence (or infringement of the penal law) can be formally charged and subject to penal law procedures.

The Convention on the Rights of the Child does not stipulate a minimum age of criminal responsibility (MACR). As a result, there is a wide range of minimum ages of criminal responsibility across the world, ranging from the age of 7 to 18. Some countries use two minimum ages of criminal responsibility with additional assessments to establish maturity. The assessment of this maturity is left to the court or judge, often without the requirement of involving a psychological expert. This can make the system of two minimum ages confusing and can leave too much discretion in the hands of the court or judge, which may result in discriminatory practices.

In light of this, the Committee on the Rights of the Child published its General Comment No. 10, which provides further guidance and recommendations regarding the MACR. It states:

'A minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States Parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level. At the same time, the Committee urges States Parties not to lower their MACR to the age of 12.'

General Comment No. 10 also states that 'every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice. It 'recommends that those States Parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The Committee notes with appreciation that some States allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception'.

### B. Age-determination

In order to establish if a child is of the age of criminal responsibility, their age must be determined. It is not uncommon for children to be unaware of their ages and dates of birth. In some cases, even the parents of such children are unable to give these particulars. Documentary proof of age is not always available for several reasons, one of which is that many children's births are never registered. Article 7 of the Convention on the Rights of the Child states that every child has the right to be registered after birth. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education, labour, and particularly within the juvenile justice system.

General Comment No. 10 states that if there is no proof of age and it cannot be established that the child is at or above the MACR, the child shall not be held criminally responsible. If there is fear that this assumption is being abused, methods such as wrist x-rays, medical examinations and testimonies from parents, teachers and other community members can be used to establish the age.

## C. Children should be treated equally

General Comment No. 10 asserts that States have to take all necessary measures to ensure that children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law are treated equally. Particular attention must be paid to discrimination and disparities which may be the result of a lack of a consistent child protection policy. Vulnerable groups of children, such as street children and children who are being sexually exploited are more likely to come into conflict with the law because of their lack of guardianship, economic subsistence and because of societal prejudices. The police must ensure that these children are treated appropriately as victims and given exactly the same respect and care as other children.

## D. Rights of children on arrest

Any contact by the police with the child should ensure the child's rights and avoid any harm. The Beijing Rules state that this could include the use of harsh language and physical violence. It can also mean any harm suffered by the child from being in contact with the law in itself. As such, the Beijing rules outline all the basic safeguards that should exist for children at all stages of proceedings:

- the presumption of innocence,
- the right to be notified of the charges
- the right to remain silent,
- the right to counsel,
- the right to the presence of a parent or guardian,
- the right to confront and cross-examine witnesses, and
- the right to appeal to a higher authority.

A child who is questioned by the police has the same rights as an adult not to answer questions put to them. This means that the child must tell the police his or her name and address but does not have to answer any other questions. The police must, as soon as possible after arrest, explain the nature of the allegations against them and inform the child of his or her rights to legal representation.

## E. Importance of fair initial contact

The first encounter a child has with the justice system will have a lasting impact on that child. Treating the child with fairness and respect reflects the importance of respecting the rights of others, which prepares the ground for the process of rehabilitation that may follow. Any treatment that leads to resentment and a sense of having been treated unfairly will make rehabilitation more difficult.

Police officers deal with children both as victims of crime and as perpetrators of crime. They are often the first agency that has contact with children. A good first experience with the police will give children more respect for the police and the law in general. The Commonwealth Secretariat<sup>1</sup> asserts that children are one of the most vulnerable groups in every society and that when dealing with children, either those suspected of committing a crime or those who are victims of crime, police officers should:

- be extremely patient;
- establish a relationship of trust with the child;
- be aware of the signs of abuse and exploitation;
- take into consideration that children may not realise that they have been or are being abused or exploited; and
- accept that sexual and physical abuse of children is not a 'private' matter, but criminal conduct and a human rights abuse.

<sup>1</sup> Commonwealth Manual on Human Rights Training for Police, 2006

Only minimum force should be used in dealing with children on arrest. There should be no use of handcuffs or restraints unless it is necessary for the protection of others or the protection of the child against harming him or herself, and no degrading treatment. It must be understood that transporting the child to the police station can also put the child at risk. Many children spend hours in the back of a police van in frightening circumstances after their arrest. Although international standards provide for keeping juveniles separate from adults in detention, these are often ignored when it comes to transportation because it is not always realistic. One option is for a police officer to sit in the back to supervise the children.

## F. Ensure the child understands

The child's first need is information about the charges against them, their rights and the process of arrest. In this regard, the police have a duty to inform the child of his/her rights in a manner the child can understand.

If a child is arrested, police officers must explain to children why they have been apprehended, in a way that they can understand. The information and advice should be provided to children in a manner adapted to their age and maturity, in a language which they can understand.

## G. Parents and guardians

When a child has been apprehended by the police, his or her parents or guardian must be immediately informed. Where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter. The police officer must advise the child of his or her right to talk to a parent or other adult and must specify that this right is separate from the right to counsel.

### *Example: United Kingdom: Appropriate Adult Service*

In the UK appropriate adult services are used when the presence of an adult is required during police questioning and other key stages of police detention of a juvenile. An appropriate adult can be a parent or guardian, social worker or other responsible adult aged 18 years or over who is not employed by the police. Appropriate adult services are run by third sector organisations. Volunteers are deployed to police stations 24 hours a day to ensure that any children arrested and questioned who do not have a parent or guardian available can have an appropriate adult instead.<sup>2</sup>

## H. Legal representation

The right of the child to legal assistance is enshrined in the international standards including the Convention on the Rights of the Child. Once arrested or detained, a child is to be advised immediately by the arresting officer or the officers in charge of his or her right to counsel. The child should have a reasonable opportunity to exercise that right. The child must be informed of the existence and availability of the applicable systems of duty counsel, free preliminary legal advice and legal aid in the jurisdiction.

## I. Protection of identity

The Beijing Rules state that the child's 'right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling'. The Council of Europe Guidelines on Child-friendly Justice give further information on what this protection of privacy looks like. In principle, no information that may lead to the identification of a child should be published. For example, no information or personal data should be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity. This could include their image, detailed descriptions of the child or the child's family, names or addresses, and audio and video records. This is because children are susceptible to stigmatisation

<sup>2</sup> Goldson, B (2008) Dictionary of Youth Justice. Willan

from society and may suffer from the adverse effects that may result from the publication in the mass media of information about their arrest.

## J. Need for specialist training

Police officers should be specially instructed and trained in child rights. As the Beijing Rules state, 'as police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.'

### *Example: Turkey: Specialised Police Units*

The staff of the Children's Police includes social workers, psychologists and internet technicians as well as police officers, and all receive intensive in-service training. In addition, a psychological questionnaire to evaluate candidates has been developed by the Istanbul office, and this was used to screen its entire staff by the end of 2009.<sup>3</sup>

## K. Diversion

Police are the first point of contact between children and the justice system and, as such, are the key actors in "diverting" children away from that system at the earliest possible stage. If they feel that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims, they may divert the child from the formal court process. In order to decide if this is the case, it is recommended that a set of established criteria is developed. Any diversion involving referral to appropriate community or other services shall require the consent of the child and her or his parents or guardians. For more in-depth information, see Chapter 4: Diversion.

## L. Pre- trial assessment

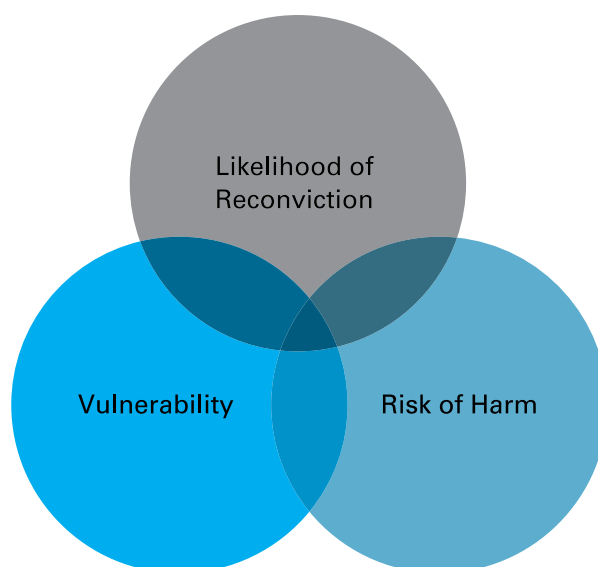
Children should be assessed by the appropriate professional to ascertain whether they could be dealt with in a way other than through criminal prosecution. The assessment is aimed at obtaining information about the child, which will assist in the probation officer or social worker's decision or recommendation to divert the case, whether the child can go home to parents or guardians, and what an appropriate temporary placement would be. Alternatively, they are necessary to ensure that the competent authority is informed of relevant facts about the child, such as their social and family background, schooling and educational experiences, and their emotional and mental health.

The Beijing Rules highlight that this background assessment of a child's characteristics and circumstances are indispensable. These assessment reports are sometimes also called social inquiry reports or social reports and they are usually concerned with three issues:

**Likelihood of reconviction:** The likelihood that the child will be arrested for further offences.

**Vulnerability:** The risk that the child is being harmed or will be harmed by his or her acts or omissions or the acts and omissions of others.

**Risk of harm:** The risk that the child might inflict death or injury either physical or physiological to others.



<sup>3</sup> UNICEF (2010) Good practices and promising initiatives in juvenile justice in the CEE/CIS region: A UNICEF catalogue of practices documented through the Juvenile Justice Critical Mass initiative



Assessment can take place soon after arrest and/or before children's appearance in court. The investigation and the report that results from it should be undertaken by a qualified social worker or a probation officer, attached to, or linked with, the court or board. The Assessment can be used for:

- Considering the child's suitability for diversion;
- Considering bail;
- Sentencing;
- Deciding the content of programmes and interventions;
- Identifying the risk of re-offending, vulnerability and risk of harm;
- Evaluating changes in needs and risks of time.

The basis of the assessment will be a thorough risk assessment. The purpose of risk assessment is aided by the identification of risk factors (static and dynamic).

- Static risk factors are those that are not subject to change. For child offenders, the relevant static risk factors include gender, low socio-economic status, instability of family environment, a history of school problems, a history of childhood abuse/neglect, a history of substance abuse, a history of crime and violence (exposure to and victimisation by as well as perpetration of), younger age of onset of antisocial behaviours, and certain kinds of disorders or deficits.
- Dynamic risk factors are those that have the potential to change through planned intervention, rehabilitation, or other influences. These changes can occur within the individual (e.g., treatment, rehabilitation) or within the situation (e.g., living setting, access to weapons).

See Chapter 2: Children at Risk, for more of a discussion of risk factors and protective factors.

*Example: United Kingdom: 'Asset' assessments*

In the UK, a Youth Offending Team Worker has the responsibility of writing an Asset assessment on the young person. In order to complete this assessment they will interview the young person, their parents, and assess any other documentation and court reports to give a complete assessment of the young person and their likelihood of reoffending. In this assessment they will also set out the positive factors the young person has their lives, and the vulnerabilities they show, as well as their potential for harm.<sup>4</sup>

**Example of a social inquiry report structure: ASSET - UK**

1. Living arrangements
2. Family and personal relationships
3. Education, training and employment
4. Neighbourhood
5. Lifestyle
6. Substance use
7. Physical Health
8. Emotional and mental health
9. Perception of self and other people
10. Thinking and Behaviour
11. Attitudes to offending
12. Motivation to change
13. Positive Factors
14. Indicators of Vulnerability
15. Indicators of Serious harm to others

<sup>4</sup> Stephenson et al (2011) *Effective Practice in Youth Justice*. Routledge

## ISSUES FOR DISCUSSION

- A. What are the differences between the rights of children and adults on arrest?
- B. What are the responsibilities of police officers when dealing with children who are suspected of committing a crime?
- C. Can police question a child if they cannot find their parents or guardians? Why/Why not?
- D. How can police best reassure a child who has been arrested that they are safe?

## CASE STUDIES

- A. You are a police officer and are out on duty when you see Marko, an 11-year-old boy, coming out of a house that he has broken into. You suspect he has stolen a mobile phone from inside the house. When he sees the police, he runs away with the phone. Once you catch up with him you find out that he has been living on the streets for 18 months and has been suspected of taking food from houses. He has not been going to school for a long time. You find out that his father is no longer alive. What are the first steps you would take in investigating this case?
- B. Beni is 15 years of age and lives at home with his parents. His school work has slipped as he has been taking the odd day off school but his teachers describe him as being very bright with a good future if he works hard and stays at school. Ben likes to do his own thing so some nights he gets out of his bedroom window and meets up with his older friends. When he is with them he misuses substances. One day he is caught in possession of marijuana which he says is just for his use, however the amount that he is holding suggests that he has been dealing in the drug. What do you think is the most suitable course of action in this case?
- C. Emi has started running away from home and spending the night time on the streets. In order to survive she has been getting into cars with men and selling sex. One night when Emi was in a car with an older man he refused to pay her for sex and so she tried to forcibly remove the money from his wallet. A physical fight broke out and during the fight Emi pulled a knife and stabbed him in the ribs. The police arrived and Emi was found three streets away, still holding the knife. The victim was rushed to hospital where it was found that he had a punctured lung. As a police officer, what measures would you take when confronted with this case?

## REFERENCES AND FURTHER READING:

Commonwealth Secretariat (2006) *Commonwealth Manual on Human Rights Training for Police*

Stephenson et al (2011) *Effective Practice in Youth Justice*. Routledge

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UNICEF (2010) Good practices and promising initiatives in juvenile justice in the CEE/CIS region: A UNICEF catalogue of practices documented through the Juvenile Justice Critical Mass initiative





# CHAPTER 4

## DIVERSION

### CONTENTS

Learning Objectives

Essential Principles

Country Context

Diversion Theory

A. Rules of diversion

B. Advantages of diversion

C. Assessment

Diversion Measures in Practice

A. Non-intervention

B. Cautions or formal warnings

C. Support services

D. Voluntary work

E. Family interventions

F. Restorative justice measures

Implementation Considerations

Issues for Discussion

Case Studies

References and further reading

#### **UN policy indicator:**

1. Children in conflict with the law: Number of children arrested during a 12 month period per 100,000 of the population.
10. Pre-sentence diversion: Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme.

## LEARNING OBJECTIVES

After completing this chapter you should be able to:

- Understand the value of using diversion measures;
- Know when diversion can be used most effectively at key stages in the justice process;
- Understand the domestic, international and regional standards regarding diversion of children;
- Examine which diversion measures can be applied, which institutions or organisations should be involved in implementing them, and how this should be done.

## ESSENTIAL PRINCIPLES

- A. States shall promote and establish laws and procedures for measures for dealing with children who have infringed the penal law, without resorting to judicial proceedings, providing that **human rights and legal safeguards are fully respected**. (*Convention on the Rights of the Child, Article 40*)
- B. Consideration shall be given to dealing with juvenile offenders without resorting to the formal trial system, whenever it may serve the child's **best interests**. (*Council of Europe Guidelines on Child-friendly Justice; Beijing Rules, No.11*)
- C. Any diversion involving referral to community or other services must require the **consent** of the juvenile, or her or his parent's or guardian. Children should be **informed of their rights** in regard to the judicial or non-judicial proceedings in which they are or might be involved. (*Council of Europe Guidelines on Child-friendly Justice; Beijing Rules, No.11*)
- D. A variety of dispositions, such as **care, guidance and supervision orders, counselling, probation, foster care, education and vocational training, mediation, restorative justice measures** and other alternatives to deprivation of liberty shall be available to ensure that children dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the offence. (*Council of Europe Guidelines on Child-friendly Justice; Convention on the Rights of the Child, Article 40; Guidance Note of the Secretary-General: UN Approach to Justice for Children*)
- E. Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding. (*Committee on the Rights of the Child, General Comment No.10*)
- F. The police, prosecution and other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings. (*Beijing Rules, No.11; Riyadh Guidelines, No.58*)
- G. Diversion programmes avoid imprisonment that may have a corruptive effect on young persons and undermine any chance of successful rehabilitation. (*Convention on the Rights of the Child, Article 37; Council of Europe Guidelines on Child-friendly Justice*)

### Country Context

- The public prosecutor can mediate between the involved parties (the child offender and the victim) and if they agree he can terminate further proceedings. This is available for cases that are punishable with less than 3 years of imprisonment. The Public Prosecutor in some cases can also postpone the proceedings for 6 months if the victim is compensated.
- The public prosecutor and the juvenile judge can also send a case to mediation for juveniles who commit offences punishable with a maximum of 5 years imprisonment. There are trained mediators and a procedure in place, but in practice there have still not been any cases referred to mediation.
- During these procedures the law does not safeguard the rights of the child to have a defence lawyer present during the initial conversation at the CSW, or the right to be heard and have their opinion taken into consideration, consent as to the referral for diversion or not, the right of the parents and child to complain regarding the diversion measure etc.
- Police diversion is not yet developed.

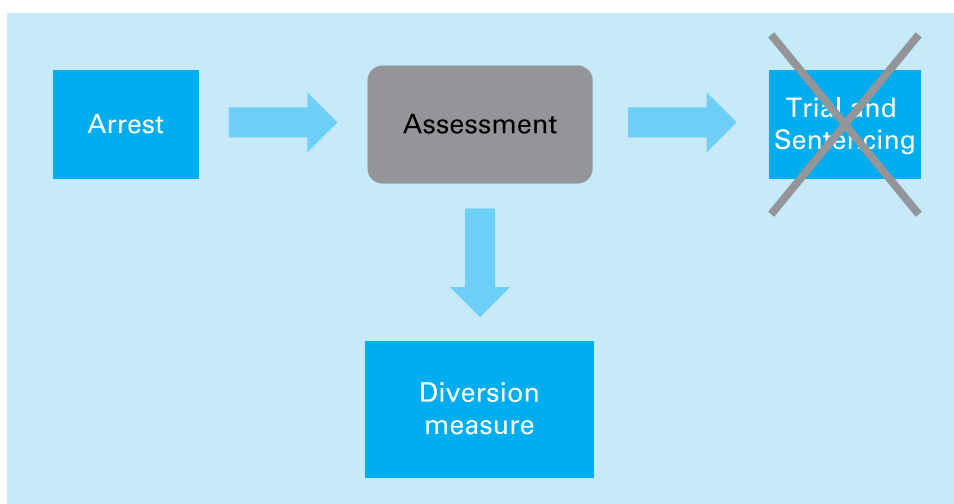
## DIVERSION THEORY

### Definition: Diversion<sup>1</sup>

Diversion programmes seek to avoid a first or early contact with the criminal justice system by directing children away from the formal justice system and prosecution towards community support and appropriate services or interventions.

Diversion is often used for minor or first time offences although it should be applicable to any offences. It can be applied at various stages of proceedings including by police before or after arrest, by investigating magistrates, judges or prosecutors before or after charge and by judges during trials.

Diversion aims to ensure that the child is diverted away from the criminal justice system:



Diversion is based on the theory that while a child may have carried out actions that are against the law, it is more damaging to them, and they are more likely to reoffend if they are taken through the formal criminal justice system. The desirability of avoiding the stigma usually associated with prosecution and the counter-productive aspects of many formal sanctions, especially detention,

<sup>1</sup> Commentary to the Beijing Rules (1985), Section 11

have been widely recognised. Furthermore, diversion avoids the excessive costs of pursuing a case through the formal justice system, which is often slow and creates a backlog of minor offence cases in juvenile courts.

Where possible, diversionary measures aim to involve support networks of the child including the family and community. Diversion measures, especially for juveniles, will often also incorporate principles of restorative justice (see Chapter 1).

## A. Rules of diversion

It is imperative that diversionary measures respect and protect child's rights, including the right to due process. The following guidelines should be followed in order to ensure this.

- Diversion must never be used where there is not suitable evidence for charges to be brought or prosecution to be achieved. The child must always be aware that he or she may be acquitted if the case goes to court.
- Diversion measures can only be used where a child freely admits to committing an offence and agrees to a non-judicial disposal. A child's parents or guardians must also consent to the diversion measure.
- Diversion must not include deprivation of liberty.
- Where no diversionary option is appropriate or acceptable to the child then the case should be referred back to the formal justice system and the court process.
- In cases where the child does not comply with the diversion measures and the case is referred back to court, the child's statement or acceptance of guilt made at the beginning of the diversion process cannot be taken as evidence.
- Legal safeguards and human rights must always be fully respected when carrying out diversion measures. Due process must be respected, including informing the child and guardian of their rights, the options available and the consequences of his or her choice; adhering to the principle of proportionality; and there must be a system in place that allows for the means of raising grievances.
- There are also worries that sometimes diversion measures disposed by the police have a 'net widening' effect where by children whose actions would not normally have warranted any official state intervention, receive a diversion measure. Therefore, diversion measures must only be applied in situations where a child's actions would otherwise lead to prosecution.

When deciding what diversion measure to use, consideration must be given to a child's age and maturity, religion, culture, community, their own views and concerns, and his or her best interests. No child should be discriminated against in the selection of a diversion programme, the options available or the process taken.

## B. Advantages of diversion

Diversion presents several advantages when compared to the formal criminal justice system which can be too rigid, cumbersome, slow and unresponsive to the needs of children who are often first-time or non-serious offenders.

- Diversion is less costly. The cost is a fraction of a formal judicial procedure making it widely accessible.
- Diversion programmes aim to give the child an insight into the consequences of his or her actions, take responsibility for them and redress the harm caused. Further, the speed of the diversion process better allows offenders to see an immediate consequence from the breach of the law and the reaction of society.
- Diversion stops a child getting a criminal record, reduces the stigmatisation of formal criminal justice sanctions and gives them a better chance of rehabilitation.
- Diversion reduces the caseload of courts allowing a judge to better focus on the needs of those children who do end up in the formal justice system.

- Diversion reduces the number of children held in pre-trial detention and therefore, improves the conditions for those who are held there.
- Where restorative justice principles are involved, it allows for the participation of the victim or community and by redressing the harm caused the child is likely to be better reintegrated into the communities.
- The flexibility of diversion allows various sanctions to be combined to better address the individual situation of the offender.
- Diversion programmes are often better able to acknowledge the root cause of the offending behaviour and target this through support services.

A German study<sup>2</sup> found that the recidivism rate was lower when cases were diverted from the criminal justice system compared to offenders who had committed similar crimes but were sentenced to custody or another formal sanction.

### C. Assessment

Assessment is the first step in determining whether a case is suitable for diversion. Each case should be considered individually and the factors contributing to the offending behaviour must be assessed to determine if diversion is appropriate.

A number of criteria must be taken into account before diverting a child. Those conducting the assessment must be able to assess the personal circumstances of the child, the offence itself, and the factors that brought it about.

- Diversion must not become a means to escape from justice. It is usually limited to first-time offences and more rarely with second offenders and never with recidivists.
- Diversion is not appropriate for the most serious offences such as murder, rape, or other instances where the child presents a threat to society.
- Where there is no reasonable case against the accused, no legal or diversionary action can be taken and the case must be dropped.
- Diversion is not appropriate when the child is not willing to admit his or her responsibility or does not wish to participate in the proposed measure.

## DIVERSION MEASURES IN PRACTICE

To be effective a variety of interventions and sanctions should be available to address the individual situation of the child. The focus should be directed toward rehabilitation, reintegration and reducing reoffending. Sometimes, a number of these diversion measures can be applied at one time to have a more intensive intervention for children who have committed more serious offences or who may be in need of increased levels of services, monitoring or help.

The Council of Europe's Guidelines on Child-friendly Justice (2010) also state that children should have the option of obtaining legal advice or other assistance so they can determine the appropriateness or desirability of the proposed programme.

Good diversion programmes will use a variety of the measures discussed below, to ensure each child is treated on a case-by-case basis and gets the most appropriate measures.

### A. Non-intervention

Non-intervention is a diversionary tactic used where it is believed a child is unlikely to reoffend and will 'grow out of' their offending behaviour. In some countries a judge may decide not to continue with

<sup>2</sup> Dunkel (2005) in European Crime Prevention Network (2006)



a trial if the case is considered too trivial. Non-intervention may be applied along with a probationary period, where as long as a child is not convicted of another offence, no measures are taken.

*Example: Austria and Germany: Non-intervention<sup>3</sup>*

In Austria the prosecutor may drop the case of a juvenile if the offence they are accused of is punishable by not more than 5 years imprisonment, unless more serious measures, in particular any form of diversion are called for. Similarly, in Germany, diversion from the criminal justice system without any sanctions attached (i.e. non-intervention) is given priority in cases of petty offences.

## B. Cautions or formal warnings

Cautions are an effective diversion option for first-time, non-serious offenders who admit to an offence immediately. They consist of an exchange between the child and the police and can take the form of an informal verbal caution or a more formal warning if there is enough evidence to support a prosecution. The offender (and his or her parent or guardian) is informed of the legal code relating to the offence and the potential sentence if it was to be prosecuted in the formal justice system.

*Example: France: 'Rappel a la loi'<sup>4</sup>*

Under the French system, the prosecutor can divert the child from formal proceedings by asking the police to carry out a 'rappel a la loi' where a police officer informs the young person and his parents of the sentence that he would have been likely to incur for the offence with which he is accused. This is by far the most commonly used diversion measure in France, accounting for between 66% and 70% of all cases diverted away from prosecution in 2006.

## C. Support services

Where it is deemed necessary or appropriate, a child may be referred to local support services or specific kinds of assistance. This can include counselling, treatment for substance abuse, or classes, either educational or developing skills to deal with their offending behaviour, such as anger management or problem solving. These seek to address the cause of the child's behaviour and deal with it in a constructive way.

*Example: Czech Republic: Police and Social Services Cooperation<sup>5</sup>*

The Czech Republic has implemented a project for early intervention for those who are arrested for a minor criminal offence. There is quick cooperation between the police, the family of the child and Social Services, who will then provide counselling and other services independently from any legal procedures.

*Example: Belgium: Youth Court Social Service*

In Belgium, the examination into a child's living environment and personality is undertaken by the Youth Courts own social service. They investigate the child's social circumstances and then make a recommendation about the child's best interest and the appropriate means for their education and treatment. If necessary, an additional medico-psychological investigation can be ordered by a psychiatrist<sup>6</sup>.

## D. Voluntary work

This includes voluntary community service work or work to compensate or benefit the victim or community, repair the damage done, or provide an educational or reformatory function (e.g. study, or writing a paper).

3 Bruckmuller in Junger-Tas & Decker (eds) (2006) International Handbook of Juvenile Justice

4 Dunkel et al. (2010) Juvenile Justice Systems in Europe: Current Situation and Reform Developments; Junger-Tas et al (2008) International Handbook of Juvenile Justice

5 European Crime Prevention Network (2006) A Review of Good Practices in Preventing Juvenile Crime in the European Union

6 Goldson & Muncie (2006) Comparative Youth Justice. Sage

## E. Family interventions

Diversion programmes can also include the referral of the child and their family to family support services. The aim is to strengthen the family support structures and establish relationships that can promote affection, responsibility, limitations, and control (e.g. parenting classes).

## F. Restorative justice measures

Restorative justice measures are a structured process by which the offender and the victim find a mutually agreed means of compensating for the offence and taking into consideration the possible damage to the community they are living in. For an explanation on the concept of restorative justice, see Chapter 1. Diversion programmes may use restorative justice mechanisms in conjunction with other interventions. These measures can be used either at a diversion stage or at the sentencing phase of the judicial process (for information on the latter, see Chapter 6).

### 1. Restorative Cautioning

This is the use of cautioning or a 'final warning' by police that also attempts to make a child take responsibility for their actions and be aware of why their behaviour is harmful and unacceptable, whilst promoting their reintegration into society. It should be carried out by trained officers so as not to have a damaging, humiliating or stigmatising effect on the child. They should explore the reasons behind the offence and discuss the impact on those affected. Where appropriate, this can lead on to referral to social welfare services.

#### *Example: Scotland: Restorative Cautioning<sup>7</sup>*

Police restorative cautioning has been fully implemented across Scotland since 2006. Specially trained police officers deliver the cautioning in front of the child's parent or guardian, with the aim of investigating why the offence occurred and the consequence of the offence on victims or the community.

### 2. Mediation

Mediation programmes allow willing victims and the offender to meet face-to-face in a safe, secure environment and talk about the offence with a trained, third-party mediator facilitating and directing the proceedings. It can be a very difficult situation and care must be taken to ensure children (including child victims) are properly protected, are aware of what the process entails and that it is in their best interests to carry it through.

Mediation proceedings should take place in a neutral arena that is not typically associated with the criminal justice system and in which both child and victim feel secure, such as a community centre or library. During the mediation proceedings, the rules of court are not applicable, a judge will not be present, and in most countries, neither party is represented by a lawyer.

Many mediation programmes require the mediator to meet with the victim and the child offender separately first to discuss the case and explore relevant issues. The child might also be required to enrol in anger management classes or family counselling. The process normally has a prescribed order, for example, the victim having the first opportunity to speak, then the offender is given an equal amount of time to respond, explain, and apologise. This dialogue can continue until both parties have had their say.

The mediator is an independent, neutral actor within the proceedings although plays an active role in the process, helping both parties understand the other's point of view, and ensuring that neither party dominates the proceedings or make the other feel victimised; as well as keeping the dialogue productive and ensuring both parties can meaningfully participate. Mediation sessions can impose a wide variety of sanctions on an offender, including: community service, supervision, restitution

<sup>7</sup> Goldson (2008) Dictionary of Youth Justice

(for damaged property, medical and funeral expenses, etc.), counselling, drug treatment, mandatory education, fines, home monitoring, probation, a simple apology, or any combination of these. In contrast to formal sentences, agreements reached during mediation tend to reflect the wishes of both the victim and the offender regarding the penalty that should be imposed. These agreements help personalise the process and make the offender more accountable: by pledging to abide by the terms of the contract and having discussed the sanctions as opposed to having them imposed on them by a court, the offender puts his or her personal integrity at issue. Experience has shown that offenders who enter into such contracts are much more likely to abide by their obligations than those who are sentenced in the formal manner.

*Example: Serbia: Victim Offender Mediation<sup>8</sup>*

Regulated by the Law on Juvenile Offenders 2006, one form of Victim-Offender Mediation used in Serbia is the Mediation Centre established in their third largest city, Nis. Initially set up as a pilot by the government, city authorities, CSW and UNICEF, cases were mostly referred to the centre by the public prosecutor and represented more than a quarter of all cases involving juvenile offenders in the city. Since the pilot, the activities have been integrated into the city's CSW structures and cases are referred here. Participants have given the centre positive feedback and consider it a 'meaningful mechanism'.

### 3. Conferencing

The basic purpose and structure of conferencing is very similar to mediation, however the mediator is referred to as a facilitator. The difference between mediation and conferencing is that conferencing is more inclusive, and encourages the participation of victims, victim advocates, the offender, members of the offender's family, friends of the offender, law enforcement officers, community representatives, and any other individuals affected by the crime who might have input into the proceedings.

Conferencing proceedings follow the same pattern as mediation. Once the victim and the offender voluntarily agree to participate, the facilitator will prepare all parties for the conferencing session. They will arrange a meeting in a neutral location and during the session, each affected party will have an opportunity to express his or her views and to ask questions. As with mediation, the objective is to reach an agreement (written or oral) regarding the appropriate outcome.

The possible outcomes of conferencing are the same as those for mediation but offers more structured participation of other involved parties and can be especially useful in the case of children.

*Example: New Zealand: Family Group Conferencing<sup>9</sup>*

New Zealand began using family group conferencing in its juvenile justice system in 1989. Rather than arresting all juveniles who have committed crimes, the police have the option of referring the juveniles to family group conferences. Conferences, which are based on Maori traditions, usually consist of the victim, a victim advocate, the offender, the offender's family members and supporters, a police representative, and the youth justice coordinator who acts as a facilitator. The purpose of the conferences is to give families more input in the process, recognise the needs of the victim, and help restore harmony to the community as a whole. Possible sanctions include community service, an apology, restitution, or participation in a treatment or counselling programme. If an agreement is reached, no charges are filed against the offender.

Good diversion programmes will allow police or prosecutors to use a variety of these measures to ensure each child is treated on a case-by-case basis and gets the most appropriate measure/s to meet their needs and to address the offence they have committed or the causes of their behaviour, as highlighted in the examples below.

<sup>8</sup> UNICEF (2009) Potential and Good Practices still being documented by UNICEF Regional office

<sup>9</sup> <http://www.justice.govt.nz/courts/youth/about-the-youth-court/family-group-conference>

*Country Example: The Netherlands: Police Diversion and 'HALT' Bureaus<sup>10</sup>*

Police have a number of discretionary measures that they can implement to divert young people away from the formal criminal justice system. They can:

- Stop any further criminal proceedings and refer a child's case to support services.
- They may issue a verbal or written warning or reprimand and then take no further action.
- If accused of offences such as vandalism, property damage or petty theft they can refer them to a HALT bureau. A child is offered this option in a written document, which is careful to state that it is a voluntary programme where they will carry out up to 20 hours of work, damage compensation or a combination of the two. In practice, few children are required to carry out more than 10 hours. Once the programme is completed with positive feedback from the HALT team, the police inform the juvenile and the state prosecutor's office that the charges are dropped. Of the approximate 50,000 children arrested by the police in the Netherlands, around 20,000 go to a HALT bureau.

*Country Example: South Africa: Diversion Programme<sup>11</sup>*

In the early 1990s, NICRO, a national-level NGO, established a number of diversion programmes in the Western Cape and Kwa Zulu-Natal. The programme is limited to juveniles who have a fixed address and whose parents or guardians are ready to take responsibility for the attendance of their children. Within this framework, five diversion options were established.

- **Youth Empowerment Scheme:** Six-session life-skills training programme involving young people and their guardians, dealing specifically with crime awareness, norms and laws, and parent-child relationships.
- **Pre-trial Community Service:** Unpaid service work for the benefit of the community.
- **Victim Offender Mediation:** The offender meets the victim so as to try to find a solution that will satisfy both of them.
- **Family Group Conferencing:** The family and friends of the offender are involved in an effort to find a solution with the victim.
- **The Journey:** Juveniles spend two weeks in a remote camp where they are challenged by various physical activities. Upon their return, they discuss this experience with peers and attend classes aimed at helping them to develop life skills.

In a study conducted of 56 participants, NICRO found the recidivism rate to be only 15 percent.

*Country Example: Italy: Diversion Programme<sup>12</sup>*

Italy's 1988 code of juvenile criminal procedure dictates that prison should be avoided for children aged 14 to 18 years (i.e. those above the age of criminal responsibility) as far as possible, and more generally, that consideration be given in judicial proceedings not to disrupt a child's normal education or development.

Where there is evidence to prosecute a child there is a mandatory obligation to do so and hence, a criminal case will be put forward by the prosecutor. The judicial process in Italy consists of a number of trial stages through which the judge will attempt to deal with the child offender without resorting to a full criminal trial. Measures available to judges include curfews or restriction on movement to certain areas. However, the most innovative options available to a judge when trying to avoid a full trial for the child are:

- A judge may rule that the offence is 'irrelevant', most likely when an offence is deemed 'trivial' or 'occasional'.
- A judge may offer a judicial pardon if it is thought that they will not reoffend. This is available for crimes punishable by up to two years imprisonment.

<sup>10</sup> Council of Europe: Examples of good practice in child-friendly justice: state submissions [[http://www.coe.int/t/dghl/standardsetting/childjustice/Examples%20of%20good%20practices\\_en.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/Examples%20of%20good%20practices_en.asp)]

<sup>11</sup> [www.nicro.org.za](http://www.nicro.org.za)

<sup>12</sup> Nelken in Muncie & Goldson (eds) (2006) *Comparative Youth Justice*

- A judge may decide on pre-trial probation, in Italian known as 'messa alla prova', which can be implemented for up to a year for any crimes punishable by up to 12 years imprisonment, and up to three years for crimes carrying potentially higher sanctions. The decision as to whether a child will have a full criminal trial is deferred to see if the child carries out a court-approved programme which will include aspects of education, work, community work and where appropriate, treatment or counselling. If this is fully completed, the child will not go to a criminal trial and will therefore escape having a criminal conviction.

## IMPLEMENTATION CONSIDERATIONS

1. **Qualified personnel** to implement a diversion programme are critical to its success. The ability of programme staff to monitor, direct, and support the activities of those diverted entails good human relations, management skills, psychology, and discipline. Support service personnel must be fully trained to deal with the range of behaviours and factors that influence offending and there should be medical personnel in detoxification programmes. The involvement of interdisciplinary teams has proven to be effective in many instances. Proper training is essential for aspects of diversion programmes that incorporate restorative justice, especially sensitive aspects such as victim-offender meetings.
2. **Clear guidelines** are important to establish consistency within the diversion system. While some leeway should be granted to those managing the programme to adjust to the individual circumstances of the child and the offence, there is a fundamental need for the sanctions to be fair and equitable. For example, the number of hours of community service a child must complete should be commensurate with similar offences.
3. **Confidentiality** with respect to information obtained during programmes is a key principle. The aim of avoiding the stigmatisation of the child would be undermined if the personnel revealed what was said during programmes where they are asked to explain the reasons for their acts. In mediation or cautioning, the child should be free to talk in the knowledge that what they say will remain confidential, including where diversion does not work and court proceedings follow. An offender should be able to refer to an authority if he or she experiences bad treatment.
4. **Accountability** for an offence should be a primary factor in determining what is to be included in a diversion programme. While diversion may be on the margin of the formal criminal system, it should not be on the margin of the rule of law and the personnel involved should be accountable for their actions. They must also be able to evaluate the efforts made by the offender to determine if he or she successfully met the obligations of the programme.
5. **Deprivation of liberty** should not be a feature of diversion. Imprisonment can only be imposed by a sentence of a criminal court established by law.

## ISSUES FOR DISCUSSION

- A. One of the drawbacks of diversion has been described as "net-widening". Minor offences that would have usually given rise to no prosecution, now give rise to diversion. What do you think of it? Are there steps that could counteract "net-widening"?
- B. Certain victims participating in family group conferences are not satisfied because of the lack of sincere regret expressed by the offender. In such a case, should the conference be considered as a failure? What steps could be taken to address this concern?
- C. In some countries, children who have re-offended are allowed to participate in diversion schemes. Do you think it is appropriate? If so, under what circumstances?

- D. In what kinds of cases would mediation or other restorative justice programmes be appropriate? Are there any instances when restorative justice should never be used as a diversion measure?
- E. What are some approaches for developing and maintaining public support for diversion programmes that may be seen to be 'soft' on crime? In particular, how would you address public concerns about applying these programmes to more serious or violent offenders?

## CASE STUDIES

- A. A 12-year-old juvenile is accused of shoplifting. The prosecutor would like to divert him towards a programme consisting of attending classes on values and responsibility. The parents give their agreement but the juvenile remains very reluctant. What would you do? Would it make a difference if the child were 16?
- B. A 16 year old boy stole a neighbour's car at 10 o'clock one evening. He drove it out of town and abandoned it on a country road about 8 miles out of the town. The owner did not notice that the car was missing until he went to drive it to work. When he saw it was not there he panicked and called the police. The police found it and brought it back. The boy admitted his guilt but did not know how to make amends. The neighbour was very angry but knew the boy well and wanted an answer as to why he had chosen his car and feared he would do it again. What would be the benefits of a restorative justice diversion measure in this case?
- C. A child has been diverted to a programme in which he has to help build a centre for handicapped persons. He has already done half of the hours due but his supervisor informs you that his effort is minimal and tries to work as little as possible. Would you consider that he failed the programme? Identify the weakness of the programme. How would you address this problem?
- D. One of the children whom you supervise during an educational training programme tells you that he did not commit the offence for which he was accused. He tells you that he was not aware of the possibility to be acquitted during his trial and that he felt pressured to accept diversion. Do you think that he should continue the programme? What, if any, responsibility do you have to follow this up?
- E. You realise that in your programme, very few of the participants come from the ethnic minority sectors of the community. Moreover, you have found that some children from these minorities who committed the same offences are not being diverted. What causes do you think might bring about these differences of treatment and under what circumstances would such differences be justifiable?

## REFERENCES AND FURTHER READING

Council of Europe: *Examples of good practice in child-friendly justice: State submissions* Available at: [http://www.coe.int/t/dghl/standardsetting/childjustice/Examples%20of%20good%20practices\\_en.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/Examples%20of%20good%20practices_en.asp) [Accessed: August 2011]

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# CHAPTER 5

## VICTIMS AND WITNESSES

### CONTENTS

- Learning Objectives
- Essential Principles
- Country Context
- Upholding children's rights
- Reporting and Investigation
  - A. Reporting
  - B. Providing effective assistance
  - C. Investigation and Interviewing
- Trial Stage
  - A. Familiarisation
  - B. Use of pre-recorded evidence
  - C. Giving testimony in court
  - D. Questioning and cross-examination
- Post Trial
  - A. Closure
  - B. Reparation
- Issues for Discussion
- Case Studies
- References and further reading
- Annex I: Practice interview script



## LEARNING OBJECTIVES

After completing this chapter you should be able to:

- Understand the international and regional guidelines relating to child victims and witnesses of crime and any relevant national legislation;
- Know what assistance and protection measures can be used at each stage of the judicial process to reduce harmful effects to a child victim or witness;
- Understand the importance of effective communication and interviewing with children and gain skills in preparing and carrying out interviews with child victims and witnesses, protecting their rights whilst obtaining accurate information;
- Explain what assistance and social services should be available to child victims and witnesses of crime and when and how they should be referred to them;
- Understand how a victim's right to reparation can be achieved in practice.

## ESSENTIAL PRINCIPLES

- A. Every child has the right to have his or her **best interests** given primary consideration in all decisions affecting him or her, including the right to protection from any form of hardship, abuse or neglect. (*Convention on the Rights of the Child, Article 3; UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*)
- B. Age should not be a barrier to a child's **right to participate** fully in the justice process. Every child should be treated as a capable witness, and his or her testimony should not be presumed invalid by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance. (*UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*)
- C. Every child has the right to **express his or her views**, opinions and concerns freely, in his or her own words and to have these given due consideration in accordance with the age and maturity of the child. If it is unable to accommodate a child's views and concerns, it should be explained to the child the reasons why. (*Convention on the Rights of the Child, Article 12; UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*)
- D. Child victims and witnesses should have their **privacy** protected as a matter of primary importance. Measures should be taken to protect the child's identity from exposure to the public. (*UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*)
- E. Every child should be treated **fairly and equally**, regardless of his or her race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status. In certain cases, special services and protection will need to be instituted to ensure children's rights are met equally. (*Convention on the Rights of the Child, Article 2; UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*)
- F. Professionals working with and for children should receive necessary **interdisciplinary training** on the rights and needs of children of different age groups and who may be in situations of particular vulnerability. (*Council of Europe Guidelines on Child-friendly Justice*)
- G. Professionals should take measures to **prevent hardship during the detection, investigation and prosecution process**

including potential intimidation, reprisals or secondary victimisation. (*UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Council of Europe Guidelines on Child-friendly justice*)

- H. Interviews, examinations and other forms of investigation should be conducted by **trained professionals** who proceed in a sensitive, respectful and thorough manner. (*UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*)
- I. All interactions should be conducted in a **child-sensitive manner in a suitable environment** that accommodates the special needs of the child and in a language which the child uses and understands to enhance a child's ability to participate. (*UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Committee on the Rights of the Child, General Comment No.12*)
- J. Child victims and witnesses, their parents or guardians, from their first contact with the justice process and throughout that process, should be promptly and adequately **informed** of their rights. (*UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Guidelines of the Council of Europe on Child-friendly Justice*)
- K. Measures should be put in place to **limit unnecessary contact with the justice proc-**

**ess**, such as limiting the number of interviews with a child and using video recording of testimony. (*UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Guidelines of the Council of Europe on Child-friendly Justice*)

- L. Child victims are entitled to **prompt redress**, as provided for by national legislation, for full reintegration and recovery. (*UN Guidelines on Justice In Matters involving Child Victims and Witnesses of Crime; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*)
- M. Child victims and witnesses should have **access to assistance and support services** such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and any other services necessary for the child's reintegration through governmental, voluntary, community-based and indigenous means. (*UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*)
- N. The establishment, strengthening and expansion of **national funds for compensation** to victims should be encouraged. (*UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*)

### Country Context

- There is a general awareness and legal framework regarding children who are victims and witnesses, however it needs further development and effort to put it into practice.
- The protection and treatment of victims is regulated by the Criminal Code of Procedure and the Law on Protection of Witnesses. According to these acts the treatment of the child victim and the adult victim are not different (note: the new Code of Criminal Procedure, which will be implemented in 2012 does provide special rights to victims - including child victims). Child victims can be subject to measures of aid and protection. There are also some attempts to regulate the resocialisation and treatment of victims through programmes and action plans but it is still too early to see the benefits of such efforts.
- The principle of best interests of the child is not strictly provided for in the national legislation.
- The rights to be heard and participate in the justice process are mentioned to some extent in the national legislation. The legal provision in the Law on Protection of Witnesses (which is not child sensitive) only states that if a juvenile wants to participate in a witness protection programme, written approval is needed from his or her parent/guardian/legal representative.
- In regard to the right to privacy, there are some provisions (Code for journalists) but the practice is not inline with the legal provision. The issue of privacy needs further elaboration as to its meaning and practical implementation.
- In the phase of identification, reporting and procedures, it is required that professionals working in cases involving child victims should be properly trained for such work (and they are in practice).

- Hearing victims - during trial the victims are heard at most twice, but this does not include the investigation and prosecution phases which add to the number of hearings and questioning of victims. Video equipment for such purposes is not available yet. Unfortunately, it is reported that the fully equipped child friendly rooms (2 in the country) are not being used.
- Exclusion of the public during trial is not obligatory when there is an adult perpetrator and a child victim. In such cases the judge decides the issue of publicity.
- Confrontation between the child victim and the accused is allowed if the judge considers it to be necessary for the case.
- There are provisions requiring presence of a social welfare (CSW) professional to support a child victim during the trial. Also, child victims are legally represented at trial.
- Child victims of violence have a right to compensation as plaintiffs in the procedure (criminal or civil).
- The new amendments to the Juvenile Justice Law revoked the articles establishing the Compensation Fund for child victims of crime.
- Procedures involving child victims should be urgent. However, some researchers state that pre-trial procedures can last longer than 12 months.
- Child victims who are foreign citizens or stateless and who might be trafficked are, upon identification, linked to the CSW and accommodated in the Transit Center for Aliens (administered by the Ministry of Interior).

## UPHOLDING CHILDREN'S RIGHTS

The principles of Justice for Children include a child's right to be able to participate in judicial proceedings in an age-appropriate manner in line with their best interests and evolving capacities. In all cases involving child victims or witnesses, measures and safeguards should be implemented to protect them from intimidation, reprisals or secondary victimisation that may occur whilst participating in the justice process.

### UN Definition: secondary victimisation

Secondary victimisation refers to the further victimisation that occurs not as a direct result of the criminal act but through responses of institutions and individuals to the victim. For example, it may occur when a victim is recounting events, testifying in court, or being in the presence of the offender. Most measures discussed below are designed to negate this.

A child's experience of being victim of or witness to a crime can have negative effects on their schooling, peer and family relationships, their ability to communicate, and general behaviour. In turn, new problems may develop, due to the stress of participating in the judicial process. A UK study of 144 child witnesses found 85 percent of them experienced pre-trial stress in the form of panic attacks, self-harm, flashbacks, bed-wetting, eating or sleep disorders, depression and loss of confidence<sup>1</sup>.

One of the guiding principles of the Convention on the Rights of the Child and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime is that 'best interests shall be a primary consideration' in any decision where a child will be affected. Police, judges and prosecutors should give priority to the child's best interest including pursuing the case without the involvement of a child victim or witness if it is deemed necessary for their development and protection.

<sup>1</sup> Plotnikoff and Woolfson (2007) Evaluation of Young Witness Support: examining the impact on witnesses and the criminal justice system

In practice, this principle must be balanced with competing interests, such as the right of the child to participate in proceedings affecting them, and other people's human rights, such as the rights of the accused in criminal justice cases.

*Example: Hungary: Criminal Proceedings Act<sup>2</sup>*

Hungary's Criminal Proceedings Act states that witnesses under 14 years old may only be questioned in an investigation if the evidence they are expected to give cannot be substituted in any other way.

The international standards state that a child has the right to be heard in all matters affecting them, including judicial proceedings; therefore, measures should be in place to facilitate child victims and witnesses to be able to fully participate in court proceedings in a meaningful manner in line with their best interests and taking into account their evolving capacities. A child, irrespective of their age, should be respected as a competent witness equal to an adult and their testimony or statement should not be deemed invalid or untrustworthy purely on the basis of their age. Many countries have a 'competency test' to decide whether or not a child's testimony can be admitted. Under Article 20 of the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime, it states that "a child is deemed to be a capable witness unless proved otherwise through a competency examination administered by the court". It further states that a competency test should be aimed at determining whether a child can understand questions put to him or her as well as the importance of telling the truth. In the UK the test is simply whether a child can understand questions asked to them and their answers be understood.

International standards state that a child's views should be given due weight and consideration in accordance with their age, abilities, intellectual maturity and evolving capacity. Levels of understanding or capability cannot be measured purely by biological age as children attain understanding, maturity and abilities at different rates. Therefore, the views of a child need to be assessed on a case by case basis to identify how much weight their testimony and evidence will be given, based on these factors. In states where a child is not compelled to testify at a trial, they must be informed of this right and given the opportunity to refuse to participate. The Council of Europe's Guidelines on Child-friendly Justice, Article 46 states "the right to be heard is a right of the child, not a duty on the child".

The right to be heard also includes allowing child victims or witnesses to express their views and concerns related to the offence, the court proceedings and their own expectations or needs. This does not mean there is a duty on the court or the State to fulfil a child's expectations but allows for their expectations to be managed and, where it is not possible to meet these expectations, the reason is explained to the child.

*Example: United States: Victim Impact Statement<sup>3</sup>*

In the USA, views of the child victim (or adult victim), and where applicable their family, on the impact of the offence are collected by using a Victim Impact Statement, which is attached to the pre-sentence report prepared by a probation officer and is used to inform the court. There are special child-friendly versions of this form available for children of different ages to allow all children to participate without discrimination. This allows the victim to express themselves in a comfortable and flexible manner.

<sup>2</sup> Council of Europe: Examples of good practice in child-friendly justice: Hungary

<sup>3</sup> UNODC/UNICEF (2009) Handbook for Professionals and Policymakers on Justice in matters involving child victims and witnesses of crime

## REPORTING AND INVESTIGATION

### A. Reporting

A duty to report situations where it is believed a child is a victim of abuse or neglect should be enshrined in legislation, either specifically for certain professions such as doctors, or for all citizens<sup>4</sup>. Child helplines should be set up to allow a child to report a crime or abuse more easily, and to enable them to be referred to appropriate services, and where necessary, the police.

There can be huge psychological stress for a victim or witness when officially reporting and recounting crimes to law enforcement agencies, especially crimes of sexual abuse or where the perpetrator is a family member. The child may be concerned about harm or reprisals from the perpetrator, being blamed or rejected for reporting the crime, not being believed, or negative parental or community reaction. Steps should be taken to try and ease these concerns and to reassure the child that they were correct to report the crime.

In some countries, specialised police officers or police units are used for when a child wishes to report a crime. They are trained in child protection issues, interview techniques and are aware of, and have contact with, local children's services to whom they can refer the child as soon as appropriate.

#### *Example: Sweden: Specialised Police Training<sup>5</sup>*

In Sweden, a new research-based training programme for interviewing child witnesses was established in 2007 by the National Swedish Police Board, the police academy in Stockholm and Stockholm University. Police are taught effective interviewing techniques as well as related developmental psychology and law.

From the moment a child comes in to contact with the justice system, he or she should be fully informed about the process they may have to go through as this can reduce any feelings of insecurity or anxiety that the child may have. Knowing when and where they will be interviewed and who by, how the justice process works, when they will be required to testify, who will be present, and the protection measures available for them both at an initial interview and when giving their testimony can have a positive impact on the quality of the statement they make. Providing a child with information can empower the child and allows him or her to feel more in control of an unfamiliar situation. This is particularly relevant in cases of abuse, which are often characterised by manipulation by the perpetrator and a lack of control for the victim.

To ensure that the child is fully informed, a trained individual, such as a social worker or police officer, should be appointed to manage the case for the child. They should make the child's views or concerns heard, provide them with information at all stages of proceedings and be present whenever they are involved in the judicial proceedings. They should be available to listen to a child's concerns, answer questions both before and after proceedings, and refer them to appropriate services.

### B. Providing effective assistance

Being the victim or witness to a criminal offence can have serious consequences for a child's physical, emotional and psychological development and well-being and can have a negative effect on their relationships with others. There is evidence that children who have been victims of serious abuse are much more likely to become victims of abuse or exploitation in the future. Therefore, it is necessary to provide as much assistance as possible to children to try and mitigate these consequences and facilitate their rehabilitation. A child and, where appropriate, their parent or guardian, have the right to be informed of all assistance and support services available to them and this should be done at the earliest opportunity.

<sup>4</sup> Ibid.

<sup>5</sup> The Crime Victim Compensation and Support Authority (2010) Child Victims in the Union – Rights and Empowerment: A Report of the CURE Project 2009-2010

Assistance can consist of financial, legal, counselling, health, social or educational services; and physical and psychological recovery. In order to best benefit the child, these services should be made available as soon as possible after the offence has been committed or discovered, throughout the justice process, and as long after the end of proceedings as is deemed necessary to help the child. Assistance can be provided by state public services, family or community support, NGOs, schools, or other community settings.

Legislation should provide for medical, psychological or social assistance to be made available for child victims. Legislation is not enough however, and States should fully implement the legal provisions through guidelines, regulations and the establishment of assistance schemes for child victims, and where appropriate, witnesses. All those who come into contact with child victims or witnesses, especially those with whom they have first contact, should be informed of all services on offer and how they can access them. These include, for example, social workers, police, teachers, child helplines, doctors, and nurses.

Where Child Protection Units are present in police stations, child victims can be given assistance at the earliest opportunity after discovery of the crime. In some States law enforcement officials are responsible for referring victims to support services (with their consent) to ensure that provisions are made as soon as possible.

*Example: United Kingdom: Witness Care Units<sup>6</sup>*

In the UK, special units conduct a needs assessment of all victims and witnesses and then refer them on to organisations that can deal with their specific needs.

*Example: Switzerland: Police referrals<sup>7</sup>*

Switzerland has law enforcement officials responsible for informing victims of the assistance and support available and, where they consent, forwarding on their contact details to the victim support services in order to make sure that victims are offered support at the earliest possible stage.

*Example: Latvia: Child Victim Policy<sup>8</sup>*

In Latvia, special sections in medical institutions are used for the medical rehabilitation and treatment of child victims, of violence, physical abuse and sexual abuse with resources allocated from the State budget. Compulsory psychological treatment expenses are also covered by the State, recouping the cost from the offender.

*Example: Poland: Network of Local Support Centres<sup>9</sup>*

In Poland, the Ministry of Justice set up the project 'The Network of Local Support Centres' which aims to coordinate actions by the police, judiciary, NGOs, local authorities, social aid institutions, hospitals, schools and others who are involved in undertaking assistance to victims of crime. In the Local Support Centres, child victims of crime, their parents or guardians, and other vulnerable people can get legal, psychological and social assistance free of charge. Volunteers at the centres support the victims, explain the judicial process and get in touch with appropriate institutions to provide additional assistance to meet their needs.

## C. Investigation and Interviewing

Cases where a child victim or witness is involved should be investigated as quickly as possible. Once a child or concerned individual or professional has reported a crime, strict time frames should be set

<sup>6</sup> UNODC/UNICEF (2009) Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Council of Europe: Examples of good practice in child-friendly justice: Poland

out to ensure that the investigation is carried out without delay. This principle should also be applied to the investigation of a case once the decision has been made to prosecute. Allowance should be made for the time needed for a child victim to consent to be a witness in court proceedings.

At various stages of the investigation and preparation of a case, child victims and witnesses need to be questioned and interviewed. This must be done in a way that is sensitive to the child's needs and respects their dignity and integrity. At the same time, interviews need to elicit accurate information that can be used in court. Recounting what has happened to them may cause secondary victimisation, fear of harm by the perpetrator, a fear of not being believed and feelings of self-blame. These issues are best tackled by approaching the communication and interviewing of children in a sensitive, fair and child-friendly manner. Incorrect interviewing techniques for investigation of the case can be stressful for the child and may even mean the interview has to be repeated if the wrong questions are asked or not enough evidence is collected. Therefore, there should be strict guidelines about who does it, their professional training, and when and where it takes place. All those undertaking interviews with child victims or witnesses should be professionally trained in techniques for interviewing children including protecting a child from harm and collecting accurate evidence that can be given due weight in proceedings.

## 1. Setting up the Interview

Interviews should be planned in collaboration with a child welfare expert so that the questioning of the child is done in a way that protects their rights and avoids causing them any harm. Planning will include discussing where and when the interview is held, who should interview the child, and the questions to be asked (to cover as much ground as possible so as not to require multiple interviews from different agencies). Where a child is old enough they may be included in this planning process, such as deciding where and when the interview will be held.

- **Location**

The basis for a good interview with a child involves making the child feel comfortable enough, both in their surroundings and with the person interviewing them, that they feel able to recount what are often traumatic events. The preferred location for an interview is in an environment familiar to the child, for example a school room. Where by law it must be in a police room or court setting, there should be special rooms for children that are comfortable and with child's furniture and toys available.

*Example: **Poland: Child-Friendly Interview Rooms**<sup>10</sup>*

In Poland the Ministry of Justice, with the help of NGOs, has established child-friendly interviewing rooms with competent, professional staff to interview child victims and witnesses. They ensure that the interview is carried out by a judge in the presence of a psychologist, and with others (prosecutors, the accused, lawyers) present in a separate room with either a two-way mirror or a live broadcast of the interview. The room is equipped both to make the child feel at ease and comfortable, and also, to accommodate the needs of the justice system, such as with a camera, microphones, etc.

- **Interviewer**

The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes state that where possible a child should only be subjected to one interview. To follow this rule as far as possible, two different approaches are often put forward: some countries choose to involve multidisciplinary teams (including criminal investigator, victim support worker, child protection etc) to interview a victim or witness in a child-sensitive way in a joint investigation or interview; while other countries prefer to use highly skilled individual interviewers to collect

<sup>10</sup> Council of Europe: Examples of good practice in child-friendly justice: Poland

evidence and information that can be relevant and used by a range of different agencies to assist the child and gain useful evidence.

*Example: Iceland: 'Barnahus' or 'Children's House'<sup>11</sup>*

In Iceland, with the overall aim of avoiding a child have to go through repeated interviews with different agencies, the 'Children's House' was created to make the child feel secure and comfortable whilst also facilitating the coordination of different agencies in society dealing with child sexual abuse cases. The core concept is a joint interview undertaken by a trained professional interviewer observed via video by representatives of the different agencies (police, prosecutor, social worker, lawyers). This ensures professional criminal investigation without compromising the right of 'best interests' for the child.

Where it is necessary for a child to be interviewed more than once, it should be with the same interviewer.

## 2. Conducting the Interview

Communicating with and interviewing children who are victims or witnesses can be a difficult job and guidelines should be developed and followed to ensure that accurate information is collected in a way that is child sensitive and minimises harm to the child. The subsequent outline should be followed:

- **Introduction and Rapport**

To begin an interview, the interviewer should fully introduce themselves and prepare the child by explaining the purpose of the interview, who will be present, how long it will take, and what will happen once the interview is finished. They should also explain to the child how the interview will be recorded and how the information will be used.

Secondly, they should inform and reassure the child that if they do not know the answer to a question, or do not understand a question, then they should say so. Further, if the interviewer appears to have misunderstood an answer or summarised the child's answer incorrectly, then they should correct or tell him or her.

This part of the interview should be used to relax the child and build trust between him or her and the interviewer. It is important to understand that it can take some time before a child is relaxed enough to be comfortable talking to the interviewer, especially when they are recalling events that are traumatic or involve intimate details.

- **Obtaining Information**

The interview should consist of as much free recall from the child as possible and he or she should be encouraged to tell their story in his or her own words. Details, further information or continued free recall should be encouraged by responses such as "and then what happened?". When it is necessary to ask questions to clarify events or request further information they should be as open ended as possible. Leading or suggestive questions that push a child towards a certain answer should never be used. The use of repeated questions should be avoided as it can signal to a child that the previous answer they gave was unacceptable or 'wrong'.

- **Closure**

Closing the interview properly is also vital. The child should be asked if they have anything else they would like to mention, wish to tell you, or any questions they would like to ask. It is also important to reiterate how the information will be used and manage the child's

<sup>11</sup> Council of Europe: Examples of good practice in child-friendly justice: Iceland



expectations for what may happen in the future. The child should be thanked and be made aware of any support services available to them.

*Please see the Annex for an Example Interview Script*

## TRIAL STAGE

A child-friendly, well-run trial can have a positive or empowering effect on a child, allowing him or her to denounce the injustice of the violation of their rights. In order for this to occur, the child should be fully supported and have their needs and rights met at all stages of the justice process and by all those who participate in it.

### A. Pre-trial

A long waiting period for trial can be stressful for a child victim or witness, especially those of a younger age or those who are experiencing harassment from perpetrators. This is of particular concern where the perpetrator is a family member because the child is at a higher risk of being pressured to amend their testimony. Cases where child victims or witnesses are involved should also be treated as quickly as is possible in order to allow the child to move past the experience of being a victim. The majority of the responsibility for this lies with the prosecutor and any adjournment in the proceedings that they request must be justified with consideration for the child's best interests. Another measure put in place to ensure cases with children are attended to swiftly is to give them priority in the court timetable over cases not involving child victims or witnesses.

In order to make the experience of attending and testifying in court less daunting for a child, many countries have 'familiarisation' processes in place where, at a date prior to the trial, a child is shown around the courtroom, where they will testify, sometimes meet those who will be present, be explained what they can expect to be questioned on and how the proceedings will run. Where possible the child should be accompanied by the individual managing their case so they feel more at ease and able to ask any questions that they may have.

### B. Use of pre-recorded evidence

Child victims should be allowed to give evidence without needing to appear in court, via pre-trial recorded evidence. This has many additional benefits for a child including not having to wait to appear at trial, avoiding issues of deteriorating memory, and reduces the length of time of a trial.

While pre-recorded evidence is regularly used by courts, some will also require a child to attend and be cross-examined or asked questions on their original pre-recorded evidence.

### C. Privacy

Any release of information regarding a child's identity can have consequences, such as putting the child at risk of reprisals or retaliation, causing the child shame or humiliation, and/or causing emotional distress.

Protecting a child victim or witness's right to privacy can be done by restricting the disclosure of information that could lead to their identification. This can be done by keeping all documents (prosecutor, defendants, judicial etc) that have identifying information about the child, in a secure place, with severely restricted access. In many States, legislation is in place that prohibits the publication or broadcasting of any information that may lead (either directly or indirectly) to the identification of the child. Therefore, even if information is leaked or discovered from the documents or the trial, the media is forbidden to publicise it.

Another way of protecting a child's privacy is restricting attendance at court proceedings that involve a child victim or witness. The restrictions may vary, including the exclusion of certain categories of person, or the exclusion of all members of the public.

## D. Giving testimony in court

It is most likely that a child whether he/she has provided pre-recorded video evidence or not, will need to provide live evidence, either via video-link or by appearing in court.

The experience of attending court and giving testimony can be a stressful and daunting ordeal for a child. Measures should be put in place so that hardship or stress is reduced as far as possible.

For example, simple measures can be taken to ensure that the court is more child-accessible: the use of microphones in the witness dock so that children can easily be heard; the removal of wigs and gowns where they are used; having children's activities or smaller furniture in waiting rooms or creating a separate children's waiting area.

The Council of Europe's Framework on the Standing of Victims in Criminal Proceedings also states that all court premises should have special waiting areas for victims to ensure that they are able to avoid contact with the accused.

Many States provide in their legislation for the attendance and assistance of a support person at court to give emotional support to the child victim or witness. While it differs from country to country, the support person is usually a family member, someone the child chooses, or a specially qualified person approved by the court. They should be able to fully support the child, be trusted by the child, and enhance his or her ability to participate in proceedings.

### *Example: United Kingdom: Court Witness Supporters<sup>12</sup>*

UK Law allows for the provision of Court Witness Supporters for vulnerable groups of witnesses, including children. They can: provide emotional support; familiarise the witness with the court and its proceedings; accompany the witness on a pre-court visit; liaise with legal, health, educational, and social services on behalf of the child; and identify or arrange any special measures that may be needed for the child to testify and participate in as full a way as possible. They have strict rules that they must not discuss the evidence or the content of the testimony with the child, to avoid allegations of coaching the witness. While UK legislation notes that these roles may be undertaken by a variety of individuals, where possible an inter-disciplinary approach undertaken by a professional individual in contact with a number of different agencies is preferred to maintain consistency for the child.

A number of measures can be put in place to facilitate testimony. Video link conferencing is now used in a number of countries to allow a child to testify from a more child-friendly setting in a separate part of the courthouse. Further technological developments in this area have made it possible for children to testify from locations outside the courthouse. Other measures where video link is not available include the use of a screen so that the victim or witness cannot see the defendant or having the accused leave the courtroom and view the testimony on a monitor in a separate area of the courthouse.

### *Example: Norway: Special Locations for Trial<sup>13</sup>*

In Norway, the questioning of a child victim or witness under the age of 14 years or whose situation indicates that it is in their best interests, can take place separately from the sitting of

<sup>12</sup> UK Home Office (2000) Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children

<sup>13</sup> UNODC/UNICEF (2009) Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime

court and in a location that the judge finds is most beneficial in getting the best evidence and preventing harm to the child.

## E. Questioning and cross-examination

International standards state that children should be questioned in a child-sensitive manner to reduce potential intimidation and judges play an important role in ensuring this. Experience has shown that this is best achieved when questioning is undertaken in the format of a talk with the child as opposed to a one-sided or adversarial examination or questioning. While civil law jurisdictions often do not allow for cross-examination of children, common law countries do and where this is the case, the proceedings should be supervised as far as possible to prevent harm coming to the child. Further to this, it should be recognised that a child's attention span is much less than that of an adult and appropriate breaks in questioning should be allowed where necessary, or limits put by the judge to restrict the number of questions put to a child, to try and keep the child's attention and get the best evidence possible. Children should only have to face questioning once during the trial, apart from in exceptional circumstances.

A child's understanding of the questions put to them can hinder their ability to give accurate testimony and where parties are allowed to question a child directly, they should be reminded to do so in plain language and with consideration for a child's level of understanding and vulnerability. The solution used by some States is to allow special intermediaries to communicate with the child when it is thought by the judge that they have misunderstood, or do not fully understand a question put to them. These intermediaries may be a specially appointed counsel, a psychologist or expert, or any other person designated by the court including a family member.

Where a child is allowed to be cross-examined, judges should carefully monitor and supervise the kind of questions and the way in which questions are asked. They should stop certain tactics used by defence lawyers such as asking irrelevant questions designed to intimidate or upset the child, asking questions rapidly or repeatedly to put the child off or confuse him or her, asking questions in language beyond a child's developmental age, or in the case of sexual abuse specifically, inferring the child has consented to the activity or asking a child questions relating to their sexual history. These tactics can amount to intimidation or harassment of the child which is not only traumatic and stressful for him or her, but will not provide accurate evidence for the case.

### *Example: Northern Ireland: Witness Intermediaries<sup>14</sup>*

In Northern Ireland, vulnerable witnesses can use registered intermediaries to help them give evidence at the police station or in court. They are individuals approved by the court and independent of the defence or prosecution. They are used to explain to the witness the questions that the court, the defence, or the prosecution asks and in some cases, to communicate the responses the witness gives.

## POST-TRIAL

### A. Closure

Obtaining closure from the trial and case is an important step for a child. The child should be thanked and informed that their testimony has been important in the justice process. Where appropriate, and where this has not already occurred, the child should be referred to relevant assistance or support services. The child should also be informed of the outcome of the case or trial, and where the outcome may not have been in line with their testimony or recall of events, they should be reassured that their views were considered and taken seriously.

<sup>14</sup> [www.nidirect.gov.uk](http://www.nidirect.gov.uk)

Furthermore, if appropriate, the sentencing execution authority (court, judge, prison director) should inform the child and/or his/her caregivers about the upcoming release of the perpetrator at least a few days in advance to enable the child or their family to set up precautionary measures.

## B. Reparation

Reparation is an important step for victims in having the harm they have suffered recognised and redressed. It can be in the form of financial reparation for material loss or damages that have occurred due to the crime, medical or psychological services, or getting recognition for the suffering that they have endured. It can be an important symbolic message to child victims that some level of justice has been achieved for them. Some countries have an age limit below which only parents or guardians of a child may request reparation, and where this is the case legislation should attempt to be amended to allow children's reparation regardless of age.

Restitution processes for child victims should be made as simple as possible. It should not be directly received from the offender (as part of a sentence in some countries), but claimed from the State. Special victim compensation funds have been set up in some countries, although often the resources for this are lacking and prevent it from becoming an effective measure of redress. In order to counter this, some States provide reparation through a national fund but then get the cost reimbursed as far as possible from the offender or other responsible bodies.

Restorative justice processes can also be used to address the harm done to the victim. However, in cases where there is a child victim, restorative justice should only be used where deemed appropriate and in the child's best interests.

## ISSUES FOR DISCUSSION

- A. What is the danger of using leading or suggestive questioning with children? What are some examples of suggestive questioning?
- B. What do you do if you realise that in interviewing a child for a second time you realise that they are telling you a different version of events from the first time?
- C. How do you mitigate against secondary victimisation?
- D. What are the advantages and disadvantages of the different ways in which countries treat victims and witnesses? Which do you think is the best country example and why?

## CASE STUDIES

- A. You are a judge hearing the case of a Tom, 13-year old who is accused of stabbing one of his classmates. The victim says he has been bullied by Tom for a number of years before the incident took place. Tom, on the other hand, insists that it was the victim that had been bullying him and that this current accusation is part of a strategy of entrapment. When cross-examination of the victim is taking place, how do you try and balance the conflicting rights of Tom and the 13-year old victim?
- B. You are a social worker. You have been asked to interview a 5 year old child who is a witness in a case of sexual abuse involving her father. How do you approach this sensitive subject with the child? What types of questions or tools will you use to gently get the information you require to establish what has happened/convict the abuser?
- C. You are a judge presiding over a case of domestic abuse. A mother stands accused of killing her husband with a kitchen knife after a domestic violence incident. Her two children, aged 8

and 12 are the only witnesses to the attack. They are very traumatised by the death of their father and terrified that their mother will go to prison. They do not know whether to say nothing or give details about the night in question. They are constantly conferring with each other about what should be their story. As such, their witness statement differs from the evidence they have given more recently at the trial and it is creating a confusing picture. How do you allay the children's fears and ensure the truth is told?

- D. You are a social worker dealing with a case of gang violence. One of the 17 year old children that you manage is the victim and perpetrator in a large gang fight that broke out in the local neighbourhood. He himself was stabbed in the leg and was hospitalised for 2 weeks. Since he has come out of hospital he has attempted to take his life by swallowing 40 paracetamol tablets and drinking alcohol. This incident sent him to hospital again. He has now recovered. During the same incident he has been accused of hitting another 17 year old child over the head with a metal bar. This child also was hospitalised, for 3 weeks, and is now recovering. The first case to be dealt with is that of the boy who was hit over the head. As a social worker how do you report to the judge about your child's vulnerability as a victim? Where does the risk he poses to others factor in this?

## REFERENCES AND FURTHER READING

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## ANNEX I

### Chapter 5: Victims and Witnesses

#### Practice Interview Script

##### Handout 1

*Guidance on Interviewing Child Witnesses in Scotland: Supporting Child Witnesses Guidance Pack*<sup>15</sup>

<http://www.scotland.gov.uk/Publications/2003/09/18265/27033>

Interviewers can modify the content according to the particular child's needs and adapt to make it age appropriate.

#### Introduction and Rapport

**Lead interviewer:** "Hello [child's name], my name is ----- . I am a police officer/social worker/etc. Part of my job is to listen to children and youths about things that may have happened to them, to give them a chance to describe any worries they may have".

[Second interviewer introduces him or herself too]

**Second interviewer:** "I will be writing things down today, because what you say here is important and I want to be sure I remember it properly."

[Obtain consent if haven't already done so. Also, answer any spontaneous questions the child asks at this point.]

"Before we begin, there are some things I want to go over with you."

"Firstly, I am here mainly to listen. I'll be asking you to tell me about things that have happened to you but this is your chance to do most of the talking."

(Pause)

"I don't know what happened, I wasn't there, so I'll need you to help me understand everything. Even if you think I already know something, you should still tell me. Have I explained that properly?"

(Pause)

"Now, I might ask some questions that you don't know the answers to. That's OK. This isn't like school - you know if a teacher asks you a question and you say you don't know, what does your teacher say to you?"

(Child: "They say I should try or guess the answer.")

"Well I don't expect you to know all the answers. If you don't know, just say "I don't know". Let's practice that. If I say, 'What day is my birthday?' you should say..."

(Wait for child's response)

"That's right. Also, if you don't remember the answer to something, it's OK to say, 'I don't remember'."

<sup>15</sup> <http://www.scotland.gov.uk/Publications/2003/09/18265/27033>

"Now, I might ask you some questions today which you don't understand or seem a bit 'strange'. I'll try not to, but if I do, I want you to say, 'I don't understand'. Then I can try to put it another way. So, if I say, 'How many wegs are in a wug?' you should say..."

(Wait for child's response)

"That's right. You should not try to guess the answers. If a question doesn't make sense, just tell me. Also if I make a mistake, or get something wrong, I want you to tell me. For example, if I say, 'So do you like being 7 years old?' you should say, 'I'm not 7 years old, I'm 5 years old' because that is how old you really are. Let's practice with another example. If I say your daddy is called X, you should say..."

(Wait for child's response)

"Yes, your daddy is really called Y. Always correct me if I say something wrong".

"Now, I might ask you the same question more than once today. Or, I might ask you a question that someone else has already asked you. That doesn't mean that you gave the wrong answer the first time. It's just to help me remember what has been said. So if I do ask a question again, just tell me the truth, because that is very important".

(Pause)

"I want you to tell me the truth. Not what someone else has told you to say. I don't want you to make anything up. Only tell me what really happened to you - what you saw with your own eyes, what you heard with your own ears, smelled with your own nose, and tasted with your own mouth. Will you do that?"

### **Building a Rapport**

"So far, I've done a lot of talking. But from now on today, you shall be doing most of the talking. Why don't you tell me a bit about yourself and your family?"

(Wait for child's response)

"And what else can you tell me about your family?"

(Wait for response)

"What do you enjoy doing?" (Child: "Watching television".) "Tell me all about your favourite television programme."

(Wait for response)

"Not long ago, we celebrated an event called ----- [e.g. Christmas]. Tell me how you celebrated [the event]".

(Wait for response)

"What else can you tell me about [the event]?"

(Wait for response)

"Think again about [the event]. I would like you to tell me everything that happened, from when you got up that morning right through until when you went to bed that night."

[If the child only speaks briefly then prompt with, "And then what happened?". Also, probe for details of each item mentioned by the child. For example if the child says, "We opened presents" then say, "Tell me everything that you can remember, every detail, about you opening your presents."]

(Wait for response. Then to conclude...)

"Wow, it sounds like you had a great [event]!"

### **Obtaining Relevant Information: Free Recall**

[Provide quick reminder of ground rules]

"Now, it's time to talk about something else, the reason you are here today. Do you know why you are here today?"

[If the child refers to, or makes, an allegation then repeat that allegation and ask the child to expand on it with more detail:]

"OK, so [briefly summarise the main offence/problem that the child has just disclosed]. I want you to tell me everything that happened; from the very beginning to the very end, as best you can remember."

[On the other hand, if the first request does not elicit any relevant response then proceed through the hierarchy of prompts below:]

"Tell me why you are here today";

"I heard you said something to your teacher/friend/mummy last week. Tell me everything you can about that";

"As I told you, my job is to talk to children about things which may be troubling them. It is very important I understand if anything is troubling you. Tell me why you think [the carer] has brought you here today."

[When the child does refer to the allegation, encourage them to give a free narrative using appropriate open-ended questions, follow-ups and prompts when the child stops]

e.g. "Tell me everything you can about that", "Then what happened?", "uh huh", "go on", "You said ----- . Can you tell me more about that, please?"

### **Obtaining Relevant Information: Questioning**

[Once it is clear that the child has finished their free narrative, establish whether the event described was a one-off or a repeated event:]

"Did that happen one time or more than one time?"

[If the child replies, "one time" then draw the child's attention back to a particular salient detail that they talked about. Refer to that, and other details where necessary, to obtain a fuller account/clarification]

"You said earlier that ----- . Please tell me/explain/describe..."



[If the child says it happened more than once:]

“Think back to: the time you remember best/the first time/the last time. I want to understand what happened, from the very beginning to the very end.”

[After the child has finished talking about event no. 1, continue with open-ended prompts, e.g. “And then what happened?”, “What else can you tell me about that?” Once the child has finished talking about that incident, ask about other salient ones and try to obtain as much detail about each]

[Finally, ask, “Is there another time you remember well? Tell me about that time, from the very beginning to the very end”, using the prompts above to elicit additional information]

[If more evidentially important details are required from the child, e.g. about the offender’s appearance, then probe for them at this stage with specific “Wh-” questions wherever possible.]

e.g. “What did the man look like?” [Wait for response then follow-up with] “Tell me more about this man, everything you can remember.”

### **Closure**

[After summarising the main points of the child’s statement and having conferred with the second interviewer, ask:]

“Is there something else I should know?”

(Wait for response)

“Is there something else you want to tell me?”

(Wait for response)

“Do you have any questions you’d like to ask me?”

(Wait for response)

[After this discussion, provide the child with contact names/addresses/numbers. Then say:]

“Thank you for taking the time to talk to us today, -----. I’m going to take you back to [your mum/dad/other person] in just a minute. What are you going to do once the interview is over?”

(Wait for response)

[If the child says for example that they are going to go home, ask:]

e.g. “Are you going to watch some TV?” or “Are you going to have something to eat?”

(Wait for response)

“What is your favourite TV programme/food?” [and so on until the child is calm and relaxed and ready to leave]





# CHAPTER 6

## TRIAL AND SENTENCING

### CONTENTS

#### **UN policy indicator:**

1. Children in conflict with the law: Number of children arrested during a 12 month period per 100,000 of the population.
3. Duration of pre-sentence detention: Time spent in detention by children before sentencing.
10. Percentage of children sentenced receiving a custodial sentence.
11. Pre-sentence diversion: Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme.

Learning Objectives

Essential Principles

Country Context

Application: Trial

- A. Avoiding undue delay
- B. A fair and just trial
- C. Child-friendly environment
- D. Legal counsel and representation
- E. Parents and guardians
- F. Right to be heard and to express views

Application: Sentencing

- A. Proportionality
- B. Adjudicating and disposing of cases
- C. Provision of needed assistance
- D. Effective implementation of disposition
- E. Need for professionalism and training

Types of Disposition Measures

- A. Sentencing contracts
- B. Supervision orders
- C. Community service orders
- D. Financial penalties
- E. Intervention or treatment orders

Issues for Discussion

Case Studies

References and further reading

## LEARNING OBJECTIVES

By the end of this module you will be able to:

- Explain why a preliminary inquiry report is needed in order to assist the court in its decisions regarding child offenders;
- Know the rules underpinning a detention decision by a court and be able to apply your knowledge to practical cases;
- List a number of different sentencing options in the community and argue the advantages and disadvantages of each one;
- Evaluate which of these alternatives to imprisonment would be most suitable for use in your country and what steps would have to be taken to achieve them.

## ESSENTIAL PRINCIPLES

- A. In all proceedings involving children, the urgency principle should be applied to provide a **speedy response** while respecting the rule of law. (*Council of Europe Guidelines on Child-friendly Justice; Beijing Rules, Rule 20*)
- B. A juvenile should be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of **a fair and just trial**. (*Beijing Rules, Rule 14*)
- C. Cases involving children should be dealt with in **non-intimidating and child-sensitive settings**. (*Council of Europe Guidelines on Child-friendly Justice*)
- D. Children should have the right to their own **legal counsel** and representation, in their own name. (*Council of Europe Guidelines on Child-friendly Justice*)
- E. Children should be allowed to be accompanied by their **parents** or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person. (*Council of Europe Guidelines on Child-friendly Justice*)
- F. Judges should respect **the right of children to be heard** in all matters that affect them. (*Council of Europe Guidelines on Child-friendly Justice*)
- G. The well-being of the juvenile shall be the guiding factor in the consideration of his or her case and is one of a few **guiding principles in adjudication and disposal** of cases. (*Beijing Rules, Rule 17*)
- H. The principle of **proportionality** should be adhered to. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. (*Beijing Rules, Rule 5; Tokyo Rules, Rule 12*)
- I. Efforts shall be made to provide children with **assistance such as lodging, education or vocational training, employment** or any other assistance, helpful and practical, in order to facilitate the rehabilitative process. (*Beijing Rules, Rule 24*)
- J. Appropriate provisions shall be made for the **effective implementation** of orders of the competent authority, and the power to modify the orders. (*Beijing Rules, Rule 23*)
- K. **Professional education, in-service training, refresher courses** and other appropriate modes of instruction shall be utilised to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases. (*Beijing Rules, Rule 22*)
- L. A large **variety of disposition measures** shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible. (*Convention on the Rights of the Child, Article 40; Beijing Rules, Rule 18; Tokyo Rules, Rule 2*)

### Country Context

- Children can be taken to court from the age of 14 years.
- There are no juvenile courts, but there are judges and prosecutors who specialise in cases involving children. In the country there are 12 with a juvenile judge responsible for dealing with juvenile cases. However, they do not work exclusively on juvenile cases. Juvenile judges have three separate functions: an investigating judge, a trial judge and a judge for the enforcement of sentences. According to the Juvenile Justice Law, juvenile judges hear misdemeanour cases. In practice judges dealing with misdemeanour for adults are handling cases of juveniles as well.
- The Juvenile Justice Law states that juveniles have all the same rights as adults in criminal and misdemeanour procedures, as well as the special rights recognised by the international instruments, such as the Convention on the Rights of the Child.
- Juveniles have a right to a legal representative during court procedures, free of charge. During trial, the juvenile and his/her legal representative must be present. Also, if it is not harmful for the juvenile, his or her parents may be present as well.
- The process is divided into a preliminary stage when all the facts are gathered and examined and a proposed sanction or measure is prepared and a trial when, without hearing any witnesses, the sentence is decided. The juvenile judge acts alone or in some cases decides with a panel of judges.
- In cases when all the facts are known and a custodial sentence can not be issued, the trial is accelerated, and only the decision as to the sentence or the measure is necessary. This accelerated procedure can last up to 38 days.
- The procedure against juveniles can not last longer than one year, except for crimes for which a prison sentence of at least four years can be given, in which case the procedure can last up to one year and six months. For misdemeanour cases the procedure can not last more than six months.
- Trials are closed to the public.
- There is an appellate panel composed of a juvenile judge and two other judges that decide in second instance, and a supreme court juvenile panel which acts as a third instance procedure.
- For juveniles aged 14-16 years, only educational measures can be taken. Some educational measures are institutional such as the disciplinary centres, the open institution for juveniles and the semi open educational and correctional institution. Other measures include a reprimand and intensive supervision by parents/ guardian, by foster family or by the Center for Social Work.
- For older juveniles (aged 16-18), beside the educational measures, the following non-custodial sentences can be given: conditional sentence with protective supervision, suspension of prosecution, community work and fines. There is no data as to whether these have been used in practice.
- Only children aged 16-18 years can be detained. Regarding the resocialisation and treatment activities available, in all situations this is a huge challenge. There are no activities during pre-trial detention (although the law states that there should be), and there are difficulties in this field that are shared among the institutions mentioned above. There are also scarce resources for implementing non-custodial sentences (although some do not require financial resources).

## APPLICATION: TRIAL

### A. Avoiding undue delay

When children are in conflict with the law it is especially important to ensure that court proceedings are commenced as soon as possible. The Council of Europe Guidelines on Child-friendly Justice state that their cases should be classed as urgent in order to protect the best interests of the child. They advise that when necessary, judicial authorities could consider the possibility of making preliminary judgments to be monitored for a certain period of time in order to be reviewed later.

In terms of the prosecution and defence, both sides must be guaranteed due time for preparing the case. However, the child also has the right to due and speedy process, and these competing rights must be balanced appropriately. This means, for example, that there should be a limit on how long a case can be interrupted to await a missing witness or evidence. The Beijing Rules state that the speedy conduct of formal procedures in children's cases is a paramount concern. This is particularly important as 'otherwise, whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically'.

## B. A fair and just trial

Children should always be ensured a fair and just trial. This includes being tried by a competent authority, with legal representation, parental assistance, in an atmosphere of understanding conducive to their best interests. Children undergoing trial must be able to participate in any decision-making, and all proceedings should take place within the shortest appropriate period.

It is the responsibility of the court or the judge to:

- Ensure that the child understands the charge;
- Explain to the child the consequences and procedure of the trial;
- Explain, if appropriate, that the child may plead guilty or not guilty.

This information should be communicated in child friendly language so that the child understands what he or she faces. It must be remembered that the court setting is intimidating for the child, who, depending on the court customs of the country, may be confronted with a judge in robes on a raised bench and a number of people unknown to him or her. This makes it all the more important for the judge to explain the proceedings to the child at the start of the hearing. The child needs to be introduced to court procedure and know what the next steps will be and what the results of each finding or action will have for him or her.

## C. Child-friendly environment

The court room can be a daunting environment for any person being tried and even more alienating and intimidating for a child. As such it is crucial that in all proceedings, children should be treated with respect for their age, their special needs, and their maturity and level of understanding. All efforts should be made to ensure that the environment is as non-intimidating and child-sensitive as possible. For example, the design of the court can be made more informal in layout and procedure, the number of attendees can be reduced and their dress can be casual and non-ceremonial.

In order to ensure that the child is set at ease, the Council of Europe Guidelines on Child-friendly Justice recommends that 'before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved'. In addition, during the proceedings, a language appropriate to the child's age and level of understanding should be used. Children have a right to the protection of privacy because of their age. Therefore, in many countries, the public is excluded from the court's room, and in some countries, all juvenile proceedings are held *in camera*.

Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long to ensure that the child is able to keep up with the proceedings at all stages. In addition, it is recommended that to facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum.

International standards recommend that as far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office.

*Example: Belgium: Youth Court<sup>1</sup>*

Belgium Youth Courts deal with all offences committed by minors under the age of 18 which is the age of criminal responsibility. Therefore, youth courts impose protection measures only 'in the best interests of the child' and there are no criminal sanctions.

*Example: United Kingdom: Youth Court<sup>2</sup>*

The youth court is a specialised form of magistrate's court with jurisdiction in respect of children and young people aged 10-17. The hearing in a youth court is similar to one in the magistrate's court, although the procedure is often adapted to take account of the age of the defendant. Cases are heard by magistrates or by a district judge. The youth court is not open to the general public and only those directly involved in the case will normally be permitted to attend. Youth courts are key institutions in the youth justice systems in England and Wales and in Northern Ireland.

## D. Legal counsel and representation

All children have the right to be represented by a lawyer or legal adviser. They should also be able to apply for free legal aid where there is provision for this. The judge or court must explain this right to the child at the beginning of the hearing, and when a child attends a hearing without a lawyer, the court must advise the child of the right to counsel and give the child a reasonable opportunity to obtain counsel. Where the court does not believe that the child attending a hearing without a lawyer understands the charges it must direct the child to be represented by counsel.

Any lawyers representing children should be trained in and knowledgeable on children's rights and related issues. They should receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. They should provide the child with all the necessary information and explanations concerning the possible consequences of the child's views and/or opinions and should bring forward the opinion of the child.

## E. Parents and guardians

Parents or guardians must be involved in the preparation for the trial and present when it takes place. They should be informed in writing by police, prosecutor or judge that a formal trial will take place and that they are invited to attend. If there is a conflict in the family, the parents or guardians can be excluded at least partially if it is in the child's best interests to do so. If the child will not speak when the parents are present, the child will have to be heard separately from them. The Council of Europe Guidelines on Child-friendly Justice state that in cases where there are conflicting interests between parents and children, the competent authority should appoint either an independent representative to represent the views and interests of the child.

## F. Right to be heard and to express views

The Council of Europe Guidelines on Child-friendly Justice state that judges should respect the right of children to be heard in all matters that affect them. The child must be made aware that the right to be heard is a right of the child, not a duty on the child and they should be provided with all necessary information on how effectively to use the right to be heard.

<sup>1</sup> Goldson & Muncie (2006) *Comparative Youth Justice*. Sage

<sup>2</sup> Goldson, B (2008) *Dictionary of Youth Justice*. Willan

The child has the right to make a statement, the right to produce witnesses and, in principle, to question witnesses at any point in the proceedings directly themselves or through a lawyer. It is up to the judge to decide whether a question is admissible and whether the witness should answer. Even more important is the right of the child to confront prosecution witnesses and to cross-examine them. In common law countries, cross-examination helps to keep the rights of the prosecution and defence in balance, while under civil law systems, it is up to the judge to decide who gets the floor at which time during the proceedings.

The child has the right to have the last word in a hearing. This is important, especially before sentencing because it allows the child to give an impression the judge or jury will carry with them when they retire. Any judgements and court rulings affecting children should be duly reasoned and explained to them in language they can understand, particularly those decisions in which the child's views and opinions have not been followed. Finally, the child has the right to disposition of his or her case in due course and to hear and receive in writing the reasoning for a sentence. This is the basis for any challenge of the disposition – the right to appeal to a higher authority.

## APPLICATION: SENTENCING

### A. Proportionality

International standards stipulate that in all cases, the final disposition must be proportionate both to the circumstances and the gravity of the offence and to the circumstances and needs of the juvenile, as well as to the needs of society. Therefore, it cannot be delivered until the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed have been investigated. This assessment should take place as soon as possible after the child has been arrested. For more information see Chapter 3, Arrest.

In some cases the assessment that has already been undertaken by the social worker or probation officer may not provide enough information or the judge may request further assessments. The court may order that a child be assessed by a qualified person when:

- The court has reasonable grounds to believe that the child might be suffering from a physical or mental illness or disorder, a psychological disorder, an emotional disturbance, or a learning or mental disability;
- The child has a history of repeated convictions; or
- The child is alleged to have committed a serious violent offence.

A fundamental principle is that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the child for that offence. In determining the seriousness of the offence and the degree of responsibility of the child, the court must consider some of these factors:

- The harm done to victims and whether it was intentional or reasonably foreseeable;
- Previous findings of guilt; and
- Any other aggravating or mitigating circumstances related to the child or the offence that are relevant.

In assessing these factors however, the court must remember that:

- A minority of child offenders are 'serious offenders';
- Only the highest risk offenders need high security;
- The offence alone is not a reliable indicator of the risk the child poses to the public;
- The objective of sanctions should be rehabilitation not punishment; and
- Sentences which include the community build a connection and respect between the child and the community.



Having determined the seriousness of the offence and the degree of responsibility of the child, the court must determine which of the possible sanctions or combination of sanctions would be a proportionate sentence. It is quite possible that more than one sentence would meet the requirement of proportionality in a particular case. Other considerations, such as the potential rehabilitative effect of the sentencing options, will guide the determination of the appropriate sentence. For example, a short community sentence with minimal conditions would be proportionate to some less serious offences. A longer community sanction with restrictive conditions would be proportionate to more serious offences. A child's sentence must never exceed that of an adult sentence, and according to a majority of States should not be more than half of the sentence an adult would receive in the same circumstances.

A key element in effective sentencing is ensuring that the sentence promotes the rehabilitation of the child. The measures or sanctions that are directed at rehabilitation, however, must not violate the proportionality principle. This means that the rehabilitative measures must not result in a sentence that is excessive in view of the seriousness of the offence and the degree of responsibility of the child. Such a sentence would amount to punishing the child because of his or her needs, despite the fact that the judge is well intentioned, concerned about helping the child, and does not perceive the greater degree of intervention as punishment. If the child has needs that go beyond the appropriate scope of a criminal justice intervention, other means of intervening should be sought outside the child justice system.

The court must assess the possible proportionate sentences, which must:

- Be the least restrictive sentence that can achieve the purpose of rehabilitation;
- Be the sentence that is most likely to promote the rehabilitation and reintegration of the child; and
- Promote a sense of responsibility in the child and an acknowledgement of the harm done to the victim and the community.

Any measures taken against children who commit offences should:

- Reinforce respect for social values;
- Encourage the repair of harm done to victims and the community;
- Be meaningful for the individual child, given his or her needs and level of development;
- Where appropriate, involve the parents, the extended family, the community and social or other agencies in the child's rehabilitation and reintegration;
- Respect gender, ethnic, cultural and linguistic differences; and
- Respond to the needs of children with special requirements.

## **B. Adjudicating and disposing of cases**

The purpose of sentencing is to hold a child accountable for the offence committed. This is accomplished by imposing fair sanctions that have meaningful consequences for the child and promote his/her rehabilitation and reintegration into society. If a custodial measure is being contemplated, for example, it is important to recognise that non-custodial consequences, such as repairing the harm done to the victim, are more likely to be meaningful for many children than custody.

A valid sentence must at its conception bear in mind the ultimate goal of the sentence which is to rehabilitate the child and his or her reintegration into society. Although research in this area indicates that there are numerous factors beyond the control of the court that can influence the chances of success with a particular child, the court is required to choose a sentence that will promote rehabilitation and reintegration as far as possible. It should be recognised that imposing a sentence with terms and conditions likely to be breached would not be consistent with promoting the rehabilitation of the child and, therefore, would not be a valid sentence.

In determining the appropriate sentence the competent authority must take into account:

- The extent to which the child participated in committing the offence;
- The harm done to victims and whether the child intended to cause it or could reasonably have foreseen that it might occur;
- Any previous findings of guilt relating to the child;
- Any reparation made by the child to the victim or the community;
- The amount of time that the child may have spent in pre-trial detention as a result of the offence;
- Any other aggravating and mitigating circumstances related to the child or the offence such as the nature and circumstances of the offence; and
- The personal history, social circumstances and personal characteristics of the child.

In addition, when adjudicating and disposing of cases, the Beijing Rules state:

- Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.
- Deprivation of personal liberty shall not be imposed unless the juvenile is convicted of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.
- Capital punishment shall never be imposed for any crime committed by children.
- Children shall not be subject to corporal punishment.

The competent authority should ensure that within the sentence, the fundamental rights of children are protected, especially the fundamental rights of personal development and education.

### C. Provision of needed assistance

Children in conflict with the law often lack appropriate and stable accommodation and/or are not in education or work. Therefore, international rules state that efforts should be made to provide children with assistance such as:

- accommodation,
- education and/or vocational training,
- support and encouragement, and
- protection from harm in their homes or communities.

It is this assistance that is most likely to aid the child in the rehabilitative process. Therefore the court must be aware of the child's circumstances and order, where appropriate, the necessary assistance to the child so that they are able to carry out their sentence.

### D. Effective implementation of disposition

Community sentences require supervision by a competent authority. Usually this would be a youth probation worker or a social worker, who is the key point of contact for the child during their sentence. The Beijing Rules stipulate the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. This could also include the power to modify the orders as the competent authority may deem necessary from time to time.

Best practice is that one caseworker is responsible for the child's case throughout the duration of their order. This case manager, in implementing the disposition will:

- Organise interventions to meet the requirements of the order.
- Engage parents in interventions and/or to support the child.
- Monitor the child's compliance with their order.
- Explain warnings and assist the child with his/her sanctions, and inform an enforcing authority if he/she has not complied with an order.
- Broker access to external interventions.
- Coordinate interventions for the child with their colleagues and other agencies.
- Provide one-on-one supervision to the child, challenging his/her opinions and tackling his/her risk factors.
- Monitor their vulnerability and highlight any safeguarding concerns to the relevant authorities.
- Monitor the child's risk to him/herself and others, and highlight any risk concerns to the relevant authorities.

The Tokyo Rules state that there should be good coordination between services responsible for non-custodial measures and other relevant agencies in criminal justice, health, housing, education, and labour as well as with the mass media. As such, the ability of the case worker to involve as many different outside agencies as possible in the formulation and delivery of the child's disposal is beneficial for the child and the community.

*Example: United Kingdom: Youth Offending Teams<sup>3</sup>*

Youth Offending Teams are multi-agency teams comprising personnel from health, education, police, probation and social services. They are responsible for the provision and supervision of youth justice disposals in England and Wales. All team members are expected to work flexibly, with each case allocated to their personal skills. A new organisational model, where children are given different levels of supervision based on their risk factors is now in operation across the country. There are three intervention categories: standard, enhanced and intensive. The intervention category recommended determines the sentence proposed to court, the proposed frequency of contact and the suggested content of the intervention. Each case worker co-ordinates their children's cases based on these considerations.

## E. Need for professionalism and training

The Beijing Rules require that professional education, in-service training, refresher courses and other appropriate modes of instruction must be used to ensure the professional competence of all personnel dealing with children's cases. In addition, it requires that child justice personnel should reflect the diversity of the children who come into contact with the justice system, including the fair representation of women and minorities in juvenile justice agencies.

The Beijing Rules also promote the use of volunteers, voluntary organisations, local institutions and other community resources for the rehabilitation of the children. It states that 'co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively'. It is pointed out that the use of ex-offenders (including ex-addicts) can be of considerable assistance in enhancing the skills and empathy of a workforce.

## TYPES OF DISPOSITION MEASURES

In order to ensure the most appropriate disposition is given to a child, the Beijing Rules stipulate that a large variety of measures shall be made available to the competent authority. These should allow for flexibility so as to avoid institutionalisation to the greatest extent possible. In addition,

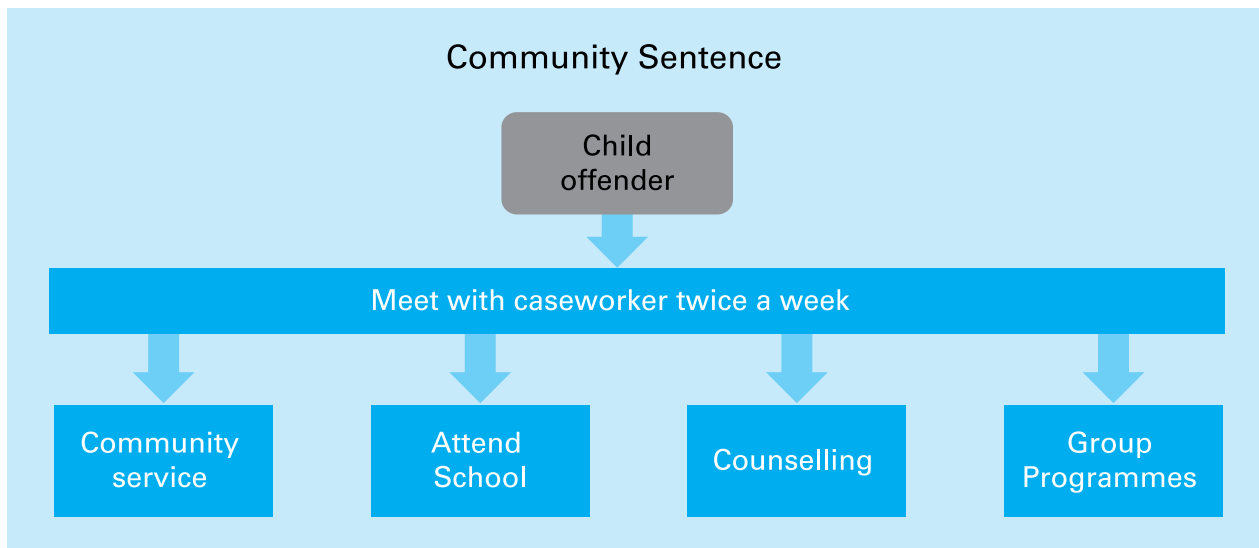
<sup>3</sup> Goldson, B (2008) Dictionary of Youth Justice. Willan

it is emphasised that 'full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind'. Incarceration for children should be avoided 'unless there is no other appropriate response that will protect the public safety.'

There is a broad range of possible sanctions that a court may consider in determining an appropriate sentence. These include:

- A. Sentencing contracts
- B. Supervision orders
- C. Community service orders
- D. Financial penalties
- E. Intervention or treatment orders

Community dispositions are versatile and can include different elements from each programme. An example of what a community sentence could look like is shown in the diagram below.



## A. Sentencing contracts

In order to involve the child in the formation of their sentence, it is possible to move the design of their sentence to a smaller, and more informal setting. Sentencing contracts take place after the formal trial in a community setting and aim to get the child offender, their parents and professional workers and any victims, together to discuss the offence and how the child can repair the damage done to the community.

A key principle in sentencing contracts is the use of a restorative justice approach. Restorative justice aims to resolve conflict and to repair the harm caused by offending. It encourages those who have caused harm to acknowledge the impact of what they have done and those who have suffered harm a chance to have their feelings heard. It aims to help the child offender and their victim. For more information on restorative justice measures please see Chapter 4: Diversion.

### *Example: United Kingdom: Referral Orders<sup>4</sup>*

Referral orders are a standard first sentence in England and Wales for children and young people who are pleading guilty to a first conviction. Within 20 days of the order being made in court the child and their parents must attend a youth offender panel. The panel is a less formal forum than the youth court in which to consider the circumstances of the offence,

<sup>4</sup> Goldson, B (2008) Dictionary of Youth Justice. Willan

the offender and the victim and two volunteers from the local community. The court sets the duration of the sentence but the terms of the order are decided in the panel and set down in a contract which the child and all others present sign. The child contract may cover the following:

- employment or apprenticeship, participation in educational or training programmes;
- stipulation of residence, and/or leisure activities, treatment for alcohol or drug;
- payment of damages;
- hours of community reparation (un-paid work).

*Example: Canada Aboriginal Communities: Sentencing circles<sup>5</sup>*

A sentencing circle is a restorative justice programme that enables the community and the victim to work with the child offender to devise an appropriate sentence after the offender has pleaded guilty in a formal criminal court. Sentencing circles are typically used after the offender has pleaded guilty to the offence in a court of law. In jurisdictions that utilise sentencing circles, eligible offenders then have the option of asking to be sentenced by the sentencing circle rather than by the criminal court judge. Sentencing circles have a variety of participants, including the offender, the offender's supporters, the victim, the victim's supporters, members of the community, a community representative of high standing (i.e., an elder), representatives from the legal system (e.g., the prosecutor and the defence attorney), representatives from social services, and a facilitator or group of facilitators who are trained in circle group dynamics. After each participant has had his or her say, the participants attempt to agree on a sanction or sanctions. If an agreement is reached, the offender might be required to return to the sentencing circle on a regular basis. If an offender fails to abide by the agreement, the sentencing circles usually have the power to send the offender back to court to be sentenced.

## B. Supervision orders

Supervision orders place the child under the supervision of a community authority for a set period of time. This could be a youth probation worker or a social worker who acts as a case manager and is responsible for the child for the duration of their sentence. They coordinate the elements of intervention and supervision and are a key point of contact for the police or the courts in any matters relating to the child's offences.

Supervision is a structured and strictly controlled community-based sentence. The order provides for a number of requirements which can also be combined, including to:

- Participate in specified activities and attend places as directed either by the supervising officer or as specified by the court;
- Reside at a particular place;
- Make reparation to the victim or community in the form of community service;
- Refrain from certain activities or refrain from entering certain geographical areas;
- Receive mental health or other treatment;
- Comply with education arrangements;
- Comply with a programme of drug treatment.

### 1. Intensive supervision

If the child is a high risk offender or if they have a very chaotic lifestyle, intensive supervision is a more rigorous version of supervision that can be used. This implies that the child is closely supervised in order to reduce opportunities for re-offending and to assist the child in reintegrating into society.

<sup>5</sup> UNODC (2006) Handbook on Restorative Justice Programmes

Intensive supervision programmes (ISPs) are community-based, post-adjudication, non-residential programmes designed to provide restraints on offenders in the community. ISPs are characterised by higher levels of contact with case workers and strict conditions of compliance. They generally encompass a wide variety of risk control strategies, including multiple weekly face-to-face contacts, evening visits, urine testing, and electronic monitoring. Most ISPs also incorporate the delivery of a wide range of services to address offenders' needs.

*Example: United Kingdom: Intensive Fostering<sup>6</sup>*

Intensive fostering was developed in Oregon 35 years ago and is being piloted in the UK by the Youth Justice Board. After sentencing, the young person is sent to the foster family for six to nine months, with social workers, family therapists and liaison officers on call. The programme is strict: to enjoy privileges such as watching television, participants must earn points for good behaviour by, for example, doing their homework and going to bed on time. It is purposely childish: intensive fostering is designed to re-programme the young person's experience of childhood. The scheme has won acclaim as being more effective at steering young people away from jail, according to a think tank New Philanthropy Capital.

## 2. Monitoring

The monitoring of children is designed to ensure their compliance with their order and promote non-offending behaviour. It can also be used to restrict the activities of children in the community. This sanction allows children to remain in their homes, go to work, run errands, attend school, and maintain other responsibilities. However, their activities are closely monitored (either electronically and/or by frequent staff contacts) to ensure that they comply with the conditions set by the court. Some community sentences may be accompanied by a curfew. Compliance with this curfew is then monitored using a range of devices. In this way, the child is able to fulfil employment education or treatment programme obligations, however they are required to stay at home during the evening.

*Example: Europe: Electronic Monitoring<sup>7</sup>*

In Europe electronic monitoring has become an increasingly popular intervention usually imposed alongside curfews or intensive supervision orders. It is currently used in, among others, England and Wales, France, Sweden, Holland and Scotland.

*Example: Switzerland: Electronic Monitoring*

The Basel region of Switzerland has introduced electronic monitoring as an alternative to imprisonment of juveniles. While it is mainly used as an alternative for remand/pre-trial detention it can also be used as an alternative to the execution of prison sentences. This way, the person is kept in their community but must be in their home at certain times of the day or night. Electronic monitoring works best when the juvenile has a daily structure involving school or other activities imposed by the courts/police.

## C. Community service orders

Community service is work performed by the child for the benefit of the community. It offers a way for the child to be held accountable and to repair some of the harm caused by his or her criminal conduct. This sanction involves a specific number of hours of unpaid work which is usually undertaken outside school hours, so as not to interfere with the child's education. Community service is particularly beneficial in involving the local community in the reintegration of the child. It works best where the type of work done relates to the offence the young person has committed. For example, if they committed a crime against an older person, they might be set to work at a nursing home. It is important to remember that the free consent of the child must be given before community service can be authorised.

<sup>6</sup> Neal, Hazel/UK Youth Justice Board (2008) Cross-national comparison of youth justice.

<sup>7</sup> Hazel, N. (2008) Cross National Comparisons of Youth Justice, UK, Youth Justice Board.

#### *Example: Eastern Europe: Community Service Orders<sup>8</sup>*

In some Eastern European countries including Armenia, Moldova, Ukraine and Azerbaijan legislation specifies that community service orders can only be given as a sentence to convicted juveniles over a certain age. The age requirement relates to the minimum age for employment in the labour laws of those countries. For example, in Armenia, Moldova and Ukraine juveniles can only be sentenced to community service over the age of 16. In Georgia, the legislation for imposing community service orders states that the work has to be performed outside of school hours.

#### *Example: Canada: Community Service Orders<sup>9</sup>*

The Community Service Orders (CSO) programme at non-profit organisation St. Leonard's Society of Canada, administers sentences of child offenders. The services performed are varied and attempt to match the needs and abilities of each person. Keeping children in contact with their community, making them take responsibility for their actions and providing them with necessary employment and social skills are just a few of the goals behind the CSO programme. By carefully screening each client, the staff attempts to place the individual in an environment that will bring out their best in an attempt to make the placement beneficial for all those involved. Each client is supervised while at their placement, and reports are sent directly to the staff regarding their activity, and ensuring that the hours assigned by the court are completed. With over 130 local non-profit service organisations participating in the programme, clients have a chance to work directly with the community and develop the connections that will help ensure a healthier, pro-social lifestyle.

## **D. Financial penalties**

Financial or material penalties can be imposed as the sole sanction, as one of several sanctions, or as a condition of probation. The amount of the fine should be tailored to an offender's ability to pay. Payment can be ensured through various court-sanctioned methods, including outright payment, instalment payments, garnering an offender's salary, or taking possession of the offender's property. Monetary payments may involve minimal State intervention. However, it is rare for fines to be imposed on children who are not working. In the United Kingdom, there is an age threshold of 16 years, under which the parents of the child must pay the fine on his or her behalf.

Fines are the best-known and most common form of monetary sanction. Fines are considered humane, causing a minimum of social disruption for children who can afford them. Fines, however, may create inequalities by discriminating against poor children, for whom the inability to pay may mean imprisonment.

Restitution is typically ordered to compensate victims in cases of property crime, fraud, forgery, or theft. It may also be applied to reimburse victims of violent crime for expenses related to their physical and mental health recovery. Direct service to victims is the rarest form of restitution. It is a type of reconciliation in which the offender and the victim meet in a carefully supervised setting to determine how the offender can make restitution directly to the victim by performing a service. These services usually include repairing property damaged by the offender. This type of personalised restitution incorporates the benefit of the victim being able to meet the offender, which often alleviates the fear associated with the criminal encounter (much like mediation programmes).

## **E. Intervention or treatment orders**

Treatment approaches are interventions that are designed to reinforce pro-social behaviour. Some specific types of treatment approaches include:

8 UNICEF (2010) The Development of Juvenile Justice Systems in Eastern European Neighbourhood Policy Countries: Reform Achievements and Challenges in Armenia, Azerbaijan, Georgia, Moldova and Ukraine

9 European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

- individual therapy,
- anger management,
- problem solving,
- behaviour modification,
- group therapy,
- multi-systemic therapy, and
- individualised case planning.

Multisystemic Therapy (MST) is an intensive family-and community-based treatment programme that focuses on all aspects of chronic and violent juvenile offenders lives — their homes and families, schools and teachers, neighbourhoods and friends. MST works with children who have chaotic backgrounds. Elements of MST programmes are that:

- MST clinicians go to where the child is and are on call 24 hours a day, seven days a week.
- They work intensively with parents and caregivers to put them in control.
- The therapist works with the caregivers to keep the adolescent focused on school and gaining job skills.
- The therapist and caregivers introduce the youth to sports and recreational activities as an alternative to hanging out.

MST has been proven to work and produce positive results with the toughest children. It blends the best clinical treatments—cognitive behavioural therapy, behaviour management training, family therapies and community psychology to reach this population. Research indicates that MST can:

- Keep children in their home;
- Keep children in school;
- Reduce re-arrest rates
- Improve family relations and functioning;
- Decrease adolescent psychiatric symptoms;
- Decrease adolescent drug and alcohol use.<sup>10</sup>

Day treatment facilities (or day reporting centres) are highly structured, community-based, post-adjudication, non-residential programmes for serious juvenile offenders. The goal of day treatment is to provide both intensive supervision to ensure community safety and a wide range of services to the offender to prevent future offending behaviour. The intensive supervision is fulfilled by requiring the offender to report to the facility on a daily basis at specified times for a specified length of time. Generally, programmes are provided at the facility during the day and/or evening at least five days a week. Special weekend activities may also be conducted.

*Example: United Kingdom: Youth Rehabilitation Order<sup>11</sup>*

Since 2009 a young offender in England and Wales can be sentenced to a Youth Rehabilitation Order (YRO). This can require a juvenile to undertake one, or more, requirements whilst being supervised in the community, one of which is a Drug Treatment Requirement. In being given this sentence, the young person must agree to drug or alcohol treatment, of which the court decides whether it will be residential or non-residential. This is given alongside a Drug Testing Requirement where a young person must agree to be tested for drugs or alcohol for the duration of their Order. There are currently 202 specialist drug workers working with Youth Offending Teams to ensure both young offenders, and those at risk of offending, have access to drug treatment in their local area.

<sup>10</sup> <http://mstservices.com/index.php/what-is-mst/what-is-mst>

<sup>11</sup> Goldson, B (2008) Dictionary of Youth Justice. Willan



## ISSUES FOR DISCUSSION

- A. The Tokyo Rules state that there are three questions that must always be considered when looking at alternatives to custodial sentencing: Do they offer rehabilitation to the offender? Do they offer adequate protection to society? Do they take into account the interests and needs of the victim? Discuss the limits by which each of these conditions can be true (for example, society is not protected if a serious, violent offender is assigned to a non-intensive supervision order; are the needs of the victim protected if the offender is assigned to repair the fence he vandalised, etc).
- B. International standards state that community sanctions and measures shall be made as meaningful as possible to the offender and shall seek to contribute to personal and social development. How could this best be accomplished? What types of non-custodial sanctions could be most effective in achieving this objective?
- C. In many justice systems, a large proportion of time and resources are devoted to children who have been convicted of petty offences. In your system, which of these children might be considered for non-custodial sanctions? What offences should be considered petty? How do your views correspond to the definitions of crime established by your national law?
- D. How can the concepts of serious, appropriate, and fair consequences for criminal behaviour by juveniles be combined with the objectives of rehabilitation and socialisation of a young offender to promote positive changes in behaviour?
- E. To what extent should the nature of the crime, the age and personality of the offender, his life conditions, or the opinion of the victim be considered in determining what alternatives are used? Are there circumstances in which a prison sentence should be imposed without considering any alternatives?
- F. Compare the advantages and disadvantages for each non-custodial measure described above. In which circumstances would you choose one of these alternatives over another? For each measures described, give two examples where this alternative measure would be appropriate and two others where it would not be appropriate. Explain why.
- G. Should serious or violent offenders be permitted to participate in restorative justice programmes? Why or why not? If such offenders are allowed to participate, who should make the final decision as to a particular offender's eligibility (e.g., the judge, the prosecutor, a coordinator, the victim, etc.)?

## CASE STUDIES

- A. A 15 year old boy is on trial for the robbery of an elderly woman. His mother died when he was 3 and he is only looked after by his father. His father is currently on bail for a burglary of a shop and has a series of previous violent offences. Some suspect that he groomed his son to undertake robberies. As a judge, do you ensure that the boy's father is in attendance? Why/ Why not?
- B. You are a judge with two 16 year old boys in front of you accused of grievous bodily harm of another male. One of the boys has had a number of previous convictions for serious assault whilst for the other it is his first offence. They are both pleading guilty and say they committed the assault together whilst drunk. What sentence would you give each of the boys? Would they be the same or different? Why?
- C. You are the lawyer of a 17 year old girl who has been accused of manslaughter. The girl has a history of self harming and during her time being remanded to custody she has attempted suicide. She is highly vulnerable and professionals are concerned about her mental health.

What steps would you take to understand her vulnerability risk? What sentence do you consider would be an appropriate response from the court?

- D. You are a judge trying a 14 year old boy who has been accused of joyriding. You know from his social worker that both of his parents are substance misusers and that there is domestic violence in the house. Your client has told you that the night of the incident his father and mother were both fighting whilst on substances and had become violent. He ran out of the house and stole a car. You feel this needs to be considered a mitigating factor in the case however no official report has been completed on the boy. How do you ensure that such factors are conveyed to the judge? What type of sentence would you recommend to the judge?

## REFERENCES AND FURTHER READING

European Crime Prevention Network (2006) *A Review of good practices in Preventing Juvenile Crime in the European Union*

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UNICEF (2010) *Good Practices and Promising Initiatives in Juvenile Justice in the CEE/CIS Region: A UNICEF catalogue of practices documented through the Juvenile Justice Critical Mass Initiative*

Video resources MST <http://vimeo.com/10767228>





# CHAPTER 7

## DETENTION

### CONTENTS

#### UN policy indicator:

2. Children in detention: Number of children in detention per 100,000 child population.
3. Children in pre-sentence detention: Number of children in pre-sentence detention per 100,000 child population.
4. Duration of pre-sentence detention: Time spent in detention by children before sentencing.
5. Duration of sentenced detention: Time spent in detention by children after sentencing.
6. Child deaths in detention: Number of child deaths in detention during a 12 month period, per 1,000 children detained.
7. Separation from adults: Percentage of children in detention not wholly separated from adults.
8. Contact with parents and family: Percentage of children in detention who have been visited by, or visited, parents, guardians or an adult family member in the last 3 months.
9. Custodial sentencing: Percentage of children sentenced receiving a custodial sentence.
10. Aftercare: Percentage of children released from detention receiving aftercare.

#### Learning Objectives

#### Essential Principles

#### Country Context

#### Application

- A. Institutions as a last resort
- B. Importance of detained children's rights
- C. Care and education
- D. Children awaiting trial presumed innocent
- E. Placement
- F. The rights of girls
- G. Design
- H. Communicate the rules
- I. Records
- J. Staff
- K. Planning
- L. Education and vocational training
- M. Programmes, recreation and religion
- N. Health
- O. Maintenance of family ties
- P. Maintenance of community ties
- Q. Safeguarding: self harm and bullying
- R. Discipline
- S. Transition
- T. Inspections and complaints

#### Issues for discussion

#### Case Studies

#### References and further reading

## LEARNING OBJECTIVES

By the end of this module you will be able to:

- Describe what practical measures can be taken to protect detained juveniles from violence and exploitation;
- Explain what measures prison staff can take to promote juvenile prisoners' education, skill development, and reintegration into society;
- Identify the primary international and domestic standards that address the treatment of child detainees who have mental health issues; and
- Identify the provisions of international and domestic law that prohibit torture, abuse, and ill-treatment in detention.

## ESSENTIAL PRINCIPLES

- A. Deprivation of the liberty of a juvenile should be a disposition of **last resort** and for the minimum necessary period and should be limited to exceptional cases. (*Havana Rules, Rules 1, 2, 19*)
- B. Juveniles shall benefit from all the **human rights guarantees** available to adults. (*Universal Declaration of Human Rights, Article 2; Havana Rules, Rule 13; Convention on the Rights of the Child, Article 37*)
- C. The objective of training and treatment of juveniles placed in institutions is to **provide care**, protection, and all necessary individual assistance—social, educational, vocational, psychological, medical, and physical—that they may require in view of their age, sex, and personality. (*Beijing Rules, Rule 13, 26*)
- D. Juveniles who are detained under arrest or **awaiting trial (“untried”)** are **presumed innocent** and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. (*Havana Rules, Rule 17; Beijing Rules, Rule 13*)
- E. The **placement** of children should take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. They must be separated from adults. (*Havana Rules, Rule 28,29; International Covenant on Civil and Political Rights, Article 10*)
- F. Prison authorities shall put in place measures to meet the special protection needs of **juvenile female prisoners**. (*Bangkok Rules, Rule 36, 37; Beijing Rules, Rule 26*)
- G. The **design** of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment. (*Havana Rules, Rule 32*)
- H. On admission, all juveniles shall be given a copy of the rules governing the detention facility, address of the authorities competent to receive complaints, and those who provide legal assistance **in a manner enabling full comprehension**. (*Havana Rules, Rule 24*)
- I. Staff should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. (*Havana Rules, Rule 83*)
- J. Every juvenile of compulsory school age has the right to **education and vocational training** suited to his or her needs and abilities and designed to prepare him or her for return to society. (*Havana Rules, Rule 38, 42; Beijing Rules, Rule 26*)

- K. Every child should have suitable time for daily free exercise, and **recreational and physical training** should be offered (*Havana Rules, Rule 47*)
- L. Every juvenile shall receive adequate **medical care**, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. A juvenile who is suffering from mental illness should be treated in a specialised institution under independent medical management. (*Havana Rules, Rule 49, 51, 53; Standard Minimum Rules for the Treatment of Prisoners, Rule 82*)
- M. The **parents or guardians** shall have right of access to an institutionalised child and must be notified of the admission, transfer, release, sickness, injury, or death of a juvenile. (*Beijing Rules, Rule 10, 11, 26; Council of Europe Guidelines on Child-friendly Justice*)
- N. Every means should be provided to ensure that juveniles have adequate **communication with the outside world**, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. (*Havana Rules, Rule 59*)
- O. All **disciplinary measures** constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment. (*Havana Rules, Rule 67; Beijing Rules, Rule 65; Universal Declaration of Human Rights, Article 5; International Convention on Civil and Political Rights, Article 7; Cairo Declaration, Article 20; Islamic Declaration, Article 7; Standard Minimum Rules for the Treatment of Prisoners,, Rule 31*)
- P. Every juvenile should have the right to make a request or complaint. (*Havana Rules, Rule 76*)

### Country Context

- According to the Juvenile Justice Law, the deprivation of liberty is the final measure which may be imposed on a juvenile. However, it only defines custody and pre-trial detention as forms of deprivation of liberty. Temporary custody during trial, educational measures that include institutionalisation and the use of the disciplinary measure of referral to a youth center are also forms of deprivation of liberty and should be defined as such.
- Juveniles have all the rights available to adults as well as additional ones that are set out in international documents such as the Convention on the Rights of the Child. In custody the juvenile should be provided with work or other activities that are useful for his education and counteract the negative consequences of deprivation of freedom. In practice, however, this is not implemented.
- Juveniles detained in educational and correctional institutions and in the juvenile prison have the right to attend primary and secondary education, which is obligatory. Nevertheless, for some institutions this is difficult to implement in practice.
- There are no specific or girl-sensitive programmes developed yet. The girls and boys are separated in different facilities. Unlike the boys, girls are mixed; those who are in pre-trial, who are referred to an educational and correctional institutions and those who are sentenced to imprisonment are all placed in the same institution.
- Programmes for treatment and organised sport activities are not satisfactory.
- Medical care is guaranteed to juveniles in institutions. However, in practice at times juveniles are left without some types of treatment, for example, dental treatment. Hepatitis C has been a problem in the juvenile prison in the past due to lack of treatment, medicines and vitamins etc.
- The right to visits, correspondence, and contact with the outer world are regulated by the internal rules of each institution. For pre-trial prison for example, children do not have access to free telephone communication, and so arrange any future visits with relatives and defence attorneys during each visit.
- Disciplinary procedures are also regulated by each institution. There is no standard document regulating this and the decision as to the disciplinary measures imposed on juveniles lies solely with the director of the institution. Corporal punishment is not recorded, but mentioned by juveniles as a practice used by staff. It is not strictly forbidden.

- Children in juvenile prison can stay until 23 years of age before being transferred to an adult institution. However, there are no specific regulations regarding the transfer process. There have been cases when adults have remained in the juvenile prison until 26 or 27 years of age when their sentence is finished. There is also the possibility, rarely taken up, to be transferred to an adult prison before the age of 23 years, on request.
- Children do have a right to complaint, but it is not often used; sometimes because the children are not aware of how to complain but sometimes due to discouragement and a lack of belief in the outcome.

## APPLICATION

### A. Institutions as a last resort

#### UN Definition: Deprivation of Liberty<sup>1</sup>

The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

Depriving a juvenile of their liberty in any institution or facility should be a disposition of last resort, for the minimum necessary period and should be limited to exceptional cases. Confining a child in detention has been shown to make them more likely, rather than less likely, to commit a crime again when they are released. Children are best treated in the community under a community sanction. Only children who pose a real danger to the public should be detained; these children make up a very small minority of the overall child offender population.

#### *Example: Sweden: No child prisons*

In Sweden only between seven and fourteen young people aged under 18 receive sentences of detention each year. Consequently, there are no separate young person institutions. However, there are reformatories, which although officially for care and treatment, involve sentencing about one hundred children a year for up to four years, depending upon the offence. In Sweden, where a few offenders are in custody for very serious crimes, they are under closed institutional 'care', with an emphasis on welfare and treatment (for abuse issues etc), rather than detention or imprisonment.<sup>2</sup>

### B. Importance of detained children's rights

The emphasis of any juvenile facility should be on the care, protection, rehabilitation, and training of the child. The approach to juvenile rehabilitation should be multidisciplinary, drawing upon the skills of a range of professionals including teachers, trainers, and psychologists. Administrations should offer a full programme of education, sport, vocational training, recreation, and other meaningful activities. Prison staff should create an environment in which children feel safe—safe from adults, safe from other children, and safe from the prison staff. An environment of fear breeds violence and behavioural problems.

The Havana Rules state that children deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty. They must all

<sup>1</sup> Havana Rules (1990) Rule 11 (b)

<sup>2</sup> Cavadino and Dignan (2005) *Penal Systems: A Comparative Approach*

be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account their needs.

*Example: Germany and Austria: Spent Sentences*

Germany has implemented short periods of custody for up to four weeks that, importantly, do not appear on the offender's criminal record. At the same time, Germany has a minimum sentence of six months for imprisonment proper, because they believe that education (which forms the crux of the German system) cannot be implemented over a shorter period. Austria has gone one step further by having a 'custodial sentence without conviction', where the record would show a custodial conviction as a warning but no sentence is served (and no threat like a suspended sentence).<sup>3</sup>

### C. Care and education

The main objective of institutional detention for juveniles should be to provide care, protection, education and vocational skills, with a view to assisting the children to assume socially constructive and productive roles in society. The Beijing Rules state that 'juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development.'

### D. Children awaiting trial presumed innocent

All arrested persons, including children, must be brought before court within 48 hours after arrest, where a judge will then decide whether or not to remand the child in custody until their trial. Children who have not been tried must always be presumed innocent. Their detention should therefore only be in exceptional cases, as a last resort and for the shortest possible period of time, for example if it is felt that they pose a threat to society. In the vast majority of cases, other alternatives must be found, such as close supervision, intensive care or placement with a family, or in an educational setting or home.

If children are detained, then the Havana Rules stipulate that investigative bodies should give the highest priority to ensuring that their cases are processed as swiftly as possible to ensure that the duration is of the shortest possible period.

International guidelines state that untried children should be separated from convicted children but that nevertheless, the conditions under which an untried child is detained should be consistent with the rules set out for convicted children. Additionally, it must be ensured that specific provisions relating to their status are upheld due to the presumption of innocence, the duration of the detention and the legal status and circumstances of the child. Particularly important in this is the right to ongoing and private communications with their legal counsel and access to legal aid.

*Example: Europe: Remand as a last resort*

A number of jurisdictions, including Northern Ireland, France and Slovenia, now state explicitly that remand should only be used in most serious cases – which usually means only sexual or very violent cases – and numbers are reduced to a handful of children in each. In order to achieve this, in 1999 Slovenia instituted alternative restrictive bail conditions, including home detention, curfews and very regular reporting to a police station. In some countries, including Austria and Canada, remand must only be given if a prison sentence is deemed likely on conviction.<sup>4</sup>

*Example: Worldwide: Time limited remand*

In parts of Australia, Luxembourg, Saudi Arabia, Spain, Switzerland and Zambia, detention pending trial (including periods between court dates) was limited to 30 days or less. In other

<sup>3</sup> Neal, Hazel/UK Youth Justice Board (2008) Cross-national comparison of youth justice. YJB

<sup>4</sup> Ibid.



countries, it was restricted to periods from two months (including Armenia, India, Japan and Libya), through to three months (Colombia, Bahrain, Lebanon), and to five months (China). In Austria, Germany and several other European jurisdictions it is mandatory to consider the time a child has been detained on remand in the sentence given.<sup>5</sup>

## E. Placement

When placing children in a detention facility, the utmost attention must be taken to safeguard their needs. Their age, personality, sex, type of offence, and mental and physical health must be taken into account. It must always be ensured that they are protected from harmful influences and risk situations.

An important aspect of the appropriate treatment of a child is ensuring they are properly separated from adults. Experiences around the world have shown that contact with adult prisoners is dangerous for children. Only under controlled conditions should children be brought together with carefully selected adults as part of a special programme that has been proven to be beneficial for them.

The transportation of children to their placement should be secure and uphold the principle of separation from adults. Vehicles used must have adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Children should at no point be transferred from one facility to another arbitrarily.

When placing children who have children themselves, it is important to take account of these care-giving responsibilities. The Bangkok Rules particularly draw attention to this in the case of girls.

## F. The rights of girls

Girls placed in an institution deserve special attention as to their personal needs. The Bangkok Rules stipulate that detained girls must have equal access to the education and vocational training that is available to detained boys. In addition, they should have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence.

Specific healthcare needs of girls must be met by providing them with regular access to gynaecologists and education on women's healthcare. Any pregnant girls must receive support and medical care equivalent to that provided for adult female prisoners and their health should be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

## G. Design

The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in exercise and other leisure activities.

It is recommended by the Havana Rules that child detention facilities should be open or have very minimal security measures. They also recommend that the detention facilities should be as small as possible, in order to facilitate effective individualised treatment. These small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community as much as possible, and never be located in areas where there are known health or other risks.

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<sup>5</sup> Neal, Hazel (2008) Cross-national comparison of youth justice. YJB

A well-designed child detention centre will provide positive and personalised conditions of detention for the children. It should be of an adequate size, well lit and ventilated, well furnished with regard to sleeping and living areas, decorated, and visually stimulating. Every child should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness. Children should be able to comply with their personal hygiene needs in privacy and in a clean and decent manner.

The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of a child. To every extent possible children should have the right to use their own clothing and detention facilities should ensure that each child has clothing suitable for the climate and adequate to ensure good health. Every detention facility shall ensure that all juveniles receive food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to all children at all times.

*Example: Europe: Partial custody*

Some countries in Europe use intermittent custody for children in conflict with the law. For example, night detention is used in countries including Italy and the Netherlands, where the young person is free to take part in external employment or education during the day, but is required to spend the night in prison. A converse sentence operates in Spain, where a Day Centre provides a tight structure, but the child resides at home. Spain also uses weekend only custody.<sup>6</sup>

*Example: Turkey: Open prison*

There are three reformatories for juvenile offenders, located in Ankara, Elazig and Izmir. They are all open facilities, and have a combined capacity for approximately 400 persons aged 18–21 years. The facility in Ankara offers a variety of vocational programmes, such as hairdressing, and heating and air conditioning training. One third of the prisoners are employed in the community. The physical facilities are old, but spacious, well maintained and clean and the children attend school in the community.<sup>7</sup>

## H. Communicate the rules

Children admitted to any detention facility are in a vulnerable position and must be treated with the utmost care and respect. They require staff to help them understand why they are there and what they can expect during their time in detention. As such, the Havana rules stipulate that on admission to any facility, all children should be given a copy of the rules governing the institution and a written description of their rights and obligations in a language they can understand. In addition, they are entitled to the contact details of the authorities competent to receive complaints, and information as to how they get access to legal assistance. It is likely that many children admitted to a detention facility may have learning difficulties or be unable to read and write, therefore international standards stipulate that all this the information should be conveyed to the child in a manner that they can understand.

## I. Records

All children received into a detention facility must have a valid commitment order from a judicial, administrative or other public authority. This order must be recorded and held in each child's individual file. This file must be kept confidentially and should also include a child's legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of his/her treatment.

<sup>6</sup> Neal, Hazel/UK Youth Justice Board (2008) Cross-national comparison of youth justice

<sup>7</sup> UNICEF (2010) Good practices and promising initiatives in juvenile justice in the CEE/CIS region: A UNICEF catalogue of practices documented through the Juvenile Justice Critical Mass initiative

The Havana Rules state that as soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each child should be drawn up and submitted to the administration. In addition, a complete and secure record of the following information should be kept concerning each child received:

- Information on their identity;
- The reasons for detention;
- The day and hour of admission, transfer and release;
- Details of the notifications to parents and guardians on every admission, transfer or release of the child at the time of commitment;
- Details of known physical and mental health problems, including drug and alcohol abuse; and
- Details of any children they have and their names and ages.

The child's file should be kept up to date, accessible only to authorised persons and classified in such a way as to be easily understood by the child. Every child should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request.

The child's file should accompany the child if they are transferred to another place of detention. The information on admission, place, transfer and release must be provided without delay to the parents and guardians or closest relative of the juvenile concerned. In addition, on release, the records of juveniles should be sealed, and, at an appropriate time, destroyed.

## J. Staff

The quality of staff in a detention facility will set the standard for all the work that is carried out there. Their enthusiasm, commitment and skills are enough to make even a poorly resourced facility feel like a home. As such, the Havana Rules state that staff should include only those qualified to work with children. The makeup of the staff should be multi-disciplinary and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. It is recommended that detention facilities should make use of all appropriate educational, moral, spiritual, and other resources and forms of assistance that are available in the community.

The recruitment process is crucial to ensure that staff of the necessary calibre and experience are employed. All staff who work in a children's institution should have expressed the desire to work with children. Staff of all grades should be selected carefully, as the Havana Rules state that 'the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.' It is essential that staff are given adequate pay in order to attract and retain suitable women and men and detention centres should have mixed gender staffing as the presence of both male and female staff can have a beneficial effect by fostering a degree of normality in a place of detention. The director of a facility must be adequately qualified and should carry out his or her duties on a full-time basis.

Ensuring that there is a culture of respect and sharing information between the different types of staff in a facility is crucial to the effective running of the institution. Staff should receive training on topics such as child psychology, child welfare and international standards on the rights of the child. They should be encouraged to maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organised at suitable intervals throughout their career.

All the staff and management of a facility must be committed to establishing a safe and secure environment and should be positive role models for the children. As such, in the performance of

their duties, they should respect and protect the fundamental rights of all children, in particular, as follows:

- No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever.
- All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities.
- All personnel should ensure the full protection of the physical and mental health of children, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required.
- All personnel should respect the right of the child to privacy, and, in particular, should safeguard all confidential matters concerning children or their families learned as a result of their professional capacity.
- All personnel should seek to minimise any differences between life inside and outside the detention facility which lessen respect for the dignity of children as human beings.

The attitude of staff members toward detained children can have a profound effect on the children. Caring, sensitive, and professional staff members can positively influence a child's rehabilitation. It is essential that staff members communicate with the children. Understanding why they may be fighting, for example, is only possible through good listening skills and close communication. Without this effort to understand the children's feelings, their sense of anger and injustice is likely to increase, hindering their progress toward rehabilitation.

*Example: United Kingdom: Multi-disciplinary Team*

The Keppel Unit in the north of England has a multi-disciplinary team of professionals including prison officers, teachers, psychologists, nurses and mental health workers. Before the unit opened, all these staff were trained together. This group training broke down the barriers and suspicions between professions and a bond was formed between them. This is maintained through regular multi-disciplinary meetings every morning and afternoon. In this way they are able to devise strategies to help each other with a particular child's behaviour.<sup>8</sup>

*Example: Turkey: Staff training*

The Ministry of Justice in Turkey (with funding from the EU and technical support from UNICEF) have implemented a new training design and standard for 'Psychosocial and Other Professionals working with Children in Prisons, Detention and Education Houses'. Central Ministry personnel were involved from the beginning of the project and it was developed within the Ministry of Justice leading to a sense of ownership of the material. It provides 'management training, tools and information to work more effectively with children' and has created a positive change of attitude towards detained children. It was designed to train psychological personnel employed in the Ministry of Justice establishments (psychologists, social workers, and teachers) in handling children with specific problems such as anger management, and developing confidence.<sup>9</sup>

## K. Planning

If a child is detained it is imperative that a plan of their treatment/sentence is made for the period of their detention. This plan should be made as soon as possible after admission to the place of detention, and be based on all known information and reports of their background, needs, characteristics and risk factors. It should also take the child's ultimate reintegration into the community as its ultimate goal and all interventions should be designed to facilitate a positive outcome in this respect.

<sup>8</sup> Cordis Bright/UK Youth Justice Board (2011) Keppel Unit Process Evaluation

<sup>9</sup> UNICEF (2009) Potential and Good practices still being documented by UNICEF Regional Office

In order to ensure that the plan is based on the child's needs, the Havana Rules stipulate that as soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be assessed in order to establish the specific type and level of care and programme required and to be pursued.

Trained personnel of the facility should prepare a written, individualised treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

*Example: United Kingdom: Care planning*

At the Keppel Unit, a specialist unit for detaining young people in the UK, the staff use a 6 week care planning tool to assess the child's vulnerability concerns and risks. This meeting involves the child's key worker in the detention facility, his/her teachers, the managers of the unit, his/her parents and any professional involved in his/her mental health. The child's progress is monitored through this meeting and strategies are formulated in order to deal with any difficulties the child is facing. Each plan builds on the child's overall sentence plan which is designed for their integration into alternative placements or the community.<sup>10</sup>

## L. Education and vocational training

All children deprived of their liberty have the right to education. This should be the case both for children of compulsory school age and older children above it who would benefit from education. The delivery of the education should take into account the learning ability and social skills of the child. Qualified teachers based inside or outside the facility must deliver the education in line with each child's individual needs. Where possible this education should be provided outside the detention facility in community schools. In addition, special attention should be given to children who have learning difficulties, who are of foreign origin or who have particular cultural or ethnic needs. A successful educational programme requires teachers and prison staff to work together as a team. For example, prison staff must ensure that the juveniles have the time and suitable conditions in which to do their homework. In order to prevent stigmatisation after release, educational certificates should not show that they were gained in an institution. The Havana Rules state that every facility should provide access to a library that is adequately stocked and children should be encouraged and enabled to make full use of it.

All children have the right to receive vocational training in occupations likely to prepare them for future employment. As far as possible they should be able to choose the type of work they wish to perform. In order to give the child a sense of worth and help build bridges between them and their community, the Havana Rules state that wherever possible, juveniles should be remunerated for their labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of vocational training and work carried out should always be chosen with a view to be of benefit to the children following release. As such, the organisation and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare children for the conditions of normal occupational life and prepare them to assume productive employment in the community following their release. It is important to remember that girls should have equal access to the vocational training available to boys.

All the national and international standards and laws regarding child labour are applicable to detained children, and children should be able to be remunerated for their work. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile

<sup>10</sup> Cordis Bright/UK Youth Justice Board (2011) Keppel Unit Process Evaluation

on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

*Example: France: Educative custody*

In France, short sentences are served at Secure Education Centres. They provide intense educational activity lasting between three and six months.<sup>11</sup>

*Example: Austria: Work training*

In Austria, trainees receive professional work training, and receive a proper wage for work – most of which is saved until release.<sup>12</sup>

## M. Programmes, recreation and religion

All children should have a suitable amount of time each day for free exercise. This should be in the open air whenever weather permits and should also include appropriate recreational and physical training. Children must also be able to take part in other activities such as arts and crafts and skill development.

Children should receive treatment and counselling either in an individual or group setting, which is tailored to each child's individual needs. Programmes to address anger management, crisis coping skills, and drug/alcohol dependency and offending behaviour will be key to ensuring that the child is able to live an offence free life when they leave the establishment.

Children must also be able to satisfy the needs of his/her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting their own services and having possession of the necessary books or items of religious observance. If a detention facility contains a sufficient number of children of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every child should have the right to receive visits from a qualified representative of any religion of his/her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

## N. Health

Children have a right to have all their medical needs identified and treated whilst they are in detention. To that end, the Havana Rules stipulate that children should be examined by a physician immediately upon admission for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention. Following this assessment, the facility should ensure that all the necessary means to ensure that child's health are administered. It is essential that every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. If possible, this medical care should be provided through the health facilities and services located in the community in which the detention facility is located, in order to prevent stigmatisation of the juvenile and promote self-respect and integration into the community. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

<sup>11</sup> European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

<sup>12</sup> *ibid.*

Children’s mental health should be assessed when they arrive in a facility, and on an ongoing basis. Children may suffer from mental health problems, such as depression, conduct disorders, mood disorders, sleep disorders, psychotic disorders, and post-traumatic stress disorder. Therefore, every youth facility should have a trained child psychologist on staff. The Havana Rules state that any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be negatively affected by continued detention or any specific condition of detention, should report this fact immediately to the director of the detention facility and to the independent authority responsible for safeguarding the well-being of the juvenile. If a child is considered to be suffering from mental illness they must be treated in a specialised institution under independent medical management. Medicines should be administered only for necessary treatment on medical grounds and the administration of any drug should always be authorised and carried out by qualified medical personnel. Any children who have been diagnosed with emotional or psychological issues must receive counselling and treatment from qualified members of the prison staff or from qualified members of the community.

Children who enter detention facilities may have problems with substances. Therefore, on admission, children should be screened and receive adequate treatment for drug and alcohol addictions. The Havana Rules specify that detention facilities should adopt specialised drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the children concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles. The administration of such drug treatment could be on an individual or community basis.

*Example: France: Interagency co-operation*

France has transferred the responsibility for prison healthcare from the prison authorities to the Ministry of Health. As part of the transfer, the care and treatment of prisoners is overseen by public hospitals.<sup>13</sup>

*Example: Ireland: Detoxification and Therapeutic Unit*

At Mountjoy Prison in Ireland, prison authorities created the Detoxification and Therapeutic Unit for addicted prisoners. Entry into the Unit is voluntary. Once admitted, prisoners undergo 14-21 days of detoxification under medical supervision. Following detoxification, prisoners enter a six-week treatment programme that is organised by prison staff and agencies from the community. After completing the programme, prisoners have the option of transferring to a semi-closed area of the prison that has been designated as “drug free.”<sup>14</sup>

## O. Maintenance of Family Ties

It is vital that children maintain contact with their families as much as possible for the duration of their detention as it has been shown to improve their reintegration. Children should be allowed to communicate with their families, friends and other persons freely, and family contact should be actively encouraged by staff. All opportunities to ensure that family contact and family involvement in the child’s daily life is embedded in the regime should be sought. Key to this is ensuring that all children receive regular and frequent visits. The Havana Rules state that this should be in principle once a week and not less than once a month and it should be carried out in circumstances that respect their privacy. Opportunities for the child to visit their family during their stay should also be encouraged unless there are reasons to think that a child is at risk of abuse from doing so. As the Havana Rules state ‘maintenance of family ties can be important in helping juveniles re-assimilate back into society and their community. Juveniles with family support are also more likely to live law-abiding lives after their release’.

<sup>13</sup> European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

<sup>14</sup> O’Mahony, P. (2002) Criminal Justice in Ireland

The international standards state that parents or guardians also have the right to request information regarding the child's health, including information regarding any significant changes in the health of the child. The director of the detention facility should immediately notify the family or guardian if the child dies, contracts an illness that requires transfer to an outside medical facility, or has a condition requiring clinical care within the detention facility for more than 48 hours.

## P. Maintenance of community ties

Children who are cut off from the community are less likely to be able to reintegrate into it when they are released. Children who are isolated from the community are therefore at greater risk of re-offending. As such, detention staff should arrange to have members of the community maintain regular contact with detained juveniles through recreational, cultural, educational, or other programmes. Community volunteers can organise and run cultural, educational, ministry, and vocational activities. Such ties can have a beneficial effect on both the juveniles and the volunteers: the juveniles maintain relationships with the community and the community is less likely to ostracise the juveniles after they are released from prison.

To encourage contact with people living in the community children have the right to receive correspondence and to communicate in writing or by telephone at least twice a week. This should be with people of their choice, unless legally restricted, and staff should assist them with this. Children should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, and through access to radio, television programmes and films.

## Q. Safeguarding: self harm and bullying

Children in detention are vulnerable. Safeguarding children is therefore crucial and all staff need to be aware of the signs that a child is in distress. Some children may be at risk of self harm or even suicide. Children who self-harm may injure themselves by cutting or burning their skin, hitting themselves against objects or taking a drug overdose. Self harming behaviours need to be managed effectively by the staff through a specially devised procedure. Programmes that match every child with a case worker who he or she can confide in may help to ensure they have someone to go to if they are in distress.

Members of staff should be alert to signs of bullying. Signs of bullying include physical and sexual assault, verbal abuse, extortion, and theft of other children's belongings. Staff should create an anti-bullying policy and enforce it. Such a strategy requires that the victim be protected (and kept anonymous if possible) and that the bully be confronted. Thorough reporting and support procedures should be in place so that the staff members have clear guidelines to follow.

### *Example: United Kingdom: Assessment Care in Custody and Teamwork*

To manage children's self harm the UK Prison Service uses a care planning system called ACCT (Assessment, Care in Custody, and Teamwork). ACCT allows the prison to monitor the child closely, engaging them in planning ways of reducing their problems and helping them to build up their own sources of support. Children are fully involved in the ACCT process. They have an interview with a trained assessor, from which an individual care plan is drawn up. They then attend regular case reviews, where a Case Manager reviews the care and support they receive. The care plan will address the problems that are causing the child pain and leading them to self-harm or attempt suicide and also find ways of meeting the child's needs without the need for self-harming. The care plan also looks at linking the prisoner with other forms of support and help within the prison, for example the Mental Health Teams.<sup>15</sup>

<sup>15</sup> [http://www.justice.gov.uk/downloads/publications/corporate-reports/hmps/performance-standards/1000312560\\_suicide\\_prevention\\_oct\\_07.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/hmps/performance-standards/1000312560_suicide_prevention_oct_07.pdf) (Accessed September 2011)



## R. Discipline

If disciplinary measures must be used, they should always be for the maintenance of safety and an ordered community life. They should always be consistent with upholding the inherent dignity of the child and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person. The Havana Rules make clear that all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the child concerned. The reduction of diet and the restriction or denial of contact with family members should be completely prohibited. Labour should not be imposed as a disciplinary sanction and no juveniles should be responsible for carrying out disciplinary sanctions.

If a child is to be disciplined, they should first be informed of the alleged infraction in a manner that they understand. At this point they must be given a proper opportunity to present his or her defence, including the right of appeal to a competent impartial authority. Complete records should always be kept of all disciplinary proceedings.

Instruments of restraint must only be used in exceptional cases, where all other control methods have been exhausted and failed. By order of the director of the administration, such instruments might be resorted to in order to prevent the child from inflicting self-injury, injuries to others or serious destruction of property. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

## S. Transition

The transfer of a child from the youth secure estate to the adult estate or to the community should always be well planned. It can be an unsettling and difficult time for the child to move away from their friends and an environment that will generally be more protective than that of an adult prison. Transfers to adult probation services can also lead to a decrease in the frequency of contact and support.<sup>16</sup> It is essential, therefore, to ensure this transition is as carefully organised as possible so that the child is not re-victimised by the change in service provision.

In order to plan for the move, sentence planning must be linked to transition planning. Consideration must be given at the beginning of the sentence to predict whether a child is likely to be transitioning to an adult establishment during the course of their sentence. This eventual transition must be given consideration and then be incorporated in to their sentence. For example, it will be important to know what programmes and education might be available in the youth estate and what programmes and education they might eventually go on to receive in the adult estate. The plans for their rehabilitation need to be sequenced and due consideration should be given to the availability of resources in both settings. At least 6 months prior to the transfer date of a child it must be clear:

- Where the child will go;
- When the child will go;
- What education and programmes they can continue with and what they will have to complete in the youth estate;
- How information on the child's progress will be shared with the new establishment; and
- Who the child's key worker will be in the new establishment.

<sup>16</sup> HM Chief inspector of Prison & HM Chief inspector of Probation (2008) The Indeterminate Sentence for Public Protection: A thematic review 6.38

Unpublished consultations with children who have undergone transition to the adult estate from the youth estate show that they require:

- Good warning before the physical move;
- Information on how the adult estate works and what will be available for them there;
- Influence over the choice of establishment where possible; and
- To be talked to by someone who is already in the establishment they are going to, for example someone on day release coming to answer their questions<sup>17</sup>.

Staff in establishments must be well versed in the processes and procedures involved in transferring a child to the adult estate and their message needs to be consistent to each child in their care to avoid uncertainty and confusion.

## T. Inspection and complaints

All children in detention must be informed of how they can make a complaint. They should have the means and liberty to make requests or complaints to the director of the detention facility, to his or her authorised representative and preferably also an independent ombudsman. If necessary the child should be able to request assistance from family members, legal counsellors, humanitarian groups or others where possible. It is particularly important that children who have literacy or learning difficulties should receive help making a complaint. All complaints should be acknowledged and answered without delay. Children may be afraid to raise concerns or issues for fear of punishment, victimisation or reprisals by staff for doing so and it should be made clear to children that this will not occur and it should be possible for them to raise concerns or complaints confidentially if necessary.

Independent qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative. Such inspectors should have unrestricted access to all persons employed by or working in any facility. Every child should have the right to talk in confidence to any inspector. For more information see Chapter 8: Independent Monitoring Mechanisms.

## ISSUES FOR DISCUSSION

- Many juveniles deprived of their liberty should not actually be detained. What are some of the reasons that a juvenile should not be in prison?
- Healthcare staff working in the reception area of the prison may be the first to notice potential problems with a child's state of mental health. If the staff members suspect that a newly admitted prisoner may be mentally unstable, what should they say to the other staff members who have to deal with the prisoner in the reception area? How should such a prisoner be treated?
- Many children in prison come from children's homes or other institutions. How can the needs of these children for family relationships best be met while they are in prison?
- How can prison doctors and other healthcare staff establish links with their professional colleagues in the community? What are the main advantages of forging such links?
- What methods of discipline might be used with very unruly children in prison who have repeatedly committed serious offences? What sorts of education or training might they be encouraged to undertake?

<sup>17</sup> Unpublished research by Cordis Bright for the Youth Justice Board for England and Wales. 2010

## CASE STUDIES

- A. Most of the juveniles in your prison are in pre-trial detention. Two children have been in prison for six months and have not yet seen a judge. What can you, as prison administrator, do to ensure these children get a fair and prompt trial?
- B. Bullying and intimidation during recreation time have become major problems in your institution. What are some ways to prevent this behaviour without limiting the freedom of movement of the children?
- C. You are a prison officer on duty. One day you receive a phone call telling you that your 14 year old son has been charged with a drug offence and has been put in detention. What would be your reaction?
- D. In the course of a medical examination, the medical officer in an institution where children are detained finds marks on a child's body that are consistent with a beating. The child alleges that he has been hit by staff but says that he does not wish to make any complaint for fear of reprisal. What should the doctor do?
- E. A child is admitted to the prison late one evening. He gives every appearance of being suicidal. The medical officer has gone home and cannot be contacted. What action should the staff take to ensure that the child does not harm himself during the night?
- F. In the community in which the prison is situated there is a shortage of psychiatrists and of good healthcare for the mentally ill. The prison has a number of children who have some form of mental disorder. How can the prison director ensure that these prisoners receive the medical and psychological care that they need?
- G. You are the senior officer on duty in the prison. A prisoner has punched a member of the staff in the face. He has been subdued by other staff and has been taken to the punishment cells by the time you arrive on the scene. The staff members are very annoyed on behalf of their colleague. You suspect that once you leave, the prisoner will be beaten. How do you convince the staff that they should not do this?

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# CHAPTER 8

## INDEPENDENT MONITORING MECHANISMS

### CONTENTS

#### **UN policy indicator:**

1. Children in conflict with the law: Number of children arrested during a 12 month period per 100,000 of the population.
2. Children in detention: Number of children in detention per 100,000 child population.
12. Regular independent inspections: Existence of a system guaranteeing regular independent inspection of places of detention.
13. Complaints mechanisms: Existence of a complaints system for children in detention.

Learning Objectives

Essential Principles

Country Context

Aims of Independent Monitoring Mechanisms

Different Types of Monitoring

- A. Judicial monitoring
- B. Statutory inspection bodies
- C. Civil society monitoring
- D. Parliamentary inspections
- E. Complaints mechanisms
- F. Regional mechanisms
- G. International mechanisms

UNOHCHR Key Principles for Inspecting Detention Facilities

Practical Elements of Monitoring

- A. Information gathering
- B. Observation
- C. Interviewing children
- D. Making recommendations

Issues for Discussion

Case Studies

References and further reading

## LEARNING OBJECTIVES

After completing this chapter you should be able to:

- Understand the main international and regional standards relating to independent monitoring of facilities where people are deprived of their liberty and any relevant domestic legislation;
- Know the different kinds of independent mechanisms that can carry out monitoring duties;
- Identify the basic principles of monitoring and what practical aspects of detention to inspect;
- Know how inspection reports and effective recommendations can instigate change within an institution.

## ESSENTIAL PRINCIPLES

- A. There shall be a **regular inspection** of places where people are deprived of their liberty by independent international and national bodies made up of **qualified and experienced inspectors** appointed by a competent authority. Their task is to ensure that these institutions are administered in accordance with existing laws and regulations, and to prevent torture and other cruel, inhuman or degrading treatment. (*Standard Minimum Rules for the Treatment of Prisoners, No.55; OPCAT*)
- B. Inspectors should be empowered to conduct **unannounced inspections** on their own initiative. They should have **unrestricted access** to all children and to all records of such facilities. Every juvenile should have the right to talk in confidence to any inspecting officer. (*Havana Rules, No.72*)
- C. Qualified **medical officers** attached to the inspecting authority or the public health service should participate in the inspections on conditions of institutional life that affect the physical and mental health of juveniles. (*Havana Rules, No.73*)
- D. After completing the inspection, the inspector should be required to submit a **report** on the findings, which should include an evaluation of the compliance of the detention facilities with the international standards and relevant provisions of national law, and **recommendations** regarding any steps considered necessary to ensure compliance with them. Where it is discovered there has been a violation of a child's rights, this should be communicated to the authorities for investigation and prosecution. (*Havana Rules, No.74*)
- E. Every juvenile should have the **right to make a request or complaint**, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay. (*Havana Rules, No.76*)

## Country Context

There are a variety of different mechanisms used for monitoring facilities where children are deprived of their liberty in the country. These include:

- Judicial oversight of children whom a judge has sentenced to a closed institution. This tool is rather weak.
- According to the Law on Execution of Sanctions (2006) a parliamentary commission should be established to inspect and observe the situation in all institutions administered under that law. This would include the educational and correctional institution Tetovo and the juvenile prison in Ohrid. However, so far this legal obligation has not been fulfilled.
- The Deputy Ombudsman for Children is the main independent body which has the duty to observe and report on the condition of children in institutions. The Ombudsman Office was established in 1997 and the specialised position of Deputy Ombudsman for Children established in 1999. The Deputy Ombudsman for Children monitors the situation of children in residential facilities. Unfortunately, the impact of these initiatives is limited. The last issue raised by the Ombudsman dates back to 2009 when it reported about the abuse of children in two facilities, but no official investigation or clarification of the concern and alleged ill-treatment was reported.
- Another department within the Ombudsman office is the unit of the national preventive mechanism for the protection against torture, inhuman and degrading treatment or punishment, which was established in 2009. The unit is supposed to conduct regular and ad hoc visits to all places official or unofficial where people are deprived of their liberty. The unit officially begun its operation in 2011.
- Civil society monitoring is also a mechanism that is used in the country. For example, in the past the Helsinki Committee for Human Rights has carried out visits to two facilities and reported on the findings. This tool should be strengthened further.
- The European Committee for the Prevention of Torture has visited the country and considered that the conditions for children in detention was not acceptable. It produced a report in 2008 and a report from 2010 is forthcoming.
- The International Committee of the Red Cross also has the possibility to visit and inspect inside the facilities and speak with the juveniles as well. However, its visits and reports are produced in confidence.
- Regarding the complaint procedures within the institution that accommodate and care for children, it should be noticed that there is no standard regulating procedure to establish the right of the child to complain. Each institution has its own manner of dealing with these situations, which are regulated by the internal rule of each institution. In general, the child has a right to complain, however the procedures are rather vague.

## AIMS OF INDEPENDENT MONITORING MECHANISMS

International standards state that children should only be detained as a last resort and for the shortest time period possible. Nonetheless, many children are detained and their rights violated whilst in detention. Facilities where children are held are often isolated from the community and therefore, when their rights are violated it is more likely to go unnoticed. The existence and work of independent monitoring mechanisms is important to try and prevent violations and to report when violations do occur. Inspections of detention facilities and continuous monitoring is vital in ensuring that conditions of detention are in compliance with national and international standards, and that children's human rights are upheld.

Inspections achieve this by:

- Prevention. The knowledge that an institution will be inspected and reported on can often be enough to encourage authorities to improve the conditions in their facility.
- Documentation. By recording the conditions of detention it is possible to compare between institutions, against international and national standards and against previous inspection records.

- Reporting. Effective reporting, recommendations and follow up aimed at the correct level of authority – prison governors, local government, central government – can ensure that the issues identified are addressed seriously.
- Dealing with serious incidents. Inspection teams should be allowed to interview staff and detainees to ensure any incident has been handled in compliance with human rights and that reprisals are not occurring.

Independent Monitoring teams should:

- have well-qualified inspectors, including medically trained inspectors;
- include women in the inspection team;
- make regular visits;
- have the right to make unannounced visits;
- have unrestricted access to all places where children are deprived of their liberty;
- have access to conduct interviews confidentially with children and be properly trained in doing so;
- be able to make their reports publicly available; and
- have the ability to follow-up allegations of abuse or violence.

## DIFFERENT TYPES OF MONITORING

### Definition: Independent Monitoring Mechanisms<sup>1</sup>

Independent monitoring mechanisms are bodies that undertake inspections of facilities where people are deprived of their liberty on a regular basis through onsite visits. They maintain their independence by not being under the same authority as the detaining institutions. Within this definition, there are many forms that an independent inspection body can take.

Many countries use more than one of the following to ensure effective inspection of places of detention.

### A. JUDICIAL MONITORING

Judges often have a formal role of prison oversight by visiting places of detention and hearing prisoners' complaints. These systems work best when the judges are able to devote adequate time to this area of their work.

#### *Example: Austria; Judicial Oversight*

In Austria, the judge, mandated by the president of the Youth court, must visit the detention facility once a month to speak with the children who were sent by the Court to be detained, including those who are detained on remand. The judge must then report back to the president of the youth court on his findings, and the president has the right to deal with the shortcomings of the prison staff.

### B. Statutory inspection bodies

These are inspection bodies whose responsibilities and functions are established by government legislation. It should be legislated that they have full access to all detention facilities and produce reports to an authority that can implement their recommendations. Included in this remit is the work of Children's Commissioners or Children's Ombudsmen who often have the statutory right to inspect

<sup>1</sup> APT (2004) Monitoring Places of Detention: A Practical Guide



places of detention where children are held and receive complaints or grievances from children in detention and investigate these.

*Example: New Zealand: The Office of the Children's Commissioner<sup>2</sup>*

The Children's Commissioner in New Zealand has its statutory basis under the Children, Young Persons and Their Families Act 1989 and later, separately under the Children's Commissioner Act 2003. Under New Zealand's obligations to OPCAT, it has been nominated as a National Preventative Mechanism and is jointly responsible (along with the Prisons Ombudsman) for monitoring children in detention facilities. In practice, the Children's Commissioner's Office undertakes the inspections and visits and then passes on their reports and findings to the Ombudsman to include in his/her report. The monitoring team is made up of qualified social workers with monitoring experience. The Commissioner's independence is outlined in legislation and since its assignment as an NPM under new legislation, its monitoring responsibilities have become more robust.

*Example: United Kingdom: Her Majesty's Inspectorate of Prisons (HMIP)<sup>3</sup>*

The UK's HMIP has the statutory responsibility to inspect the conditions and treatment of all prisons, juvenile facilities and immigration detention centres. The Chief Inspector reports directly to government ministers and the Justice Secretary. The inspection staff includes health inspectors, drugs inspectors, researchers and administrative staff. HMIP produces reports after the inspections of individual facilities as well as thematic reports on specific custodial issues.

## C. Civil society monitoring

Informal scrutiny by civil society is likely to occur when there is contact between the community and the detention centre, such as where cultural, religious or educational groups or individuals work inside detention facilities. However, in some countries official civil society monitoring takes place where independent monitoring boards made up of members of the local community regularly make visits to a prison and report back to the authorities and the community.

*Example: United Kingdom: Independent Monitoring Boards (IMB)<sup>4</sup>*

In the UK, every institution where someone is detained has a statutory requirement to have an IMB. These boards are made up of members of the public, who are trained, and who have unrestricted access at any time to the facility they monitor. They also have the permission to talk to any detainee they wish to and any detainee may put in a confidential request to see a member of their IMB. A team from the Board visits the detention centre regularly and the whole Board meets once a month to talk about matters of concern about the establishment. Each Board produces an annual report on the establishment it oversees and leaves comments at the end of each regular visit.

## D. Parliamentary inspections

*Example: Switzerland: Geneva Parliamentary Commission<sup>5</sup>*

The Geneva Parliamentary Commission was established in 1825 and has the permission to visit any place where people are deprived of their liberty. It is made up of 9 members from the Parliament, with a representative sample of political parties. For its visiting duties, the monitoring team consists of three people from the Commission, representing three different parties and can utilise external experts such as medical personnel, lawyers, or former prison governors. It conducts at least two announced visits per year and may also conduct

2 [www.occ.org.nz](http://www.occ.org.nz)

3 [www.justice.gov.uk/about/hmi-prisons/index.htm](http://www.justice.gov.uk/about/hmi-prisons/index.htm)

4 [www.justice.gov.uk/about/imb.htm](http://www.justice.gov.uk/about/imb.htm)

5 APT (2003) Visiting Places of Detention: Lessons Learned and Practices of Selected Domestic Institutions

unannounced visits where it feels it is necessary. The commission produces an annual report summing up its observations and recommendations, which is distributed to the General Attorney, the institutions visited and the department of the penitentiary system under which the institutions are run. It is also mandated to follow up complaints received in relation to standards of detention.

## E. Regional mechanisms

There are also regional bodies that have a mandate to visit places of detention and report to governments on their findings. These can provide a standard against which newly established domestic inspection mechanisms can be measured.

*Example: Council of Europe: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*<sup>6</sup>

The CPT has unrestricted access to all places where people are detained within Council of Europe States and is able to interview or speak with detainees or others who can provide information to them. After each visit, a report is sent to the State outlining the CPT's findings and recommendations to which the State must respond in detail. Both the report and the response are kept confidential in order to enhance cooperation between the State and the CPT, unless the State itself chooses to publish these documents, which most do. The CPT must inform a State of its planned visit and inspection, but once this notification has been made, they may visit any place within that State where people are detained.

## F. International mechanisms

*Example: International: The Optional Protocol to the Convention against Torture (OPCAT)*<sup>7</sup>

OPCAT came into force in 2006 and, as of 2011, has been ratified by 56 States. States that have ratified OPCAT are required to establish their own national independent monitoring bodies (national preventative mechanisms) to carry out inspections of detention facilities. However, the Sub-committee on the Prevention of Torture (SPT) set up by OPCAT, can also visit any place of detention in ratifying countries.

*Example: International: International Committee of the Red Cross (ICRC)*<sup>8</sup>

The ICRC is mandated, through the Geneva Convention to visit detainees and ensure they are treated with dignity and humanity. While their main focus is on prisoners of war and civilians detained during armed conflict, they have expanded their visiting to anyone under arrest or detention for any reason. The ICRC works with States to try and prevent torture and ill-treatment and improve conditions in institutions where people are detained. The ICRC's visits to detention facilities have strict guidelines to ensure obtaining the most objective view of the facility including unimpeded access to all areas of the detention facility; the ability to speak to any detainee in private; and to be allowed to repeat visits where necessary.

## G. Complaints mechanisms

Children in detention should have the right to register complaints when they feel they have been unfairly treated or ill-treated. Issues should initially be able to be raised with the immediate members of staff who supervise them, but if the issue cannot be resolved children should be able to make a complaint to the authorities running the facility. There should also be a mechanism whereby more serious complaints, or where issues that fail to get resolved, can be brought to the attention of external inspection bodies including Children's Commissioners or other independent monitoring bodies. Children should be made aware on entering an institution what the procedure is for raising issues or complaints. Children may be afraid to raise concerns or issues for fear of punishment or

6 [www.cpt.coe.int](http://www.cpt.coe.int)

7 <http://www2.ohchr.org/english/law/cat-one.htm>

8 [www.icrc.org](http://www.icrc.org)

victimisation by staff for doing so and it should be made clear to children that this will not occur and it should be possible for them to raise concerns or complaints confidentially if necessary. Complaints mechanisms should be accessible to all children regardless of their age, maturity, understanding or literacy level.

## UN OHCHR KEY PRINCIPLES FOR INSPECTING DETENTION FACILITIES

- 1. Do no harm.** Often when inspecting a place of detention there is a conflict of interest between the need to obtain information and the safety of the children detained, for example, the risk of reprisals for those who may be interviewed. When carrying out inspections, the safety of the children in the facility must be kept in mind at all times and no action by the visiting body should jeopardise this.
- 2. Know the standards.** Inspectors must have a good knowledge of the international and national standards, both those which give them their mandate to inspect, and those which set out the appropriate conditions of the detentions they inspect.
- 3. Respect the authorities.** An inspector's role is to ensure authorities' compliance with the rights of the child and this is best achieved by establishing a minimum basis of mutual respect. Inspectors should respect the functioning of the authorities and identify the hierarchical levels and their responsibilities so that problems can be addressed at the right level.
- 4. Credibility.** Credibility is crucial to successful monitoring and inspectors should not make any promises they cannot follow through. When interviewing children, it is especially important to ensure that the child knows the limitations of what an inspector can achieve and that any information given is done anonymously and confidentially.
- 5. Confidentiality.** All information received by an inspection body must be treated confidentially as to do otherwise can have serious consequences both for the person interviewed and the inspectors' credibility. Special measures should be taken to keep recorded information confidential, such as the identities of interviewees, for example, by using coded language.
- 6. Security.** Inspectors must be aware of both their own security, the security of those they come in to contact with and the security of the institution as a whole.
- 7. Sensitivity.** When interviewing children in detention it is imperative that inspectors be sensitive to the traumatic effect that recalling certain events may have on them.
- 8. Objectivity.** Inspectors should work to record actual facts and work to provide a report of the facility that is objective and free from feelings or preconceived ideas.
- 9. Visibility.** Inspectors should be sure that the authorities know of their methodology and mandate for monitoring the institution. The work of inspectors should be publicised through their written reports and careful use of the media to inform local communities of their work.

## PRACTICAL ELEMENTS OF INSPECTION

### A. Information Gathering

To get the most out of an independent inspection, basic information gathering must be done prior to the visit. This includes obtaining information on:

- the number of children detained;
- the ages of the children;
- the category of crimes they have committed;
- whether they are on remand or convicted;

- who the senior officials of the facility are and what responsibility each level of staff member has; and
- any allegations of torture or ill-treatment; and any complaints they have received from children in the facility.

## B. Observation

The inspection should always involve observation of all the facilities and aspects of the institution including:

- accommodation,
- food,
- clothing,
- personal property,
- hygiene,
- educational/vocational work,
- recreation,
- religious provision,
- contact with the outside world,
- use of force and restraint,
- disciplinary measures,
- medical services,
- gender-specific treatment,
- reintegration programmes, and
- training and organisation of staff.

Checklists for inspectors can be found in the following resources:

APT (2004) *Monitoring Places of Detention: A Practical Guide*

AMIMB (2010) *A Practical Guide to Monitoring Prisons*

HMIP (2009) *Expectations: Criteria for Assessing the Treatment and Conditions for Children and Young People held in Custody*

## C. Interviewing children

Children have the right to be heard in all areas of Justice for Children and inspecting places where they are detained is no exception. It is vital that a child's views are listened to in order to get a full account of their experiences within detention facilities. However, interviewing children must be done in a sensitive way, in private, and without a risk that a child will face reprisals for speaking to an inspection team. It is important to remember that the children being interviewed are likely to be in a vulnerable position and the interview should be undertaken by someone with training in communicating with children and the welfare issues that may arise. It is imperative that the child voluntarily agrees to be interviewed after being given all necessary information to make an informed decision.

The children chosen to be interviewed should be a representative sample of those detained in the facility (in terms of age, offence category etc) and should not only be those who have been put forward by the staff or those who have approached them. A location should be found with as much privacy as possible and where a child feels safe. The interview should be recorded (either by tape or a secondary interviewer) and the child should be made aware of why it is being recorded and how the recording will be kept confidential.

The interview should follow a similar pattern to that for interviewing child victims and witnesses (see Chapter 5): introduction and rapport; obtaining information; and closure. Whilst obtaining

information the child should be asked open ended questions, such as “Tell me about the schooling here”.

An important aspect of interviewing a child in detention is the management of their expectations of what the interview will achieve. The interviewer in both the introduction and closure of the interview should explain what the information given will be used for and the limit of what is possible to change with regards to the things the child has informed them of. It is important not to raise false hopes of what the interview will achieve.

## D. Making recommendations

Effective follow-up to an independent inspection is a hugely important part of the monitoring process as, without it, rights violations may be documented or observed but changes will not occur. Effective follow-up can be a useful tool for advocacy at different levels. A written inspection report should always be completed at the end of an inspection and sent to the inspected facility highlighting all the issues that have been identified and recommendations for their improvement. Recommendations should be SMART (specific, measurable, achievable, relevant and time-bound). Recommendations should not simply be a reiteration of the international standards and where the facility fails to meet them, but should explore the reasons why they are not being met and propose solutions. Recommendations should be targeted at the level of the detention authority if it is problems or issues that they are able to solve or improve, or at a higher level of authority if it involves a change in regulations, legislation or policy.

Where it is desired to use the report as an advocacy tool, it should be made public and disseminated to relevant government officials, civil society organisations, the media and international organisations that may be able to exert extra pressure on the authorities to take up the recommendations. Information or reports could also be sent to UN bodies such as the Special Rapporteur on Torture, UNICEF, UNHCR or the Committee on the Rights of the Child. The recommendations should be taken up as advocacy messages. (More information on advocacy is detailed in Chapter 10).

### *Example: Poland: Polish Office of the Commissioner for Civil Rights Protection<sup>9</sup>*

Poland’s Commissioner for Civil Rights Protection’s Office conducts inspections to all places where people are deprived of their liberty in Poland. Its report from each inspection is made public and distributed, and it conducts awareness raising activities through conferences, press releases and publications. It maintains a good relationship with the media in order to help it disseminate information about violations of rights, and ill-treatment within detention facilities.

## ISSUES FOR DISCUSSION

- A. For internal complaints mechanisms inside detention facilities, how and to whom should the child make his complaint? Who should be involved in resolving a child’s complaint?
- B. What could be done to ensure a child at any literacy level can make a complaint?
- C. What types of incidents require an independent inspection body to investigate?
- D. Under what circumstance might a prison director actively seek an independent inspection for their facility? Are there any circumstances in which an independent inspection is likely to be unhelpful?
- E. How would you approach the inspection of a detention facility that you knew was abusing the child detainees?

<sup>9</sup> Association for the Prevention of Torture (2003) Visiting Places of Detention: Lessons Learned and Practices of Selected Domestic Institutions

## CASE STUDIES

- A. You are an inspector in an independent monitoring body and arrive at a detention centre that you have not been to before. You interview a number of staff there and they show you that the detention facility is complying with international guidelines. The centre has very beautiful grounds but very few children are present. When you ask to see the children you find that they are all detained in one room which is locked. They are all sitting quietly on mattresses which are thread bare and in poor condition. The guard who has shown you in is standing over you watching your interaction with the children. How do you proceed with the inspection? How do you ensure that the children's view point on how the centre is run is heard?
- B. You are the manager of a detention centre. You are worried that some of your staff are treating the children badly and want to find out if the children have any complaints. In order to do this you set up a complaints box in the association area of the detention centre. The only problem is, after 6 months no children have raised any complaints. You do not know why this is as your fears that the children are being abused has not gone away. Why do you think the complaints box is not being used? What other methods could you use to allay your fears?
- C. You are an independent monitor who has been commissioned to report on the detention conditions of 4 facilities in your country. The government official who commissioned you is notoriously volatile and is not keen on the inspection taking place. Now you have uncovered that the majority of the detention centres are not performing well against international standards. You are scared of conveying this message to the government official as you fear you will not be employed by him again. How will you report on the situation you have discovered without alienating the government official that you are reporting to?
- D. You have just begun working in a detention centre. One day you witness your manager punishing a child by hitting him with a baton. You know that this act is against the rules but you are intimidated by your manager and do not want to lose your job. What do you do?

## REFERENCES AND FURTHER READING

Association of Members of Independent Monitoring Boards (2010) *A Practical Guide to Monitoring Prisons*

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# CHAPTER 9

## REINTEGRATION

### CONTENTS

**UN policy indicator:**

8. Percentage of children in detention who have been visited by, or visited, parents, guardians or an adult family member in the last 3 months.
11. Aftercare: Percentage of children released from detention receiving aftercare.

Learning Objectives

Essential Principles

Country Context

Application

A. Community reintegration

B. Continuity of care

C. Provision of services

D. Conditional release

E. Semi-institutional arrangements and supervision

Issues for Discussion

Case Studies

References and further reading



## LEARNING OBJECTIVES

By the end of this chapter you should be able to:

- State when authorities should begin to plan for a child's reintegration;
- Explain the conditions of reintegration most likely to prevent a child from reoffending;
- List the pathways that are important for the reintegration of a child after a period of detention;
- Prioritise how you would design a child's reintegration programme.

## ESSENTIAL PRINCIPLES

- A. All juveniles should benefit from **arrangements designed to assist them in returning to society**, family life, education or employment after release. (*Havana Rules, Rule 79-80*)
- B. There should be a **continuity of care** between treatment provided within the prison and treatment provided in the community following release. (*Standard Minimum Rules for the Treatment of Prisoners, Rule 81*)
- C. Competent authorities should provide **suitable residence, employment, clothing, and sufficient means for a person to maintain himself or herself** upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community. (*Beijing Rules, Rule 80*)
- D. **Conditional release** from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time. Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community and community support should be encouraged. (*Beijing Rules, Rule 28*)
- E. Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may **assist juveniles in their proper reintegration into society**. (*Beijing Rules, Rule 29*)

### Country Context

- There is the possibility for a child to get conditional release from an institution after serving at least 6 months (Juvenile Justice Law) or one year (Code of Criminal Procedure) of their sentence.
- A system of reintegration is not developed yet. Although, according to the Law on Enforcement of Sanction, the CSW should continue treatment in the community and have oversight of the juvenile once they have left detention, in practice this function is not properly carried out.

## APPLICATION

### A. Community reintegration

#### Definition: Reintegration<sup>1</sup>

Reintegration is the effective re-entry of a child back into the community following a custodial sentence. The term, however, is something of a misnomer because the process does not simply begin after an offender is released. A comprehensive reintegration process typically begins after sentencing, continues through incarceration and into the period of release into the community. It requires the creation of a seamless set of systems across formal and informal social control networks as well as the creation of a continuum of community services to prevent the re-occurrence of antisocial behaviour.

The Havana Rules stipulate that all children should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Children being released from custody and those who are finishing community interventions need help to sustain a law abiding lifestyle. The majority of children exiting the criminal justice system will have many needs that are necessary to address in order to ensure community integration.

#### Profile of children released from custody

Evidence suggests that children released from custody are most likely to:

- Have received little or no education or training from some time prior to their admission to custody;
- Have low levels of literacy and numeracy;
- Have some kind of special educational need;
- Experience some kind of mental health difficulty;
- Experience issues related to substance misuse;
- Be homeless or in housing need;
- Come from chaotic and disruptive backgrounds.

Children are often placed in custodial establishments that are far away from their homes. This makes reintegration difficult as family are less likely to be able to visit their children whilst they are in detention. It also means that establishments are unable to develop programmes with the local community. The complete withdrawal of support at the end of a sentence can be unsettling and extreme for the child.

Returning to the community from custody also has a labelling effect as people see children returning from custody as an 'offender' or 'dangerous'. The stigma of being a returning offender can alienate the child before they have even tried to reintegrate back into their community. The Havana Rules stipulate that competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and also to lessen prejudice against them. Community and voluntary sector organisations may be well placed to provide a range of services to offenders and their families, both in prisons and the community.

Successful reintegration programmes:

- Acknowledge the history of the child concerned;
- Accept that the process can be time-consuming and may have setbacks;
- Acknowledge that one programme or approach will not work for all;
- Work in a comprehensive and holistic manner without overemphasis on one risk factor;

<sup>1</sup> Goldson (2008) Dictionary of Youth Justice. Willan

- Acknowledge that different individuals take different skills or resources from the same programme and that the results may vary<sup>2</sup>.

## B. Continuity of care

Preparing for a child's exit from the criminal justice system is something that must be considered from the point at which they enter the criminal justice system. A thorough assessment of their risk factors needs to be undertaken at the very beginning of the process to ensure that their entire path through the criminal justice system is geared to their eventual reintegration into the community.

In order to appropriately carry out the reintegration following the release from detention, the representatives of agencies providing such services should be consulted and should have access to the children before they are released in order to plan their return to the community. Having a consistent case worker throughout the entire process is an important way to ensure that the child's needs are considered the entire way through:

- Pre-sentence,
- Custody under sentence,
- Community under sentence, and
- Community post sentence.

Custodial establishments and the community need to work together to ensure that prior to their release, juveniles receive instruction in basic life skills, including communication and conflict resolution, career skills, and courses on how to live independently as adults. In addition, intervention strategies (e.g. counselling, behavioural programmes, probation, employment, vocational and academic programmes) that tackle each child's individual risk factors are an essential precondition to reintegration. Possible aspects of reintegration that need to be considered are:

- Helping children to develop a broad range of strategies for managing tasks and solving problems.
- Helping children develop independence and autonomy.
- Helping children to build positive relationships with their families and friends.
- Providing children with education and vocational training.
- Helping children to control their thoughts and behaviour.

### Common mistakes made in reintegration<sup>3</sup>

- Case worker support deteriorates while the child is in custody and planning for release happens too late and too slowly.
- Lack of integration between separate planning systems and the sentence planning process.
- Poor transmission of key information on the child's needs and the progress made between the establishment and the community.
- High turnover rate of staff in secure establishments and of case workers.
- Lack of continuity between custodial-based services and those provided (if at all) in the community.
- Community-based services shutting down for some young people while they are in custody, making seamless reintegration when they return to their communities that much harder.
- Release at an inappropriate time such as shortly before, or during public holidays (e.g. Christmas) where it may be more difficult to find them appropriate shelter.

<sup>2</sup> Stephenson et al (2011) Effective Practice in Youth Justice. Routledge

<sup>3</sup> Stephenson et al. (2011) Effective Practice in Youth Justice, p.240

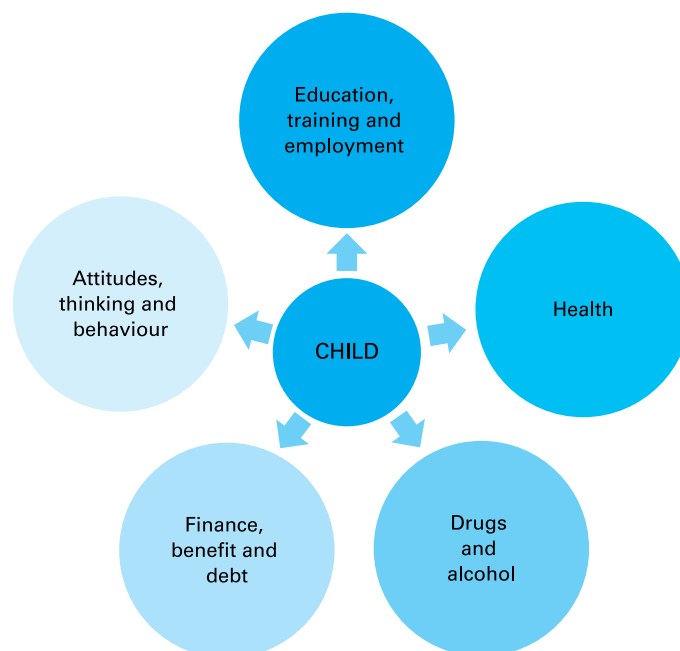
## C. Provision of services

Many children will have come from difficult and unstable living conditions before they went into detention, and many will not have anywhere suitable to return to on release. As such, a case manager needs to ensure that arrangements can be made for the children to have a place to live, employment, clothing, and other basic necessities upon release. Any gaps between leaving custody and finding accommodation or returning to education can further alienate the child and they may end up back in custody. These gaps may feel short to a professional but they can feel like a long and unsettling time to a child.

Prevention of re-offending is obviously a key factor in ensuring that the child is reintegrated successfully. Research in the United Kingdom has identified a number of causes of reoffending, which if tackled can prevent ex-offenders from committing more crime:

- Lack of education,
- Lack of employment,
- Drug and alcohol misuse,
- Poor mental and/or physical health,
- Lack of positive attitudes and self-control,
- Institutionalisation and missing life-skills,
- Lack of housing or appropriate housing arrangements,
- Lack of financial support and debt,
- Lack of family networks.

In response, the Home Office developed five pathways to tackle these root causes. Provision of support in these key areas is likely to create successful reintegration of a child and stop him/her from reoffending.



## D. Conditional release

Children should be released from detention as early as possible to serve the remainder of their sentence in the community. Children released on such conditions from an institution must be assisted and supervised by an appropriate authority. The Havana Rules state 'circumstances permitting, conditional release shall be preferred to serving a full sentence'. In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer should be provided and community support should be encouraged. It is also possible to gradually reintegrate children into the community using short term releases from custody. Such short visits help the child to feel more connected to the outside world and get a gradual taste of what it is like to be in the community.

### *Example: United Kingdom: Release on Temporary Licence (ROTL)*

In the UK, children are able to have day-release from custody in order to fulfil community work, visit family or undertake education. This 'release on temporary licence' is given in order to aid the young person's gradual reintegration into the community.<sup>4</sup>

## E. Semi-institutional arrangements and supervision

Moving from a custodial environment to the community is not a straight forward process. Custody is a structured environment where there is limited choice, strict rules and straight forward systems of reward and sanction. For some children with chaotic home lives this can be a very different type of experience, and for some it may feel like a safe haven. The shock of moving from this highly controlled environment into one where the child is free can be very difficult.

The Havana Rules state that efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements to assist children in their proper reintegration into society. This rule emphasises the need for a diverse range of facilities and services designed to meet the different needs of children re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

Residential centres and halfway houses are facilities in the community for the housing, rehabilitation, and training of convicted offenders. The basic objectives of residential centres and halfway houses are to provide children with a highly structured and supportive living environment, including treatment, education, and training programmes which ease the child's transition back into society.

Community surveillance when the child released into the community can also be a necessary way to provide the child with some ongoing structure and support. Specific examples of community restraint are activities such as contact with case workers or parole officers.

### *Example: United States: Intensive Aftercare Programme<sup>5</sup>*

This programme focuses on providing a highly structured period in the community following release. The model has been most developed in Colorado, Nevada and Virginia.

### *Example: Finland: Youth Rise<sup>6</sup>*

In Finland, the Youth Rise project is an intensive holistic intervention. It combines an intensive three-month Immediate Intervention Programme, beginning a few days after custody with a week-long outdoor camp (including skills training), with intensive mentoring. Mentors are

4 Goldson, B (2008) Dictionary of Youth Justice. Willan

5 Neal, Hazel (2008) Cross-national comparison of youth justice. YJB

6 European Crime Prevention Network (2006) A Review of good practices in Preventing Juvenile Crime in the European Union

job seekers, who provide intensive support to a young person primarily to gain valuable work experience.

*.Example: Ukraine: Reintegration Programme<sup>7</sup>*

In Ukraine, six months before juvenile prisoners are released they enter a special programme preparing them for their reintegration into their community. 'Caring councils', which incorporate local government and NGO representatives further provide them with assistance after their release. Guidelines on cooperation between the State Department of Penal Implementation and State Social Services for Family, Children and Youth, regarding assistance from the local social services centre after juvenile prisoners return to the community were also developed in 2006 and were created with inputs from juvenile offenders.

## ISSUES FOR DISCUSSION

- A. In some countries, as many as 80 percent of children who are imprisoned are convicted of another offence within two years of their release. This suggests that imprisonment is failing to help these children to lead law-abiding lives. Is it possible to do something about this situation? If so, how?
- B. What are likely to be the most important issues for a child immediately after his or her release from custody?
- C. Consider how community agencies could be involved in helping children to prepare for release. How could they best work together to provide comprehensive support for those leaving detention?
- D. The prison has a well-developed scheme to help children who have been detained for a lengthy period of time to prepare for release. However, the majority of the children are serving short sentences. They are not given any proper preparation for release because they are not in prison long enough. Many of them are likely to be repeat offenders who have been detained many times. What can be done during the short time they are in prison to prepare them to lead law-abiding lives?

## CASE STUDIES

- A. You are a teacher in a detention centre and have been teaching a 15 year old boy for the duration of his 5 month sentence. The boy was originally very disruptive in class and would bully the other children. After speaking to him one on one you discovered that his bad behaviour was masking his inability to read and write. He told you he had been in school but had not been going for at least 2 years prior to him receiving his sentence. After some intensive work with him he is able to read basic books and write short sentences about himself. You are very pleased with the progress he has made. How can you ensure that this good work is continued once he leaves the establishment? What key information would you need to pass on and to whom?
- B. You are the mother of a 16 year old boy who is being released from custody after serving 1 year for a gang related robbery. In the days leading up to his release date you have had countless visits from his friends in the gang he belongs to. They keep asking when he is coming out and intimidating you. You fear that when your son is released from custody he will go back to associating with his gang and commit another crime. How would you like the authorities to prevent this?

<sup>7</sup> UNICEF (2009) The Development of Juvenile Justice Systems in Eastern Europe and Central Asia: Lessons from Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine

- C. Three months ago you were released from custody having served a 6 month sentence. When you were released you were given an education placement in your local school and a gardening project at the local old people's home. Unfortunately since you have been back at home you have not been getting on with your step father. One evening, after a heated argument with your stepfather you had to sleep on your friend's sofa and felt so depressed the next day that you decided not to go into your work placement. This resulted in them giving you the sack. Now you are worried about being able to attend school and trying to look for somewhere to live. How could your probation officer best help you?
- D. You are a social worker/probation officer and have just been given a new child to case manage. There are four weeks before the child is supposed to leave detention but you have been given no information about his progress while inside. All you know is that he currently has no home to go to or any educational or vocational training when he gets out. What is your first priority? How will you ensure he is reintegrated into the community effectively?

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# CHAPTER 10

## PUTTING JUSTICE FOR CHILDREN IN TO PRACTICE

### CONTENTS

Learning Objectives

Essential Principles

Monitoring and Evaluation

- A. Establishing a vision and a baseline
- B. UNODC/UNICEF juvenile justice indicators
- C. Data collection
- D. Evaluating
- E. Improving practice

Legal Reform and Analysis

- A. What is legal reform?
- B. Elements of legal reform
- C. Strategies of law reform
- D. Implementing law reform

Advocacy

- A. What is advocacy?
- B. Advocacy planning
- C. Advocacy methods

Issues for Discussion

Case Studies

References and further reading

## LEARNING OBJECTIVES

By the end of this chapter you will be able to:

- Explain why it is necessary to monitor and evaluate child justice policies, programmes and practice;
- Identify how to determine legal reforms required to put child justice in to practice; and
- Explain the advocacy process.

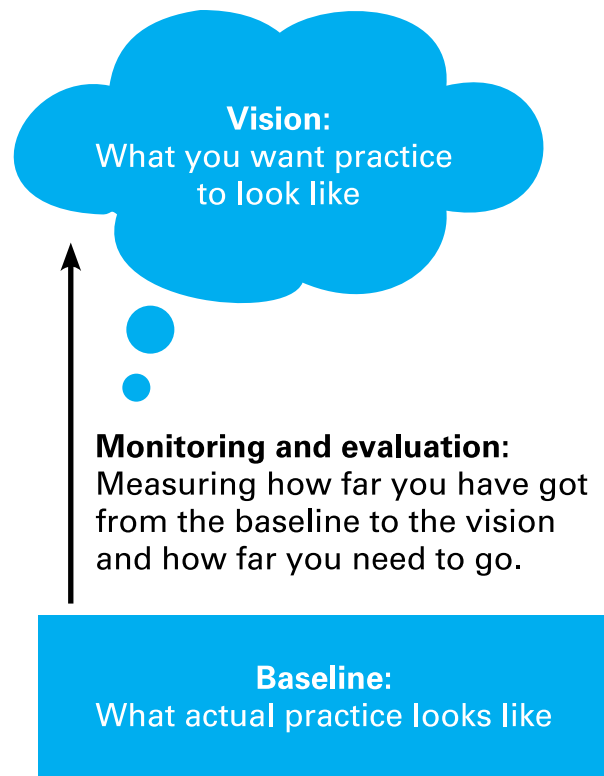
## ESSENTIAL PRINCIPLES

- A. Efforts should be made to organise and promote necessary research as a basis for effective planning and policy formation. (*Beijing Rules*)
- B. States Parties should systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency. (*Committee on the Rights of the Child, General Comment No.10*)
- C. Efforts shall be made to establish a regular evaluative research mechanism built in to the juvenile justice system to collect and analyse relevant data and information for the assessment and future improvement and reform of the administration. (*Beijing Rules*)
- D. States should conduct regular evaluations of their juvenile justice practices in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration, and recidivism, preferably carried out by academic institutions. Children should be involved in this evaluation and research, in particular those who have been in contact with parts of the justice system. (*Committee on the Rights of the Child, General Comment No.10*)
- E. States should undertake all appropriate legislative, administrative or other measures for the implementation of children's rights, ensuring that all domestic legislation is fully compatible with the Convention on the Rights of the Child. (*Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No.5*)

## MONITORING AND EVALUATION

### A. Establishing a vision and a baseline

Monitoring and evaluation of any child justice system is reliant on first having a vision of the system that should be in place. Defining what makes a good child justice system is necessary in order to establish what you are aiming for. It is also necessary to understand what the current system looks like in practice.



The vision is what the entire child justice system would look like in an ideal world. The international standards outline in detail what this would look like. For example, the following international standards set out the main principles for a child justice system:

- Convention on the Rights of the Child;
- Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and its Optional Protocol;
- Standard Minimum Rules for the Administration of Juvenile Justice;
- UN Guidelines for the Prevention of Juvenile Delinquency;
- UN Rules for the Protection of Juveniles Deprived of their Liberty;
- UN Standard Minimum Rules for Non-custodial Measures; and
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

The vision of a child justice system will be about taking these international standards and applying them to your country context in order to establish exactly what the system would look like.

Understanding what baseline practice looks like is crucial in order to establish where you are starting from. In order to establish the baseline it is necessary to define particular areas of practice that you wish to look at. For example, you may want to take each of the chapters in this manual and establish where the practice is in relation to these.

To do this you must first collect data on each of the areas. Without baseline data it will be impossible to establish how far you need to improve the get to your vision of service.

## B. UNODC/UNICEF juvenile justice indicators

Setting indicators is a way of establishing key areas in which you can set a vision for your service. Then, in establishing your baseline data against these indicators, you are able to measure these areas of work at set points in time in order to establish how far practice has come since the baseline was measured, and how far you need to go toward achieving your vision.

In order to assist in this process, UNODC/UNICEF have set juvenile justice indicators, which can be used for ongoing monitoring and evaluation of the child justice system in your country. The 15 indicators are:

#### *Quantitative Indicators*

- 1. Children in conflict with the law.** Number of children arrested during a 12 month period per 100,000 child population.
- 2. Children in detention.** Number of children in detention per 100,000 child population.
- 3. Children in pre-sentence detention.** Number of children in pre-sentence detention per 100,000 child population.
- 4. Duration of pre-sentence detention.** Time spent in detention by children before sentencing.
- 5. Duration of sentenced detention.** Time spent in detention by children after sentencing.
- 6. Child deaths in detention.** Number of child deaths in detention during a 12 month period, per 1,000 children detained.
- 7. Separation from adults.** Percentage of children in detention not wholly separated from adults.
- 8. Contact with parents and family.** Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months.
- 9. Custodial sentencing.** Percentage of children sentenced receiving a custodial sentence.
- 10. Pre-sentence diversion.** Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme.
- 11. Aftercare.** Percentage of children released from detention receiving aftercare.

#### *Policy Indicators*

- 12. Regular independent inspections.** a) Existence of a system guaranteeing regular independent inspection of places of detention. b) Percentage of places of detention that have received an independent inspection visit in the last 12 months.
- 13. Complaints mechanism.** a) Existence of a complaints system for children in detention. b) Percentage of places of detention operating a complaints system.
- 14. Specialised juvenile justice system.** Existence of a specialised juvenile justice system.
- 15. Prevention.** Existence of a national plan for the prevention of child involvement in crime.

These indicators can be used to establish what the current practice is in the country, and then be periodically reviewed to see how the practice is changing. As you continually measure progress you can establish if your practice is getting closer to the vision or further away.

## **C. Data collection**

It is impossible to measure progress against indicators without collecting data against them. In order to create a successful, comprehensive and effective Justice for Children policy, data collection and research is imperative.

There are two main types of data collection:

### **1. Quantitative data collection**

Quantitative indicators are numerical and can be achieved through the collection of statistics and calculating the percentage of such statistics.

## 2. Qualitative data collection

The methods used to collect qualitative data are varied and the best results come when a variety of methods are used, such as:

- **Observations:** examining buildings and facilities, watching interactions between staff and prisoners, understanding how space and equipment is used.
- **Questionnaires:** open questions, closed questions or those requiring just a yes or no answer, questions on a Likert Scale (1-10), or multiple choice.
- **Interviews:** with children, detention staff, lawyers, social workers, managers.
- **Focus groups:** with children, detention staff, lawyers, social workers, managers.
- Looking at **legislation, policies, procedures, plans and strategies.**
- Inspecting children's **case files** and other recordings or reports.

The UN indicators use examples of both of these types of data. The first 10 quantitative indicators are numerical. The second 5 indicators are policy orientated and require different forms of qualitative data collection.

It is recommended that data should be collected to allow measurement of a baseline of the UN indicators at a minimum. However, in order to have a full picture of what the situation is for children in contact with the justice system, it is advisable that additional data is collected, such as:

- The offences committed by children and why: age, gender, type of offence, town or region it occurred in, how many crimes are being committed by children and who the victims are.
- What happens to children once they are in the justice system: arrest, interrogation, diversion, pre-trial detention, courts, alternative sentencing, custody, reintegration and reoffending.
- The impact of the justice system on children and any violations of their rights that occur, including trial delays, legal aid or the availability of lawyers, and abuse. This must be done by talking to children about their experience of the justice system.
- The structures that affect justice systems including poverty, education system, social policies, legislation and the structures of the criminal justice system.
- The organisations involved.

Effective data collection requires a commitment from all the different agencies working in the child justice spheres such as the police, social workers, the courts, and government departments. Further, in collecting data, one must be aware of the political interest in such data, the nuances of opinion about the data from the perspective of the international arena, the media, public opinion and political decisions.

## D. Evaluating

The purpose of evaluating is to establish what current practice is and how best to improve it. To be robust all projects and services as a minimum should have some form of internal evaluation. This takes stock of the project or service, assesses its successes and areas for development, establishes if a particular project or programme is working and highlights key pieces of learning. On-going evaluations can show improvements or problems in practice and one off evaluations can be an opportunity to have a thorough investigation into an entire system or project.

An evaluation should cover all aspects of a project or programme:

- **Activities:** were the planned activities delivered on time and to specification? Were they delivered efficiently? Why?
- **Outputs:** were the planned outputs produced on time, to specification and of a high quality? Were your target audience (children, parents, justice for children professionals) satisfied with the outputs?

- **Impact:** did the activities and outputs produced have the desired impact on children and young people? Did change occur in their knowledge, skills, attitudes and behaviours? What was the extent of the change? Was it as much as expected? Why?
- **Outcomes:** how did the impact achieved contribute to improved outcomes? Why?

Some projects or services often choose to appoint an external evaluator to undertake this work and to help inform internal evaluations. In either case it is important to ensure that from the outset the project is collecting sufficient data that will enable the evaluator to assess impact over time. An evaluator can be appointed at the beginning of the project to advise on data collection, agree what data is being collected by the project and what original research will be undertaken by the evaluator. Evaluation may be:

#### (a) **Formative vs. Summative**

- **Formative:** Conducted during implementation of the project/service in order to improve performance.
- **Summative:** Overall conclusions about the effectiveness of the project/service in terms of impact or outcomes.

#### (b) **Internal/self-evaluation vs. external/independent**

- **Internal/self-evaluation:** Conducted by the project/service itself.
- **External/independent:** Conducted by an outside agency.

#### (c) **Process vs. Output vs. Outcome vs. Causal**

- **Process evaluation:** Evaluation of the internal dynamics of the project/service.
- **Output evaluation:** Evaluation to assess whether the project/service has met the desired output and targets.
- **Outcome evaluation:** Evaluation to assess whether the project/service has had the desired impact on outcomes.
- **Causal evaluation:** Evaluation to assess the causes as to why a project/service achieved its desired outcomes, or why it did not. Evaluating for causation is one step further than an outcome evaluation by demonstrating that the programme was responsible in whole or in part, for results or outcomes.

#### (d) **Project/service vs. Programme**

- **Project/service evaluation:** Evaluation of a specific project/service.
- **Programme evaluation:** Evaluation of a number of project/services that contribute to achieving the same goals.

## **E. Improving practice**

The reason for monitoring and evaluating projects or programmes is to improve practice. The results of the monitoring and evaluation will inform you of what your work is achieving but also how to improve it. Each evaluation will highlight the unique ways in which the project or programme can be improved. However, some possible principles of how a project may be improved are shown in the box below.

Principles of Effective Practice <sup>1</sup>	
Risk Classification	Matching the level and intensity of intervention to an assessment of the seriousness of offending and the risk of offending
Criminogenic need	Programmes should focus on those factors that directly contribute to offending, as opposed to more distantly related causes
Dosage	Programmes must be of sufficient intensity and duration to achieve their aims
Responsivity	Matching the learning styles and strategies of young people to the staff working with them
Community based	Learning takes place in a context that is meaningful to the young person, i.e. close to the young person's experiences and life contexts
Intervention modality	Programme content and methods are skills based, focused on problem solving with a cognitive behavioural approach. Programme interventions mirror the multiple (criminogenic) needs of the child
Programme integrity	Effective programmes have a clear rationale, They link aims to methods, are adequately resourced, staff are trained and supported, and there is appropriate monitoring and evaluation

Once your project or service has been evaluated it is useful to:

- Reflect on the messages that have come through from the evaluation;
- Discuss the recommendations that have been proposed;
- Establish which recommendations can be used and which cannot;
- Prioritise the recommendations;
- Formulate a plan for improvements;
- Communicate recommendations that have an impact on other projects or services; and
- Incorporate the recommendations into any relevant policies, procedures or projects.

## LEGAL REFORM AND ANALYSIS

### A. What is legal reform?

Justice for Children reform cannot succeed without the support, active or passive, of the wider community. To be effective and sustainable the development process needs to include widespread consensus building both on the need for reform and on the strategies for carrying it out. Reform is an opportunity for national debate.

In some countries, the legislative framework relating to Justice for Children does not reflect international or regional standards, and therefore, this should be reviewed and amended to bring it in line with such standards. It is an important aspect of improving Justice for Children as it provides a framework around which practical measures can exist and function. Ideally, legislation relating to Justice for Children should be brought together in one place, as fragmented legislation can lead to less comprehensive protection of children's rights. New legislation should be created with consideration for how it will be implemented in practice and ensure that there are sufficient resources to implement.

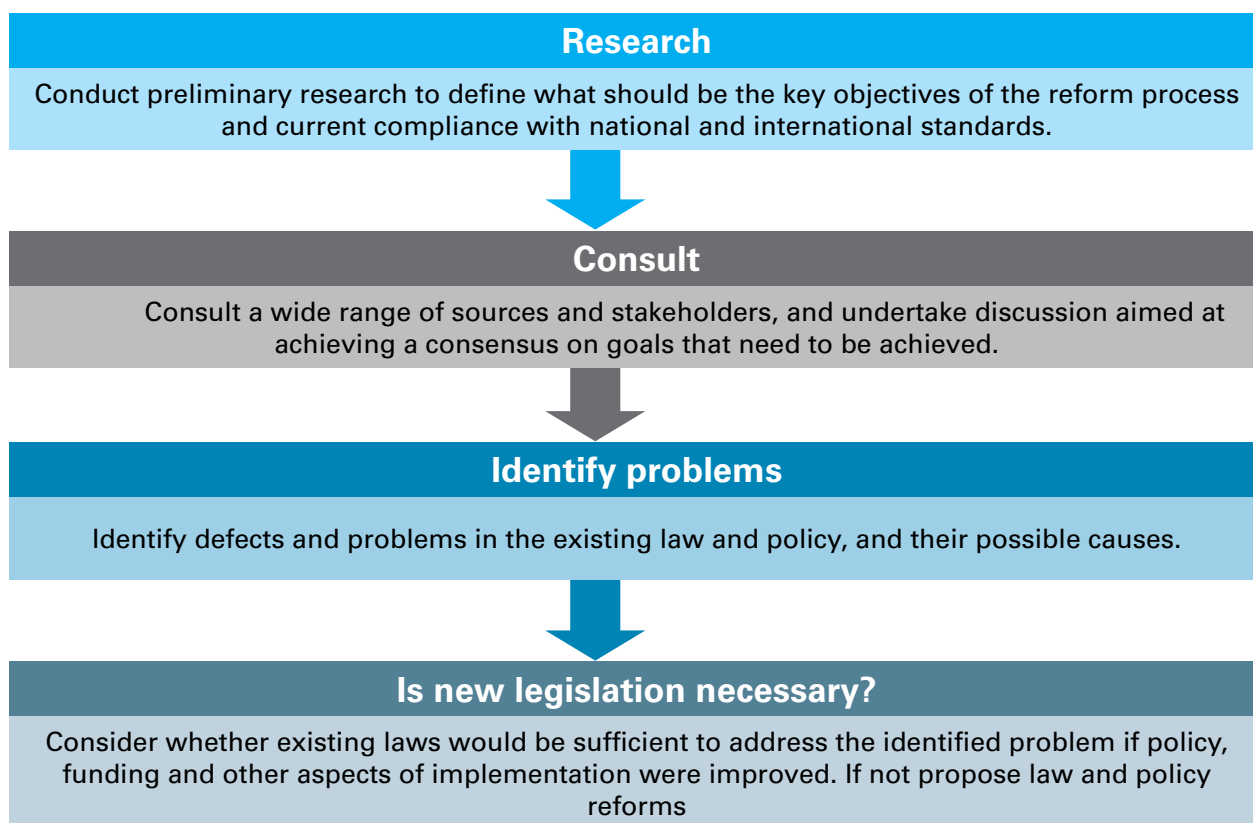
Reviewing legislation in a country often also requires the balancing of complex social, political and professional interests. Revisions in legislation may affect the working and relationships between,

<sup>1</sup> Stephenson et al (2011) Effective Practice in Youth Justice. Routledge

among others, the police, social workers and the probation staff, which may be unwelcome, especially if it involves the reallocation of resources. Where it is the case that roles or responsibilities are changing, it is likely that training to the sectors and professionals involved will be needed to be done to convince them of the change and make sure they are aware of any new responsibilities, measures, or changes under the new law.

## B. Elements of legal reform

Before proposing legal reform it is necessary to establish the scope of the reform. Policy formulation, legislative reforms and implementation should be carried out with a basis in research of the problems and the identification of effective solutions. It must be established if it is possible to make the desired changes with small tweaks to existing legislation or if completely new legislation needs to be enacted.



Research into, or a 'situational analysis' of, the current legal and policy framework that exist for Justice for Children is a good first step in law reform. It should identify the gaps in legislation that allow for violations of children's rights and look at practice that could be improved by effective legislation. The situation analysis needs to assess current legal and policy frameworks that exist for children in conflict with the law and also existing methods for monitoring and reporting infractions of such policies and laws. It should look at how current frameworks are implemented, identify gaps that leave children in conflict with the law with little or no legal recourse to protect their rights, and pinpoints areas of practice that could result in immediate and measurable improvements.

A situation analysis should cover all aspects of juvenile justice, including delinquency prevention, the role of the police, prosecution, adjudication (including diversion) and rehabilitation. It should contain different types of information, including background information, information about the law, statistical data, and qualitative evaluations of the prevailing practices in the various areas which make up a juvenile justice system. An example of the types of questions one might use when conducting a situational analysis is contained in the Annex.



The box below outlines the essential elements in developing law and policy reform:

Essential elements in developing law and policy reform <sup>2</sup>	
Identify problems and causes	<ul style="list-style-type: none"> <li>• Legal research, development of drafting</li> <li>• Ensuring access to socio-legal, economic and other empirical research</li> </ul>
Draft proposals	<ul style="list-style-type: none"> <li>• Developing discussion and consultation papers, reports, and draft legislation</li> </ul>
Do a compatibility check (national law and international standards)	<ul style="list-style-type: none"> <li>• Reviewing compatibility of proposed reforms with international human rights standards</li> <li>• Reviewing compatibility with existing legislation</li> </ul>
Cost analysis	<ul style="list-style-type: none"> <li>• Researching the full cost of implementing the existing system</li> <li>• Examining the costs of implementing the reform</li> <li>• Looking at long-term and indirect costs and benefits of policy and law changes</li> <li>• Considering which is the most effective allocation of resources across the system as a whole</li> </ul>
Inclusive consultation Building consensus	<ul style="list-style-type: none"> <li>• Discussion of consultation methods, timing and use of the responses</li> <li>• Use of consultants, working parties and advisory groups, seminars and public meetings</li> <li>• Engagement with the general public and with particular interest groups</li> <li>• Approaches tailored to diverse populations, such as those which are large, small, indigenous, ethnic minorities, scattered, disabled, with literacy problems</li> </ul>
Dissemination Training	<ul style="list-style-type: none"> <li>• Developing a plan for engaging with government and others to ensure legislation and reform is disseminated, for example, to police, judges, prison service officials and probation services, defendants and prisoners</li> </ul>
Monitoring and Evaluation	<ul style="list-style-type: none"> <li>• Ensuring internal (institutional) monitoring and evaluation</li> <li>• Considering the role of independent national inspectorates</li> <li>• Developing external (civil society) monitoring processes to track the success and failures of the reforms, and to identify lessons learnt and further steps (legislative, policy etc.) needed to complete or further develop the reform programme</li> <li>• Developing criteria to be used for evaluation</li> <li>• Linking the reviews to compliance with recommendations made under international and regional treaties</li> </ul>

The review of legislation is a process that should involve a variety of players. Legislators, including governments, have an important role to play. In addition, it requires the perspectives of those who apply the law, those who seek to use it to protect the rights of children, those working with and for children, and children themselves. Aside from resource obstacles and unintended consequences, logistics, system inconsistencies, and administrative burdens may impede the implementation of well designed legislation. States enacting comprehensive juvenile justice reform legislation should consider the practices already in place and calculate whether changes are necessary, how difficult the changes will be, and what new administrative options are available.

Ideally, laws relating to children should be amalgamated into one document. When legislation is fragmented, children can fall through the gaps. The problem with major revision of any one area of the

<sup>2</sup> Penal Reform International (2010) Making Law and Policy that work: A Handbook for Law and Policy Makers on Reforming Criminal Justice and Penal Legislation, Policy and Practice

law relating to children is that it tends to have a domino effect, so that other pieces of legislation also need to be made consistent. The most obvious example is in the area linking juvenile justice and welfare/childcare laws. For example, where there is a minimum age of criminal responsibility, there will be a need for appropriate provisions for those below this age, who will require places of safety. The rights of children will be undermined if the two areas are guided by principles that conflict each other. In order to avoid this, it seems necessary for both areas of law to be revised at the same time, and for practitioners from both areas to collaborate.

Legislative reform can be a long, time-consuming process or it may not always be possible to reform the law. Therefore, in some circumstances, a more effective way of improving the justice system for children will be to work within the framework of existing law. Even where good laws exist, juvenile justice systems often fail to implement them in practice.

### C. Strategies for law reform

Law reform is a complex task which requires the support of a wide variety of stakeholders. Strategies that can assist the development of fair and effective law and policy reform:

- **Look backwards as well as forwards.** Developing sound law and policy reform requires the ability to look back at what has gone before as well as forwards towards future implementation, and to balance the two. This requires knowledge, time and understanding.
- **Identify the political context.** Laws are generally shaped through political processes, so the political context becomes crucial to legislative reform in favour of a progressive criminal justice system. Work in this area involves understanding the power dynamics and interest groups, confronting power structures at all levels, and promoting democratic and inclusive political structures. Identification of resistance must be prepared for in advance, but also opportunities for legislative reform.
- **Listen to public opinion.** Reform requires more than a textual review of existing legislation and jurisprudence and will benefit from public forums and other opportunities to gauge public perceptions of the law, and first-hand accounts of how specific laws (or a lack thereof) affect everyday lives.
- **Take a holistic approach.** This takes into account not only the interdependence of the various parts of the justice and penal systems, but also their interdependence with the state systems which provide health, social support, education, child welfare, etc.
- **Make use of good practice.** Good practice is reflected in the standards and norms that have been developed at international and regional level. In addition, practical examples of implementing those standards and norms and insight into the experience are available in neighbouring and other countries.
- **Use the support available from international agencies and organisations.** There are a variety of agencies and organisations that are able to provide technical assistance to jurisdictions attempting to reform their criminal justice and penal law. These include the Justice Section of the UNODC, the International Centre for Criminal Law and Criminal Justice Policy, UNICEF and PRI.<sup>3</sup>

Several lessons can be learned, and cautions should be heeded, when policymakers consider revising juvenile justice legislation. One lesson relates to the impact that a new programme will have on the juvenile justice system as a whole. Changes made to one part of the system will not exist in isolation, but will have an impact on the delivery of juvenile justice services for all who have contact with it. This phenomenon, which is compounded by limited programmes, services, and budgets, may mean that appropriations to pay for a new programme may come at the expense of other child justice programmes. Policymakers should be aware that a comprehensive change in juvenile justice

<sup>3</sup> Penal Reform International (2010) Making Law and Policy that work: A Handbook for Law and Policy Makers on Reforming Criminal Justice and Penal Legislation, Policy and Practice

policy or law will affect not only the child justice system but also other agencies whose primary responsibility is to provide services to children and families.

- **A Limited Approach.** An approach with limited objectives to changing the law may be more appropriate and can happen in a number of ways. However, even with amendments and rules, consultation is necessary before the changes are introduced and advocacy and training will still be needed for their implementation.
- **Promoting Children’s Participation in Law Reform.** Measures which fail to take into account the views and experiences of children themselves will inevitably fail, as they will not relate to their life experiences, including in the juvenile justice system. Children have an important contribution to make to the enactment of laws and the development of policies for dealing with child delinquency.
- **Legislative Change must be Achievable in Practice.** If new laws are to be credible and win support, governments must have the capacity to implement them. Raising community awareness of children’s rights will cause a greater demand for services and an insufficient capacity to provide them will lead to frustration and disillusionment. Financial and institutional capacity to provide services in response to changes is therefore essential. For this reason, States should also be able to monitor their own institutions at local level. For example, it is essential to have systems for tracking an individual child through judicial processes and national statistics to evaluate trends.
- **Public Attitude.** It is essential that the debate about new legislation be extended to the general public at the community level as well as at the professional level and other groups which may be extremely influential or opposed to supporting change. Without the investment in debate and discussion, legislation may be passed but not implemented. Promoting changes in attitude involves listening to the public as well as transmitting new ideas and requires public debate through the media and training of implementers.

## D. Implementing law reform

In addition to amending legislation, child-centred and child rights-based policies and procedures in the following key areas should be developed:

- **Prevention:** political will and resources for the development of child rights-based comprehensive prevention policies.
- **Diversions:** law and practice reform and resources allocation to ensure that arrest and detention are only used as a last resort. Promoting diversion programmes as an additional procedural mechanism to allow/propose exit points at each stage of criminal proceedings, with an emphasis on restorative justice and child rights-friendly proceedings and services.
- **Alternatives to detention:** prioritisation of the use of non-custodial sentencing options as measures at the disposal of the judiciary (to constitute diversion from imprisonment, but not necessarily diversion from criminal proceedings) and implementation of an immediate review of children currently in detention with a view to withdrawing them from detention for placement in alternative programmes.
- **Evidence-based approach:** many of the system reforms being undertaken, whether traditional or innovative, are based on little evidence to support their efficacy.

There is evidence that punitive measures are less effective and less cost-effective than alternative sanctions and may be more harmful to the child, perpetuate his/her stigmatisation and might be an obstacle to his/her reintegration into his/her community and society as a whole.

While reform of legislation is important, a more intransigent problem lies with the implementation of legislation. In some States, adequate law regarding Justice for Children exists, but there is no effective implementation. Where legislative reform is being proposed, there must be a national commitment,

both in governing bodies and the general public, to the changes otherwise implementation is likely to fall short of the desired results or expectations of the legislation.

## ADVOCACY

### A. What is advocacy?

Advocacy can be used to influence governments to make changes to policy and legislation or to increase public awareness on a particular issue. Resistance to change can be expected from civil, religious, political and traditional elements of the community. Police, probation and social work staff may also be worried because law reform is likely to force them to change their ways of working or it could result in the reallocation of resources or the closure of institutions with vested financial interests. Change can also run counter to currently held values and attitudes about children in conflict with the law, which are perpetuated within communities, often by the media who may demonise children as offenders. Therefore a concerted advocacy effort will be needed to explain the true facts about children in conflict with the law to the public and communities and to explain the proposed changes to police and social services staff and their benefits both to the children and to their profession to win them over.

#### Definitions of Advocacy<sup>4</sup>

Advocacy is an umbrella term and there are a number of activities that can be considered advocacy, such as:

- a set of targeted actions in support of a specific policy issues;
- a process to bring about change in the policies, laws and practices of influential individuals, groups and institutions;
- an ongoing process aiming at a change of attitudes, actions, policies, and laws by influencing people and organisations with power, systems and structures at different levels for the betterment of people affected by the issue;
- an action directed at changing the policies, positions and programmes of any type of institution.

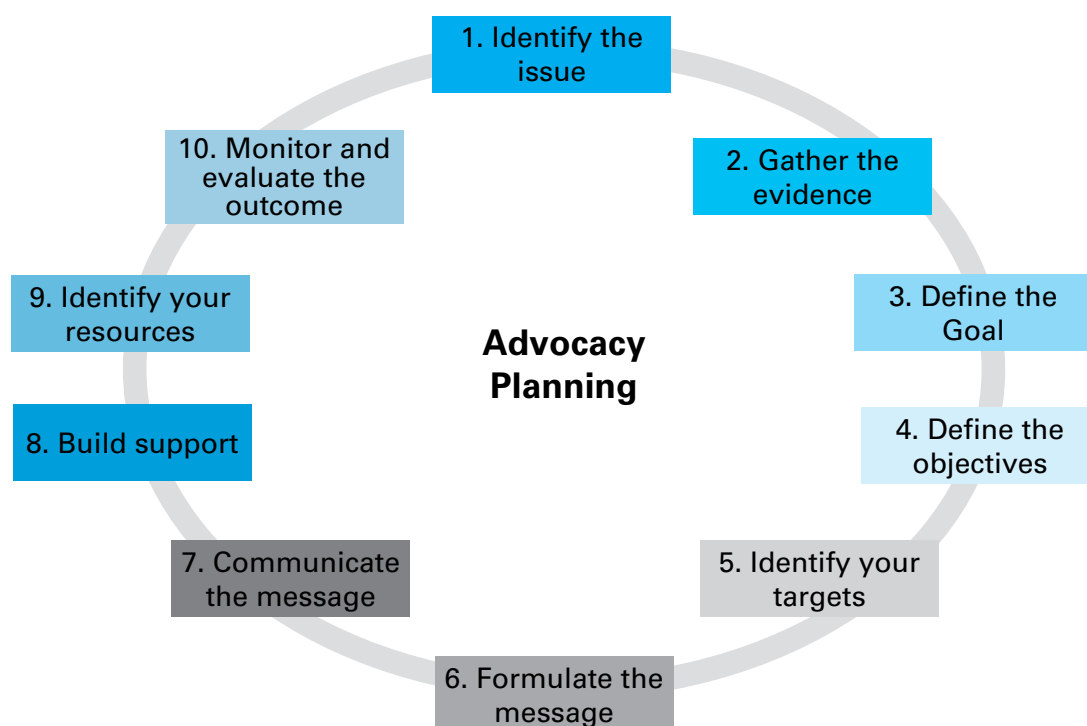
To be effective advocacy has to be strategic. An advocacy plan should focus on three main issues:

1. Audience: Who are you trying to convince? This can be directed at a number of targets such as government, businesses, or groups of people or individuals.
2. Aim: What are you trying to convince them of? This can be a short or long term goal. Advocacy aims linked to the death penalty can vary from full legal abolition to criminal justice reforms. Abolition is sometimes seen as more confrontational, whereas reform is usually viewed as more collaborative and/or practical.
3. Messages and delivery channels: How are you going to convince them? What type of advocacy method are you going to choose to deliver your message to the audience?

<sup>4</sup> UNICEF and PRI workshop: Developing Advocacy Strategies

## B. Advocacy planning

There are ten elements to an effective advocacy plan:



- 1. Identify the issue.** Identify the problem that needs to be addressed.
- 2. Gather the evidence.** Research is the foundation for successful advocacy. It can give your advocacy substance and it provides you with the evidence you need to support your advocacy message.
- 3. Define the Goal.** The goal is the ultimate, long-term improvement you want to see from your advocacy work, the achievement of which is dependent on many factors, of which your organisation's work is only one.
- 4. Define the objectives.** The goal may take many years to achieve, so what are the smaller elements needed to achieve this goal? Break the goal down into smaller manageable objectives which can be achieved in a shorter time period (for example over two or four years). In defining your possible objectives you are looking for the most effective ways of reaching your long term goal. Objectives should be clear, concise and measurable (see box on SMART targets below).
- 5. Identify your targets.** Now you know what you want to achieve, you need to identify the groups or people that can help achieve this. These are called the advocacy 'targets'. Once you have a clear picture of the decision making system, you will be able to identify your advocacy targets. The decision makers at the national/regional/international levels might include parliamentarians, government ministers, diplomats, police chiefs, policy makers etc.
- 6. Develop the message.** A message is a concise and persuasive statement about your advocacy goal that captures what you want to achieve, why and how. Since the underlying purpose of a message is to create action, your message should also include the specific action you would like the audience to take.
- 7. Communicating the message.** Once you have identified your key messages and your target audience, the next step in the planning process is to decide how you deliver your message to your target audience.

8. **Building support.** Advocacy work is often more successful when it's carried out in coalition with other like minded organisations. Make a list of potential partners, networks or coalitions you might be able to work with, and communicate your plans with them. This reduces duplication of work, means you can share resources and capacity and be a more effective collective voice.
9. **Identifying resources.** Estimate an approximate budget for each activity. This will force you to be realistic about what you can realistically undertake. Work out what you need to buy and what you may be able to get in kind or by others volunteering their time and effort.
10. **Monitoring and evaluation.** It is important to monitor and evaluate the success (or not) of your programme. Try to understand the reasons why it did or didn't work and whether the reasons were internal or external. The answers to these questions may make the difference in future advocacy work.

What is a SMART target/objective?		Ask yourself:
Specific	The objective must be precise and state exactly what is to be achieved	<i>What do I want to accomplish?</i>
Measurable	It must be possible to measure whether the objective has been achieved or not	<i>How will I know if I have accomplished it?</i>
Achievable	You must have the resources and capacity to achieve the objective	<i>Is it possible that it can be accomplished?</i>
Relevant	The objective must be linked to your vision, mission and aims and have a point to it	<i>Is it desirable that it be accomplished?</i>
Time-bound	It must be possible to understand exactly when the objective has been completed or not	<i>How will I know when I have accomplished it?</i>

## C. Advocacy methods

There are a variety of different methods that can be used to get your message across to your targets or to build support for your goal. Possible advocacy efforts include:

- Sharing and exchanging good practice;
- Training stakeholders on the key issues and recommendations and building their confidence and capacities to advocate on this issue;
- Forming advocacy and lobbying groups. Working with smaller groups of stakeholders to focus on particular aspects of your topic;
- Having public or media launches using the internet, radio, television, newspaper, or poster displays;
- Holding seminars, workshops and conferences for different groups, including government representatives, service providers and other decision-makers – to train and raise awareness on the topic;
- Setting up one-to-one meetings with key government officials and policy makers to discuss the issue in detail;
- Linking with academic research institutions;
- Starting a newsletter or website;
- Training of trainers; and
- Establishing networks.

## ISSUES FOR DISCUSSION

- A. How would you get a national picture of children in detention? What would be the constraints?
- B. How would your methods differ for getting data on children in police custody? What would be the constraints?
- C. You are setting out to collect data on children in conflict with the law in your country. What are the 5 most important questions you want to ask?
- D. What do you think the majority of people in your country think about children in conflict with the law? How would you best convince them of the need to take a child rights focus?

## CASE STUDIES

- A. You want to begin to measure the UN indicator on numbers of children in detention. In order to establish a baseline, you have reviewed the data that is currently being collected on the number of children in detention. You discover that the police have not been recording incidences where children are kept overnight in police custody. Therefore you will not have an accurate basis from which to measure any ongoing numbers. What should you do?
- B. You are running three projects to prevent children from coming into conflict with the law. The government, who had been funding all three, are introducing cuts and have told you that they can no longer fund all three projects and that you must choose only one to continue. How will you decide which projects to cut? What type of information do you need to assess how well the projects are working in comparison with each other?
- C. You want to set up a process for diverting children away from the criminal justice system in your country. You have the data which supports your views. You think that 40% of current child criminal cases could be diverted if the government were to put a process of diversion into their policy. Although you know you have the backing of one other NGO you have yet to convince another influential NGO that diversion is a good policy. Also, you know that the Justice Minister is against any type of criminal justice reform. How would you advocate for the change you want to see? How would you prioritise your actions?

## RESOURCES AND FURTHER READING

ICPS (2004) *Guidance Notes on Prison Reform*

Penal Reform International (2010) *Making Law and Policy that work: A Handbook for Law and Policy Makers on Reforming Criminal Justice and Penal Legislation, Policy and Practice*

UNICEF/PRI (2007) *Juvenile Justice Manual*

UNODC/UNICEF (2007) *Manual for the Measurement of Juvenile Justice Indicators*

Save the Children UK (2006) *Juvenile Justice: modern Concepts of Working with Children in Conflict with the Law*

<http://www.makingitwork-crpd.org/miw-toolkit/step-12-advocacy-options/miw-guideline-step-12/>

## ANNEX: KEY ELEMENTS FOR A SITUATION ANALYSIS:

- **Children in conflict with the law**
  - What is considered for children under the age of 18 to be 'in conflict with the law'? (delinquency–anti-social behavior–irregular situation etc.)
  - What are the major public and political perceptions/concerns over the problem of children in conflict with the law?
  - From a child rights perspective, what are the problems and what are the opportunities?
- **Legal framework**
  - What is the existing legal framework?
  - Did the country make any reservations/declarations upon ratification with regard to articles 37 and 40 of the CRC?
  - Are the Parliamentary and other bodies responsible for possible review of legislation? Who are other (potential) key agents of change in favour of more and better compliance with international children's rights norms and standards?
  - Do Codes of Conduct exist for the different professionals involved in the area of juvenile justice (social workers, magistrates, judges, lawyers, penitentiary personnel, educators etc.)?
  - Are there existing standards and norms applicable (standards of care – regulations) to institutions and services, involved in juvenile justice (national – per category of institution/service – etc.)?
- **Political framework**
  - Which are the ministries involved with/responsible for juvenile justice?
  - Are other (political or administrative) bodies, such as Commissions, Committees etc. responsible, or to which governmental departments are responsibilities delegated?
  - Who are the (potential) key political agents of change in favour of more and better compliance with international children's rights norms and standards?
- **Juvenile justice in practice**
  - Who are the decision-makers for individual cases (law enforcement officials (police) judiciary administrative bodies such as School Commissions and Regional Commissions – etc.)?
  - What are the administrative, judicial and other decision-making procedures?
  - Who are auxiliaries to the decision-making process such as social workers etc.?
  - DIVERSION: what happens to those children reported to the police but not referred to the court? To those children referred to the court but not prosecuted? What are current initiatives or activities? Please consider all possible frameworks: the law does foresee the possibility for, or the law does not provide the possibility for, diversion. However, it does not exclude diversionary practices, they are applied informally OR applied illegally. They exist 'de facto' and 'de jure' against the law of juvenile justice? What are, from a children's rights perspective, the obstacles or difficulties involved in traditional justice systems?
- **Juvenile justice in practice**
  - Are there any forms of restorative justice (actively involving the victims) used for dealing with children in conflict with the law? What are current initiatives or activities? If not used but existing, to what extent could the traditional justice



- systems be useful in the framework of juvenile justice? What are, from a children's rights perspective, the obstacles or difficulties involved in using restorative justice?
- What are the existing residential and non-residential structures and services for the execution of sentences and educational measures applicable to children in conflict with the law? How many structures/services exist for each kind of sentence/ measure and what is their capacity?
  - What are the current initiatives, services and facilities used as alternatives to deprivation of liberty (including alternatives to arrest, pre-trial detention and imprisonment or any other sentence in a closed institution)? What is their capacity?
  - How is legal assistance organised for minors arrested, brought before a judge, a court, an administrative, or other body, having committed an offence?
  - How is the situation of children undergoing a sentence monitored? Are there any independent monitoring bodies reviewing the functioning of the juvenile justice system?
  - Is there a formal review process of the imposed or agreed measures, in each individual case?
  - Who are the (potential) professional key agents of change in favour of more and better compliance with international children's rights norms and standards?
- **Aftercare and social reintegration**
    - What are the means put at the disposal for aftercare and social reintegration of children, alleged, accused or convicted of being in conflict with the law, and particularly of those children undergoing a placement in an institution, prison or detention centre?
    - What are the structures and services and who are the professionals involved? Who are the (potential) professional key agents of change in favour of more and better compliance with international children's rights norms and standards?
  - **Reality of children in the juvenile justice system (information if possible over the last 5 years)**
    - How many children are reported to the police or any other official body, annually, alleged of being in conflict with the law? What is their proportion compared to the total population under the aged of 18? On what specific grounds are children reported? Are there any regional disparities?
    - Are there any estimates of unreported offences committed by children?
    - Who are those children in conflict with the law? (age, sex, ethnic origin, etc.)
    - What are our sources for information and how valid and reliable are the data? (Statistics, studies etc.)
    - How many children are arrested annually alleged of being in conflict with the law? On what specific grounds?
    - How many children are annually put in pre-trial detention? For what reasons?
    - How many children annually are prosecuted, accused of being in conflict with the law? On what grounds?
    - How many children are going through 'diversion' schemes? On what grounds? Please specify as far as possible, the number of children per specific scheme?
    - How many children are going through 'traditional justice' schemes? On what grounds? Please specify as far as possible, the number of children per specific scheme?
    - How many children are going through 'restorative justice' schemes? On what grounds? Please specify as far as possible, the number of children per specific scheme?

- How many children are convicted every year of being in conflict with the law? On what grounds? Please specify as far as possible, the number of children per specific conviction?
- What are the different sentences applied, and to what extent (how many children, each year)?
- What are the conditions of children deprived of their liberty? To what extent are their rights met?
- Are there any studies on the perceptions/experiences of children involved in the juvenile justice system? If yes, what are their main findings?
- Are there any studies on the impact of the juvenile justice system on the lives of children once they leave the system? (Recidivism (un)successful re-integration in the family, school, work, etc.)



