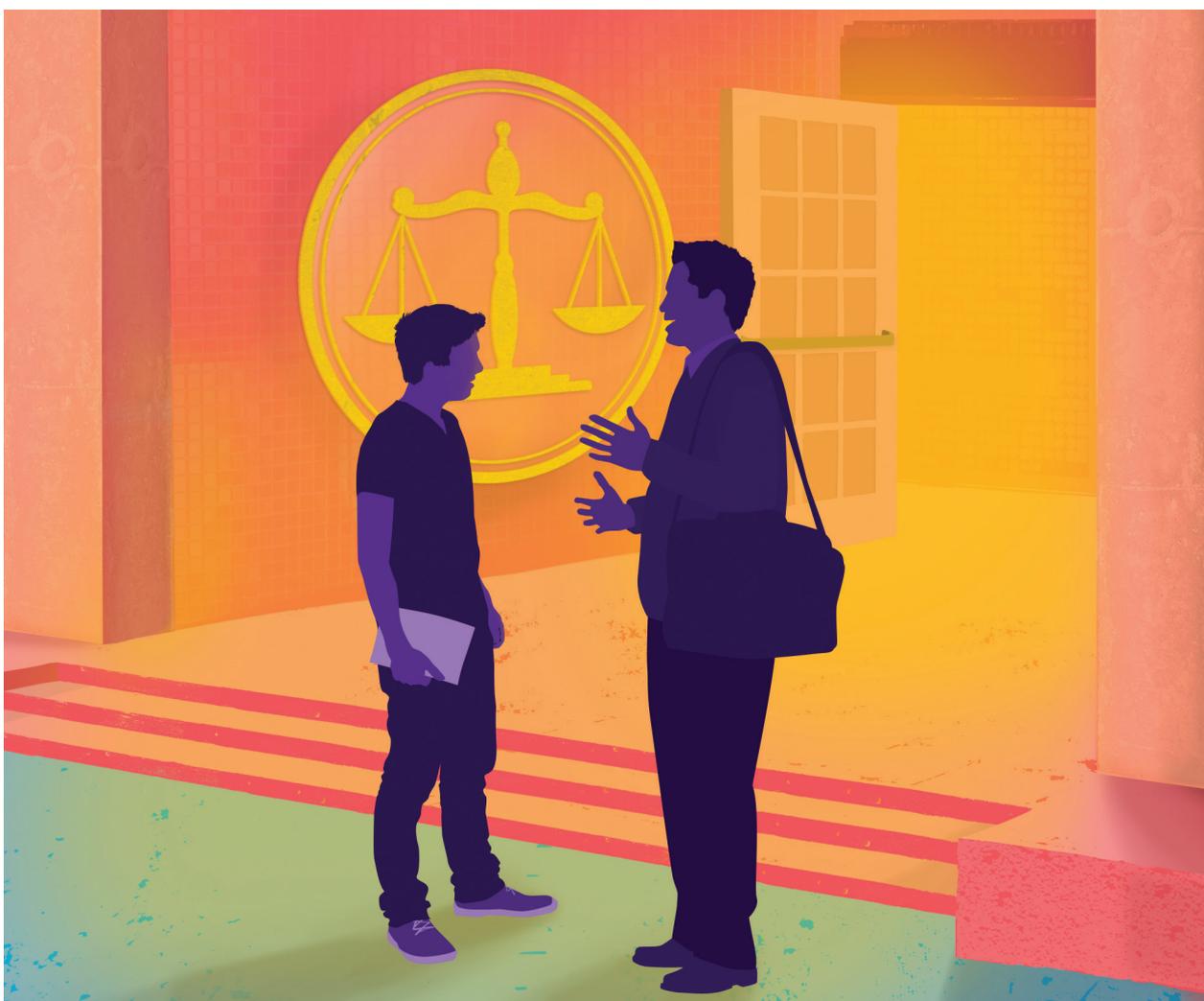


Protecting children's rights in criminal justice systems

A training manual and reference point
for professionals and policymakers



**Protecting children's rights in criminal justice systems:
A training manual and reference point for professionals
and policymakers**

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Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

We promote alternatives to prison which support the reintegration of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

We currently have programmes in the Middle East and North Africa, Central and Eastern Europe, Central Asia and the South Caucasus, and work with partners in East Africa and South Asia.

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The training Manual was developed by PRI Associate and Director of Justice Studio, Marianne Moore, and Becky Randel, PRI Research Assistant, supervised by Nikhil Roy, PRI Programme Development Director. PRI would like to thank those who provided invaluable inputs to the publication including Jenny Clarkin, Marina Kovac, Frances Sheahan and Hans Wahl. In addition, thanks is given to those who gave their time to review all or part of the Manual at various stages of its development, including Rob Allen, Biljana Lubarovska, Ann Skelton, Athanassia Sykiotou, Nevena Vuckovic, and Justice Renate Winter.

Foreword

To put children in closed institutions for petty crimes because no alternatives are available; to punish children and deprive them of their future because they are stigmatised and will never find work to support themselves; to deny protection to child victims and witnesses of crime, because neither tools nor laws are in place; all these are unacceptable situations if one wishes to implement the UN Convention on the Rights of the Child in legislation and practice of Member States.

It is now over 20 years since the CRC has been accepted worldwide. The Committee on the Rights of the Child has already issued 17 General Comments, to protect children not only in penal law issues as perpetrators, victims and witnesses, but in civil law as parties of their own right as well.

It is thus not documents, treaties, conventions that are missing. It is the implementation of all these guidelines with which we have to deal now. We have to:

- Change retributive juvenile justice attitudes against restorative approaches in order to give children in conflict with the law a chance to make good what they did wrong, instead of putting them behind bars;
- Push for institutions for children, closed, semi-open and open, that are adapted for reconciling children with society, instead of keeping them apart from it;
- Legally protect children in contact with the law;
- Look after the needs of the girl child, often the most vulnerable member in already vulnerable societies.

I am really happy and very pleased that PRI has compiled this Manual which reflects all the critical issues that persons working with and for children have to be aware of. The practical approach and the collection of best practices will help professionals in the justice system to make the right choice in a critical situation and to provide much needed assistance to children in contact and/or conflict with the law.

I am convinced that we have made one more step towards a child-friendly justice system!



Justice Renate Winter

Member, Committee on the Rights of the Child.

Past president of the Special Court for Sierra Leone, member of the Appeals Chamber of the Court.

Past president of the International Association of Youth and Family Court Judges and Magistrates.

Introduction

Protecting Children's Rights in Criminal Justice Systems: A training manual and reference point for professionals and policymakers is based on the concept of 'justice for children'. Justice for children takes a broader approach than the traditional focus on juvenile justice as it encompasses not only children in conflict with the law, but also children who are victims or witnesses of crime, and children who may be in contact with the justice system for other reasons such as custody, protection or inheritance (child parties to a justice process). It can be seen as an overarching concept that works for the benefit and best interests of all children who come into contact with justice and related systems. It includes aspects such as prevention, diversion, rehabilitation, assistance services and protection measures.

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

- 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 developed by UNICEF and UNODC in 2009;
- Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice adopted on 17 November 2010.

This Manual on protecting children in criminal justice systems will cover the first two tenets of the justice for children concept: children in conflict with the law and child victims and witnesses. It will also look at responding to children who may be at risk of entering criminal 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).

The Manual will cover a variety of topics and issues including: child protection, crime prevention, law enforcement, trial procedures, sentencing and rehabilitation. These are key areas 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 legislative reform is necessary in many countries, our experience has led us to understand that it is not the only answer to protecting children's rights in the justice system. 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 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 criminal justice framework. The training module is intended for those professionals and stakeholders who have a training component to their jobs and is intended to help them effectively teach the principles outlined in the Manual using experience-based training methodology.

Based on international and regional standards, the Manual provides a practical approach to addressing issues that arise for children in criminal justice systems, which is illustrated by examples of good practice from other countries. It has ten chapters and a training module, 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 into practice**
- **Training Module**

Each of the ten chapters is structured in the following way:

- Outlining the learning objectives;
- An overview of the relevant essential principles 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 examples from other countries to identify how the application of the principles can work in real life situations. At the start of the chapters is a list of relevant 'UN policy indicators' for each topic. These indicators, which were produced by UNODC/UNICEF¹, should be used to measure whether standards of child justice are being adequately met.

At the end of the Manual is a comprehensive list of PRI and other resources which can provide further or more detailed information on the range of topics discussed throughout.

The **training module** provides trainers with guidance and key resources in order to run workshops and training sessions on the content of the Manual. The sample training workshops and activities aim to link the Manual's reference material to real world situations.

The Manual is based around the approach outlined in the *10 Point Plan for Fair and Effective Criminal Justice for Children*, co-authored by PRI and the Interagency Panel on Juvenile Justice (IPJJ) in 2012.

1. UNODC/UNICEF, *Manual for the Measurement of Juvenile Justice Indicators*, 2007.

Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
CAT	UN Convention against Torture
CPT	European Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
IPJJ	Interagency Panel on Juvenile Justice
MACR	Minimum age of criminal responsibility
NPM	National Preventive Mechanism
OHCHR	United Nations Office of the High Commission on Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PRI	Penal Reform International
UN	United Nations
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

Symbols



Definition



Case studies



Example



In-depth case study



Issues for discussion



References and further reading



Further information



Key training techniques



Time required

Chapter 1

Principles of justice for children

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Learning objectives

After completing this chapter you should be able to:

- Explain the concept of justice for children and which groups of children it specifically refers to;
- Identify the primary provisions of regional and international standards that serve as the foundation of protecting children's rights in criminal justice systems;
- Know the main international guidelines on prevention; and
- Know the cross-cutting principles of children's rights protection, which will be applied throughout the Manual.

Essential principles

- Children shall benefit from all the human rights guarantees available to adults. (Universal Declaration of Human Rights; Convention on the Rights of the Child)
- 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)
- States will respect each 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)
- 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)

- 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)
- 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)
- Close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation. (Council of Europe Guidelines on Child-friendly Justice)
- 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; African Charter on the Rights and Welfare of the Child; Council of Europe Guidelines on Child-friendly Justice)

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 (ie 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 in contact with the justice system for other reasons such as custody, protection or inheritance (child parties to a justice process).²

It can be seen as an overarching concept that works for the benefit and best interests of all children who come into 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 only cover children who come into conflict with the law, but all children who are affected by the judicial process.

Children in criminal justice systems

This Manual focuses on children in criminal justice systems, which cover the first two tenets of the justice for children concept: children in conflict with the law and child victims and witnesses. It will also look at children who may be at risk of entering criminal 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).

2. Interagency Panel on Juvenile Justice, *Justice for Children Factsheet*, 2012; *UN Common Approach to Justice for Children*, 2008.

Overview of international and regional standards

There are two main categories of international standards.

1. Treaties, which are legally binding on States that are parties to them. This means that they are obliged under international human rights law to respect, protect and fulfil their provisions and to report on the ways in which national legislation, policy and practice reflect this. Each treaty has established a committee of experts to monitor implementation of the provisions by the States parties.

2. Human rights standards, concerned with criminal justice law and policy reform are also enshrined in other types of UN non-treaty instrument: declarations, recommendations, bodies of principles, codes of conduct and guidelines. These complement the treaties, have significant moral force and provide useful and practical guidance. Their value rests on their recognition and acceptance by a large number of States.

In the text below, a binding treaty is marked [b], whilst standards, norms and guidelines are unmarked.

1. General child rights



For full text of international treaties and standards see the website of the UN OHCHR*.

→ **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.

→ **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (and its Optional Protocol 2002) [b]**

The Convention against Torture (CAT) 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 also established the Committee against Torture that monitors implementation of the CAT. The Optional Protocol (OPCAT) requires the establishment of national preventive mechanisms to visit places of detention and receive allegations of abuse and investigate 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.

→ **Convention on the Rights of the Child 1989 [b]**

The CRC is the most widely ratified Convention, being ratified by all but three States worldwide. A wide range of children's rights are set out in the CRC and it 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. Thirteen 'General Comments' have been published by the Committee on the Rights of the Child giving a more detailed interpretation of some of the rights in the Convention. Of these, General Comment No.10 (2007) deals with the treatment of children in conflict with the law.

2. Children in conflict with the law

→ **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 treated with humanity and dignity.

→ **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.

→ **UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 ('Beijing Rules')**

The Beijing Rules are a set of principles and guidelines for the proper administration of juvenile justice and includes guidelines and commentary on justice for children issues such as juvenile courts, the age of criminal responsibility, prosecution of juveniles, sentencing and standards for juveniles if incarcerated.

* www.ohchr.org

- **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.
- **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.
- **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.
- **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.
- **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.
- **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, including the specific needs of girls in detention.
- **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems 2012**
This set of guidelines recognises the importance of provision of, and access to, legal aid in order for children and adults to participate in the justice system, obtain a fair trial and have their rights protected. Most relevant are Principles 1, 4 and 5 and Guidelines 7, 8, 9 and 10, which refer specifically to legal aid for victims, witnesses and children in conflict with the law.

3. Children as victims and witnesses

- **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.
- **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.

4. Regional-specific child rights standards

- **European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 [b]**
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.



For full text of these regional standards, see the Council of Europe, African Commission and Organisation of American states.[†]

[†] Council of Europe: www.coe.int, African Commission: www.achpr.org, Organisation of American States: www.oas.org

→ **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987 [b]**

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.

→ **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), and redress and outlines how each State should ensure that these rights are met and how this is best done.

→ **European Rules for juvenile offenders subject to sanctions or measures 2008**

These rules are intended to uphold the safety and rights of all juvenile offenders subjected to community sanctions or measures, or any form of deprivation of liberty. They include discussions on the legal framework and implementation of non-custodial sanctions or measures, all aspects of the treatment of children who are deprived of their liberty, complaints mechanisms and inspection of facilities, staffing, and working with the public and the media.

→ **Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice 2010**

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

→ **African Charter on Human and Peoples' Rights 1986 [b]**

This charter upholds the Universal Declaration of Human Rights but also takes into consideration the historical, traditional and cultural values of African civilisation which should characterise their reflection on the concept of human and peoples' rights.

→ **African Charter on the Rights and Welfare of the Child 1990 [b]**

The ACRWC was adopted by the African Union in 1990 (came into force 1999) and is a complementary instrument to the CRC but has a specific and nuanced focus on issues affecting African children. Its provisions concerning the rights of children in conflict with the law are largely in conformity with the CRC however, it also has a specific section focused explicitly on the rights of children imprisoned with their mothers. It sets up the African Committee of Experts on the Rights and Welfare of the Child.

→ **American Convention on Human Rights 1978 [b]**

This Convention builds on international instruments to provide civil, political and other rights for those living in the Americas. Its implementation and compliance is overseen by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. As of 2013, 25 of the 35 countries of the Organisation of American States have ratified the Convention.

→ **Inter-American Convention to Prevent and Punish Torture 1985 [b]**

This Convention created by the Organisation of American States expands Article 5 of the American Convention on Human Rights which prevents torture. It defines torture and requires ratifying States to prevent it in all its forms and to investigate and hold to account those accused of torture.

→ **Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008**

This set of principles provides guidelines on the protection of people in all forms of detention in the Americas. References to children in criminal justice systems are included throughout the principles.

Cross-cutting principles of justice for children

These are the basic principles that underpin the protection of children's rights in criminal justice systems. These principles must be taken account of in all actions where children are affected, and the application of these principles can be seen in each chapter of the Manual.

1. 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.

2. Protection

The principle of protecting a child's well-being and development is entwined with 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 by 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.

3. Right to be heard

The right to be heard ensures that every child who is capable of forming a view is able to express himself or herself freely and fully in any matter that may affect him or her. It also means that this view should be taken into 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, a child must receive adequate information about the process, the choices they have and possible consequences of these choices. One difficulty that arises for professionals working with children is assessing a child's age and maturity and the weight that should be given to their views, opinions, concerns, and testimony whilst in the judicial process. The Committee on the Rights of the Child General Comment No.12 (2009) discusses this issue in more detail and identifies that age alone can't determine the significance of a child's view and that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child's capacities to form a view. Therefore, the weight that should be given to a child's views must be assessed and considered on a case-by-case basis.



More information can be found in Chapter 5: Victims and witnesses, page 59

4. 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

1. Inter-agency working

Protecting children's rights in the criminal justice system involves a range of state and judicial 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.

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.

2. 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 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.³ 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.



Definition

Restorative justice⁴

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.

3. Goldson, B., *Dictionary of Youth Justice*, 2008.

4. UNODC, *Handbook on Restorative Justice Programmes*, 2006.

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.



More information can be found in Chapter 4: Diversion, page 45

Restorative justice can be particularly effective with children in the criminal justice system. Due to a child's continuing development psychologically, restorative justice measures are likely to have an increased impact on a child who has committed an offence as well as providing a valuable educational 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-judicial situations (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 later chapters.



Issues for discussion

- How is the justice for children concept different from the traditional concept of juvenile justice? What is it designed to achieve?
- Discuss some of the reasons why you think the following categories of children may need additional measures to protect their human rights:
 - children at risk
 - children in conflict with the law
 - children who are victims or witnesses
- 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?
- Should children in conflict with the law and children who are victims and witnesses be treated differently during the judicial process?
- What does 'the best interest of the child' mean in practice in the context of your profession?
- In what ways and at what times in the criminal justice system would it be important to ensure a child's right to be heard?
- Why might children be vulnerable to discrimination or be discriminated against? Are there any particular types of children who are more likely to be discriminated against than others? In what ways?



Case studies

- A 15-year-old boy 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 should professionals (police/prosecutors/social workers/judges) be aware of in relation to the 15-year-old? What should they do to ensure that the cross-cutting principles of justice for children are applied?
- 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?

- You are a lawyer representing a 12-year-old boy 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 or her right to be safeguarded from harm?



In-depth case study:

Family in conflict with the law

Michal is a 12-year-old boy who lives with his father Filip on the outskirts of a city. Michal is an only child and has been looked after by his father all his life as his mother died in child birth. Filip has no stable income. Although he has some casual work as a labourer on a local farm, this work is not regular and sometimes the family struggle for money. When this happens, Filip will sell drugs for a friend of his in the city.

Filip is emotionally unstable and depends on Michal for his sense of well-being; he treats him more like a partner than a son. Michal has always been close to his father and does what his father demands of him. However, since he has started to go to his secondary school, Michal has begun to want to hang around with his friends more. In response, Filip has begun to try and restrict Michal's movements and has become very controlling. Michal loves his father and does not want to alienate him and as such he is living in fear of his father's actions and disapproval.

Last week Filip needed to pay the bills but did not have any labouring work to do so he contacted his friend in the city to see if he could do some drug dealing. This time he brought along Michal to help. At 9pm on Friday night, three hours after the two had begun drug dealing in the city, they were both arrested by the police. They were taken together to the city police station.

Discussion questions

- Is Michal a child offender or a child victim? Why?
- What issues have been raised in this case study that the child justice system can address?
- In what ways should the criminal justice system treat Michal differently to Filip and why?
- What do you think should be the different outcomes of this case for each individual?



References and further reading

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

UNICEF, *Implementation Handbook for the Convention on the Rights of the Child: 3rd Edition*, 2007

UNODC, *Handbook on Restorative Justice*, 2006

UNODC, *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary*, 2009

UNODC, *Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime*, 2009

Chapter 2

Children at risk

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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’;
- Identify ‘risk factors’ for children and the ‘protective factors’ that can negate these;
- Know the main international guidelines on prevention; and
- Explain the different kinds of interventions for at-risk children and their strengths and weaknesses.

UN policy indicator

15. Prevention: Existence of a national plan for the prevention of child involvement in crime

Essential principles

- The need for and importance of delinquency prevention policies, which facilitate the socialisation and integration of all children, should be recognised. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly and educational materials, curricula, approaches and tools should be developed and fully utilised. (Riyadh Guidelines, No. 5, 24 and 48; Committee on the Rights of the Child, General Comment No.10)
- 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)
- Those who are demonstrably endangered or at social risk and are in need of special care and protection need safeguarding. (Riyadh Guidelines, No 5)
- Government agencies should take special responsibility and provide necessary services for homeless or street children. (Riyadh Guidelines, No.38)
- 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)

- Participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation. (Riyadh Guidelines, No. 50)
- 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)
- 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)
- Specialised prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilised. (Riyadh Guidelines, No.24)
- 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 persons. (Riyadh Guidelines; Committee on the Rights of the Child, General Comment No.10)
- 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)
- The institutionalisation of young persons should be a measure of last resort and for the minimum necessary period. (Riyadh Guidelines, No.46)
- 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)

APPLICATION

Key concepts

1. 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.'⁵

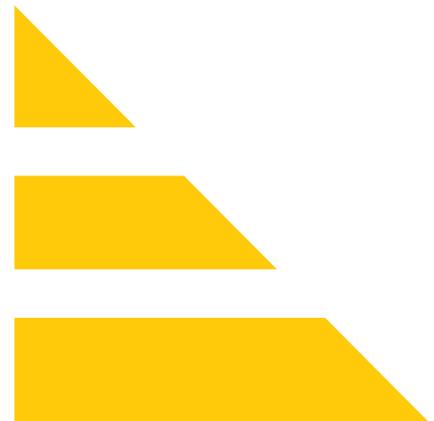
The Committee on the Rights of the Child's General Comment No. 10 draws attention to the need for countries to consider prevention when tackling the issue of child criminality, stating that 'a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious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

Prevention can be seen as having three tiers:

→ **Tertiary prevention**
Approaches that focus on children who have already been victimised or in conflict with the law.

→ **Secondary prevention**
Approaches that focus on children at the highest risk of victimisation or coming into conflict with the law.

→ **Primary prevention**
Universal approaches that aim to prevent children becoming victimised or in conflict with the law before it occurs



5. Loeber et al., 1991, in Cipriani, D., *Children's Rights and the Minimum Age of Criminal Responsibility*, 2009.

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

2. Vulnerable children

Children *at risk* of coming into conflict with the law may be identified by the characteristics they share with children *in* conflict with the law. Their family background and current behaviour leads 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 at risk can display behaviour that may seem frightening, hostile or self-destructive. Such behaviour can evoke powerful emotions and reactions in professionals. To be effective, those professionals must feel equipped and empowered when trying to understand and work with such behaviour. One helpful way to deal with it is to understand where the behaviour may originate and what measures can be taken to try and address it. Such knowledge can help professionals to work more effectively with children at risk.

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:⁶

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

6. Adapted from Stephenson et al., *Effective Practice in Youth Justice*, 2011.

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.

3. Safeguarding

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



Definition

Child in need of care and protection⁷

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 abuse, neglect, abandonment or exploitation.

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; or
- have experienced war, conflict or violence.

Children at risk are likely to come from troubled backgrounds and to have experienced one or more form of abuse, which could include neglect, physical abuse, psychological/emotional abuse or sexual abuse or exposure to domestic violence. Therefore, it is important as a professional within the justice or welfare system to be able to identify abuse or neglect in order to address it and protect the child.



Definitions: child abuse⁸

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.

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.

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 in a relationship of responsibility, trust or power, with 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; or the exploitative use of children in pornographic performances and materials.

7. UNICEF, *Child Protection Systems: Mapping and Assessment Toolkit*, 2010.

8. World Health Organisation, *Handbook on Child Abuse*, 1999.



Definitions: child abuse – continued

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.

4. Incapacity to commit crime

Children who suffer from a number of different risk factors and abuse may act out in violent or difficult ways. They 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 be criminal if they were of the age of criminal responsibility. 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'.⁹ In fact, the earlier the anti-social behaviour begins, the more likelihood there is of the children becoming serious, violent and chronic offenders. Nevertheless, a child can only be considered to have committed a crime if they are of the age of criminal responsibility. This age differs from country to country.



Definition

Anti-social behaviour¹⁰

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.

A child under the age of criminal prosecution lacks the capacity to commit a crime. This means they are immune from criminal prosecution – they cannot be formally charged by authorities with an offence nor be subjected to any criminal law procedures or measures. The significance of the minimum age of criminal responsibility is that it recognises that a child has attained the emotional, mental and intellectual maturity to be held responsible for their actions. Under Article 40(3) of the CRC, States are encouraged to establish a minimum age below which children are presumed not to have the capacity to infringe the criminal law. There is much controversy about what should be the most appropriate age of criminal responsibility and there are no categorical international standards in this regard. In General Comment No. 10, the Committee on the Rights of the Child concludes that '*a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable*'.¹¹ At the same time it stresses that States should not lower their age of criminal responsibility to 12 where it has already been set higher and strongly encourages States to introduce a higher minimum age of criminal responsibility, for instance 14 or 16 years of age.

How to respond to children who commit both grave acts or anti-social acts that would be criminal if they were of the age of criminal responsibility is crucial. General Comment No. 10 recommends that for these children special protective measures can be taken, if necessary, in their best interests.

9. Cipriani, D., *Children's Rights and the Minimum Age of Criminal Responsibility*, 2009.

10. Goldson, B., *Dictionary of Youth Justice*, 2008.

11. UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10 Paragraph 32.



More information can be found in Chapter 3: Arrest, page 35

The behaviour of children under the age of criminal responsibility should be addressed through appropriate and targeted interventions that are proven to be in their best interests. They should never be taken through the criminal justice system. Such interventions can include educational measures or supervision by social workers.

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 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 the minimum age.



Example

Canada: SNAP outreach project¹²

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 the city of 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.



Example

Turkey: Protection, care and rehabilitation centres¹³

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. The majority of 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.



Example

Germany: Fallschirm project¹⁴

Since 1998 the Fallschirm project has been working in Berlin with children who have committed acts which would have been criminal offences if they were over the age of criminal responsibility (14 years). They aim to support these children to stop them becoming more marginalised and criminalised. The project establishes regular contact with the child and his or her family, in coordination with social services, the police, the child's school and other youth projects in the area. It teaches responsibility, how to deal with crises, and assists with reintegration into both the school system (for example, by accompanying the child to school each day) and leisure time activities such as sports and youth clubs. In addition, the project also provides regular educational skills training for the parents of the children.

12. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

13. UNICEF, *Good practices and promising initiatives in juvenile justice in the CEE/CIS region*, 2010.

14. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

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 and children with an illness or disability.

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.

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.

1. Avoiding stigmatisation

Children who are in conflict or contact with criminal justice systems can be at risk of stigmatisation by the community. When providing services to children at risk, it is important to be extremely mindful of the stigmatisation that a child may experience from being involved in the prevention services or programmes. 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.

2. 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 2006¹⁵ 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;
- Targeted policing of high risk children and of areas where they are known to commit crimes;
- Restorative justice.

¹⁵ European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

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, where children must engage in military-style drills and exercises;
- Trying juveniles in adult courts.¹⁶

In designing a programme for children at risk, 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;
- Incorporate the relevant training for all staff at all levels.

3. Multi-agency co-operation

General Comment No. 10 emphasises that States should fully promote and support the involvement of children, in accordance with Article 12 of the CRC, and of parents, community leaders and other key actors (eg representatives of NGOs, probation services and social workers), in the development and implementation of prevention programmes.



Example

Poland: Multi-agency prevention¹⁷

In Poland, a ten-year programme initiated by the Ministries of the Interior, 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 a variety of interventions: 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.

¹⁶. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

¹⁷. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.



Example

United Kingdom: Family Intervention Project¹⁸

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 utilising a range of models and approaches with regular review meetings, on-going 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.

4. 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.

5. 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:

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

¹⁸ UK Department for Education, *Family Intervention Projects: An Evaluation of their Design, Set-up and Early Outcomes – Brief*, 2008.



Example

United Kingdom: Childhood First homes¹⁸

Childhood First is a charity that provides residential care, special education and family support to young people aged twelve to eighteen. They have four 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. 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'.

6. 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 CRC 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 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: Loafers²⁰

Loafers is a community-based and multi-agency approach to provide useful leisure activities for young people at risk. It focuses on children aged 16-25 outside the formal education system or unemployed and at risk of, or being, involved in street violence or drug-based violence and aims for their social reintegration. The project uses community-based social skills training and organises free time activities for the youth to spend it creatively. Drug and alcohol prevention training and healthy lifestyle training as well as training referring to self-esteem, career and legal counselling is organised in the youth clubs and at partner organisations.

19. www.childhoodfirst.org.uk

20. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.



Example

USA: Communities that Care²¹

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.

7. Parenting programmes

Evidence suggests that prevention programmes that focus on parents and other family members are the most effective for younger children.²² Indeed Articles 18 and 27 of the CRC confirm the importance of the responsibility of parents for the upbringing of their children and the need for State to provide assistance to parents or guardians in order to better carry out these 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 Programme²³

The Swedish National Institute of Public Health initiated a pre-school, family based interactive prevention programme, COPE, 'Community Parent Education Programme'. The programme consists of around 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.



Example

United Kingdom: Webster-Stratten parent training programme²⁴

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 anti-social behaviour and their parents were allocated to experimental or control groups. Reports from parents showed that the antisocial behaviour of the experimental group decreased, while that of the control group did not change.

21. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

22. Cipriani, D., *Children's Rights and the Minimum Age of Criminal Responsibility*, 2009.

23. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006; Thorell, L., *The Community Parent Education Program: Treatment Effects in a Clinical and Community-based Sample*, 2009.

24. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

8. Programmes for children

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 those children who have low attendance at school or have 'dropped out'. Intervention programmes work best for children when they are implemented simultaneously in the home and the school.



Example

Austria: Out the Outsider²⁵

The Austrian programme 'Out the Outsider' 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 or her own boundaries.



Example

Finland: Boys in the Forest²⁶

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 (boys aged 7-15 from socially deprived areas) undertake regular activities in forms of hikes, camps, climbing, canoeing etc, in order to strengthen emotional resources, self-control, social skills and ability to deal with emotional experiences.



Example

Austria: Peer mediation²⁷

In Austria, peer mediation is used to solve conflicts in schools through selected pupils who, in the course of a voluntary class, are trained as so-called dispute helpers or dispute guide mediators 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.

9. 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.

²⁵. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

²⁶. *Ibid.*

²⁷. *Ibid.*



Example

United Kingdom: Youth Inclusion and Support Panel (YISP)²⁸

The YISPs are for children between eight and 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. 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 is 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 welfare and children's services 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 shared with other agencies.



Example

Sweden: Functional Family Therapy²⁹

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, eight to 12 sessions for mild cases and up to 30 hours of direct service (eg, clinical sessions, telephone calls, and meetings involving community resources) for more difficult cases. In most cases, sessions are spread over a 3-month period.



Issues for discussion

- Why is it important to ensure that prevention is part of a country's strategy for addressing youth crime and children in the criminal justice system?
- What are some of the factors that may contribute to a child being at risk of coming into conflict with the law? What protective factors can address these risks?
- 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. What do you think are some of the reasons behind this?
- 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?
- When designing a prevention programme how can you ensure that the programme itself does not stigmatise the participants? And why is this an important consideration?
- How can professionals ensure child participation in developing and designing prevention programmes?

28. Goldson, B., *Dictionary of Youth Justice*, 2008.

29. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.



Case studies

- You are a police officer out on patrol at 2am. You come across a boy aged around nine 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 into this situation and what measures would you take to ensure he is protected?
- 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?
- 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 five years older and whom you used to teach. You know that his brother is now in trouble with the law and you do not want the same thing to happen to this boy. What could you do?
- A 12-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 sort of response and investigation should be taken in this situation?



In-depth case study

Lost in the system

A case of family violence involving a 14-year-old boy named Petar was discovered on the streets of a town by a local NGO and reported to the child protection authorities. Petar had been living with a violent father who had physically and sexually abused him since he was 11. Progressively, the situation deteriorated as the beatings became a regular practice and Petar was required to 'bring money home' if he sought to sleep at home. As a result he began offering sexual services for money dressed like a girl. The father responded by taking the money but destroying his female clothes.

The authorities sent Petar to an uncle and family friend as a temporary measure until a more stable solution could be found. After a day the authorities referred him to the local public institution for children based on an assessment of having social and educational problems. However, the social worker at the institution declined to accept him due to a concern that Petar's sexualised behaviour would be likely to present problems in assuring his protection in the institution.

With fewer options available but a continued feeling that the situation was problematic the authorities were faced with finding another solution. Based on an assessment that the family had the potential to deal with the issue, they issued a decision that Petar be returned to his family and that the placement be accompanied by enhanced education and supervision of the parent by the child protection authorities.

A year from the date of the original case being filed, a medical examination was undertaken which confirmed that Petar continued to be sexually abused by various people. In response he was issued a prescription of Diazepam to be administered under parental supervision. A suicide attempt followed and the child protection authorities sent him to a psychiatric hospital for evaluation because of suicidal tendencies, self-harm, aggressive and sexualised behaviour. The result of the evaluation was that psychiatric treatment was recommended along with continued prescription drugs but at a lower dosage. Placing Petar in an institution without additional support was not recommended.

Discussion questions

- How would you assess the interventions of the authorities in this case? What strengths and weaknesses do you see?
- How would you evaluate the social worker's refusal to admit Petar when he was first brought to the institution?
- What other options might there have been for protecting and treating him earlier in the process?
- Following the hospital's psychiatric evaluation and recommendations what options exist to create an effective and sustainable solution?



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Chapter 3

Arrest

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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.

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

Essential principles

- 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)
- If there is no proof of age and it cannot be established that the child is at or above the minimum age of criminal responsibility, the child shall not be held criminally responsible. (Committee on the Rights of the Child, General Comment No. 10)
- 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)
- 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)

- 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)
- 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)
- Upon the apprehension of a juvenile, his or her 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, Rule 10)
- 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. Legal aid provided to children should be prioritised, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children. (Beijing Rules, Rule 15; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 11)
- Any interview with a child detained, arrested, suspected or accused of, or charged with a criminal offence shall be prohibited in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available. (Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 10)
- 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, Rule 8)
- 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 specially instructed and trained. In large cities, special police units should be established for that purpose. (Beijing Rules, Rule 12)
- Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. (Beijing Rules, Rule 11; Convention on the Rights of the Child, Article 40; Committee on the Rights of the Child, General Comment No. 10)
- 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, Rule 16)

APPLICATION

Key concepts

1. Age of criminal responsibility

Children can only be arrested if they are of the age of criminal responsibility. Article 40 of the CRC requires States 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 (MACR) 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 CRC does not stipulate a MACR. As a result, there is a wide range of MACRs across the world, ranging from the age of seven to 18. Some countries use two MACRs 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’.

2. 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. International and regional standards states that every child has the right to be registered after birth.³⁰ 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 criminal 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 of a child.

3. Non-discrimination

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.

4. Rights of children on arrest

Any contact by the police with a child should respect his or her 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;
- 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.

³⁰. Convention on the Rights of the Child, Article 7; African Charter on the Rights and Welfare of the Child, Article 6.

5. 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'. This is because children are susceptible to stigmatisation from society and may suffer from adverse effects that can result from the publication in the mass media of information about their arrest. The Council of Europe Guidelines on Child-friendly Justice give more detailed information on what this protection of privacy may look 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.

6. Need for specialist training

Police officers should be specially instructed and trained in child rights. This is made clear in the Beijing Rules which state that: '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

Jordan: Juvenile police department³¹

In 2011, a pilot project in Jordan established a new administration specialising in dealing with children who are in contact with the police. It aimed to increase the professionalism of staff working with children, involve children in socio-psycho programmes for rehabilitation and reintegration and to reduce the burden on justice systems by diverting children away from the formal system. The goals of the department are to:

- Develop and improve police procedures for treating children;
- Enhance respect for child rights;
- Enhance institutional partnership with the local community and raise awareness of the issues among the local community;
- Partner with related government and non-governmental organisations;
- Enhance institutional partnership with the local community and raise awareness of the issues among the local community.

The department works in partnership with local, national and international stakeholders and organisations. It focuses on the professionalism of its staff, for example, through its selection of staff including education, personal skills and a desire to work with children; specific training to work in the department and with children in conflict with the law; and continuous assessment of staff. In addition, the department has developed materials such as a procedural guidebook and a management training manual which provide practical guidance on juvenile justice related issues.



Example

Turkey: Specialised police units³²

In Turkey, 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.

31. Penal Reform International, *Good Practice Briefing: Juvenile Police Department in Jordan*, (unpublished, 2013). For more information contact info@penalreform.org

32. UNICEF, *Good practices and promising initiatives in juvenile justice in the CEE/CIS region*, 2010.



More information can be found in Chapter 4: Diversion, page 45

7. 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 a 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 his or her parents or guardians.



Example

Uganda: Police Diversion in the Children Act³³

Under the Children Act 2000, detention of children is considered a measure of last resort and in line with this principle police officers have wide powers to release a child without a formal charge and can dispose of a case without recourse to formal court proceedings. In addition, the police have established a Child and Family Protection Unit at every major police station to help handle cases involving child offenders. The unit plays an important role promoting diversion by counselling and releasing children after a caution, in addition the unit counsels the parents of the children if they are found. This diversion is also having an impact in reducing the workload of the Family and Children’s Court with regard to criminal cases at the community level.

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 Human Rights Unit 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;
- Accept that sexual and physical abuse of children is not a ‘private’ matter, but criminal conduct and a human rights abuse.³⁴

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 a child or children.

³³. African Child Policy Forum, *Realising Rights for Children: Good Practice, Eastern and Southern Africa*, 2007.

³⁴. Commonwealth Secretariat Human Rights Unit, *Commonwealth Manual on Human Rights Training for Police*, 2006.

1. Ensure the child understands

A child's first need is information about the charges against him or her, his or her rights and the process of arrest. In this regard, the police have a duty to inform the child of his or 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. This means in practice that all information and advice given to a child should be provided in a manner adapted to their age and maturity.

2. Inform 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 should 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 service³⁵

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.



Example

China: Appropriate Adult Scheme³⁶

The Appropriate Adult Scheme in Panlong District, China provides for full-time and trained adults to intervene as child advocates during the interview stages by the police. The appropriate adults are there to ensure that a child's rights are respected, to provide a social assessment of the child, link children to their families, and work with the police and others to support possible diversion opportunities and non-custodial measures for children pending the determination of their case. The Appropriate Adult Scheme was modelled from the UK scheme and adapted to fit the Chinese context. In China, parents or relatives are rarely called to attend any interviews carried out by the police with children suspected of having committed an offence and often would be unable to attend. Additionally, the lack of social workers or lawyers means that children would generally be interviewed without the presence of another adult party that could ensure that the child's best interests were taken into account.

3. Allow legal representation

The right of the child to legal assistance is enshrined in the international standards including the CRC. 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 country and how to obtain it.

³⁵. Goldson, B., *Dictionary of Youth Justice*, 2008.

³⁶. Save the Children, *The Right Not to Lose Hope: Children in conflict with the law – a policy analysis and examples of good practice*, 2005.

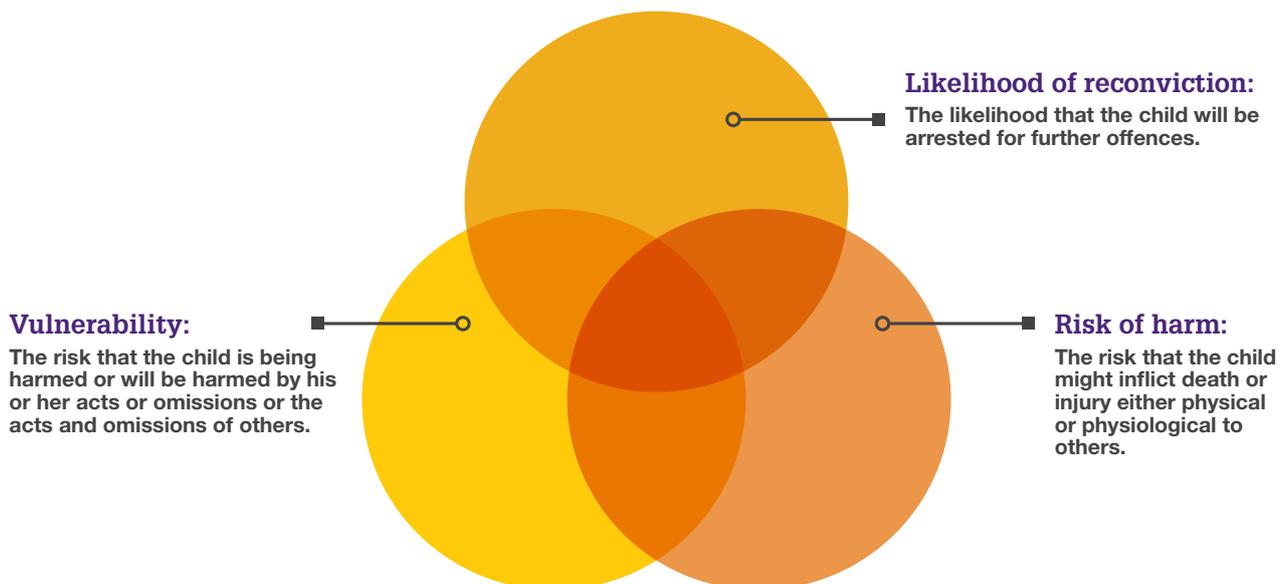
4. Secure pre-trial assessment

The Beijing Rules highlight that a background assessment of a child's characteristics and circumstances are indispensable. Assessment can take place soon after arrest and/or before a child's appearance in court and can be used for:

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

The assessment, and the report that results from it, should be undertaken by a qualified social worker or probation officer, attached to, or linked with, the court. The assessment is aimed at obtaining information about the child, which will assist 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. Additionally, 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.

These assessment reports are sometimes also called social inquiry reports or social reports and they are usually concerned with three issues:



More information on risk factors can be found in Chapter 2: Children at risk, page 19

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 (eg treatment, rehabilitation) or within the situation (eg home environment, access to weapons).



Example

United Kingdom: 'Asset' assessments³⁷

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 in their lives, and the vulnerabilities they show, as well as their potential for harm.

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



Issues for discussion

- How should a child be treated on initial contact with the police? What additional measures would a police officer have to take when dealing with a child, as opposed to an adult in a similar situation?
- Can a police officer question a child if they cannot find their parents or guardians? Why/why not? What should they do in this instance?
- How can police best reassure a child who has been arrested that they are safe?
- What is the age of criminal responsibility in your country? Does this meet the international standards? How does an appropriate age of criminal responsibility protect child rights?



Case studies

- You are a police officer and are out on duty when you see 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?

37. Stephenson et al, *Effective Practice in Youth Justice*, 2011.

- Beni is 15 years of age and lives at home with his parents. His school work has slipped because he has occasionally been taking days off school but his teachers describe him as being very bright with a good future if he works hard and stays at school. Beni 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 selling it to others as well. What do you think is the most suitable course of action in this case?
- Amina (16 years old) 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 Amina 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 Amina pulled a knife and stabbed him in the ribs. The police arrived and Amina was found three streets away, still holding the knife. As a police officer, what measures would you take when confronted with this case?



In-depth case study

Robbery and assault

Daniel (13 years old) and Nicolaus (14 years old) are friends who live on the outskirts of the capital city. They rarely go to school and spend most of their time hanging around the city with other friends. Daniel, despite being the younger of the two, is more confident and more aggressive than Nicolaus. While out in the city together Daniel sometimes bullies and robs other children. It is known that Daniel's home life is chaotic, his mother is addicted to drugs and his stepfather physically abuses him. Daniel does not like authority and is well known to the police for his behaviour and being aggressive and abusive when spoken to by the police. School reports from when he regularly attended education indicated he was above average at most subjects and particularly good at art. Nicolaus has only recently moved from the countryside to the city and met Daniel at school where they became friends. Nicolaus's family have moved around the country frequently and as such, while he would normally attend school he was often behind academically. Since meeting Daniel, Nicolaus has stopped attending school regularly and instead spends his days in the city with his friend. He comes from a large, supportive family and is the oldest of six siblings. While his mother and father work hard to earn enough money for the family, Nicolaus is often left to look after his younger brothers and sisters, do the cooking and the housework. Nicolaus is quiet and finds the responsibility of caring for his family very difficult. He envies what he sees as Daniel's freedom from his family and looks up to his confidence and the way he 'stands up' to the police.

One day Daniel and Nicolaus decide to steal some money from a market seller, however, a struggle ensues. Daniel pulls out a knife and tries to stab the market seller while Nicolaus punches him twice before some passers-by see the struggle and restrain the two boys until the police arrive. You arrive on the scene.

While Daniel is aggressive and does a lot of talking, Nicolaus is quiet and subdued. The age of criminal responsibility in the country is 14 years.

Discussion questions

- How would you proceed with the investigation with the two boys and ensure that you get each individual boy's story and account of events?
- How would you proceed with Nicolaus' case? Would you involve any other agencies?
- How would you proceed with Daniel's case considering he is under the age of criminal responsibility in the country? Which other agencies would you involve?



References and further reading

African Child Policy Forum, *Realising Rights for Children: Good Practice, Eastern and Southern Africa*, 2007

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Chapter 4

Diversions

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Learning objectives

After completing this chapter you should be able to:

- Understand the value of using diversion measures;
- Identify 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.

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

Essential principles

- 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)
- 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, Rule 11)
- Any diversion involving referral to community or other services must require the consent of the juvenile, or her or his parents 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. Children have the right to legal aid at every stage of the process where diversion is applied. (Council of Europe Guidelines on Child-friendly Justice; Beijing Rules, Rule 11; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 10)
- 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)

- Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or 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 or her in any subsequent legal proceeding. (Committee on the Rights of the Child, General Comment No.10)

- 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, Rule 11; Riyadh Guidelines, No.58)

APPLICATION

Diversion theory



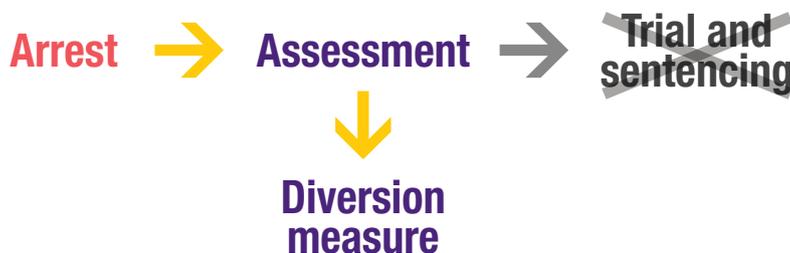
Definition

Diversion³⁸

Diversion is a process which seeks 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 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 is often used for minor or first time offences although it should be applicable to any offences.

Diversion aims to ensure that the child is not processed by the formal criminal justice system:



More information on restorative justice can be found in Chapter 1: Principles of justice for children, page 9

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, 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 and strengthen support networks of the child including the family and community. Diversion measures, especially for children, will often also incorporate principles of restorative justice.

38. Commentary to the Beijing Rules, Section 11.

1. Rules of diversion

It is imperative that diversionary measures respect and protect child 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 having a system in place that allows for a child to raise grievances.

Concern has also been raised that sometimes diversion measures disposed by the police have a 'net widening' effect whereby 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.

2. 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 their community.
- The flexibility of diversion allows various sanctions to be combined to better address the individual situation and needs of the child.
- Diversion programmes are often better able to acknowledge the root cause of the offending behaviour and target this through support services.

A German study³⁹ 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.

3. 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.



Example

Malawi: Diversion assessment⁴⁰

In Malawi paralegals are used to assist the police with those children who come into conflict with the law. They trace the parents of the young person in the police station to inform them of the whereabouts of their child, link up with social services and screen the young person using a form agreed with the police and judicial authorities. The paralegal doing the screening then recommends a diversionary option if the young person satisfies the criteria (first offender, minor offence, admits guilt) which is passed on to the prosecution who decide whether or not to divert the child. The role of the paralegals in Malawi could be assumed by social services and probation officers where they exist in sufficient numbers. Paralegals also attend police interviews to ensure the rights of the young person are protected.

Diversion measures in practice

For diversion 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 need increased levels of services, monitoring or help.

The Council of Europe's Guidelines on Child-friendly Justice 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 for their individual situation.

³⁹. Dunkel, F. (2005), in European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

⁴⁰. Penal Reform International, *Index of Good Practices in Reducing Pre-trial Detention*, 2005; Penal Reform International, *Index of Good Practices in Providing Legal Aid Services in the Criminal Justice System*, 2006.

1. 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 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-intervention⁴¹

In Austria the prosecutor may drop the case of a juvenile if the offence they are accused of is punishable by not more than five 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 (ie non-intervention) is given priority in cases of petty offences.

2. 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 à la loi'⁴²

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

3. 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 cooperation⁴³

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

41. Bruckmuller in Junger-Tas & Decker (eds), *International Handbook of Juvenile Justice*, 2006.

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

43. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.



Example

Ethiopia: Community-based Correction Programme (CBCP)⁴⁴

In Ethiopia, the CBCP supports diversion by the police of cases where a child aged 9-15 years has committed a first or petty offence. The programme brings together police and community workers with families, the child and other key individuals (including teachers) to provide intensive and individualised support for the child in community centres. Support includes help with studies, vocational opportunities, and support to parents in good parenting skills as well as recreational opportunities. There are also some links with businesses that provide apprenticeships. Each centre is run on a daily basis by a trained volunteer who is supervised by a community worker and team leader. The volunteers are mainly young males who have at least completed their high school education and their tasks include ensuring that children come to the scheduled programmes, attend school, and work to improve their relationship with their family and community. The length of time that the child spends in the programme is determined by the community worker on a case-by-case basis. On average, children are enrolled for about three hours per day on weekdays and stay at the centre from between six months and two and a half years. An assessment of the rehabilitation of a child is based on the child's school attendance, educational performance, relationship with his or her family, attendance and participation at the centre, and personal care and attitude.



Example

India: Sahyog De-addiction Centre⁴⁵

The Sahyog De-addiction Centre managed by the Society for Promotion of Youth and Masses (SPYM), a Delhi-based NGO, is designed for children who come into conflict with the law as a result of their addiction to drugs and subsequent crime. While the NGO has been working for nearly 30 years in this area, the De-addiction Centre was set up in 2011. Since then it has been providing services to children aged 8-18 years (although mainly those 14-16) with a history of substance abuse which has led them to criminal activity. Children are referred here through the Juvenile Justice Board after arrest. Services provided by the Centre include detoxification, guidance and counselling, meditation, literacy, psychotherapy, skill development training, recreation activities and Narcotics Anonymous and Alcoholics Anonymous meetings. In its provision of services it collaborates with other agencies, for example, motor mechanics training; a training and work experience scheme set up in collaboration with industrial firm Kirloskar Brothers; and training in food production in collaboration with the Government of Delhi's Industrial Training Institute.



Example

Belgium: Youth court social service⁴⁶

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.

44. Save the Children, *The Right Not to Lose Hope: Children in conflict with the law – a policy analysis and examples of good practice*, 2005.

45. PRI blog post, *Sahyog De-addiction Centre: Holistic rehabilitation for Delhi's children in contact with the law*, March 2013.

46. Goldson & Muncie, *Comparative Youth Justice*, 2006.

4. 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 (eg study, or writing a paper). However, community work for children under 18 should not prevent them from attending school or vocational activities and should have an educational component.



Example

Namibia: Pre-trial community service orders⁴⁷

In Namibia, one diversion measure available is 'pre-trial community service' whereby the young person 'pays back' to the community for the harm he or she has done by working for a number of hours in a non-profit organisation. For this diversion measure the child must be 14 years or over, admit to the offence and have no history of mental illness. The young person and parents sign a contract with the placement agency and social worker and a time sheet is kept, which is returned to the court as proof that the young person has completed the order so that the case can be withdrawn. NGOs often have an active role in the implementation of the program and conduct interviews of offenders to help determine the appropriate number of hours of community service. One important factor in the success of any program is that the community service order takes into account the offender's preferences and work skills as far as possible.

5. 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 (eg parenting classes).

6. 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).

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 cautioning⁴⁸

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.

47. Penal Reform International, *Index of Good Practices in Reducing Pre-trial Detention*, 2005.

48. Goldson, B., *Dictionary of Youth Justice*, 2008.

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 (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 mediation⁴⁹

Regulated by the Law on Juvenile Offenders 2006, one form of victim-offender mediation used in Serbia is the Mediation Centre established in the third largest city, Nis. Initially set up as a pilot by the government, city authorities, Centres for Social Work (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'.

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.

⁴⁹. UNICEF, *Potential and Good Practices still being documented by UNICEF Regional office*, 2009.

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 conferencing⁵⁰

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.

7. Using a variety of measures

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.



Example

The Netherlands: Police diversion and 'HALT' bureaux⁵¹

In the Netherlands, the 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;
- 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 ten 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 annually in the Netherlands, around 20,000 go to a HALT bureau.

50. www.justice.govt.nz

51. Hauber, A. *HALT: An alternative intervention for light-delinquent juveniles in the Netherlands*, 2007; IPJJ, *Protecting the rights of children in conflict with the law*, 2005.



Example

South Africa: Diversion programme⁵²

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.



Example

Italy: Diversion programme⁵³

Italy's 1988 Code of Juvenile Criminal Procedure dictates that prison should be avoided for children aged 14 to 18 years (ie 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, other options available when trying to avoid a full trial for the child include:

- 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.
- 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.

52. www.nicro.org.za

53. Nelken, D. in Muncie & Goldson (eds), *Comparative Youth Justice*, 2006.

Implementation considerations

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.

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.

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 a child is asked to explain the reasons for his or her 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.

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.

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

- 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. Give some examples of when this might happen. Are there steps that could counteract ‘net-widening’?
- 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?
- 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?
- 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?
- 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 12-year-old child 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 child remains very reluctant. What would you do? Would it make a difference if the child was 16?
- 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 eight miles away. 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?
- 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 what the weaknesses of the programme might be. How would you address this problem?
- 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?



In-depth case study

Theft from an elderly woman

Sara, a 15-year-old girl was apprehended for stealing \$50 from an elderly woman.

They met as Sara observed the woman struggling with heavily loaded grocery bags on the bus and she offered to help carry them. As Sara carried the woman's bags, she noticed an open wallet inside one of them. When the elderly woman wasn't looking, she took the money from the wallet and when they reached the house, she promptly put down the bags in front of her house and left. The woman called the neighbour for help in catching the girl, however it was too late. They called the police who caught Sara and brought her to the police station.

According to her teachers and schoolmates at the local high school she attended, Sara was a very good and quiet girl. She was an average student with no problematic issues. They knew that she lived with her family in the outskirts of the city, but no one knew the exact location or had met her parents. However, there were no reports of violence or abuse and the family had not previously come in contact with the welfare agencies or the police.

Sara was hoping to buy a new dress for an upcoming birthday party of a close school friend but it seemed that the family was facing economic hardships. She thought that the money from the woman's wallet might solve her financial problem.

Once the local police were notified, an officer found her near the elderly woman's house. She was frightened, trembling and clearly very upset. She was taken to a police station and a welfare officer/probation officer was called. The arresting police officer recommended that she be released with a warning but the commanding officer denied the request and ordered that the case be forwarded with criminal charges to the public prosecutor. It appears that police station performance is measured according to the number of cases filed for prosecution rather than the overall number of instances handled.

Discussion questions

- What diversion measures would be appropriate for dealing with this case? When might diversion be used and how?
- What are the advantages and disadvantages of dealing with this offence through diversion versus formally charging Sara and proceeding through the criminal court process?
- Who else should be involved in the decision and the process? What should the role of the social worker be in this process?
- What kinds of sanctions and/or remedies might be appropriate for such an offence?



References and further reading

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Chapter 5

Victims and witnesses

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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;
- 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;
- 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.

UN policy indicators

1. **Children in conflict with the law:** Number of children arrested during a 12 month period per 100,000 of the population
4. **Duration of pre-sentence detention:** Time spent in detention by children before sentencing
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

Essential principles

- 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)
- 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)
- 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 not possible 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)
- 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)
- 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)
- 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)
- 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)
- 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)
- 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)
- 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)
- Measures should be put in place to limit unnecessary contact with the justice process, 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)
- 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)
- 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; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principles 4-5, Guidelines 7-8)
- 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)

APPLICATION

Upholding children's rights

One of the guiding principles of the CRC is a child's right to be heard, including their ability 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.



Definition

Secondary victimisation⁵⁴

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.

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 per cent 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.⁵⁵

One of the guiding principles of the CRC 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.

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 Act⁵⁶

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 children have 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. 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. Article 20 of the Model Law on Justice in Matters involving Child Victims and Witnesses of Crime 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 if their answers can be understood.

54. UNODC/UNICEF, *Handbook for Professionals and Policymakers on Justice in matters involving child victims and witnesses of crime*, 2009.

55. Plotnikoff and Woolfson, *Evaluation of Young Witness Support: examining the impact on witnesses and the criminal justice system*, 2007.

56. Council of Europe: *Examples of good practice in child-friendly justice: state submissions*

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 countries 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 Guidelines on Child-friendly Justice states 'the right to be heard is a right of the child, not a duty on the child'.⁵⁷

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 it 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 Statement⁵⁸

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.

Reporting and investigation

1. 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.⁵⁹ 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 reactions. 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 training⁶⁰

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.

57. Article 46.

58. UNODC/UNICEF, *Handbook for Professionals and Policymakers on Justice in matters involving child victims and witnesses of crime*, 2009.

59. *Ibid.*

60. The Crime Victim Compensation and Support Authority, *Child Victims in the Union – Rights and Empowerment: A Report of the CURE Project 2009-2010*, 2010.



Example

Lesotho: Child and Gender Protection Unit⁶¹

The Police Service in Lesotho have established the Child and Gender Protection Unit, which aims to provide a user/child-friendly reporting environment and ensure confidentiality for child victims who report sexual abuse at the police station. In addition, it has developed mobile offices that are separate from the police office, to facilitate more confidential and child-friendly interviews, and to encourage the reporting of offences.

From the moment a child comes into 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 allow 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 a child is fully informed, a trained individual, such as a social worker or police officer, should be appointed to manage the case for him or her. 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.

2. 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.

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 knowledgeable of all the available services and how they can be accessed. 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.

⁶¹. African Child Policy Forum, *Child-friendly Laws in Africa*, 2009; African Child Policy Forum & Defence for Children International, *Achieving Child-friendly Justice in Africa*, 2012.



Example

Switzerland: Police referrals⁶²

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

Poland: Network of local support centres⁶³

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.



Example

Algeria: Special centres for child victims⁶⁴

Algeria has established 67 regional counselling centres in areas affected by terrorism. Children who are victims of terrorist attacks are provided with medical care, psychological counselling and social reintegration. Three national centres have also been opened to take care of child victims who have lost their parents.



Example

Latvia: Child victim policy⁶⁵

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.

3. 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 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. For a victim or witness, recounting what has happened to them may cause

62. Council of Europe: *Examples of good practice in child-friendly justice: state submissions*.

63. *Ibid.*

64. UNODC/UNICEF, *Handbook for Professionals and Policymakers on justice in matters involving child victims and witnesses of crime*, 2009.

65. *Ibid.*

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 the interviewer should be, their professional training, and when and where it takes place. All those questioning child victims or witnesses should be professionally trained in techniques for interviewing children.

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 rooms⁶⁶

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.



Example

Czech Republic: Special hearing rooms⁶⁷

In 2007, the Ministry of Interior established special rooms for the interviewing of children who have been victims or witnesses of sexual abuse or violence. The specially-designed rooms, free from external distractions, are designed for the victim or witness and the police or psychological expert to interview the child and attempt to explore the facts of the case. Legal representatives of a child (parent, guardian, lawyer) can follow the hearing from another room. The interview is recorded (audio and video) in order for it to be further analysed and assessed at a later date, without the need to interview the child for a subsequent time.

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 question a victim or

⁶⁶. Council of Europe: *Examples of good practice in child-friendly justice: state submissions*.

⁶⁷. European Union, *Local and regional good practices on victims' rights*, 2011.

witness in a child-sensitive way in a joint interview; while other countries prefer to use highly skilled individual interviewers to collect evidence and information that can be relevant and used by a range of different agencies to assist the child and gain evidence.



Example

Iceland: 'Barnhaus' or 'Children's House'⁶⁸

In Iceland, with the overall aim of avoiding a child having to go through repeated interviews with different agencies, the 'Children's House' was created to make a child feel secure and comfortable whilst also facilitating the coordination of different agencies dealing with child sexual abuse cases. The core concept is an 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 best interests of the child.

Where it is necessary and unavoidable that a child must be interviewed more than once, it should be with the same interviewer.



An example script for interviewing child victims and witnesses, developed by the Scottish Government can be found on their website*

Conducting the interview

Communicating with and interviewing children who are victims or witnesses can be a difficult job and national regulations 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 put the child at ease 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 they give will be used.

Secondly, the interviewer 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, the interviewer should tell the child that if it appears that he or she has misunderstood the child's answer or summarised it incorrectly then the child should 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 expectations for what may happen in the future. The child should be thanked and be made aware of any support services available to them.

68. Council of Europe: *Examples of good practice in child-friendly justice: state submissions*.

* *Guidance on Interviewing Child Witnesses in Scotland: Supporting Child Witnesses Guidance Pack, 2003*, Available at: www.scotland.gov.uk

Trial stage

A child-friendly, well-run trial can have a positive or empowering effect on a child: 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.

1. 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 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 they may have.



Example

California, USA: 'Kids' court'⁶⁹

In California, the District Attorney's office, along with other agencies, has created the 'kids' court', an educational process aimed to assist children through the judicial process by familiarising them with the court environment, personnel and process in a group setting. Children meet various individuals who are part of the court system, who explain what they do and answer any questions children or parents may have. Professional therapists and trained volunteers speak with the children to help them understand and deal with the stress associated with appearing in court.

2. 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 in a number of countries, often they will still require a child to attend court and be cross-examined or asked questions on their original pre-recorded evidence.

3. 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 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.

⁶⁹. UNODC/UNICEF, *Handbook for Professionals and Policymakers on justice in matters involving child victims and witnesses of crime*, 2009.

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.

4. Giving testimony in court

It is most likely that a child, whether he or 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 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 Supporters⁷⁰

UK legislation 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. To avoid allegations of coaching the witness, there are strict rules that they must not discuss the evidence or the content of the testimony with the child. While UK legislation notes that Court Witness Supporters may be undertaken by a variety of individuals, where possible an inter-disciplinary approach undertaken by a trained professional who is in contact with different relevant 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 trial⁷¹

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

70. UK Home Office, *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses, including Children*, 2000.

71. UNODC/UNICEF, *Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime*, 2009.

5. 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. 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 enforced by the judge to restrict the number of questions put to a child, in order to 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.

In jurisdictions where a child is allowed to be cross-examined, judges must 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;
- 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.

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.



Example

South Africa: Witness intermediaries⁷²

Under the South African Criminal Law Amendment Act, children who are victims or witnesses are able to testify through intermediaries where it seems that to appear and testify before the court would expose them to undue mental stress or suffering. In these cases, the court may appoint a competent person as an intermediary through which a child victim or witness may give evidence. In addition, children testifying in cases of sexual abuse also do so in a separate room through video-link to avoid any direct confrontation with the accused and minimise further the stress and trauma of testifying.



Example

Northern Ireland: Witness intermediaries⁷³

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.

72. African Child Policy Forum, *Child-friendly Laws in Africa*, 2009; African Child Policy Forum & Defence for Children International, *Achieving Child-friendly Justice in Africa*, 2012.

73. www.nidirect.gov.uk

Post-trial

1. 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.

Furthermore, if appropriate, the sentencing execution authority (court, judge, prison director) should inform the child and/or his or 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.

2. 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

- In what ways does the treatment of child victims and witnesses in your country differ from the examples given in this chapter? What are the main issues that need to be addressed in your context to ensure that child victims and witnesses' rights are protected?
- What is the danger of using leading or suggestive questioning with children? What are some examples of suggestive questioning?
- What would you do if while interviewing a child they are not telling you a coherent or consistent version of events?
- What are some of the ways you can mitigate against secondary victimisation?
- What are some of the advantages and disadvantages of the measures described in the examples through the chapter showing how different countries treat victims and witnesses?



Case studies

- You are a judge hearing the case of Dev, a 13-year old who is accused of stabbing one of his classmates. The victim says he has been bullied by Dev for a number of years before the incident took place. Dev, 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 Dev and the 13-year old victim?

- You are a social worker. You have been asked to interview a seven-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?
- 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 eight 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 original witness statement differs from the evidence they are now giving at the trial and it is creating a confusing picture. How do you allay the children's fears and ensure the truth is told?
- 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 two 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 was also hospitalised, for three 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?



In-depth case study

Young children as victims and witnesses

Ana is an eight-year-old girl who had made reports to her foster carer that she had been sexually abused. On an initial interview with a police officer she denied that the man had touched her. However, two months later during a session with a child psychiatrist she had been referred to, she revealed the reports again. She was subsequently questioned by a specially trained police officer, which was video-recorded and where she confirmed the allegation. After contradictory evidence from two psychologists working for the prosecution and the defence, the video was admitted as evidence in the case against the accused. A year after the initial evidence recording, the child appeared in court to give testimony. The girl was taken on an advance tour of the courtroom to try and put her at ease.

She gave her additional testimony through video-link technology with a support person beside her. However, due to technical issues she was not called until late in the afternoon when she was getting tired, having been in the courthouse for around seven hours. Before providing the court with her testimony she, and the court, watched her pre-recorded video evidence from her initial police interview.

Due to the need to test the truth of the evidence, and the country having an adversarial justice system, a cross examination took place. She was questioned by barristers, who had removed their wigs and used their first names, but still wore their gowns. Despite official guidance for lawyers questioning young witnesses instructing them not to use irrelevant, intimidating or repetitive questioning, some of the questions put to her were grammatically complicated and questions repeated when she did not answer.

The legal test in the country for allowing a child's testimony to be admitted is simply whether or not the child can understand and be understood.

Discussion questions

- What were the positives and negatives of how the child was treated throughout the process?
- What must be done to make the giving of evidence more child-friendly? With whom does the responsibility of making these changes lie?
- In your country, who would be the appropriate child victim's support person?



References and further reading

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Chapter 6

Trial and sentencing

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Learning objectives

After completing this chapter you should be able to:

- Explain why a preliminary inquiry report is needed in order to assist the court in its decisions regarding child offenders;
- Understand the rules underpinning a detention decision by a court and be able to apply your knowledge to practical cases;
- Know a number of different community-based sentencing options 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 implement them.

UN policy indicators

1. **Children in conflict with the law:** Number of children arrested during a 12 month period per 100,000 of the population.
4. **Duration of pre-sentence detention:** Time spent in detention by children before sentencing.
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.

Essential principles

- In all proceedings involving children, the urgency principle should be applied to provide a speedy response while respecting the rule of law. (Beijing Rules, Rule 20; American Convention on Human Rights, Article 5; Council of Europe Guidelines on Child-friendly Justice)
- 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 and if found guilty, be entitled to an appeal by a higher tribunal. (Beijing Rules, Rule 14; African Charter on the Rights and Welfare of the Child, Article 17)
- Minors shall be brought before specialised tribunals and should be dealt with in non-intimidating and child-sensitive settings. (American Convention on Human Rights, Article 5; Council of Europe Guidelines on Child-friendly Justice)

- Children should have the right to their own legal counsel and other appropriate assistance in the preparation and presentation of his or her defence. States should guarantee the right to legal aid in their national legal systems at the highest possible level and legal aid provided to children should be prioritised, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children. (African Charter on the Rights and Welfare of the Child, Article 17; Council of Europe Guidelines on Child-friendly Justice; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 1)
- Judges should respect the right of children to be heard in all matters that affect them. (Council of Europe Guidelines on Child-friendly Justice)
- No information or personal data may be made available or published, particularly in the media, that could reveal or indirectly enable the disclosure of the child's identity, including images of the child, detailed descriptions of the child or the child's family, names and addresses of the child's family members and audio and video records. (Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 10)
- Any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence. (Beijing Rules, Rule 5)
- The essential aim of treatment of every child if found guilty of infringing the penal law shall be his or her reformation, re-integration and social rehabilitation. (African Charter on the Rights and Welfare of the Child, Article 17; American Convention on Human Rights, Article 5)
- Death sentences shall not be pronounced for crimes committed by children. Life imprisonment without the possibility of parole shall not be imposed on children. (Convention on the Rights of the Child, Article 37; ICCPR, Article 6; African Charter on the Rights and Welfare of the Child, Article 5; American Convention on Human Rights, Article 4)
- 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)
- 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)
- 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)
- 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)

APPLICATION

Trial

1. 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 African Charter on the Rights and Welfare of the Child and the Council of Europe Guidelines on Child-friendly Justice both state that children's cases should be dealt with as speedily as possible to protect the best interests of the child. The Council of Europe 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'.

2. 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.

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.

3. 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, 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 court officials' dress can be made more casual and non-ceremonial.

In order to ensure that the child is set at ease, the Council of Europe Guidelines on Child-friendly Justice recommend 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. The African Charter on the Rights and Welfare of the Child explicitly states that the press and public should be prohibited from any trials where children are accused of infringing the penal law. Other countries have also developed legislation to this effect, prohibiting either the public or both press and public from the courtroom where children are being tried.

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

Nicaragua: Juvenile criminal courts⁷⁴

The 1998 Code for Children and Adolescents established regulations for a specialised criminal justice system for adolescents. It states that there must be at least one District Criminal Court for Adolescents in each region, with a specialised judge. In addition, the Code requires there to be public defenders and prosecutors that specialise in youth justice.

74. UNICEF, *Juvenile Justice Systems: Good Practices in Latin America*, 2003.



Example

Uganda: Family and Children's Courts (FCCs)⁷⁵

In Uganda, the FCCs preside over child protection cases as well as cases of children in conflict with the law (except where charged with a capital offence or are jointly accused with an adult). The Children Act 2000 states that the proceedings of the FCCs must be child-friendly, as informal as possible, non-adversarial and non-stigmatising, which includes holding proceedings in camera. Cases in the FCCs must be completed in three months, otherwise must be dismissed and the child cannot be then tried again for the offence. Importantly, to avoid stigmatisation the Children Act criminalises the publication of a child's details, name or address, school address, photograph or any other details that may lead to the identification of the child, without permission of the court.

4. 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 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems states that the right to legal aid should be guaranteed in national legal systems and that legal aid provided to children should be prioritised and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children. 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.



Example

South Africa: One-stop child justice centre⁷⁶

The child justice centre in Port Elizabeth in South Africa comprises a police station, criminal court and welfare services allowing all justice for children services to be accessed from one place. The court has entered into an arrangement with the state-funded Legal Aid Board, which has designated one particular lawyer to deal with all the referrals that come from the centre. The aim is to ensure that children receive proper legal services and are represented by an experienced lawyer who understands and is aware of all the existing programmes available for children. This arrangement also provides consistency and promotes good working relationships and collaboration between the court personnel and the Legal Aid Board. When a child is diverted no legal representation is appointed, however, where the case proceeds to trial or a child enters a guilty plea for a serious offence, the magistrate will ensure that it is referred to the Legal Aid Board for the appointment of the designated lawyer.

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.

⁷⁵. African Child Policy Forum, *Child-friendly Laws in Africa*, 2009.

⁷⁶. Sloth-Nielsen & Gallinetti, *Child Justice in Africa: A Guide to Good Practice*, 2004.



Example

Chile: Legal Defence Programme⁷⁷

In 1995, SENAME (the National Service for Minors) signed agreements with NGOs and public agencies in all regions of the country to help defend the rights of children in conflict with the law, which helped to institutionalise the concept of a child's right to mount a defence in the criminal justice system. NGOs involved in the legal defence of children must be legally non-profit institutions and be registered as a 'SENAME co-operant'. To be registered the organisation must develop, among other things, a project plan, setting out defence objectives, strategies, targets, with performance indicators, a list of the services they anticipate providing, methodologies, expected results, follow-up systems, co-ordination plans with other agencies, and a budget. SENAME's role is to supervise and monitor the work of these agencies.

One of these agencies is the long-standing 'El Hogar de Cristo' (Christ's House), who provide a variety of social and religious services to adults and children, including those imprisoned or in conflict with the law. El Hogar de Cristo provides specific legal advice to children about their cases as well as general information about their rights and psychosocial and other forms of support.

5. Parents and guardians

Parents or guardians of an accused child must be involved in the preparation for the trial and be 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. For example, 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 an independent representative to represent the views and interests of the child.

6. Right to be heard and to express views

The CRC clearly states a child's right to be heard in all matters that affect them and judges must respect this. 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 to effectively use the right to be heard.

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.

⁷⁷ UNICEF, *Juvenile Justice Systems: Good Practices in Latin America*, 2003.

Sentencing

1. Proportionality



More information on assessment can be found in Chapter 3: Arrest, page 35

International standards stipulate that in all cases, the final disposition of a case 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.

In some cases the initial assessment that has 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;
- 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;
- 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 offenders that pose the highest risk need high security;
- The offence alone is not a reliable indicator of the risk a child poses to the public;
- The objective of sanctions should be rehabilitation not punishment;
- 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 in a majority of States it is legislated that a child should not receive 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 African Charter on the Rights and Welfare of the Child iterates this by stating 'the essential aim of treatment of every child...shall be his or her reformation, re-integration into his or her family and social rehabilitation'. However, the measures or sanctions that are directed at rehabilitation, 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 a judge may be 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;
- Promote a sense of responsibility in the child and an acknowledgement of the harm done to the victim and the community.

2. 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 or 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. International and regional standards and treaties clearly and absolutely state that a child may never be given a death sentence.

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.

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;
- Respond to the needs of children with special requirements.

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;
- 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 child 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.

3. 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;
- 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.

4. 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 institution) with appropriate qualifications 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 to support the child;
- Monitor the child's compliance with their order;
- Explain warnings and assist the child with his or her sanctions, and inform an enforcing authority if he or she has not complied with an order;
- Organise access to or referral to external interventions and services;
- Coordinate interventions for the child with their colleagues and other agencies;
- Provide one-on-one supervision to the child, challenging his or her opinions and tackling his or her risk factors;
- Monitor their vulnerability and highlight any safeguarding concerns to the relevant authorities;
- Monitor the child's risk to himself or 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 Teams⁷⁸

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.

⁷⁸. Goldson, B., *Dictionary of Youth Justice*, 2008.

5. 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 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, 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 community-based sanctions that a court may consider in determining an appropriate sentence. These include:

- Sentencing contracts;
- Supervision orders;
- Community service orders;
- Financial penalties;
- Intervention or treatment orders.

These types of community-based sanctions are versatile and a sentence could include a range of different elements from these to best suit the individual needs of the child.



More information on restorative justice measures can be found in Chapter 4: Diversion, page 45

1. 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.



Example

Canada Aboriginal Communities: Sentencing circles⁷⁹

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. In jurisdictions that utilise sentencing circles, after pleading guilty, eligible offenders 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 (ie, an elder), representatives from the legal system (eg, 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.



Example

United Kingdom: Referral orders⁸⁰

Referral orders are a standard 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 and it is more able to consider the circumstances of the offence and the offender. 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 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 misuse;
- Payment of damages;
- Hours of community reparation (un-paid work).

2. 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 ensuring a child:

- 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.

79. UNODC, *Handbook on Restorative Justice Programmes*, 2006.

80. Goldson, B., *Dictionary of Youth Justice*, 2008.

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. The child is closely supervised in order to reduce opportunities for reoffending and to assist the child in reintegrating into society. 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 meetings, evening visits, drug or alcohol testing, and electronic monitoring. Most ISPs also incorporate the delivery of a wide range of services to address a child's needs.



Example

United Kingdom: Intensive fostering⁸¹

Intensive fostering was developed in Oregon (USA) 35 years ago and is being piloted in the UK by the Youth Justice Board. After sentencing, the young person is sent to a 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.

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 contact) to ensure that they comply with the conditions set by the court. Some community sentences may be accompanied by a curfew, which 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 monitoring⁸²

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 for 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.

81. Hazel, N., *Cross-national comparison of youth justice*, 2008.

82. *Ibid.*

3. 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 the child has committed an act of vandalism they may be required to work painting or rebuilding community structures. It is important to remember that the free consent of the child must be given before community service can be authorised.



Example

Eastern Europe: Community service orders⁸³

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 Orders⁸⁴

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 try 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.

4. 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 result in imprisonment.

83. UNICEF, *The Development of Juvenile Justice Systems in Eastern European Neighbourhood Policy Countries: Reform Achievements and Challenges in Armenia, Azerbaijan, Georgia, Moldova and Ukraine*, 2008.

84. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

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).

5. Intervention or treatment orders

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

- Individual therapy;
- Anger management;
- Problem solving;
- Behaviour modification;
- Group therapy;
- Multi-systemic therapy;
- 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.

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.⁸⁵

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.

85. mstservices.com



Example

United Kingdom: Youth Rehabilitation Order⁸⁶

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.



Issues for discussion

- 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).
- 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?
- 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?
- To what extent should the nature of the crime, the age and personality of the offender, his other 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?
- 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 measure described, give two examples where this alternative measure would be appropriate and two others where it would not be appropriate. Explain why.
- 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 (eg the judge, the prosecutor, a coordinator, the victim, etc.)?



Case studies

- A 15-year-old boy is on trial for the robbery of an elderly woman. His mother died when he was three and he is 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?
- You are a judge with two 16-year-old boys in front of you accused of a serious assault on another male. One of the boys has had a number of previous convictions for similar crimes 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?

⁸⁶. Goldson, B., *Dictionary of Youth Justice*, 2008.

- 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?
- You are a judge trying a 14-year-old boy who has been accused of stealing a car. 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 on 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 the 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?
- An aggressive child appears before the court for a second offence of assault. The prosecutor has requested that the child be detained in a pre-trial facility as he fears the child will run away. The child is held in an open facility with a social worker assisting him; he regularly attends anger management courses. At trial, the prosecutor is pushing for a heavy sentence for the child, while the child feels that during the four months held in the open facility pre-trial he has made many improvements and has changed. Which other professionals should the judge consult in this case? In your opinion, what measures should the judge consider as a sentence?



In-depth case study

Arson

Khaled is 14 years old and charged with arson. According to the police report, witnesses saw him and a 13-year-old boy throwing lit matches into a shopping centre's rubbish bin earlier that evening. The rubbish bin fire spread to the adjacent toy shop, causing extensive damage to the exterior walls. When he was arrested in front of his house later that evening, Khaled made a statement to the police that he had been looking for toys in the bin with his friends, and that another boy who was with him had thrown the matches into the bin. He made a second statement at the police station that they had just lit the matches to see better into the bin because it was dark outside, and one of the matches had fallen in. Khaled has two prior adjudications: one for unauthorised use of a vehicle when he was 12 and a second for destruction of property (for vandalism in a local playground) last year. Khaled lives at home with his mother, who says that he gets into trouble a lot, but that she wants him home with her.

Khaled grew up with his mother; his father had no involvement with him. Khaled has a range of emotional problems and a learning disability. He doesn't do well at school and gets very frustrated with his work, according to his mother. He has problems with school attendance, missing classes to go to the arcade and out in the neighbourhood. His mother reports that he is good at fixing things around the house, like the radio, and Khaled says he would like to study electronics.

Khaled admits that he has a problem controlling his anger, which leads to his arguments and fights with his peers. He also has problems with anger in school, where his record shows that he has shouted at teachers and punched walls. Khaled said that he is afraid of crowds and feels that other kids try to hurt him for no reason. He reports that his mother often screams at him and threatens to place him in foster care.

Discussion questions

- What do you think would be an appropriate sentence?
- What are your reasons behind this?



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Chapter 7

Detention

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Learning objectives

After completing this chapter you should be able to:

- Identify the primary international and domestic standards that address the treatment of child detainees including those that prohibit torture, abuse, and ill-treatment in detention;
- 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.

UN policy indicators

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 three months
9. **Custodial sentencing:** Percentage of children sentenced receiving a custodial sentence
11. **Aftercare:** Percentage of children released from detention receiving aftercare
12. **Regular independent inspections:** Existence of a system guaranteeing regular independent inspection of places of detention. Percentage of places of detention that have received an independent inspection visit in the last 12 months

Essential principles

- 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)
- 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)
- The essential aim of treatment of every child found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation. (African Charter on the Rights and Welfare of the Child, Article 17; American Convention on Human Rights, Article 5)
- 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, Rules 13, 26)
- 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)
- Every child deprived of liberty shall be separated from adults. (Convention on the Rights of the Child, Article 37)
- 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. (Havana Rules, Rules 28,29)
- Prison authorities shall put in place measures to meet the special protection needs of juvenile female prisoners. (Bangkok Rules, Rules 36, 37; Beijing Rules, Rule 26)
- 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)
- 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)
- 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)
- 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, Rules 38, 42; Beijing Rules, Rule 26)
- Every child should have suitable time for daily free exercise, and recreational and physical training should be offered. (Havana Rules, Rule 47)
- 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, Rules 49, 51, 53; Standard Minimum Rules for the Treatment of Prisoners, Rule 82)
- 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, Rules 10, 11, 26)
- 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)
- 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; Standard Minimum Rules for the Treatment of Prisoners, Rule 31)
- Every juvenile should have the right to make a request or complaint. (Havana Rules, Rule 76)

APPLICATION

Key concepts

1. Detention as a last resort



Definition

Deprivation of liberty⁸⁷

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 prisons⁸⁸

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, only a few offenders who are convicted of serious crimes are held in closed institutional care, with an emphasis on welfare and treatment, rather than detention or imprisonment.

Where children are deprived of their liberty, the main objective of institutional detention 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.'

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

⁸⁷. Havana Rules, Rule 11(b).

⁸⁸. Cavadino & Dignan, *Penal Systems: A Comparative Approach*, 2005.



Example

Germany and Austria: Spent sentences⁸⁹

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 with no threat of being recalled to detention like a suspended or conditional sentence).

3. Children awaiting trial

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 of their detention is for 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 on-going and private communications with their legal counsel and access to legal aid.



Example

Europe: Remand as a last resort⁹⁰

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, such as Austria, remand must only be given if a prison sentence is deemed likely on conviction.



Example

Worldwide: Time-limited remand⁹¹

In parts of Australia, Luxembourg, Saudi Arabia, Spain, Switzerland and Zambia, detention pending trial (including periods between court dates) is limited to 30 days or less. In other countries, it is restricted to periods from two months (including Armenia, India, Japan) 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.

⁸⁹. Hazel, N., *Cross-national comparison of youth justice*, 2008.

⁹⁰. *Ibid.*

⁹¹. *Ibid.*

4. 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 or her treatment.

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 in the facility:

- 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;
- 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.

5. 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 team⁹²

The Keppel Unit, a specialised child detention facility in the north of England has a multi-disciplinary team of professionals which includes 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.



Example

Turkey: Staff training⁹³

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.

⁹². Cordis Bright/UK Youth Justice Board, *Keppel Unit Process Evaluation*, 2011.

⁹³. UNICEF, *Potential and Good practices still being documented by UNICEF Regional Office*, 2009.

Protecting children in detention

1. 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. The CRC states that ‘every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so’, and the General Comment explains that this exception ‘should be interpreted narrowly; the child’s best interests does not mean for the convenience of the States parties’.

The transportation of children to the detention facility should be secure and uphold the principle of separation from adults. The 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 those under 18 years 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.

2. Physical environment

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.

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 proper nutrition, 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 custody⁹⁴

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.

⁹⁴. Hazel, N., *Cross-national comparison of youth justice*, 2008.



Example

Turkey: Open prison⁹⁵

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 young people aged 18–21 years. The facility in Ankara offers a variety of vocational programmes, such as hairdressing, and heating and air conditioning repair training. One third of the young people are employed in the community. The physical facilities are old, but spacious, well maintained and clean and the children attend school in the community.

3. 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 information should be conveyed to the child in a manner that they can understand.

4. Planning

If a child is detained it is imperative that a plan of treatment for the duration of their sentence is made. This plan should be developed 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 take the child's ultimate reintegration into the community as its overall goal and all interventions should be designed to facilitate a positive outcome in this respect.

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 child 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 child upon admission, should be assessed in order to establish the specific type and level of care and programme required and to be implemented.

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



Example

United Kingdom: Care planning⁹⁶

At the Keppel Unit, a specialist unit for detaining young people in the UK, the staff use a six 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 or her teachers, the managers of the unit, his or her parents and any professional involved in his or 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.

⁹⁵. UNICEF, *Good practices and promising initiatives in juvenile justice in the CEE/CIS region*, 2010.

⁹⁶. Cordis Bright/UK Youth Justice Board, *Keppel Unit Process Evaluation*, 2011.



Example

Panama: Tocumen Centre⁹⁷

The Tocumen Juvenile Correctional Centre is a facility that holds young males serving a judicial sentence. The Tocumen Centre aims to reintegrate those children who must be detained by the State. Each child's reintegration programme is planned and implemented for the duration of their sentence.

On entering the centre, each child is given a medical, social, psychiatric and psychological assessment by a multidisciplinary team, which includes obtaining information not just from the child but also from members of his family and from visits to the child's community. Within three days of a child's admission, team members draw up an individual action plan for the entire sentence. The activities for the plan must fit within the time period of the sentence, and tries to embrace all areas of the child's life (personal, educational, community, family). Thorough, periodic reports are sent to the sentencing judge discussing the child's progress and reintegration plan.

5. Health⁹⁸

Physical 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 to any facility, this is so that they can:

- Record any evidence of prior ill-treatment that may have occurred;
- Identify any physical or mental health conditions that exist and may require medical or psychological attention;
- Identify if a child may be suffering from withdrawal from drugs or alcohol and require special treatment.

Following this assessment, the facility should ensure that all the necessary measures are provided to promote the child's health and development.

It is essential that every juvenile receives 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.

Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents. 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. Children should be made aware of how they can access medical help when needed.

Where possible, medical care provided to children should be done through the health facilities and services 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.



Example

France: Interagency co-operation⁹⁹

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.

97. UNICEF, *Juvenile Justice Systems: Good Practices in Latin America*, 2003.

98. Detailed information on physical and mental health care in detention facilities can be found at: World Health Organisation, *Health in prisons: A WHO guide to the essentials in prison health*, 2007.

99. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

Mental health

All people deprived of their liberty have the right to the highest attainable standard of mental health. Children who are mentally ill should not be held in a detention facility but in a specialised health institution.

Children's mental health should be assessed when they arrive in a facility, and on an on-going basis as it is likely that detention may exacerbate existing mental health conditions or induce new ones. 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.

Substance abuse

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

Pakistan: DOST Welfare Foundation¹⁰⁰

DOST works with young people in prisons across Pakistan. When DOST began its work in prisons in 1996 it was observed that in the juvenile offenders barracks of Peshawar Central Prison approximately 80 per cent of the 7-18 year olds held there were charged with narcotic and drug-related offences, such as smuggling, carrying or using, and most were first time offenders. DOST began to address this by developing 'Therapeutic Communities' within the prisons to provide a supportive environment, which is sustainable due to the model of peer-to-peer mentoring and support. For vulnerable prisoners, including children, they assess prisoners on intake to the facility and provide health care services including treatment and rehabilitation services for drug addiction.

Continuity of care

Whenever any physical, mental or substance abuse treatment or care is begun with a child in a detention facility, it must be planned how this service will link with services in the child's community when they return. Medical staff inside the facility should have constant contact with facilities in the community in order to facilitate this continuity of care.

¹⁰⁰. DOST/Penal Reform International, *Documenting Best Practice: DOST Welfare Foundation's Work with Vulnerable Groups in Pakistan*, 2013.



PRI resource:
*Briefing on girls
in the criminal
justice system**

6. The rights of girls

Girls placed in an institution deserve special attention as to their personal needs, they are especially vulnerable due to their small numbers as well as their gender. Additional issues they may face include the fact that they:

- May be primary carers for children, whether their own or siblings;
- Have different health, hygiene and sanitary needs;
- Are at a high risk of substance abuse, self-harm, mental health issues, HIV and other sexually transmitted diseases;
- May have experienced past physical, emotional or sexual abuse;
- Are at risk of violence whilst in detention.

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.

As prison systems have been primarily designed for men, girl's health needs are often not even addressed by prison policy and procedure. Specific healthcare needs of girls must be met by providing them with regular access to gynaecologists and education on women's healthcare. In addition, ready access to sanitary and washing facilities as well as provision of hygiene items, such as sanitary towels, is of particular importance.

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.



Example

Philippines: Juvenile Justice and Welfare Act¹⁰¹

In the Philippines, the Juvenile Justice and Welfare Act (2006) includes special provisions for the protection of female children:

- **Sec. 47. Female children:** Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.
- **Sec. 48. Gender-sensitivity training:** No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender sensitivity training.

7. 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 that a child has 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.

*Available at www.penalreform.org/resources

¹⁰¹. Philippines Juvenile Justice and Welfare Act 2006, Republic Act No. 9344, 28 April 2006.



Example

United Kingdom: Assessment Care in Custody and Teamwork¹⁰²

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.

8. 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 children are held.



PRI resource:
*Briefing on the
right of children
deprived of
their liberty
to make
complaints**

9. Complaints and inspection mechanisms

Complaints mechanisms

The Havana Rules specifically state that every child in detention has the right and opportunity to make requests or complaints to the director of the detention facility¹⁰³ as well as to the central administration, the judicial authority or other proper authorities through approved channels. Such complaints should be uncensored regarding the substance of the complaint and children should be informed of the response to any complaints without delay.¹⁰⁴

Such complaints can cover a wide range of issues that include, but are not limited to, violations of children's rights and often such complaints can be dealt with efficiently and effectively through informal mechanisms of mediation. They may concern issues of daily routine such as provision of food and water and access to recreation or contact visits. Children also need to have access to more formal systems of complaint for instance when they are unable to access education or for allegations of ill-treatment and even criminal behaviour such as torture, violence, abuse and exploitation by police, detention employees or other detainees.

*Available at www.penalreform.org/resources

102. UK Home Office, *Suicide Prevention and Self-harm Management*, 2007.

103. Havana Rules, Rule 75.

104. Havana Rules, Rule 76.

The right to complain is a very important mechanism for giving a voice to children in detention and for ensuring that their rights are protected – such mechanisms need to be properly resourced and complaints investigators trained. Formal and informal complaints mechanisms can encourage detention facilities to be transparent and accountable for realising the rights of children in their care. They can also act as a deterrent to violations of children's rights and bring serious abuses against children into the public domain.

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.

On entering a detention facility, children must be made aware of the procedures for raising issues or complaints. Children may be afraid to raise concerns or issues for fear of punishment or 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. All complaints should be acknowledged and answered without delay.

Complaints mechanisms for children must be safe, child-sensitive, effective and easily accessible. They should be accessible to all children regardless of their age, maturity, understanding or literacy level. 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.



Example

The Netherlands: Youth Custodial Institutions Act¹⁰⁵

The Netherlands have an extensive complaints system for children held in detention institutions, which is established in the Youth Custodial Institutions Act (YCIA):

- Children have the right to request mediation with a member of the supervisory committee who will attempt to resolve a dispute between the child and the officer concerned within six weeks (Article 64). Each juvenile institution has a supervisory committee – this is comprised of six people appointed by the Ministry of Justice but independent from it. They come from different backgrounds and include lawyers, judges, teachers and behaviour specialists;
- If mediation is not desired or doesn't have a satisfactory outcome, then children can submit a complaint to a three-person sub-committee formed from the supervisory committee. Their decisions on complaints are not made public. Children are entitled to seek assistance from legal representatives in this process and their family can make complaints on their behalf. The complaint must be written and there is also an oral hearing that the child and the director of the institution attends. The Committee must deliver its judgment within four weeks of receiving the complaint and can find it either inadmissible, founded or unfounded. If it is founded then the child/children may be given (financial) compensation;
- A child may lodge an appeal with an Appeals Committee which publishes its decisions on anonymous basis.



More information
in Chapter 8,
page 109

Independent inspection mechanisms

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.

¹⁰⁵. Liefwaard, T, *Deprivation of liberty of children in the Netherlands*, 2008.

Focusing on rehabilitation

1. 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 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 on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use, 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 custody¹⁰⁶

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



Example

Austria: Work training¹⁰⁷

In Austria, trainees receive professional work training, and receive a proper wage for work – most of which is saved until their release.

¹⁰⁶. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.

¹⁰⁷. *Ibid.*

2. 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 or 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 or her religious and spiritual life, in particular by attending any 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 or her choice, as well as the right not to participate in religious services and be free to decline religious education, counselling or indoctrination.

3. 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'.

The international standards state that parents or guardians also have the right to request information regarding their child's health. 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.

4. 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, religious 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.

5. Transition out of a facility

The transfer of a child from a secure youth facility to an adult facility 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.¹⁰⁸ 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 into their sentence. For example, it will be important to know what programmes and education might be available in the youth facility and what programmes and education they might eventually go on to receive in the adult facility. 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 six months prior to the transfer date of a child it must be clear:

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

Unpublished consultations with children who have undergone transition to an adult facility from a youth facility in the UK showed that they require:

- Good warning before the physical move;
- Information on how the adult institution works and what will be available for them there;
- Influence over the choice of establishment where possible;
- 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.¹⁰⁹

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



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 child welfare 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 committed serious violations of the facility's rules?

¹⁰⁸. HM Chief inspector of Prison & HM Chief inspector of Probation, *The Indeterminate Sentence for Public Protection: A thematic review*, 2008.

¹⁰⁹. Unpublished research by Cordis Bright for the Youth Justice Board for England and Wales, 2010.



Case studies

- 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?
- A 14-year-old boy has just been sentenced to two years in your facility and it is his first time in custody. You notice that he is very nervous in the detention environment, is very small for his age and very quiet. Bullying and intimidation during recreation time have become major problems in your institution and it is apparent that this boy will be targeted by the bullies. In what ways can you ensure that he is protected from the bullies? What tools would you use to help address this behaviour in the prison and ensure the children there felt safe? How can you achieve this without limiting the freedom of movement of the children?
- 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?
- 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?
- 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?
- 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?
- You are the senior officer on duty in the prison. A child 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 child will be beaten. How do you ensure the staff do not do this?
- What could be done to ensure a child at any literacy level can make a complaint?



In-depth case study

First time in custody

Zoran is a 16-year-old boy who has just been sentenced to two years in a child detention facility. He committed his first crime at the age of 12 when he was convicted of theft of a car with some friends from his neighbourhood. He has been convicted of five further crimes since then: two further counts of theft of motor vehicles; possession of an offensive weapon (a knife); and two counts of street robbery. The offence for which he has just been convicted is a violent robbery. He robbed another young man in his neighbourhood at approximately 10pm in the evening by threatening him with a knife. The young man struggled with him and a fight ensued. As a result Zoran stabbed the young man in the leg before taking his wallet and phone. The victim was found by a passer-by who called for the police and an ambulance. Zoran was arrested the following day by the police.

Zoran lives with his mother and his father. He has an older brother (aged 21) and sister (aged 18) and three young siblings – two boys (aged seven and nine) and one girl (aged three). His older brother is currently in custody and his father had also been in custody when Zoran was between the ages of nine and 13. Neither his dad nor his mother work. All his siblings have witnessed their father hitting his mother but only his oldest brother has actually been hit by his father. His mother is on medication and is very depressed most of the time. Although his sister used to take over many of her tasks and help her a lot, she recently left the family home to live with her boyfriend and they have not seen her for six months. Since then Zoran has taken on the care giving role she was playing in the home.

This is Zoran's first time in custody. He is worried about his family: he is worried that his dad will take out his being in custody on his mother and is upset that he will not be able to protect his little brothers and sister from seeing the violence. He also feels guilty that he is not there to help his mother look after his siblings and is angry at his sister for abandoning the family. He has not disclosed to any of the professionals that has interviewed him about his home life as he does not think it is any of their business. Nevertheless, his worries keep him up at night and he has difficulty sleeping.

When asked about his crime he says he does not feel guilty as he said that the victim would not have been hurt had he not struggled with him. He does not view street robbery in itself as a problem as he himself has been mugged before and says that he 'got over it'. Zoran has not attended much education in the past but does have a basic understanding of maths and English and particularly likes art. Whenever he had spare time before he was arrested he would go to the cinema and hang out with his friends in the park.

Discussion questions

- What do you think are the main issues that need to be addressed with Zoran during his sentence?
- Which do you think are the most important and why?
- What types of programmes and/or interventions would you use to address these issues?
- In what ways can his worries about his family be addressed?



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Chapter 8

Independent monitoring mechanisms

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Learning objectives

After completing this chapter you should be able to:

- Know the main international and regional standards relating to independent monitoring of facilities where children are deprived of their liberty;
- Understand 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;
- Understand how inspection reports and effective recommendations can instigate change within an institution.

UN policy indicators

12. Regular independent inspections: Existence of a system guaranteeing regular independent inspection of places of detention. Percentage of places of detention that have received an independent inspection visit in the last 12 months

13. Complaints mechanisms: Existence of a complaints system for children in detention. Percentage of places of detention operating a complaints system

Essential principles

- 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, Rule 55; Optional Protocol to the Convention Against Torture)
- 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, Rule 72)

- 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, Rule 73)
- After completing the inspection, the inspector should be required to submit a report on the findings, which should include an evaluation of the facility's compliance with international standards and national law, and recommendations for 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, Rule 74)

- 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, Rule 76)

APPLICATION

Aims of independent monitoring mechanisms



PRI resource:
*Briefing on independent monitoring mechanisms for children in detention**

International standards state that children should only be detained as a last resort and for the shortest possible time. 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:

- Preventing violence and abuse against children. 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;
- Opening up the issue of children in detention to the public eye;
- Identifying challenges and changes needed in policy, practice and legislation;
- Bringing to light good practices in the treatment of children in detention which can be replicated elsewhere;
- Providing a protective mechanism for detention facility employees against unfounded criticism and supporting employees who do not want to be involved in bad practice;
- Holding those in charge accountable for what happens to children in their detention facilities;
- 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.¹¹⁰

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;
- Have the ability to follow-up allegations of abuse or violence.

*Available at www.penalreform.org/resources

¹¹⁰ Penal Reform International, *Justice for Children Briefing No.2: Independent monitoring mechanisms for children in detention*, 2012.

Different types of monitoring



Definition

Independent monitoring mechanisms¹¹¹

Independent monitoring mechanisms are bodies that undertake inspections of facilities where people are deprived of their liberty on a regular basis through on-site visits. They maintain their independence by not being under the same authority as the detaining institutions.

Within the above 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.

1. Judicial monitoring

Judges often have a formal role of prison oversight by visiting places of detention and hearing prisoners', including children's, 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.

2. 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 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 Commissioner¹¹²

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 Preventive 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 or 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.

¹¹¹. Association for the Prevention of Torture, *Monitoring Places of Detention: A Practical Guide*, 2004.

¹¹². www.occ.org.nz



Example

United Kingdom: Her Majesty's Inspectorate of Prisons (HMIP)¹¹³

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.

3. 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 groups 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)¹¹⁴

In the UK, every institution where someone is detained, including children's facilities, 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.



Example

South Africa: Independent Correctional Centre Visitors (ICCVs)¹¹⁵

Similar to the UK's IMBs, South Africa has introduced ICCVs who are trained members of the public often with no prior knowledge of the prison environment. Their main function is to respond to and investigate complaints made by prisoners, including those under 18 years. To do this they undertake announced visits to their institution at least twice a month, which includes visiting every cell, interviewing those who have complaints and interviewing others on an ad hoc basis regarding their treatment and living conditions. Any complaints are recorded and discussed with the Head of the Prison to try and reach a resolution internally. Where this cannot be done the ICCV discusses it with the Visitors Committee (a local committee made up of all ICCVs in the area that meets at least monthly) and where necessary, reports it to the Inspecting Judge. ICCVs are allowed access to any part of the prison complex and to any documentation or record related to their inquiries. In 2010 there were 220 ICCVs working throughout the country. Each month, they submit a report on their findings and any unresolved complaints to the Inspecting Judge.

¹¹³. www.justice.gov.uk/about/hmi-prisons/index.htm

¹¹⁴. www.justice.gov.uk/about/imb.htm

¹¹⁵. judicialinsp.dcs.gov.za

4. Parliamentary inspections



Example

Switzerland: Geneva Parliamentary Commission¹¹⁶

The Geneva Parliamentary Commission was established in 1825 and has the permission to visit any place where people, including children, are deprived of their liberty. It is made up of nine 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 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.

5. 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)¹¹⁷

The CPT has unrestricted access to all places where adults or children 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.

6. International mechanisms

Similarly, international bodies have been established that have a mandate to visit places of detention and report to governments on their findings.



Example

International: The Optional Protocol to the Convention against Torture (OPCAT)¹¹⁸

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 Preventive 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.

¹¹⁶. Association for the Prevention of Torture, *Visiting Places of Detention: Lessons Learned and Practices of Selected Domestic Institutions*, 2003.

¹¹⁷. www.cpt.coe.int

¹¹⁸. www.ohchr.org



Example

International: International Committee of the Red Cross (ICRC)¹¹⁹

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, which includes children. 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.

7. Multi-agency monitoring

Many countries do not just have a single type of inspection body but have a range of organisations and agencies which work together to provide comprehensive oversight of places where children are deprived of their liberty.



Example

Morocco: Multi-agency monitoring¹²⁰

Morocco employs a number of bodies which together perform oversight of detention facilities where children are held.

- Judicial monitoring, established under the Criminal Law provides for juvenile judges to visit child detention facilities at least once a month, to review their conditions and the educational and correctional programmes available;
- Administrative oversight in the form of a provincial committee is mandated by the Criminal Procedure Act, and inspects young offenders' centres. It submits reports and recommendations to the Minister of Justice. However, the frequency of visits is not defined and in practice there are long gaps in between visits;
- Consultative Council for Human Rights in Morocco (CCDH) is a national human rights institutions. It receives and investigates complaints alleging human rights violations, makes regular visits to prisons and inquires about the situation of prisoners, issues advisory opinions on improving the protection and promotion of human rights, formulates recommendations on bringing internal legislation into line with the relevant international standards and works to strengthen cooperation between the Government and civil society;
- Civil society. Since 2009, the government has permitted prison visits by independent human rights observers, including local human rights groups. Authorities documented 132 visits by domestic NGOs during the first six months of 2009.

In addition, the Ministry of Justice has formed special committees to coordinate the work of these various governmental and non-governmental institutions carrying out inspections.

119. www.icrc.org

120. Penal Reform International, *Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in Detention in MENA*, 2011.



More information can be found in Chapter 7: Detention, page 89

8. 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 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.

OHCHR key principles for inspecting detention facilities*

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.

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 detention facilities they inspect.

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.

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.

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.

Security

Inspectors must be aware of both their own security, the security of those they come into contact with and the security of the institution as a whole.

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.

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.

* www.ohchr.org

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

1. 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;
- Any allegations of torture or ill-treatment; and any complaints they have received from children in the facility.

2. Observation

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

- Accommodation;
- Food;
- Clothing;
- Personal property;
- Hygiene;
- Educational and vocational work and programmes;
- Recreation;
- Provision of religious services;
- Contact with the outside world;
- Use of force and restraint;
- Disciplinary measures;
- Medical services;
- Gender-specific treatment;
- Reintegration programmes;
- Training and organisation of staff.



Checklists for inspectors can be found in the following resources:

- Association for the Prevention of Torture, *Monitoring Places of Detention: A Practical Guide*, 2004;
- Association of Members of Independent Monitoring Boards, *A Practical Guide to Monitoring Prisons*, 2010;
- UK Her Majesty's Inspectorate of Prisons, *Expectations: Criteria for Assessing the Treatment and Conditions for Children and Young People held in Custody*, 2009.

3. Interviewing children

To get a full picture of children's experiences of a detention facility, it is vital that their views are listened to. 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.

4. 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 change 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, UNOHCHR or the Committee on the Rights of the Child. The recommendations should be taken up as advocacy messages.



More information on advocacy can be found in Chapter 10: Putting justice for children into practice, page 129



Example

Poland: Polish Office of the Commissioner for Civil Rights Protection¹²¹

Poland's Commissioner for Civil Rights Protection's Office conducts inspections to all places where adults or children are deprived of their liberty in the country. 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.

¹²¹. Association for the Prevention of Torture, *Visiting Places of Detention: Lessons Learned and Practices of Selected Domestic Institutions*, 2003.



Issues for discussion

- 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?
- What types of incidents require an independent inspection body to investigate?
- 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?
- How would you approach the inspection of a detention facility that you had heard, through trusted sources, was abusing the children in their care?



Case studies

- 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 in very 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?
- 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 six 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?
- You are an independent monitor who has been commissioned to report on the detention conditions of four facilities in your country. The government official who commissioned you is notoriously volatile. During the inspections 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?
- 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?



In-depth case study

Poor practice at a juvenile detention facility

Katerina and Faisal are staff members at a juvenile facility on the outskirts of a big city. The children they look after are boys aged between 14 and 18 years old.

Katerina began working at the facility about four months ago as a nurse in the detention home hospital. The staff are friendly and the facilities are good but she suspects that there is abuse going on. This is because she often has to administer treatment to boys with severe bruising and sometimes bloody backs and bottoms. The other staff members do not seem to think that these extreme wounds are abnormal and do not even appear to ask the boys how they received them.

Faisal has been working at the detention facility for three years and has just been promoted to deputy manager. This job is a significant increase in his status and salary and he is very pleased to get it. The first thing he has noticed is that the manager is very often off sick and so his deputy position requires that he take over a lot of his tasks. Although he is pleased to have this responsibility he sees that the staff do not give him any respect and will not do as he says. They only seem to respect the authority of the manager. Further, Faisal has always suspected that there is malpractice going on and that some of the staff have been beating the boys in the facility.

Three days ago Faisal was given a memo to say that the independent inspectorate would be inspecting the detention facility in four days. Two days ago a nurse in the medical wing, Katerina, reported to him that she had just administered care to an unconscious boy who had appeared to be beaten so badly that his underwear had been stuck to his skin with blood. Yesterday, the manager called Faisal to say that he was resigning with immediate effect. The inspection team arrive tomorrow.

Discussion questions

- If you were Faisal what would be the first things that you would do when the inspection team arrive? Why?
- If you were a member of the inspection team, how would you get to the bottom of the apparent problems in the detention facility?
- What do you think should be the next steps following the inspection?



References and further reading

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

Association for the Prevention of Torture, *Visiting Places of Detention: Lessons Learned and Practices of Selected Domestic Institutions*, 2003

Association for the Prevention of Torture, *Monitoring Places of Detention: A Practical Guide*, 2004

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *CPT Standards*, 2010

UK Her Majesty's Inspectorate of Prisons, *Expectations: Criteria for Assessing the Treatment and Conditions for Children and Young People held in Custody*, 2009

International Centre for Prison Studies, *A Human Rights Approach to Prison Management*, 2009 (2nd edition)

Penal Reform International, *Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in Detention in MENA*, 2011

Penal Reform International, *Justice for Children Briefing No.2: Independent monitoring mechanism for children in detention*, 2012

Penal Reform International, *Training Manual for Independent Monitors of Juvenile Detention Facilities and Toolkit for Interviewing Children, their Guardians, and Staff of Juvenile Detention Facilities*, 2012

Penal Reform International/Association for the Prevention of Torture, *Women in Detention: A guide to gender-sensitive monitoring*, 2013

Penal Reform International, *The right of children deprived of their liberty to make complaints*, 2013

UN OHCHR, *Training Manual on Human Rights Monitoring*, 2001

Chapter 9

Reintegration

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2. Provision of services
3. Conditional release
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Learning objectives

After completing this chapter you should be able to:

- Know when authorities should begin to plan for a child's reintegration;
- Explain the conditions of reintegration most likely to prevent a child from reoffending;
- Discuss 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.

UN policy indicators

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 three months
11. **Aftercare:** Percentage of children released from detention receiving aftercare

Essential principles

- All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. (Havana Rules, Rules 79-80)
- The essential aim of treatment of every child shall be his or her reformation, re-integration into his or her family and social rehabilitation. (African Charter on the Rights and Welfare of the Child, Article 17; American Convention on Human Rights, Article 5)
- 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)
- 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)

- 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)
- 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)

APPLICATION

Community reintegration



Definition

Reintegration¹²²

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 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 anti-social 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. Reintegration programmes for children must take into account the specific needs and circumstances of each child and recognise the importance of the family, school and the community for effective reintegration. 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

¹²². Goldson, B., *Dictionary of Youth Justice*, 2008.

a child before he or she 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 children;
- Work in a comprehensive and holistic manner without overemphasis on one risk factor;
- Acknowledge that different individuals take different skills or resources from the same programme and that the results may vary.¹²³

1. 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 a child before he or she is 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;
- Community post sentence.

Custodial establishments and the community need to work together to ensure that prior to their release, children 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 (eg 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.

¹²³. Stephenson et al., *Effective Practice in Youth Justice*, 2011.

Common mistakes made in reintegration¹²⁴

- 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 (eg Christmas) where it may be more difficult to find them appropriate shelter.

2. Provision of services

Many children will have come from difficult and unstable living conditions before they went into detention, and may not have anywhere suitable to return to on release. As such, a case manager needs to ensure that arrangements can be made for the child 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.

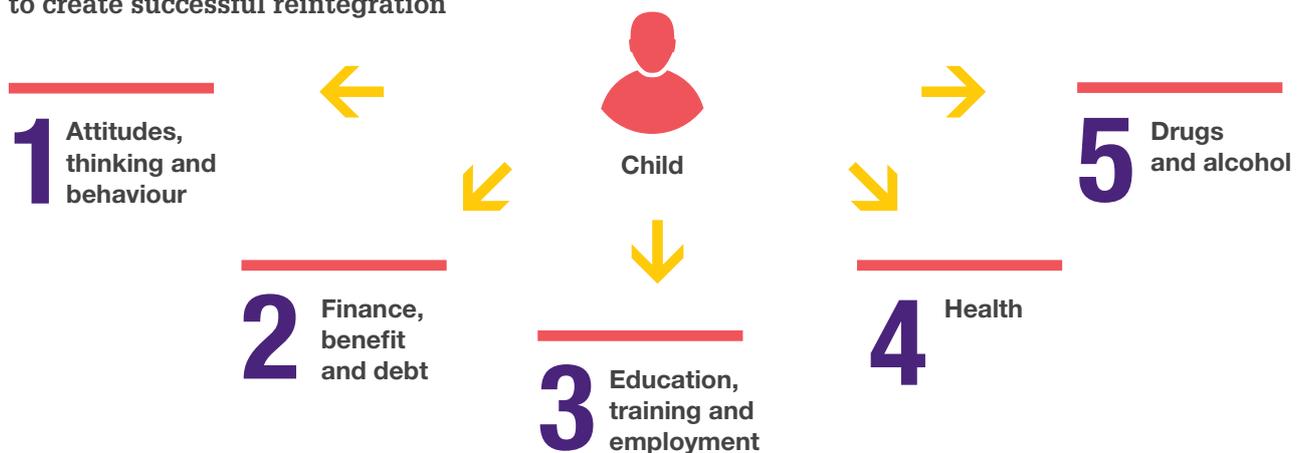
Prevention of re-offending is obviously a key factor in ensuring that the child is reintegrated successfully. Research in the United Kingdom has identified a number of causes of reoffending, which if tackled can prevent ex-offenders from committing more crime:

- 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 in the United Kingdom has 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 or her from reoffending.

¹²⁴. Stephenson et al., *Effective Practice in Youth Justice*, 2011.

Support in these key areas is likely to create successful reintegration



Example

South Africa: Creative Education with Youth at Risk¹²⁵

Creative Education with Youth at Risk (CRED) is an NGO based in Cape Town. It provides life skills programmes, creative educational programmes and professional counselling for children in detention and children on release. Its reintegration programmes are offered to a child on release and include a programme of three sessions per week for six months as well as support groups which are run weekly. The post-release programme focuses on the individual for the first few sessions and thereafter participants are encouraged and supported to build a life plan for themselves, set boundaries and exercise self-discipline.

3. 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)¹²⁶

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.

¹²⁵. Civil Society Prison Reform Initiative (CSPRI), *A Societal Responsibility: The role of civil society organisations in prisoner support, rehabilitation and reintegration*, 2009.

¹²⁶. Goldson, B., *Dictionary of Youth Justice*, 2008.

4. 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 and may lead to an increased likelihood of reoffending.

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 supervision are activities such as contact with case workers or parole officers.



Example

United States: Intensive Aftercare Programme (IAP)¹²⁷

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. It focuses on high-risk offending youth and identifies the needs of each individual on a case-by-case basis and plans how to address these needs during the youth's detention and on release. It addresses a child's needs in relation to their family, peers, schools and other social networks. It offers close supervision and control of high-risk offenders as well as intensive service and treatment provision. The IAP model uses sanctions to punish inappropriate programme infractions and rewards to encourage compliance and mark progress. Because intensive supervision programs are intrusive, numerous technical violations (eg, curfew violations) are likely to occur and so the IAP model uses a range of graduated sanctions that are directly and proportionately tied to the seriousness of the violation. A number of approaches have been employed to monitor progress ranging from relatively simple mechanisms, such as frequent case reviews incorporating peers and family, to detailed and structured systems where privileges and rewards are tied directly to meeting specific goals and objectives. To meet the broad range and depth of services required for high-risk children on release the IAP model creates partnerships with other agencies and organisations.



Example

Finland: Youth Rise¹²⁸

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 job seekers, who provide intensive support to a young person primarily to gain valuable work experience.

¹²⁷. Hazel, N., *Cross-national comparison of youth justice*, 2008; Giles, S., *Aftercare Services*, 2003.

¹²⁸. European Crime Prevention Network, *A Review of good practices in Preventing Juvenile Crime in the European Union*, 2006.



Example

Philippines: Balay Pasilungan¹²⁹

The Balay Pasilungan is an NGO-run programme for released youth offenders in the Philippines. It provides temporary shelter and a continuing rehabilitation programme to support their return to the community. Children usually stay for a maximum of six months and as the centre is an open facility, children are allowed visitors every day and also to visit their homes if parents are unable to visit the centre. The programme offers various youth development activities which vary depending on the phase of the child's case and are implemented gradually. The programme begins inside prison where children are identified and prepared for admittance to the centre, including contacting the child's family to get permission for the child to attend the programme. Once at the centre, it provides various reintegration activities including counselling, psychological therapy, behavioural workshops, community service, sports and other recreational activities, drug education and treatment, medical treatment and health education, enrolment in education courses, vocational training, support for job seeking, help with family reintegration, and referral to other programmes for long-term assistance.



Issues for discussion

- In some countries, as many as 80 per cent 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?
- What are likely to be the most important issues for a child immediately after his or her release from custody?
- 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?
- The child detention facility in your area 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

- You are a teacher in a detention centre and have been teaching a 15-year-old boy for the duration of his five 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 two 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?
- You are the mother of a 16-year-old boy who is being released from custody after serving one 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 help you prevent this?

¹²⁹. UNICEF, *Justice for Children: Detention as Last Resort – Innovative Initiatives in the East Asia and Pacific Region*, 2004.

- You are a 16-year old boy. Three months ago you were released from custody having served a six 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 stepfather. 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 to 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?
- 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?



In-depth case study

Plans for release

Anton is 16 and has been in custody for a year. During his time in custody he has attended some education classes but did not enjoy them very much as he was bullied during lessons by some of the other children. Therefore, recently he has stopped going to the classes. Instead he has begun to be interested in electronics. He has found a particular fascination in working with electronic devices and would like to pursue a career in this when he is released from custody. He is due to be released in one week. Unfortunately, he will be leaving before he has had time to complete his electronics course and will therefore also be unable to get the certificate.

So far no plans have been made for his release and he does not even know where he will live. Before custody he was living with his mother who is an alcoholic and has mental health problems. Her behaviour has become more and more erratic whilst Anton has been in custody and he is now unsure where she is living. He fears she is living with her ex-boyfriend who was abusing her and he knows he will not be able to live with her there.

Discussion questions

- What are the issues that need to be addressed to prepare for Anton's release from custody?
- How would you prioritise these needs? What needs to be addressed most urgently?
- How should Anton's release have been properly planned? What would you have done if you were planning it: At the sentencing stage? Half way through his sentence?



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Chapter 10

Putting justice for children into practice

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Learning objectives

After completing this chapter you should 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 into practice;
- Explain the advocacy process.

Essential principles

- Efforts should be made to organise and promote necessary research as a basis for effective planning and policy formation. (Beijing Rules)
- 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)
- Efforts shall be made to establish a regular evaluative research mechanism built into 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)

- 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)

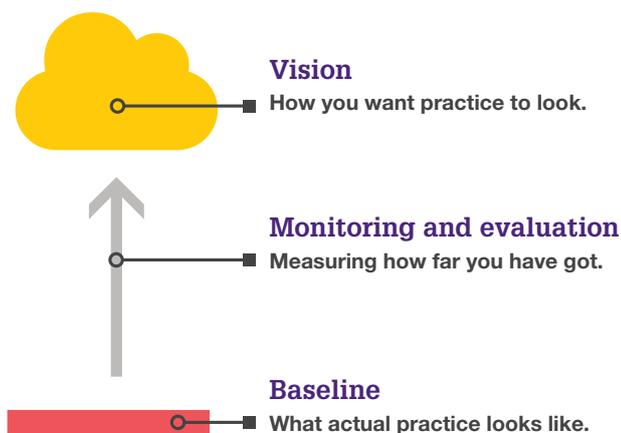
- States should undertake all appropriate legislative, administrative or other measures for the implementation of children’s rights, ensuring that all domestic legislation is fully compatible with the Convention on the Rights of the Child.
(Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No.5)

APPLICATION

Monitoring and evaluation

1. 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 how an ideal child justice system would function in your country. The international standards and content of this Manual outline in detail what this would resemble.

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 baseline practice 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 your national 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 to fulfil your vision.

2. 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 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 on-going 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.

3. Data collection

It is impossible to measure progress against indicators without collecting data against them. In order to create a successful, comprehensive and effective policy for children in the criminal justice system, data collection and research is imperative. There are two main types of data collection.

Quantitative data collection

Quantitative indicators are numerical and can be achieved through the collection of statistics and calculating the percentage of such statistics.

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 scale of 1-10, or multiple choice;
- **Interviews:** with children, detention staff, lawyers, social workers, managers;
- **Focus groups:** with children, detention staff, lawyers, social workers, managers;
- Reviewing 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 ten quantitative indicators are numerical. The second five 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 in the youth justice system.

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, and the nuances of opinion about the data from the perspective of the international arena, the media, public opinion and political decisions.



Example

Tunisia: Observatory for Information, Training, Documentation and Study for the Protection of Children’s Rights¹³⁰

In 2002 the Ministry for Women, Family, Children and Elders established the ‘Observatory for Information, Training, Documentation and Study for the Protection of Children’s Rights’. The Observatory coordinates, monitors and reports on the situation of children in the country. In particular, it does this through the collection, analysis and classification of data and information on children in the country, primarily with the aim of evaluating services or conducting research on the protection of child rights.

¹³⁰. African Child Policy Forum, *Child-friendly Laws in Africa*, 2009.

4. 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 monitoring can show improvements or problems in practice and one-off evaluations can be an opportunity to have a thorough investigation of 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?
- **Outcomes:** did the activities and outputs produce the desired outcomes for 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?
- **Impact:** did the outcomes achieved contribute to a wider impact? How?

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:

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.

Internal/self-evaluation vs external/independent

- **Internal/self-evaluation:** Conducted by the project/service itself.
- **External/independent:** Conducted by an outside agency.

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.

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.

5. 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 practice¹³¹

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	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.
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;
- Incorporate the recommendations into any relevant policies, procedures or projects.

¹³¹. Stephenson et al., *Effective Practice in Youth Justice*, 2011.

Legal reform and analysis

1. What is legal reform?

Reforming the criminal justice system to properly protect child rights 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 children in the criminal justice sector 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 protecting child rights as it provides a framework around which practical measures can exist and function. Ideally, legislation relating to children in the criminal justice system 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 it should be ensured that there are sufficient resources to implement it.

Reviewing legislation in a country often requires the balancing of complex social, political and professional interests. Revisions in legislation may affect the work and relationships between, 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 make sure they are aware of any new responsibilities, measures, or changes under the new law.

2. 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 based on 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 on, or a 'situational analysis' of, the current legal and policy framework that exist for protecting children in the criminal justice system 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 any 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 pinpoint areas of practice where change could result in immediate and measurable improvements.

1

RESEARCH

Conduct preliminary research to define what should be the key objectives of the reform process and current compliance with national and international standards.

2

CONSULT

Consult a wide range of sources and stakeholders, and undertake discussion aimed at achieving a consensus on goals that need to be achieved.

3

IDENTIFY PROBLEMS

Identify defects and problems in the existing law and policy, and their possible causes.

4

IS NEW LEGISLATION NECESSARY?

Consider whether existing laws would be sufficient to address the identified problem if policy, funding and other aspects of implementation were improved. If not, propose law and policy reforms.

A situation analysis should cover all aspects of the child justice system, 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 different various areas which make up the justice system. An example of the types of questions one might use when conducting a situational analysis can be found in the *Implementation Handbook for the Convention on the Rights of the Child* (3rd edition), page 620.

The table below outlines the essential elements in developing law and policy reform.

Essential elements in developing law and policy reform¹³²

<p>Identify problems and causes</p> <p>Draft proposals</p> <p>Do a compatibility check (national law and international standards)</p>	<ul style="list-style-type: none"> ■ Legal research, development of drafting ■ Ensuring access to socio-legal, economic and other empirical research ■ Developing discussion and consultation papers, reports, and draft legislation ■ Reviewing compatibility of proposed reforms with international human rights standards ■ Reviewing compatibility with existing legislation
<p>Cost analysis</p>	<ul style="list-style-type: none"> ■ Researching the full cost of implementing the existing system ■ Examining the costs of implementing the reform ■ Looking at long-term and indirect costs and benefits of policy and law changes ■ Considering which is the most effective allocation of resources across the system as a whole
<p>Inclusive consultation</p> <p>Building consensus</p>	<ul style="list-style-type: none"> ■ Discussion of consultation methods, timing and use of the responses ■ Use of consultants, working parties and advisory groups, seminars and public meetings ■ Engagement with the general public, including parents and children, and with particular interest groups ■ Approaches tailored to diverse populations, such as those which are large, small, indigenous, ethnic minorities, scattered, disabled, with literacy problems
<p>Dissemination</p> <p>Training</p>	<ul style="list-style-type: none"> ■ 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

¹³². Penal Reform International, *Making Law and Policy that work: A Handbook for Law and Policy Makers on Reforming Criminal Justice and Penal Legislation, Policy and Practice*, 2010.

Monitoring and evaluation

- Ensuring internal (institutional) monitoring and evaluation
- Considering the role of independent national inspectorates
- 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
- Developing criteria to be used for evaluation
- Linking the reviews to compliance with recommendations made under international and regional treaties

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 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 law relating to children is that it tends to have a domino effect, so that other pieces of legislation also need to be amended to be made consistent. The most obvious example is in the area linking juvenile justice and welfare or 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, child justice systems often fail to implement them in practice.

3. Strategies for law reform

Law reform is a complex task which requires the support of a wide variety of stakeholders. Below is a list of 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.¹³³

Several lessons can be learned, and cautions should be heeded, when policymakers consider revising child criminal justice legislation. One lesson relates to the impact that a new programme will have on the 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 justice services for all children 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 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 effective 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.

Advocacy

1. 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. Change can also run counter to currently held values and attitudes about children in conflict with the law, which are perpetuated

¹³³ Penal Reform International, *Making Law and Policy that work: A Handbook for Law and Policy Makers on Reforming Criminal Justice and Penal Legislation, Policy and Practice*, 2010.

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.



Definition

Advocacy¹³⁴

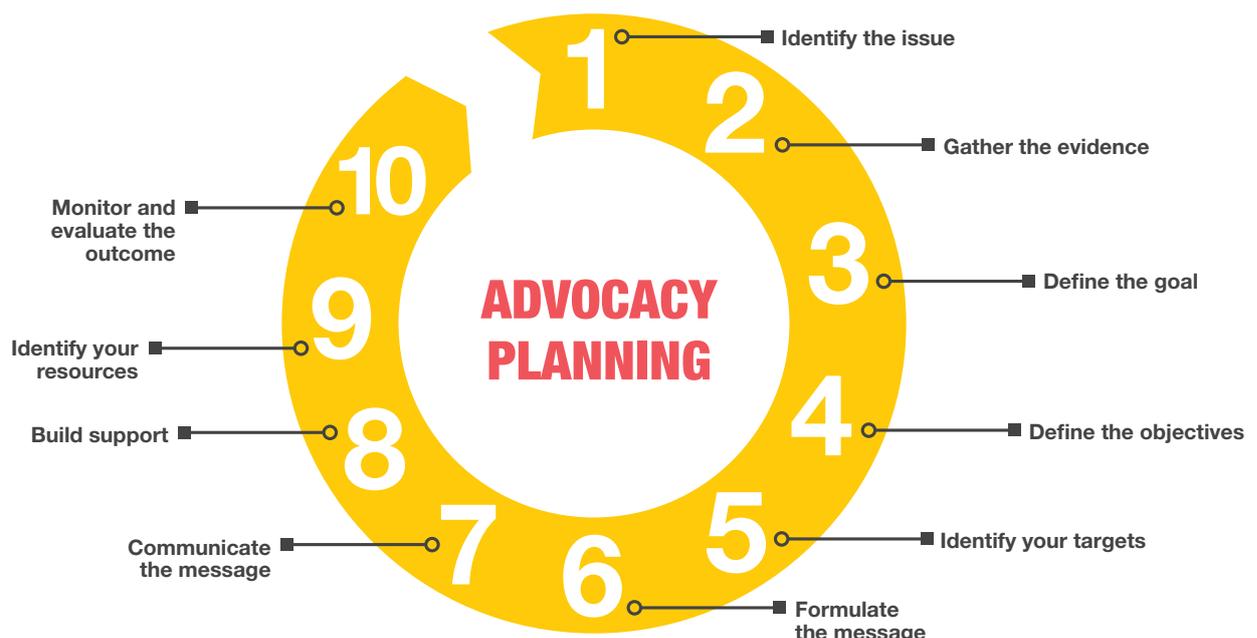
Advocacy is an umbrella term and there are a number of activities that can be considered advocacy, such as:

- A set of targeted actions in support of a specific policy issue;
- A process to bring about change in the policies, laws and practices of influential individuals, groups and institutions;
- An on-going 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:

- **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.
- **Aim:** What are you trying to convince them of? This can be a short- or long-term goal. For example, advocacy aims linked to the death penalty can vary from full legal abolition to incremental criminal justice reforms. Abolition is sometimes seen as more confrontational, whereas reform is usually viewed as more collaborative and/or practical.
- **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?

2. Advocacy planning



¹³⁴. UNICEF and PRI workshop: Developing Advocacy Strategies.

There are ten elements to an effective advocacy plan:

Identify the issue

Identify the problem that needs to be addressed.

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.

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.

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 objectives on the opposite page).

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. For example, the decision makers at the national/regional/international levels, which might include parliamentarians, government ministers, diplomats, police chiefs, policy makers etc.

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.

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.

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.

Identifying resources

Estimate an approximate budget for each activity. This will force you to be realistic about what you can 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.

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 objective?		Ask yourself:
Specific	The objective must be precise and state exactly what is to be achieved	What do I want to accomplish?
Measurable	It must be possible to measure whether the objective has been achieved or not	How will I know if I have accomplished it?
Achievable	You must have the resources and capacity to achieve the objective	Is it possible that it can be accomplished?
Relevant	The objective must be linked to your vision, mission and aims and have a point to it	Is it desirable that it be accomplished?
Time-bound	It must be possible to understand exactly when the objective has been completed or not	How will I know when I have accomplished it?

3. 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;
- Establishing networks.



Issues for discussion

- How would you get a national picture of children in detention? What would be the constraints?
- How would your methods differ for getting data on children in police custody? What would be the constraints?
- You are setting out to collect data on children in conflict with the law in your country. What are the five most important questions you want to ask?
- 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

- 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?
- 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?
- 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 per cent 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?



In-depth case study

Age of criminal responsibility

You are employed for a charity that works with children who are at risk of coming into conflict with the law. You are a long standing organisation with a good reputation and have access to significant numbers of prominent politicians and people in the media. You have achieved good work with troubled children helping them to change their anti-social behaviour. Your organisation stands for children's rights and you have a major campaign to increase the numbers of children dealt with outside the criminal justice system.

The current age of criminal responsibility in your country is 14. The general public have not paid much attention to the age of criminal responsibility and there has been very little debate concerning whether or not it is appropriate and in line with public opinion. However, a recent event has caught the public's attention. Two boys, aged 11 and 12 years old, raped and murdered an eight-year-old girl from their neighbourhood. The children had been friends and had all been playing together in a field. The details of what happened during the incident are as yet unknown but the girl was found three hours later with bruises to her body having been sexually assaulted and then strangled.

Your organisation had just begun working with one of the boys on a prevention of crime project. This 12-year-old boy had been referred to your programme due to his increasingly alarming and violent behaviour in school. His teachers were unable to control him and were unable to reach his parents. Since working with him you have discovered that his father physically and sexually abused him from the age of three to the age of five when he left the home and that his mother is a heroin addict who appears to completely neglect him. Before he committed the murder you had been trying to find him alternative accommodation in a safe place, however nothing had come of this before he was discovered to have raped and killed the girl and been detained in a children's home.

Now the general public's outcry at this event has sparked off a campaign to lower the age of criminal responsibility in the press. The public seem to be demanding that these two boys are dealt with in the criminal justice system. Further, your organisation is coming under criticism in the right wing press for having failed to prevent the rape and murder.

Discussion questions

- Why do you think the general public wants a change in the age of criminal responsibility?
- What are the key challenges facing your organisation at this time?
- How will you defend your organisation against the criticism that its programmes are not working?
- How would you advocate for the continued existence of an age of criminal responsibility which is at the age of 14?



Resources and further reading

African Child Policy Forum, *Child-friendly Laws in Africa*, 2009

International Centre for Prison Studies, *Guidance Notes on Prison Reform*, 2004

Penal Reform International, *Making Law and Policy that work: A Handbook for Law and Policy Makers on Reforming Criminal Justice and Penal Legislation*, Policy and Practice, 2010

UNODC/UNICEF, *Manual for the Measurement of Juvenile Justice Indicators*, 2007

Save the Children UK, *Juvenile Justice: modern Concepts of Working with Children in Conflict with the Law*, 2006

Training module

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Introduction

This module provides guidance on how to utilise the content and reference material in the previous ten chapters in a training context, using experience-based training methodology.

Penal Reform International believes that 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. Therefore, our training efforts have focused on the introduction of new knowledge, developing skills and changing attitudes so that those involved in justice systems and related agencies can carry out their roles in an effective and child-sensitive manner.

Many participants come to training programmes with a considerable amount of experience, expertise and practical knowledge from their area within the justice system. The aim therefore, must be to draw upon that experience, add new information and develop the skills and attitudes of participants to be able to carry out their professional role and work with children more effectively. As a result, we use a training methodology that actively involves participants, is relevant to professionals, draws on concrete working experience of participants and is practical.

The sample training workshops in this section are based on this adult learning theory. The training activities link what has been learnt to the real world outside. In appreciation of the fact that adults learn best through discussion, discovery and analysis, the sample training workshops limit the use of lectures by facilitators and emphasise active participation of learners.

Designing a training workshop



Sample pre-workshop questionnaire available in Appendix I; sample agenda available in Appendix II

Any good training workshop must always be adjusted to the profession, experience and knowledge of participants. Therefore, when you begin designing a training workshop, it is important to establish the level of knowledge and experience of the audience to whom you will be delivering it. To do this, you can use a pre-workshop questionnaire, a sample one is attached in Appendix I and can be adjusted to ask more specific questions depending on the scope of the workshop. When sending participants the questionnaire it is a good idea to send a draft agenda for the workshop (see Appendix II for a sample 4-day training workshop agenda) so that respondents have an outline on which they can provide comments and observations.

Understanding the professional background of participants and their level of knowledge, skills and attitudes in different areas will help you design a workshop that is directed at the right level and will be beneficial to those attending. For example, you may not have time to cover all the chapters above, or may wish to go into some in more detail and therefore, you can select the most relevant parts based on your participants' needs and experience.

Ideally there should be a group of around no more than 20 participants to ensure that each person can actively participate in the workshop to a full extent.

Gaining feedback from your participants is an important way to monitor the progress of the workshop and adjust methods or techniques that they feel are not working to make it a more effective learning experience. Short feedback questionnaires should be given out at the end of each day in order to collect participants' views, or this can also be captured through a short, constructive discussion.



Sample evaluation questionnaire available in Appendix III

A final evaluation of the whole training workshop should also be used to get feedback on the entire course and the value of it for participants.¹³⁵ Where necessary this will provide you with information that will help you to improve your workshop content and delivery, as well as any logistical or practical arrangements for the next training. Finally, a certificate of completion should be awarded to all participants.

Four sample training workshops are provided in this module, corresponding to a selection of content from the previous chapters. They are intended to be guides upon which trainers can develop their own workshops based on the needs and requirements of the audience they are training.

An inter-agency training approach

In some workshops it can be beneficial to have participants from a mix of backgrounds and professions, for example social workers, police officers, psychologists and prison officers or detention facility staff; this is known as an inter-agency training workshop.

Conducting workshops using an inter-agency approach can be an effective way of equipping personnel from a cross-section of agencies and organisations with an in-depth knowledge of the justice for children principles as well as building their capacity to collaborate across sectors.

Inter-agency training workshops give participants the opportunity to gain a deeper understanding of other agencies within the sector and how to work in partnership with them to promote justice for children principles.

¹³⁵. For more information, please see OHCHR/Equitas, *Evaluating Human Rights Training Activities, A Handbook for Human Rights Educators*, 2011.

The range of agencies could include representatives from police, lawyers, judges and magistrates, prosecutors, prison personnel (including educators, psychologists etc), probation staff, social workers and civil society. Participants should be carefully selected and it is always useful to draw up some selection criteria in advance; having a mix of practitioners and policy makers, gender balance, and representatives from urban and regional settings.

When taking an inter-agency approach it is important to get a similar number of people from each agency at the training so it is not dominated by one or two organisations. Make sure that when the plenary is broken down into smaller groups for discussions that each small group contains participants from a range of agencies.

Training methods

Tips

Come prepared

When you arrive at the workshop, make sure you have all the resources and materials you will need and that you have analysed the pre-workshop questionnaires and are aware of your participants' expectations and backgrounds. Make sure you arrive in plenty of time to set up and test any equipment you will be using during the workshop.

Timing

Make sure you have a well-timed agenda, allowing for at least a one hour lunch break and two other short breaks. Also, be strict about starting times for the morning and afternoon sessions, otherwise you may end up rushing through presentations or activities.

Resources

Identify all the resources and equipment you will need in advance and ensure that the location for the workshop can facilitate this. This may mean getting photocopies of handouts made, ensuring all participants are able to have a copy of the accompanying Manual, or checking the workshop room is set up to use PowerPoint presentations (ie has a projector and laptop connection).

Seating

Active participation can be promoted by using an appropriate seating arrangement which encourages an exchange of experience among the participants. Try to find a room that allows the participants to sit together in groups around a table rather than in classroom-style rows. There should also be enough space in the room for role-plays, demonstrations and energisers. The optimum number of participants seated around a table will depend on the task, but having 4-6 people to a table allows for the quick forming of small sub-groups that are normally appropriate.

Introductory and closing sessions

Introductory and closing sessions are important aspects to any workshop. One option is to have the introductory session on the evening before the workshop begins, to allow participants to introduce themselves in a more informal atmosphere. Some of the energisers listed below allow for introductions to be made in a more interactive and participatory way.

Introductory sessions should include the following:

Purpose

The purpose of the workshop and the background as to why it is being conducted should be outlined first.

Objectives

These should overlap with participants' expectations. Write the learning objectives up on a flipchart to be kept on display for the duration of the training workshop.

Agenda

Let participants know the schedule of the workshop and hand them out a written agenda. At the beginning of each day, get participants to recap what was covered during the previous day(s) and then explain what will be covered that day.

Introductions

Make sure to introduce yourself and anyone else who will be working with you during the training workshop. Next, get participants to introduce themselves. In addition, make sure that each participant also has a list of everyone attending.

Expectations

Ideally these should have been identified in your pre-workshop questionnaire so as to feed into the design of the workshop. However, asking participants to reiterate these expectations can be useful and allows you to identify how the workshop will address them.

Ground rules

These should be set with the participants by asking them what they feel are rules that everybody (including the trainer) should follow. These rules are related to general behaviour and good conduct, for example, time-keeping and having respect for other's views. At this point, you should also answer any questions participants have regarding assistance, the given materials, the venue etc.

The purpose of the daily feedback and post-workshop evaluation forms

This should also be covered so participants fill them out with meaningful suggestions and comments.

Closing session

The closing session is a time to go over the objectives of the workshops and how the presentations, discussions and activities have met them. It can also be a good point to discuss with participants how they will apply the information they've learnt in their own work situations. You should hand out the evaluation forms to participants to fill in and then provide them with a certificate of completion from the training workshop. It can also be useful at this stage to hand out a revised participant list with everybody's contact details on it to help them take advantage of the workshop as a networking opportunity. Finally, thank all the participants for their work and attendance over the course of the workshop.

Key training techniques



Ice-breakers and energisers

The tone of a training workshop and the relationships within the group can affect the discussions that take place and ultimately, the overall impact of the workshop.

'Ice-breakers' are introductory exercises or activities that can be used to introduce participants to each other at the start of the training and to create a comfortable, personal and interactive learning environment.

Energisers are quick games (5-15 minutes) that are used to generate energy and get participants to relax and connect with each other. They can be used at any point during a workshop, and are particularly useful when energy is lacking, or to bring a group together after a break.

They don't need to be directly related to the course content although this can be useful, but they do need to increase energy and participation within the group.

Tips:

- Energisers should be fun;
- Activities should be appropriate to the group;
- Introduce the activity clearly and make sure the group understands what is required of them from the task;
- After the activity, discuss any relevant lessons learnt or insights that may have been gained from the activity. Ask participants to do the same;
- Choose appropriate energisers so that all participants feel comfortable in taking part.

However, as a trainer you must be aware that energisers can often be disorganised and must be properly managed to stick to the time limits and ensure that energy generated is focused back into the learning tasks.



Presentations

Presentations are a traditional method of teaching and are an efficient way of imparting a large amount of factual information and knowledge. A skilled trainer can organise and present the material in a clear and understandable way.

As the purpose of a workshop is to allow participants to discuss and apply the knowledge presented to them and exchange practical experience in each area, presentations should include interaction and participation with the audience and therefore, there should be time included to allow for questions.

Presentations should cover all the basic information for a topic and leave room for discussion on the application of the knowledge by participants afterwards. Audio-visual aids are vital for making presentations more effective, such as flipcharts, whiteboards, PowerPoint presentations or the use of videos or other media to illustrate points made. However, make sure you practice with them before hand to ensure that the timing and pace of the visuals work with your spoken presentation.

Tips:

- Speak slowly and clearly to ensure all participants can understand you. If your presentation is being translated, speak even more slowly to allow for accurate translation;
- Try not to read off notes but speak naturally, only read quotes verbatim;
- Avoid jargon or abbreviations that participants may not understand;
- A presentation is more effective if the trainer is moving around instead of sitting or standing still for the entire presentation;
- Vary the level of your voice and the speed of speech, and use gestures and volume to emphasise key points;
- Rehearse your presentation in advance to ensure that it does not overrun the planned time limit;
- Ask questions to participants to prompt the next part of your presentation;
- Pause during the presentation to allow participants to ask questions.



Brainstorming

Brainstorming is the generation of short ideas or responses in answer to a specific question, such as 'what do you think are the basic principles of justice for children?'. It is highly effective at producing a diverse range of ideas quickly, encouraging participation from all participants and building group cohesiveness and communication. It is not a discussion, but more an opportunity for participants to think out loud.

It is highly effective at producing a diverse range of ideas quickly, encouraging participation from all participants and building group cohesiveness and communication. It is not a discussion, but more an opportunity for participants to think out loud.

A brainstorming session should last approximately ten to 15 minutes. You should:

- State how the activity and topic relates to the training objective and outcomes;
- Explain what the ideas and answers will be used for when it is finished;
- Explain the rules (see below);
- State the question/statement that you want the group to generate ideas for and write it in clear view of everyone;
- Clarify any questions the participants may have;
- Write down every answer on a flip chart or board so it can be seen, preferably using only one or two words that the participant has provided;
- End the brainstorming by explaining again what the list will be used for.

It should follow these rules:

- Write down all the ideas given;
- There should be no discussion, critique or evaluation of any of the ideas put forward either by the other participants or the trainer;
- After the initial brainstorming, allow participants to explain any ideas that others are unclear about but avoid this becoming a discussion;
- Encourage ideas that both continue on from others suggestions and that may be seemingly unrelated. No idea is a bad idea;
- The facilitator should not contribute ideas, or lead the discussion towards the learning objectives or topics in the Manual but allow for a free flow of ideas without comment or judgment.

Brainstorming can also be formatted in a number of other ways, for example, trainers could get participants to write down 2-3 ideas on a note card before taking contributions from the group. Alternatively, they could get participants to write one idea on a note card and ask participants to pin them to a board in the room. The group can then organise and review the ideas themselves.

Once the ideas from a brainstorming session have been recorded they can be used in subsequent sessions and activities to initiate discussion on the topic posed. Often the list will need to be synthesised in some way before it can be used effectively in a later activity. This can be done by asking the group to identify those ideas that they think are priorities or by grouping them into categories.



Small discussion groups

Small discussion groups allow participants to digest information heard in a presentation or lecture and think about how the issues and key points relate to their professional day-to-day work through discussions with their peers.

They are used to increase participant involvement and interest, increase their ownership and investment in the group product, and to generate more ideas and solutions than could be done by discussions using the whole group.

Small group discussions can be particularly beneficial as they alter the group dynamics by allowing a more intimate discussion, which may be more amenable to reluctant or shy participants. However, be aware that group dynamics, for example, dominance or conflict, can still arise in sub-groups.

Small discussion groups are best used for discussions based around analysis of an issue, problem solving and planning tasks.

How to run a small discussion group:

- Clearly define the task, including providing a handout with the task written on it so all participants can see it;
- Explain the expected outcome of the group discussions (eg reporting back to the group, writing ideas on the board, role play);
- Check all participants understand the task and answer any questions they have before you begin;
- Make sure each group has the information, resources and knowledge needed to complete the task;
- Provide a clear time limit for the group to do the work.
- If groups are asked to generate a lot of ideas or information, make sure they synthesise it before reporting back to the main group;
- Monitor the groups as they work, including guiding and advising them as needed. This is best done by silently moving around the groups and answering any questions that the individual groups have. It's important not to address the whole room as this can disturb the other groups and interrupt working;
- Allow time in the workshop for each group to report their work back to the plenary. Where all the small groups have had the same task, choose one or two to report back their ideas and then ask others if they think anything important has been missed.

Feeding back to the main group:

This could be done by appointing someone from each group to report back on the main ideas or issues generated by the sub-group and to have a short discussion on these points.

This could also be done by requesting each subgroup to write their main points or ideas on a flip chart or board. Then, ask all the participants to read each sub-groups' board and place either a tick (indicating agreement with a point), a cross (to indicate disagreement), or a question mark (to indicate they don't understand) next to each point. Once this is done, the trainer invites participants to clarify the question marks and comment on the ticks and crosses.



Case studies

Case studies are a good tool to establish or embed participants' recently acquired understanding or skills by problem-solving. It generates multi-level analysis of complex problems and puts the reference material learnt into a more realistic situation.

At the end of each of the previous ten chapters you have been provided with in-depth case studies. In addition, four or five shorter case studies are also found at the end of each chapter and these can be expanded, or used in their current short format in the same way. Local news stories are also a good source to find case studies that are more region-specific and can also be adjusted to make appropriate case studies.

In running a case study discussion, you should select a case study directly relevant to the points and issues that need to be examined and with enough detail for participants to understand the situation and the factors affecting it. Case studies can, and should, be modified for your audience to get the most beneficial discussion. You should identify the key questions around which the discussion will focus and these should be given to participants with the case study. In the case studies provided, a few sample questions are included at the end of each case study. Make sure you prepare any necessary background or additional resources that the participants may require to understand the complex issues posed in the cases.

When discussing the case study as a group, move the discussion towards the key points and issues, and direct the analysis back towards the objectives of the workshop. The discussion should be solution-oriented and constructive. Summarise all the key points identified by participants on a flip chart or board and, to conclude the activity, restate how they relate back to the objectives of the workshop and material they've learned.



Role play

Role plays are intended to imitate a real situation and encourage trainees to think about how they would react, or address, or feel in a certain situation. They are built around hypothetical problem situations.

Role play is a way of putting participants into a situation to determine either different solutions or responses to a posed problem, or to practice certain skills (for example, getting informed consent for diversion or interviewing a child witness). Although the situation is hypothetical, it should be based on real life situations that participants are likely to come into contact with. The whole group then analyses the interaction and discusses ways in which it was positive, and what could be done to improve it.

Role plays are useful for engaging the participants fully in a real-life situation and providing them with the space to try different responses safely with feedback from professionals and peers. The task of the trainer in a role play situation is to ensure that the group can effectively analyse the role-play without allowing negative criticism toward those involved, which can discourage others from taking part in such a learning event. The trainer should also highlight how the role-play helps achieve the objectives of the session.

Role plays can be a good way to initiate a discussion on some of the issues raised during the session and allows participants to bring forward experience from their area of work.

Tips:

- Brief the whole group on the situation;
- Tell participants to act their parts as naturally as possible;
- Make sure you have enough time to undertake the role play, analyse it, and discuss the general issues it involves. The presentation of the role play should not take longer than 10-15 minutes;
- During the preparation of the role play, give participants not directly involved an additional task to undertake, for example, discussing what they will be looking out for in the role play.
- Get the other participants to jot down notes while the role play is taking place;
- It is a good idea to begin by asking those who participated in the role play how they felt it went, and what they feel could have been a better response before opening it up to comments from other participants.



Using video resources

Visual material such as videos can be a great way to spark discussions on different aspects of the training. Video material could be from documentaries or fictional films, as long as they relate to participants' experiences and facilitate discussion.

Questions and discussion may flow naturally from video clips, by simply asking 'Does anyone have any comments or reaction to the video?' For fictional films, or more complex video clips, questions for discussion may need to be posed to guide discussion towards certain issues, for example 'How do you think the child is feeling in that instance?', 'what do you think could have been done differently in that situation?', or 'what rights of the child have been violated in that clip?'. Alternatively, copying or acting out parts of the video clip can be useful for getting participants to think about or discuss how the scenario could have been handled differently or more effectively.

Always make sure you know what you want to gain from a video and how it can be used to reach the workshop or session objectives or enhance participants understanding of an issue.

Video resources we recommend include the following:

- True Vision Productions (2002) *Kids Behind Bars*
This 90-minute documentary film showcases detention of children in different countries around the world.
- Clips from news items or reports, either international examples or local examples, can also create debate and discussion. Below is a selection of internet clips that could be used to highlight different issues:
 - www.youtube.com/watch?v=WkLHXKHb1Vc
This is a video from National Geographic which highlights some of the issues of interrogating a child upon arrest. For example, no parents are present, no lawyer, and it's a long interrogation.
 - www.youtube.com/watch?feature=player_embedded&v=FcgUhEvT0F8
www.youtube.com/watch?feature=player_embedded&v=CaAs38J2ssY
These two CNN reports show conditions of detention for children in the Philippines and some rehabilitation work done by civil society once a children is released.

Please note that these resources are all in English, so for workshops conducted in another language, translators would need to be available and full length films are not likely to be appropriate.



Introducing a resource person

Using an expert to present a session or give additional information during part of the workshop is a great way to add authority and credibility to the workshop. For example, in a longer workshop you could use a judge from a country which focuses on the use of alternative sentencing as opposed to detention. This can be positive for showing participants the nuances of implementing such policies. It allows them to ask questions and get a well-informed answer from someone who meets with difficult issues regarding the topic regularly.

When preparing a resource person make sure you:

- Explain the professional background and experience of participants;
- Explain the purpose and objectives of the session and his or her role in achieving it;
- Be clear about the topic and key points you would like him or her to cover;
- Be clear about the time limits and review this together if necessary;
- Explain what will take place in the rest of the workshop so they know the context of their presentation;
- Always allow time for participants to ask questions.



Visiting an institution

A trip to a juvenile detention facility within the country is a great way for participants to put the theory they are learning into a real situation. It is best used during the 'detention' or 'independent monitoring mechanisms' workshops but can be beneficial during others as well. Visits to detention facilities should be organised far in advance in order to get approval from the institution's authorities and for any necessary security checks to be made.

Prior to the visit, the participants should be split into groups and each prepare a 'checklist' for what they should be looking for in terms of international standards for conditions and treatment of juveniles. These should be discussed among the plenary to make sure all groups have comprehensive lists covering all the different areas. Alternatively, each group could be given a single topic to inspect, for example, one group to assess accommodation, one group to assess health and hygiene, and one group to assess the recreation and educational programmes on offer in the facility.

During the visit the participants should note down where they feel the institution is meeting international standards and where they are not. They should note down any key issues they observe. Once back in the training room, participants should discuss the visit, including what were the positives and negatives they saw in the institution. Finally, they should prepare a set of recommendations that are SMART (Specific, Measurable, Achievable, Relevant and Time-bound: see Chapter 10 of the Manual for more information) based on what they observed. These should then be discussed among the group and participants may discuss which recommendations they feel are the biggest priority for the institution.

Sample training workshop 1

Diversion



Content for this training workshop can be found in Chapter 4, page 45



Time required:
3.5 to 4
hours

Learning objectives for participants

- To understand the value of diversion for children who have offended and how it can be used at key stages in the justice process;
- To become familiar with the domestic and international standards regarding diversion of children;
- To examine what diversion measures can be applied, and how, within the structures established to provide justice for children.

Participants

Members of the police, public prosecutors, judiciary, probation, and social welfare professionals who are currently, or may in future, be involved in referring young people away from the criminal justice system and those managing the programmes they are diverted to.

Reference and preparatory materials

- The UN Factsheet on Justice for Children, the Convention of the Rights of the Child (CRC), 1989; Guidance Note on Justice for Children, UN Secretary General 2008; Guidelines of the Council of Europe on child-friendly justice 2010; UNODC Handbook on Restorative Justice Programmes 2006; UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985; and the UN Guidelines for the Prevention of Juvenile Delinquency, 1990;
- Any relevant national legislation, guidelines or best practice;
- Preparatory analysis to identify the extent to which diversion measures are legislated for in the country, if any are practised and the agencies and training of those who implement the measures.

Workshop agenda/outline

15 minutes

1. Introduction

Introduction to the workshop, agenda, objectives, participants, and their expectations. The definition of diversion should be explained and how it can provide better justice for children.

2 hours

2. Foundation

20 minutes

Facilitated discussion – *Diversion*

The facilitator poses the following question to the participants: *'What are the advantages and disadvantages of a child who comes into contact with the law going through the formal criminal justice process?'* The facilitator notes the group's responses on the flip chart.

10-15 mins

Short lecture – *Diversion*

Using the background material included in Chapter 4 and the facilitator's own knowledge of the situation in the country, the facilitator presents a brief, interactive lecture on diversion, the principles behind it, how it is used in general and how it is, and could be, applied to the national or local situation.

20-25 mins

Identify applications

At the end of the lecture, the full group is asked to think of ways in which different diversion might be applied in the real life situations they have come into contact with. The group should generate a list long enough so as to form working groups with approximately 4-5 participants in each (ie 20 participants with five members per group would require at least four situations). However, encouraging participants to come up with longer lists will give them choices in the next workshop activity.

60 minutes

Small group activity 1 – *Case application*

Participants are divided into small groups with 4-5 participants in each. Each group takes responsibility for one of the case studies generated by the group (above). They should develop a complete case description of the situation including details of all those involved and the nature of the offence. (If members of the group are familiar with the details of the specific case they can complete the case based on the facts, otherwise creating a fictional, but realistic case is a suitable substitute).

The group is then asked to examine the diversion measures available, what would be most appropriate, and what would be the advantages and risks of implementing that measure.

Having selected the approach to be used, each team is asked to develop a role-play simulating a five-minute segment of the diversion intervention to be presented to the full group. Members of the team assume the roles of key participants in the process (ie police or prosecutor, offender, victim, parents, other parties, etc.) The aim of the exercise is for participants to cover the basic ground rules for implementing a diversion measure, for example the child having admitted guilt, gaining informed consent from a child and giving them time and space to consult with a legal representative.

Alternatively, the trainer could prepare a series of cases in advance presenting the situations, key issues and roles. Participants would then choose from the cases given.

1.5 hours

3. Learning events

45-60 mins

Role plays and discussion – *A diversion intervention*

Each team is asked to present their case, describe the key personalities involved, and present the role-play to the full group.

Following each presentation, the trainer leads a group discussion on the diversion intervention shows. They should highlight the importance of adhering to the procedural safeguards. Participants should provide constructive input and suggestions as to the diversion measure suggested and its implementation.

The trainer keeps track of the general suggestions and insights gained from these role-plays.

30 minutes

Application lessons

Once all of the groups have presented their role-plays and all the lists on the flip chart have been reviewed. The trainer and participants work together to identify:

- Key lessons that could be extracted from this experience to real situations where diversion might be used;
- Considerations to be kept in mind when doing so;
- Insights as to how and when diversion can best be used in instances of justice for children;
- What steps could be taken to increase more effective use of diversion in cases involving children.

10 minutes

4. Closing

The trainer reviews the lists developed in the course of the workshop, including the advantages and disadvantages of diversion from the beginning. The conclusions from the workshop are synthesised and next steps are reviewed with the participants to confirm their commitment.

Participants should be thanked and time should be allowed for any final questions before passing out a written workshop evaluation.

Sample training workshop 2

Victims and witnesses



Content for this training workshop can be found in Chapter 5, page 59



Time required:
3-3.5
hours

Learning objectives for participants

- To know the international and regional guidelines relating to child victims and witnesses of crime and the relevant national legislation;
- To learn how a child victim or witness can be affected by taking part in the justice process and what assistance and protection measures can be used to reduce harmful effects to the child;
- For those who interview child victims and witnesses as part of their professional work to understand the importance of effective communication with children and gain skills in preparing and carrying out interviews with child victims and witnesses, protecting their rights whilst obtaining accurate information;
- To know what assistance and social services should be available to child victims and witnesses and when and how they should be referred to them, including their right to reparation and how this should be achieved in practice.

Participants

Lawyers, police officials, the judiciary, social welfare professionals and all others who may come into contact with child victims or witnesses either before, during, or after, judicial proceedings in which they are participating.

Reference and preparatory materials

- UN Convention of the Rights of the Child (CRC), 1989; UNODC/ UNICEF Handbook on Justice in Matters involving Child Victims and Witnesses of Crime, 2009; Guidance Note on Justice for Children, UN Secretary General 2008; Guidelines of the Council of Europe on child-friendly justice 2010; UN Declaration of Basic Principles of Justice for Victims of Crime and Abuses of Power, 1985; and any other relevant international standards pertaining to children as victims or witnesses;
- Any relevant national legislation, guidelines or best practice;
- Preparatory analysis to investigate the legislation, regulation and guidelines surrounding how child victims and witnesses should be treated throughout the justice process, including their initial interview and later testifying in court. Further, find out the different kinds of assistance currently available and offered to child victims and witnesses and identify the different agencies and organisations who work with this group.

Workshop agenda/outline

15 minutes

1. Introduction

Introduction to the workshop, agenda, objectives, participants, and their expectations. It should be explained why child victims and witnesses are in need of special protection and assistance in the justice process.

1.5 hours

2. Foundation

15 minutes

Brainstorming

The trainer poses the following question to the group: *'What fears do you think a child victim or witness may have about participating in judicial proceedings?'*. The facilitator notes the group's responses on the flip chart, and reiterates that the purpose of the workshop will be to identify techniques and assistance measures that will negate these issues.

15-20 mins

Short lecture – *Child victims and witnesses*

Using Chapter 5 of the Manual, material from other reference sources discussed above and the facilitator's own knowledge of the situation in the country, he or she should present a short, interactive lecture on child victims and witnesses, tailored to the level of knowledge that participants have on the topic. Ideally it should cover:

- The international and regional guidelines relating to child victims and witnesses;
- How a child victim or witness is likely to be affected by the justice process;
- Interviewing child victims and witnesses;
- Protective measures applicable in court to assist and protect children;
- Balancing a child's rights with the rights of the accused;
- Reparation and other social or psychological assistance available to children.

The trainer should make reference to the situation locally as well as identifying good practice from other countries.

Handouts and well-prepared visual aides should be used to assist participants in understanding the concepts being presented.

45-60 mins

Discussion

Depending on the mix and experience of participants present at the workshop, two discussion topics are suggested:

1. The role of referring:

The facilitator splits the plenary into small groups of four or five participants and gives each a small scenario. For example, a six-year-old child reported by medical staff to have suffered physical abuse at home, it is not established yet who the perpetrator is. The group should then discuss in what ways the child should be referred to which appropriate services. (eg social welfare, police, counselling, medical etc);

2. Balancing rights:

The facilitator splits the participants into groups of 4-5 people and asks them to list the rights of the child that should be adhered to during the judicial process (ie right to be heard, protection, non-discrimination etc). They should then discuss for each stage of the judicial process what measures should be introduced to ensure these rights are upheld and which agency or agencies should be responsible for this.

1.5 hours

3. Learning events

60 mins

Role play – *Gathering evidence from child victims and witnesses*

After the lecture and discussion the full group is asked what they think an interviewer must be aware of when gathering evidence. These are written on a flip chart.

The group is then divided into small groups to perform a role play and practice gathering evidence from a child, being aware of the difficulties they just listed. Each small group may choose from one of the following scenarios:

The initial interview:

The group should first decide what crime the child is reporting, whether they are victim or witness, who they are reporting it against, and how old the child is. One or two people then take on the task of being an interviewer who must gather the child's initial report. The task should begin with them planning the interview, carrying it out, and then deciding which, if any, services the child should be referred on to;

Cross-examination in court:

Two people take on the task of being lawyers in a court room setting, one for the defence and one for the prosecution. They should decide on the details of the situation such as, is the child a victim or witness, what the crime is, who the accused is and if they are related to the child, and how old the child is. They should then each take a turn interviewing the child, remembering it is their job to protect their client. Another member of the group should take on the important role of the judge to oversee the proceedings and step in where appropriate.

The trainer keeps track of the general suggestions and insights gained from these role-plays.

30 mins



An example script for interviewing child victims and witnesses, developed by the Scottish Government can be found on their website*

Discussion

A selection of the smaller sub-groups is then asked to present to the plenary a full description of the situation and then perform their role play. Once this is complete the trainer can facilitate other participants commenting on the group's situation, where they did well and where they could improve. This must be closely monitored by the trainer to ensure that there is effective analysis of the situations by the whole group and that this does not slip into negative criticism as this may discourage others from participating.

Once the participants have offered their comments, the trainer can refer back to the list made before the role plays took place regarding what they thought an interviewer must be aware of when gathering evidence from a child either at an initial interview or whilst gathering testimony. They can then go through the list and discuss whether or not they thought that the role plays adhered to these items, or whether there were items which were forgotten.

Once they have done this, the trainer can ask the group if they have any further comments and what are the key lessons that have been learnt from the role play that can be applied to real-life situations.

10 mins

4. Closing

The trainer reviews the activities undertaken in the course of the workshop and discusses how they have accomplished the objectives set out at the start. They should have a brief discussion on how participants may apply what they've learnt in the workshop into their working life.

Participants should be thanked and time should be allowed for any final questions before passing out a written workshop evaluation.

* *Guidance on Interviewing Child Witnesses in Scotland: Supporting Child Witnesses Guidance Pack*, Available at: www.scotland.gov.uk

Sample training workshop 3

Detention



Content for this training workshop can be found in Chapter 7, page 89



Time required:
4 to 4.5
hours

Learning objectives for participants

- 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 detainees' education, skill development, and reintegration into society;
- Identify the primary international and domestic standards that address the treatment of prisoners who have mental health issues;
- Identify the provisions of international and domestic law that prohibit torture, abuse, and ill-treatment in all aspects of prison work.

Participants

Members of the police, public prosecutors, judiciary, probation, and social welfare professionals engaged in working with young people in detention.

Reference and preparatory materials

- The UN Factsheet on Justice for Children, the Convention of the Rights of the Child (CRC), 1989; Guidance Note on Justice for Children, UN Secretary General 2008; Guidelines of the Council of Europe on child-friendly justice 2010; UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990; UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985; and the UN Guidelines for the Prevention of Juvenile Delinquency, 1990;
- Any relevant national legislation, guidelines or best practice;
- Preparatory analysis to familiarise themselves with the situation in the country and the extent to which detention is used for children. It will also be useful to be able to compare the extent to which detention is used in this country with other countries in the region.

Workshop agenda/outline

10 minutes

1. Introduction

Introduction of the workshop, agenda, objectives, participants, and their expectations. Explain the definition of detention and what is meant by children deprived of their liberty.

1.5-2 hours

2. Foundation

10 minutes

Facilitated discussion – *The who / what / why of detention*

The facilitator poses the following question to the participants:

- What types of detention facility are there in the country? Do you think these are the right types of detention facility?
- Who are the children who are usually detained in these facilities? (What are their sentences, vulnerability issues and what risk do they pose to the public?) Do you think these are the right types of children to be detained?

45 mins

Child's journey

The group works together to chart the journey of a child through the process of being detained. The facilitator asks the participants to identify the whole journey from receiving their sentence in court, through to being transported to their detention facility, their induction, their first night, meeting the other children, planning their sentence, meeting the professionals, through to preparing for release and reintegration. The facilitator should draw the child's journey on a flip chart so the whole group can see it.

As the participants explain the child's journey the facilitator should probe the participants, asking how the child is feeling at each point in the journey, and how they as professionals can make the experience one that feels less intimidating. The facilitator should ask for example what effect the condition of the institution will be on the child as they enter, from dilapidated buildings, bars on the windows or insufficient bedding. The facilitator should help to explore with the participants how they can make the environment child-friendly, even if they cannot change anything structurally about the building.

45-60 mins

Small group activity – *Sentence planning*

Participants are divided into small groups with four or five participants in each. If possible each group should contain a mixture of different professions and so the facilitator will need to split the participants into groups rather than allow them to choose who they want to work with.

Each group will be tasked with writing a sentence plan for the child in the case study at the end of Chapter 7, on page 106. First they will have ten minutes to read the case study and discuss the issues that they see are important to address during the time this child is in custody.

They will then have 15 minutes to write the objectives of the sentence plan. They must be reminded that objectives need to be SMART (Specific, Measurable, Achievable, Relevant, and Time-bound: see page 141). A good sentence plan:

- Prepares the child for their eventual release;
- Incorporates and plans for any vulnerabilities that the child has and any protection measures that should be put in place;
- Addresses the risks that they pose to themselves, others or society;
- Ensures that have a full educational and vocational timetable.

Once completed, the group need to choose a representative to present their plan back to the plenary. The facilitator and the group will then be able to establish to what extent the plan is SMART and addresses all the needs of the child in the case study.

2 hours

3. Learning events

90 mins

Participant presentations – *International standards in detention*

The participants must be split into five groups and each given a topic.

- The rights and needs of girls in detention;
- The importance of education and vocational training;
- Helping children maintain good contact and relationships with their family;
- How to prevent bullying and safeguard children;
- Appropriate discipline measures.

Each team is to look at the key international standards relating to their topic and devise a five minute presentation to explain to the rest of the group why it is important that the international guidelines be followed.

The teams will be allowed 40 minutes to prepare their presentation. All members of the team must be involved in the presentation and they are allowed to use props or make posters to support their presentation.

Each team will then be given five minutes to convince the rest of the group why their topic is the most important topic. At the end of the presentations the participants get to vote on which presentation was most convincing. Following the announcement of the winner there is then a short discussion regarding why their presentation was the most convincing and what lessons could be learned by others.

20-30 mins

Application lessons

Once all of the groups have presented and all the lists on the flip chart have been reviewed, the trainer and participants work together to identify:

- When each of the five issues are most relevant at different stages of the journey of the child through the detention process;
- The importance of each of these topics in terms of the child leaving custody and being reintegrated into society.

Finally, the facilitator gathers the views on the participants about what types of things they would expect children in detention to report to them if they had received a good experience in detention (eg that it felt like a home, that the staff cared for them, that they learned a skill).

10 mins

4. Closing

The trainer reviews the lists developed in the course of the workshop, including the what/who/why of detention at the beginning. The conclusions from the workshop are synthesised and the group asked what changes they would like to see in their own detention system and, where appropriate, how they might begin to bring these about.

Participants should be thanked and time should be allowed for any final questions before passing out a written workshop evaluation.

Sample training workshop 4

Independent monitoring mechanisms



Content for this training workshop can be found in Chapter 8, page 109



Time required:
3.5 to 4
hours

Learning objectives for participants

- To become familiar with the international and regional standards relating to independent monitoring of detention facilities;
- To identify the different kinds of independent mechanisms that can carry out monitoring duties;
- To learn about some of the practical elements for monitoring;
- To learn how inspection reports can make successful recommendations and be used as an advocacy tool for change.

Participants

Members of the prison staff, inspectors, judiciary, children's commissioners, civil society groups and social welfare professionals engaged in either inspecting institutions where children are detained or managing these facilities.

Reference and preparatory materials

- UN Convention of the Rights of the Child (CRC), 1989; Guidance Note on Justice for Children, UN Secretary General 2008; Guidelines of the Council of Europe on child-friendly justice 2010; OPCAT, 2002; UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990; and other relevant international standards pertaining to justice for children;
- Any relevant national legislation, guidelines or best practice;
- Preparatory analysis to identify which, if any, organisations currently undertake inspection or visiting functions in the country, the frequency of inspections, and the effectiveness of the recommendations made.

Workshop agenda/outline

10 minutes

1. Introduction

Introduction to the workshop, agenda, objectives, participants, and their expectations. It should be explained what independent monitoring mechanisms are and how they help provide justice for children.

1 hour

2. Foundation

15 minutes

Facilitated discussion – *Independent monitoring mechanisms*

The trainer poses one, or both, of the following question to the participants: *‘What individuals or organisations are currently able to inspect places where children are deprived of their liberty?’*, or *‘How does inspecting places where children are deprived of their liberty improve justice for children?’*. The facilitator notes the group’s responses on the flip chart.

10-15 mins

Short lecture – *Independent monitoring mechanisms*

From the Manual, reference materials from other sources discussed above, and the facilitator’s own knowledge of the situation in the country, he or she presents a short, interactive lecture on independent monitoring mechanisms covering: what they are, the different types of monitoring bodies, the key principles for monitoring and the practical elements of inspections. The trainer should make reference to the situation locally and how different types of monitoring could be applied in the country.

Handouts and well-prepared visual aides should be used to assist participants in understanding the concepts being presented.

25-30 mins

Discussion

At the end of the lecture, the trainer asks the group the following question to begin a discussion:

- If you were reporting on the conditions of detention in your country, what would be the things that you would want to find out?

The facilitator can lead this into a wider discussion on:

- Which kind of monitoring would be most appropriate for the country?
- How could current monitoring teams be improved? Would financial resources be needed to achieve this?

2-2.5 hours

3. Learning events

1 hour

Case studies and discussions

After the lecture and discussion the full group is asked what problems they think an inspection team may encounter in the course of trying to carry out their role. These problems are written on a flip chart.

The group is then divided up into small groups of around four or five people and each group is asked to discuss one of the problems/situations on the flip chart in detail. For example, a complete description of the problem including how it may arise, all those who may be involved or affected by it and what possible solutions they could put forward to solve it.

Alternatively, the trainer can use the case studies provided at the end of Chapter 8, on page 118 in the Manual for the groups to discuss.

Each group is then asked to present to the plenary the full description of their situation and the solutions they have generated for it. Once this is complete the trainer can facilitate other participants offering up solutions to that group’s situation or commenting on their solutions. This must be done carefully to ensure that there is effective analysis of the solutions by the whole group and not negative criticism as this may discourage others from participating.

45-60 mins

Writing effective recommendations

The participants are split into small groups who will act as inspection teams. Each one is provided with a handout about a certain juvenile detention facility and a report on its physical conditions, the programmes it offers and its staffing. This should be prepared by the trainer beforehand and be tailored to the relevant country and where possible, using correct names of facilities and describing real conditions reported by NGOs or current inspection teams.

The inspection team is then asked to discuss the methods that they would use to try and ascertain the conditions of the facility. The facilitator should encourage them to use both quantitative and qualitative methods and consult with a variety of different groups. They will have 10 minutes for this discussion.

Following this, the teams have 20 minutes to devise a list of appropriate recommendations, which are prioritised and aimed at the correct level of authority (ie prison governor, local council, central government minister). Once they are happy with the recommendations, each group writes their recommendations on a flip chart or board. All the participants are then asked to go round the room and read the recommendations from each group (and the report on conditions) and place either a tick (indicating agreement with the recommendation and target level of authority), a cross (indicating disagreement), or a question mark (indicating a lack of understanding). Once this is done, the trainer and participants go through each group's board and discuss the disagreements and clarify the question marks.

15-30 mins

Application lessons

Once all of the groups have presented their situations, the trainer and participants work together to identify key lessons that could be extracted from these situations that can be applicable to multiple real inspection situations and how these situations can be prevented in the first place.

10 mins

4. Closing

The trainer reviews the activities undertaken in the course of the workshop and discusses how they have accomplished the objectives set out at the start. Discussions on how action could be taken forward are synthesised and reviewed with the participants confirming their commitment.

Participants should be thanked and time should be allowed for any final questions before passing out a written workshop evaluation.

Appendices

Appendix 1: sample pre-workshop questionnaire

Appendix 2: sample agenda for a 4-day workshop

Appendix 3: sample evaluation form

Protecting children's rights in criminal justice system workshop

Pre-workshop questionnaire

Please complete and email to:

Your input will help the trainer to tailor the workshop as much as possible to your needs and level of experience.

Name	Number of years working with children in the justice system
Job title	
Organisation	

Please describe your experience working with children in the justice system:

What other training on the topic have you attended?

Based on the attached agenda –

Please tell us what your learning objectives for the upcoming workshop are:

Do you have specific questions or situations that you would like to see addressed during any of the sessions? If yes, please list them below:

Do you have any experience with justice for children that would be relevant to any of the sessions described in the agenda? If so, please describe:

Protecting children’s rights in criminal justice system workshop

Sample agenda

Day 1

Time	Session	Purpose	Mins
09.00	Introduction/ expectations	Overview of the workshop, objectives, introduction to the training team, introduction of participants’ expectations.	30
09.30	Principles of justice for children	To explain the concept of justice for children and which children fall under its remit; To identify the primary provisions of domestic, regional and international standards that serve as the foundation of justice for children; To understand the basic, cross-cutting principles of justice for children, and the underlying concept of restorative justice.	90
11.00	Break		
11.30	Children at risk	To define who is a ‘child at risk’; To understand the main international guidelines on prevention; To explain why it is important to establish a national plan for the prevention of children involved in crime (UN policy indicator); To explain the difference between different prevention policies and their strengths and weaknesses.	120
13.30	Lunch		
14.30	Arrest	To explain why it is important for police officers to respect and protect the human rights of children; To explain how children who are suspected of committing a crime should be treated.	60
15.30	Break		
15.45	Arrest	Continued.	35
16.20	Closing session	Evaluation forms.	10
16.30	End of day		

Day 2

Time	Session	Purpose	Mins
09.00	Diversion	<p>To understand the value of using diversion measures;</p> <p>To know when diversion can be best applied at key stages in the justice process;</p> <p>To list the domestic, international and regional standards regarding diversion of children;</p> <p>To examine what diversion measures can be applied, which institutions should apply them, and how this should be done.</p>	90
10.30	Break		
10.45	Diversion	Continued.	75
12.00	Lunch		
13.00	Victims and witnesses	<p>To understand what assistance and protection measures can be used at each stage of the judicial process to reduce harmful effects to the child victim or witness;</p> <p>To understand the importance of effective communication and interviewing skills with children and gain skills in preparing and carrying out interviews with child victims and witnesses, protecting their rights whilst obtaining accurate information;</p> <p>To 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;</p> <p>To understand how a victim's right to reparation can be achieved in practice.</p>	90
14.30	Break		
15.00	Victims and witnesses	Continued.	80
16.20	Closing session	Evaluation forms.	10
16.30	End of day		

Day 3

Time	Session	Purpose	Mins
09.00	Trial and sentencing	<p>To explain why a preliminary inquiry report is needed in order to assist the court in its decisions regarding child offenders;</p> <p>To list a number of different sentencing options in the community and argue the advantages and disadvantages of each one;</p> <p>To be able to evaluate which of these alternatives to imprisonment would be most suitable for use (or expanded use) in your country and what steps would have to be taken to achieve them.</p>	90
10.30	Break		
11.00	Trial and sentencing	Continued.	60
12.00	Lunch		
13.00	Detention	<p>To describe what practical measures can be taken to protect detained juveniles from violence and exploitation;</p> <p>To explain what measures prison staff can take to promote juvenile prisoners' education, skill development, and reintegration into society.</p>	90
14.30	Break		
15.00	Detention	Continued.	80
16.20	Closing session	Evaluation forms.	10
16.30	End of day		

Day 4

Time	Session	Purpose	Mins
09.00	Independent monitoring mechanisms	<p>To list the main international and regional standards relating to independent monitoring of detention facilities and any relevant domestic legislation;</p> <p>To identify the basic principles of monitoring and what practical aspects of detention to inspect;</p> <p>To learn about how inspection reports and effective recommendations can instigate change within an institution.</p>	90
10.30	Break		
11.00	Independent monitoring mechanisms	Continued.	90
12.30	Lunch		
13.30	Reintegration	<p>To discuss when authorities should begin to plan for a child's resettlement;</p> <p>To explain the conditions most likely to prevent a child from reoffending;</p> <p>To understand the different pathways that are important for the resettlement of a child after a period of detention;</p> <p>Prioritise how to design a child's reintegration programme.</p>	90
15.00	Break		
15.15	Putting justice for children into practice	<p>To enhance understanding of key issues essential for bringing about effective delivery of justice for children;</p> <p>To facilitate action planning for change through inter-agency discussions and dialogue.</p>	90
16.45	Closing session	Evaluation forms	15
16.30	End of day		

Protecting children’s rights in criminal justice system workshop

Sample evaluation form

Please complete the following evaluation form so we can improve this training.



Training site	Date:
Audience	
Trainers	



Name (optional)
Job title

Please circle to what extent you agree with the following statements:

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
The subject matter was adequately covered	1	2	3	4	5
The content was relevant to my work	1	2	3	4	5
The programme was well-paced	1	2	3	4	5
The materials were useful	1	2	3	4	5
The participants were encouraged to take an active part	1	2	3	4	5
The programme met my individual objectives	1	2	3	4	5
I would recommend this programme to my colleagues	1	2	3	4	5

Please rate the following (circle a number as applicable: 1= poor, 5 = excellent):

	Poor					Excellent
Meeting place	1	2	3	4	5	
Meals/refreshments	1	2	3	4	5	
Overall organisation	1	2	3	4	5	

Please rate individual workshop sessions (enter a number in each column: 1= poor, 5 = excellent):

	Content	Delivery of presentation	Exercises	Additional comments
1. Principles of justice for children	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Children at risk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Arrest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Diversion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Victims and witnesses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6. Trial and sentencing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Detention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Independent monitoring mechanisms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Reintegration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10. Putting justice for children into practice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Was the workshop length: Sufficient? Too short? Too long? (please tick)

Were there: Just enough participants? Too few? Too many? (please tick)

What are the three most important things you learned during the workshop:

Which sections of the workshop were least helpful?

What suggestions do you have for improving this training workshop?
(If you need more space please use the back of this form)

What is your overall rating of this workshop?

Excellent Very good Good Fair Poor (please tick)

After attending this workshop, in what ways do you think you can improve the implementation of justice for children principles in your agency and your professional working with children?

What further training would help you to improve the role you play with respect to justice for children?

Do you have any other comments?

References and further reading

References and further reading

Binding international and regional treaties

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

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment 1984

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

Convention on the Rights of the Child 1989

Optional Protocol to the Convention Against Torture 2002

African Charter on Human and Peoples' Rights 1986

African Charter on the Rights and Welfare of the Child 1990

American Convention on Human Rights 1978

Inter-American Convention to Prevent and Punish Torture 1985

International and regional standards and guidelines

Universal Declaration on Human Rights 1948

Standard Minimum Rules for the Treatment of Prisoners 1955

Code of Conduct for Law Enforcement Officials 1979

UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 ('Beijing Rules')

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

UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 ('Havana Rules')

UN Guidelines for the Prevention of Juvenile Delinquency 1990 ('Riyadh Guidelines')

UN Standard Minimum Rules for Non-custodial Measures 1990 ('Tokyo Rules')

Guidelines for Action on Children in the Criminal Justice System 1997

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

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

UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime 2005

Committee on the Rights of the Child General Comment No.10 2007

European Rules for juvenile offenders subject to sanctions or measures 2008

Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008

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

UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 2010 ('Bangkok Rules')

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems 2012

Further reading and additional training materials

- African Child Policy Forum, *Realising Rights for Children: Good Practice, Eastern and Southern Africa*, 2007
- African Child Policy Forum, *Child-friendly Laws in Africa*, 2009
- African Child Policy Forum & Defence for Children International, *Achieving Child-friendly Justice in Africa*, 2012
- Association for the Prevention of Torture, *Visiting Places of Detention: Lessons Learned and Practices of Selected Domestic Institutions*, 2003
- Association for the Prevention of Torture, *Monitoring Places of Detention: A Practical Guide*, 2004
- Association of Members of Independent Monitoring Boards, *A Practical Guide to Monitoring Prisons*, 2010
- AUT University Institute of Public Policy, *Child Witnesses in New Zealand Criminal Courts: A review of Practice and Implications for Policy*, 2010
- Cavadino, M. and Dignan, J., *Penal Systems: A Comparative Approach*, 2005
- Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, 2009
- Commonwealth Secretariat, *Commonwealth Manual on Human Rights Training for Police*, 2006
- Cordis Bright/UK Youth Justice Board, *Keppel Unit Process Evaluation*, 2011
- Council of Europe: *Examples of good practice in child-friendly justice: State submissions* Available at: www.coe.int [Accessed October 2013]
- DOST/Penal Reform International, *Documenting Best Practice: DOST Welfare Foundation's Work with Vulnerable Groups in Pakistan*, 2013
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *CPT Standards*, 2010, Available at: www.cpt.coe.int [Accessed October 2013]
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- Goldson, B., *Dictionary of Youth Justice*, 2008
- Goldson, B. and Muncie, J., *Comparative Youth Justice*, 2006
- Hazel, N., *Cross-national comparison of youth justice*, 2008, UK Youth Justice Board
- International Centre for Prison Studies, *A Human Rights Approach to Prison Management*, 2009 (2nd edition)
- International Centre for Prison Studies, *Guidance Notes on Prison Reform*, 2004
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- Junger-Tas et al. (eds), *International Handbook of Juvenile Justice*, 2006
- Junger-Tas et al. (eds), *Reforming Juvenile Justice*, 2009
- Muncie, J. and Goldson, B., *Comparative Youth Justice*, 2006
- Penal Reform International, *Human Rights and Vulnerable Prisoners Training Manual*, 2004
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