ADDRESSING JUVENILE JUSTICE PRIORITIES IN THE ASIA-PACIFIC REGION

BASED ON THE SECOND MEETING OF THE ASIA-PACIFIC COUNCIL FOR JUVENILE JUSTICE

POLICY RECOMMENDATIONS ON VIOLENCE AGAINST CHILDREN; ALTERNATIVES TO DETENTION; RESTORATIVE JUSTICE IN THE ASIA-PACIFIC REGION
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ON BEHALF OF THE IJJO CHAIRMAN

On behalf of the International Juvenile Justice Observatory and myself as its president, it is a pleasure to present the second report by the Asia-Pacific Council for Juvenile Justice: ‘Addressing Juvenile Justice Priorities in the Asia-Pacific Region’. The first APCJJ publication: ‘A Voice for the Future of Juvenile Justice in Asia-Pacific’, marked a series of conclusions and recommendations agreed by the participants in the First APCJJ Meeting, which identified priorities for action. Today, this report addresses more in depth some of those key priorities, drawing from the insights and dialogues sparked by the Second Meeting of the Council, and wishes to enhance the concrete contribution of the APCJJ to the progress of fair justice systems in the region.

The International Juvenile Justice Observatory – IJJO – was founded in 2002 with the firm commitment to promoting the protection of children and adolescents immersed in cycles of violence, conflict and crime, creating new sources of knowledge, innovation and evidence on phenomena that affect them, and encouraging the practical implementation of international juvenile justice standards. Its objective is to improve the efficiency of systems, policies and models of juvenile justice in order to improve the lives of millions of children and adolescents who come into contact with the law all over the world. Essentially our mission is to work for a Fair Juvenile Justice. This needs to be, therefore, an effective, inclusive, guarantee-providing, and child-protective juvenile justice.

With a view to this objective, and being aware of the importance of not straying from the realities, necessities and principle agents of change within regions, over the last six years the Observatory has been gradually forming the Continental Councils for Juvenile Justice, having produced continental reports that have an impact in the different regional agendas. At the moment, there are Councils in place for Europe, Asia-Pacific, Latin America and North America; and we are currently developing those in Africa and the Middle East.

In terms of the Asia-Pacific region, the IJJO is conscious that improving juvenile justice has turned into a common concern for the majority of countries of which it comprises. In the last few years we have witnessed interesting processes of legislative reform and the modernisation of policies with the aim of responding to challenges linked to the idea of children in conflict with the law, focussing on the many types of victimisation that they suffer from. With the aim of accompanying regional governments in these processes, the Asia-Pacific Council was formed in 2012 with the objective of uniting representatives from public administrations, judicial powers, universities, investigation centres and NGOs. All of them professionals with a large amount of experience in the different fields of juvenile justice, and who I thank wholeheartedly for their involvement and commitment in this initiative.

In particular, I would like to express my deepest appreciation for the longstanding collaboration with the Department of Juvenile Protection and Observation of the Thailand Ministry of Justice, whose support was crucial to organise and host the Second APCJJ Meeting, and thank UNICEF, UNODC, and the Thailand Institute of Justice for their precious cooperation as co-organisers. We were especially glad to be able to offer participants a series of capacity building exercises, according to the necessities expressed in the course of the First Meeting and identified by ‘A Voice for the Future of Juvenile Justice in the Asia-Pacific’, to strengthen the specialised training of professionals. We hope that the present report will further contribute to the orientation of practitioners.

Furthermore, the recent initiatives of the Council are developing at a particularly significant moment in the international political calendar, identified by important events:

- The recent 25th anniversary of the adoption of the Convention on the Rights of the Child.
- The revision of the Agenda Post-2015 of the Objectives of Sustainable Development and the incorporation of objective 16 which calls on a significant reduction of all forms of violence and rates of mortality as well as ending abuse, exploitation, trafficking and all forms of violence and torture towards children.
- The invitation, included in the UN General Assembly Resolution A/RES/69/157, to the UN Secretary-General to commission an in-depth global study on children deprived of liberty.
The recent Doha Declaration as a result of the Thirteen United Nations Congress on Crime Prevention and Criminal Justice, held in Doha, Qatar from 12 to 19 April 2015, whereby Member States were called upon to strengthen juvenile justice systems and better promote and protect the rights of children in contact with the justice system.

And last but not least, I would like to make a special mention to recognise the efforts of and congratulate the United Nations Office on Drugs and Crime for having taken the lead in providing support to Member States in the development of a new international normative instrument, the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice adopted by the UN General Assembly in December 2014. We trust that we will reach the right level of commitment and implementation of these instruments in national public policies all over the world. The IJJO places its experience and interest at the service of this initiative.

Without a doubt these initiatives represent years of effort from the international community and mark a turning point in the efforts and resources that can be directed towards the advancement of juvenile justice systems at regional, national and international level, and we will be glad if the Asia-Pacific Council for Juvenile Justice can constitute a forum of exchange and shared initiatives to contribute to this change.

Finally, I wish to express my most sincere gratitude to all the experts and colleagues who have invested time and knowledge contributing to this report, for their strong commitment and active participation, so that collectively, we can achieve results which have a positive influence on the situation of children and young people who come into contact with the law in the Asia-Pacific region.

Dr. Francisco Legaz
IJJO Chairman
FOREWORD BY THE THAILAND DEPARTMENT OF JUVENILE OBSERVATION AND PROTECTION (DJOP)

It has been an honour to be able to work side by side with the International Juvenile Justice Observatory (IJJO) and other world-leading organisations like the United Nations Office on Drugs and Crime – UNODC, United Nations Children’s Fund – UNICEF, and the Thailand Institution of Justice – TIJ in creating a better juvenile justice system in Thailand and in every country in the Asia-Pacific region.

The Department of Juvenile Observation and Protection (DJOP), Ministry of Justice of Thailand (MOJ) is committed and involved in promoting a better situation for and treatment of children in conflict with the law. It continues to develop policy and raise the standard of the treatment of children and young people with regard to justice in accordance with international standards protecting the rights of children and young people. The institution’s main purpose is to deliver and promote excellent services for children’s rights protection, to rehabilitate children in conflict with the law, and to reintegrate good and productive juveniles into society.

The IJJO created the APCJJ, and with the support of the DJOP it organises the meetings. The First Meeting of the APCJJ was held in Bangkok in June 2012. The event was our first success in gathering all the experts and practitioners from 20 countries within the regions and from around the globe with the main purpose of being a platform for exchanging best practices in the area of youth justice and helping to raise the standard of practice to be up to the international standards of juvenile justice.

With that success, and with the increasing awareness of the need for preparation for the ASEAN Community which was announced to take place at the end of 2015, the IJJO created an APCJJ Sub-Committee for South East Asia Nations under the APCJJ. With the support of the DJOP, a conference was hosted as the First Meeting of the ASEAN Juvenile Justice Organizing Committee in September 2014 in Bangkok. This APCJJ Sub-Committee Meeting for South East Asia Nations saw the participation of representatives from Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Vietnam, and Thailand and was an important opportunity to begin a dialogue on judicial cooperation, in the context of opening borders. At the conference, the data relating to the needs for development from its members were collected and developed into the programme of the Second Meeting of the Asia-Pacific Council for Juvenile Justice, which was conducted in Phuket, Thailand, during May 5-8, 2015.

The Second APCJJ Meeting provided an opportunity to strengthen partnership networks and collaborate in the care of children and young people in the region. The meeting also supported the development of the formulation of policies and practices that will, at the end, result in consistency of the juvenile justice system throughout the region.

Our success is owed greatly to the strong commitment and participation of the IJJO, UNODC, UNICEF, and the TIJ. With the aim of being the center to promote juvenile justice reform in ASEAN, the DJOP, MOJ Thailand will continue to work towards the sustained development of juvenile justice within the region and will continue to create opportunities and platforms for member countries to share and develop policies together for a better juvenile justice system.

Professor Wisit Wisitsora-at
Director-General
Department of Juvenile Observation and Protection
ACKNOWLEDGEMENTS

Many professionals have contributed to this research, sharing their national and regional experience and knowledge. Mainly experts on the ground, the APCJJ members work on a daily basis with children and young people at risk of social exclusion, in order to protect their rights. All of them have generously shared their expertise for this publication, coordinated by the International Juvenile Justice Observatory.

The International Juvenile Justice Observatory would like to express its most sincere gratitude to the Department of Juvenile Observation and Protection, of the Ministry of Justice of Thailand, for its invaluable contribution during the last 5 years to the process of the Asia Pacific Council for Juvenile Justice and for the kind offer of hosting the First and Second Meetings of the APCJJ. In particular, the IJJO would like to express its gratitude to Dr. Kattiya Rattanadilok for her dedication and commitment to the First and Second Meetings’ success. Our partnership with the Department of Juvenile Observation and Protection represent an essential bridge with the local realities and challenges, and constitutes a crucial tool for developing effective action and long-lasting impact in the context of Asian countries.

The International Juvenile Justice Observatory also would like to express its sincere gratitude to the United Nations Office on Drugs and Crime (UNODC) for having accepted to be co-organiser of the training event held on the 5th to 7th of May that preceded the Second Meeting of APCJJ and, in particular, for having provided invaluable technical expertise in the conceptualisation and delivery of the training activities. The ideas shared by UNODC colleagues with criminal justice officials from Asia-Pacific countries were very useful for inspiring juvenile justice practitioners in the region. Our partnership with UNODC is instrumental in promoting more child-friendly juvenile justice systems, in line with international standards and norms.

Special thanks are given to:

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- Judge Chanthaly Douangvilay, People’s Supreme Court, Lao PDR.
- Justice V. M. Kanade, Chair, Juvenile Justice Committee of Maharashtra, India.
- Ms. Datin Paduka Intan Kassim, Brunei Commissioner, ASEAN Commission on the Promotion and Protection of the Rights of Women and Children.
• General Paiboon Koomchaya, Minister of Justice, Thailand.

• Dr. Kattiya Ratanadilok, Chief of the Research and Development Sector, Department of Juvenile Observation and Protection, Thai Ministry of Justice.

• Mr. Alasdair Roy, Children & Young People Commissioner, ACT Human Rights Commission, Australia.

• Ms. Geeta Sekhon, United Nations Office on Drugs and Crime.

• Mr. Veerayuth Sukcharoen, Director, Department of Juvenile Observation and Protection, Thai Ministry of Justice.

• Ms. Le Thi Hoa, Vice Head of the Criminal Law Division, Department of Criminal and Administrative Legislation, Vietnam.

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• His Hon. Judge John Walker, District Court and Youth Court of New Zealand.

Very special thanks go to the Raoul Wallenberg Institute of Human Rights and Humanitarian Law for sharing with the participants of the Second Meetings the outcome of the research “A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States”. 
1. EXECUTIVE SUMMARY

This report aims to analyse priority issues for juvenile justice systems in Asia-Pacific, namely: violence against children within the justice system, diversionary and alternative measures, restorative justice and cross-border issues. In the course of the APCJJ’s work in the region, these topics have emerged as key subjects to tackle, in order to provide real support to effective reforms and a fairer justice system. The report A Voice for the Future of Juvenile Justice in Asia-Pacific, an outcome of the 2012 meeting, analysed the main challenges for the development of juvenile justice systems in line with human rights standards, and outlined the necessity to improve safeguards and policies in these areas.

A second aspect that emerged is the urgent need to strengthen training of professionals in the area of youth justice, in particular to reinforce capacity building to provide a more child-friendly approach. As a result, the debates and exchanges that were carried out in the course of the Second Meeting, held in May 2015, focused on three thematic areas: violence against children, alternatives to detention, and restorative justice. The meeting tackled each subject according to a multilayered approach: addressing the theoretical definition of the issue; promoting promising practices; and fostering the training of professionals. This report will follow the same structure, providing for a threefold analysis of each thematic area.

Children in conflict with the law, and in particular those deprived of their liberty, face a high risk of becoming victims of violence as a mere result of being in contact with the juvenile justice system. This violence frequently remains invisible, unrecorded, unprosecuted and unpunished. It can occur in all phases of the justice process and be perpetrated by justice professionals who deal with these children, peers or the child him or herself as a result of self-harm. Considering the negative effects of detention on children’s health and psychological well-being and the inevitable obstacles that deprivation of liberty poses to education, personal development and reintegration into society, effective diversion and alternative measures have become a priority for any juvenile justice system. In particular restorative justice, which can be used as diversionary or alternative measure, can be particularly responsive to children's best interests as it promotes reconciliation between the parties and embodies a rehabilitation objective.

Moreover, a final section will specify the priorities of the Council’s work in the Region, which were tackled in the course of the last day, according to the preferences expressed by the APCJJ members. The ASEAN subcommittee decided to explore cross-border safeguards for children in contact with the law, as the member states are working towards opening borders, while various other members expressed the intention to keep focusing on restorative justice, deemed a particularly child-friendly form of alternative measure. Finally, the report is concluded by key recommendations on each theme.

In order to provide an accurate account of the APCJJ’s positions and of the objectives of future initiatives, the report builds on the various exchanges, presentations, papers, and national good practices that were shared by the Council’s members, as well as by international guests in the course of the meeting. In addition, it draws on the consultations and capacity building exercises that were carried out in the course of the training for professionals, led by the United Nations Office on Drugs and Crime. In this light, the IJJO would like to express its most sincere gratitude to all the participants in the Meeting, and in particular speakers and co-organisers, for engaging so actively in the exchange of knowledge that constitutes the basis of the APCJJ’s action.
2. THE ASIA PACIFIC COUNCIL FOR JUVENILE JUSTICE

The Asia-Pacific Council for Juvenile Justice (APCJJ) was launched by the International Juvenile Justice Observatory (IJJO) in 2012, with the objective of promoting child-friendly justice reforms and advocacy according to the priorities and challenges in the region. Various countries in the Asia-Pacific region have dedicated increasing attention to the issues faced by young people at risk of social exclusion and in conflict with the law, and have started developing legislative and policy reforms to increase their safeguards and shift the punitive attitude of the traditional criminal system. Nonetheless, this progress is hampered by issues of perception, resources and social conditions.

In order to assist the development of a more fair juvenile justice system focused on effective reintegration of young people into society, the APCJJ brings together 46 renowned experts from 18 countries and builds a forum for trans-national dialogue, exchange of evidence-based practices, and support for common initiatives. To fulfill this purpose, it relies on the multi-disciplinary competences of its members, who represent the academia, the civil society sector, the public administration, as well as the judiciary, and therefore combines their expertise in legislation, implementation, supervision, research and direct intervention in this field.

The Council first met in June 2012 to discuss child involvement in crime and crime-prevention programmes in the region, and to formalise the establishment of the Asia-Pacific Council for Juvenile Justice. Following that meeting, the APCJJ published a report, A Voice for the Future of Juvenile Justice in Asia-Pacific. Introduction to the Asia Pacific Council for Juvenile Justice and Leading Juvenile Justice Reforms in the Region, which addressed detention conditions in the Asia-Pacific region, whilst promoting a preventive approach and restorative policies. In September 2014, an APCJJ Subcommittee for South East Asian Nations was created and its first meeting was organised in Bangkok with representatives from the justice ministries and academia of eight ASEAN member states.

The second general meeting of the entire APCJJ was held in Phuket, in May 2015, under the title ‘Towards Child-Friendly Justice in the Asia-Pacific Region: Alternatives to detention and restorative Justice for Children’ and brought together a total of 258 experts (118 women and 140 men). The Second Meeting of the APCJJ consisted of two complementary events: a three-day professional development training event and the APCJJ policy oriented event for participants and APCJJ official members. The first event was co-organised by the IJJO, the Thai Department for Juvenile Observation and Protection, the United Nations Office on Drugs and Crime, the United Nations Children's Fund and the Thailand Institute of Justice. Designed around the goal of promoting child-friendly juvenile justice systems and related international standards in the Asia-Pacific region, the Meeting constituted a crucial opportunity to bring together stakeholders from over twenty countries, as well as representatives of regional and international bodies.

The first above-mentioned training event, held during the first three days of the meetings featured plenary sessions in the morning, dedicated to the discussion of the main topics and focused in particular on an evidence-based approach to good practices, as well as ad-hoc workshops in the afternoon. These afternoon sessions were designed as capacity-building exercises, based on the active participation of the entire group of professionals taking part in the meeting. As a result of the variety of backgrounds of APCJJ members and participants in the meeting, in the course of the workshops it was possible to analyse different perspectives and approaches to juvenile justice issues, in the view of fostering transnational and inter-organisational cooperation to develop promising practices. Finally, the fourth day was a policy-oriented event, dedicated to defining the priorities of the APCJJ, and discussing a roadmap of future activities, on the basis of members’ interest and suggestions.
3. VIOLENCE AGAINST CHILDREN IN THE JUSTICE SYSTEM

3.1 Theoretical Approach on Violence against Children

- Definition of the Issue

The 2006 UN Study on Violence against Children unveiled the extent of violence against children in the framework of care and justice systems, as an extremely widespread and almost systematic phenomenon. Since the first stages of contact with the justice system, whether as victims, witnesses or offenders, children find themselves in particularly vulnerable circumstances and can easily be targets of psychological pressure, abuse of power, degrading treatment and even physical violence. Therefore, providing specific safeguards, complaint and monitoring mechanisms appear as a priority for all national youth justice systems.

According to the joint report of the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system, detention presents particular risks for children, as they are more easily subjected to violence. Beyond being limited in their possibility of movement, other factors contribute to making detention facilities potentially unsafe: lack of clear separation from adult detainees, overloaded capacity of institutions and the consequences on living situations and privacy conditions, corruption. In some countries, when in custody, children are often subject to abuse and exploitation, such as being forced to become drug couriers, servants of adult prisoners, or forced to provide sexual services. They may also be subject to neglect, which can be particularly devastating for those suffering from physical and mental issues or drug addictions. Furthermore, they could suffer from isolation from society, particularly when their welfare, education, and reintegration needs are not fully addressed within the formal justice system.

In consideration of the seriousness of the issue, this report dedicates the following to the two most recent international instruments developed to fight violence against children, as well as to the promising practices to ensure appropriate protection to children in contact with the law.

- United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (the UN Model Strategies on VAC)

Following the results of the 2006 UN Study on Violence against Children and the 2012 Joint Report of OHCHR-UNODC-SRSG on VAC on prevention of and responses to violence against children, the UN General Assembly adopted resolution A/RES/69/194 in December 2014 which contains in its annex a new international normative instrument - the UN Model Strategies on Violence against Children. The core objective of this new tool is to improve the effectiveness of the criminal justice system in preventing and responding to violence against children, in particular when such violence may result from their contact with the criminal justice system.

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1 The Theoretical Approach on Violence Against Children section is based on the contributions to the morning session of the first day of meeting, including Alexandra Martins, Yasmeen Shariff, Datin Paduka Hajah Intan, Kazi Reazul Hoque and Alasdair Roy.

In this framework, the United Nations Office on Drugs and Crime was given a mandate to provide technical assistance and advisory services to UN Member States, with a view to facilitating the implementation of the UN Model Strategies on VAC. To assist Member States in promoting the implementation of the UN Model Strategies on VAC, UNODC developed two technical assistance tools: i) Introducing the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice: A New Tool for Policy Makers, Criminal Justice Officials and Practitioners; and ii) Planning the implementation of the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice: A Checklist.

The scope and content of these instruments are based on the three core parts of the Model Strategies, which address: general prevention; improvement of the criminal justice system’s capacities to respond to violence against children; and reducing the risk of violence against children in the justice system.

The **general prevention strategies** focus on prohibiting all forms of violence against children and promoting the criminalisation of serious forms of violence. At the same time, they enhance the importance of prevention policies, also specifically aimed at vulnerable groups. A crucial element in developing comprehensive prevention programmes is promoting data collection, research, analysis and dissemination of results.

The **strategies to improve the ability and capacity of the criminal justice system to respond to violence against children** specifically tackle different phases of intervention: establishing detection and reporting mechanisms; providing effective protection to children that are victims of violence; ensuring effective investigation and prosecution of violence against children, and enhancing inter-sectorial cooperation among interested parties. This is accomplished by improving criminal proceedings involving child victims of violence, ensuring that sentencing reflects the serious nature of violence against children, and strengthening the capacity of criminal justice professionals.

Finally, the strategies dedicated to the **prevention of and response to violence against children in contact with the law**, focus first of all on reducing the number of children in contact with the justice system, and especially of children in detention. In this light, it is apparent how the promotion of effective systems of diversion and alternative sanctions is a priority to reduce the occurrence of violence and secondary victimization of children. Moreover, the focus on prevention of violence during investigation and prosecution, as well as during custody, on promoting clear criminalization of torture and degrading treatment, ensuring monitoring and accountability mechanisms, and programmes of assistance targeted at children who have been subject to violence in this framework.

The key objective of the UN Model Strategies on VAC is to support a comprehensive, system-wide and strategic approach to this issue in the field of juvenile justice. In doing so, the normative instrument aims to support countries in integrating violence prevention and child protection strategies and thus in strengthening a protective environment framework to prevent and respond to incidents of violence against children. It provides for a practical framework to identify gaps in laws, policies and practices; review and design national laws and policies; and set up institutions and mechanisms that can guide professionals in their day-to-day practices. Some of these measures have been expressed in general terms to allow various governments to refine and adapt them to local circumstances. In addition, the priority for these strategies may vary depending on the context in which they would be applied. In the coming years about 3-4 countries will be selected for pilot programs to implement the Model Strategies within their national context.
Complaint Mechanisms in the Optional Protocol 3

In April 2014 the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, also known as OP3, entered into force. The Optional Protocol 3 establishes a communications procedure for those who claim their rights have been violated by a State that is party to the Convention on the Rights of the Child or its two Optional Protocols, allowing them to bring a complaint or communication directly before the CRC Committee. It also foresees a system of inter-state communications and of inquiries promoted ex-officio by the Committee in case of grave and systematic violations of the rights of child.

The basic rules provided state that complaints can be brought by a victim, a group of victims, a representative of a victim, or a representative of a group of victims. While there is no minimum age at which to lodge a complaint, the violation of a right should have occurred when a child is below 18 years old. The victim may be above 18 years at the time of submission, but the communication should be submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit within the time limit. The complaint cannot be anonymous.

A complaint can only be brought against a State Party that recognizes the competence of the Committee under the OPCP (i.e., has ratified the present OP). The complaint must involve a violation of a right guaranteed under the CRC, the Optional Protocol on the sale of children, child prostitution and child pornography or the Optional Protocol on the involvement of children in armed conflict, and the state must have ratified the instrument for which the violation is alleged.

There are three types of complaints: individual or group-of-individuals complaints, inquiries, and interstate complaints. The complaint or communication should always be in writing. Information will be provided in an appropriate and accessible format for adults and children alike, adapted to the extent possible, to the age and maturity of the child/children. This will be done even if the latter is/are represented by an adult, the communication may be submitted in the local language.

Nonetheless, the communication or complaint will not be accepted if the domestic mechanisms of redress have not been exhausted, according to the principle of “domestic relief”, which establishes that in international law, States shall be given the opportunity to remedy human rights violations before a complaint can be brought to an international body. A complainant shall therefore seek a remedy before national courts and get a final decision before submitting a complaint or communications procedure. Yet, this principle does not apply if the domestic remedies are unreasonably prolonged or not likely to bring effective relief. Once the commission receives a complaint or communication, it shall bring it confidentially to the attention of the State party concerned as soon as possible. The State shall, as soon as possible and within six months, submit to the committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided.

Children receive value from this protocol because it complements and adds value to the CRC and its two initial optional protocols. Before the OP3 was developed, the CRC was the only core international human rights treaty without a communications procedure. Therefore, the protocol consolidates the international system of accountability for children’s rights and strengthens the international recognition of children as rights holders. Governments benefit from this because the committee will develop international jurisprudence and provide practical and authoritative interpretation of the CRC provisions and the obligations of states. The possibility of submitting complaints at the international level will encourage states to strengthen or develop appropriate remedies at national level.

In addition, the OPCP authorises the CRC to transmit, with the consent of the State concerned, to the relevant UN actors its views and recommendations indicating a need for technical advice and assistance. It allows the CRC to undertake inquiries if it receives reliable information indicating grave or systematic

3 To see the list of countries that have ratified: http://ratifyop3crc.org/ratificationnews/#.VdWaLvlTSFQ.
child rights violations by a state. Governments that take their obligations under the CRC and its optional protocols seriously should not worry about ratifying this new protocol; rather, it should encourage them to improve policies, programs and services for children. They should also create good options and solutions at the local or national level such as child-friendly legal systems and advocates for children. The OP3 **strengthens the commitment of the international community to children's rights** as a common concern and provides a solid basis for sharing good practices and learning across the borders. It also provides an opportunity for states to strengthen their juvenile justice systems.
3.2 Snapshots of Promising Practices to Ensure Children Protection

AUSTRALIA – INDEPENDENT OVERSIGHT: THE CASE OF AUSTRALIA

Presentation by Alasdair Roy, Children & Young People Commissioner, Australia

The key functions of the Children and Young People Commissioner, one of the three Commissioners on Human Rights within the Australian Capital Territory (ACT), involve: resolving complaints related to services for young people, including those in juvenile justice system; providing advice to the government concerning child-friendly policies, practices, and legislation; and consulting with children, particularly those in custody. He also visits detention centres upon request or at any time to inspect the records. As a statutory official, the commissioner has independence from political interference with his work.

In the ACT, three key agencies have a role in the oversight of the juvenile justice system and in preventing violence against children: the Official Visitor, the Public Advocate of the ACT, and the Children & Young People Commissioner. The role of the Official Visitor is to inspect places of detention, receive and consider complaints, and report to the minister monthly. Visits are regularly held every two weeks, as well as upon request.

While the Official Visitor focuses on individual matters, systemic issues fall under the purview of the Public Advocate, who acts as an advocate for the rights of children by monitoring the provision of services and investigating complaints from a systemic perspective, guided always by the best interests of the child. The Public Advocate receives a daily list of young people going into detention, as well as those on care-and-protective orders and detained in mental health facilities. He visits detention centres monthly and upon request and also inspects the register of the use of force and the register of searches every three months. Furthermore he receives all segregation (solitary confinement) orders.

Officials from these agencies make a point of talking with young people in detention centres, often in informal settings, such as over lunch, as the children can provide the most useful information and clear ideas about what is more necessary and effective in the facilities. Moreover, the three oversight agencies have developed a strict cooperation, meeting monthly to discuss issues of mutual interest and concern; undertake joint activities and projects and report annually to the Legislative Assembly Standing Committee on Education, Training & Youth Affairs. Representatives of Legal Aid also attend these meetings, though they are not technically overseers.

Examples of joint activities and projects that the three agencies have accomplished or that are still in progress include: Inquiry into Children & Young People with Complex Needs in the Youth Justice System (in progress); Annual survey of young people in detention (2015 & 2014); Review of bail (2014); Review of the use of “time-out” (2013); Development of an accessible complaint mechanism (2013).

At national level, beyond the ACT, there is a Commissioner, Guardian and/or Advocate for Children and Young People in each Australian State and Territory who work together as the Australian Children’s Commissioners & Guardians (ACCG).

Results from the efforts of the agencies and this independent oversight include: a significant decrease in the use of force; a significant decrease of injuries and violence and in number of complaints; fewer reports of concerns from both residents and staff, and an overall decrease of nearly 75% of young people in detention. These results show how independent oversight with powers to enter, inspect and compel facilities to take action is critical to achieving a safer and more effective youth justice system. In contrast, a closed system kept away from oversight is a potentially system that allows problems to develop and fester. To achieve meaningful reform, governments must be prepared to account for their performance and treatment of young people in detention.
STRENGTHENING THE REGIONAL PERSPECTIVE TO COMBAT VIOLENCE AGAINST CHILDREN: THE ACWC’S ROLE

Presentation by: Datin Paduka Intan Kassim, ASEAN Commission on the Promotion and Protection of the Rights of Women and Children – Brunei

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was inaugurated on 7 April 2010 in Hanoi, as an inter-governmental body. Each member country appoints two representatives to the ACWC, for a total of 20 representatives: 10 on women’s rights and 10 on children’s rights. Its primary bases of reference are the Convention on the Rights of the Child, and the Convention on the Elimination of all Forms of Discrimination against Women. The ACWC works on the principle of consensus.

The Commission aims to promote and protect the human rights and fundamental freedoms of women and children in ASEAN, who comprise about 60% of the ASEAN population. In order to complement national and international efforts, the ACWC focuses on the promotion of regional and international cooperation for the effective empowerment and development of children and women.

To address the risk of violence that children face when in contact with the law, the ACWC strives for the implementation of international standards: eliminating the death penalty and life sentences without parole for acts committed by children, applying detention only as a measure of last resort and for the shortest period possible, separating juveniles in detention from adults, providing children with the adult’s right to a fair trial. Furthermore, judges, lawyers and other officials who deal with children in conflict with the law must be trained on the rights and needs of children, and finally, violence against children is never acceptable, even as a disciplinary measure.

Moreover, in order to help ASEAN Member States to protect children, the ACWC sees its role as performing in regional-oriented activities, including setting performance standards in line with international standards, sharing good practices, formulating regional plan of action and establishing a Network of Social Services Agencies (NOSSA) for capacity building, data exchange, and aggregating best practices. The commission’s efforts have led to the ASEAN Declaration on the Elimination of Violence against Women and Elimination of Violence against Children that was approved by leaders in 2013 in Bandar Seri Begawan, Brunei; a regional Plan of Action on the Elimination of Violence against Children; and activities under the ACWC’s Work Plan. The ACWC is the main mechanism to implement the declaration. While it has completed the regional action plan for women, the plan for children is still a work in progress.

Under the Work Plan for 2012 to 2016, the commission has focused on the following activities related to children in contact with the law:

- Review of legislation, national plans and other national mechanisms (in progress);
- Compilation of best practices in ASEAN countries;
- Review of existing practices in the treatment and management of child victims of trafficking;
- Comprehensive and integrative approach for children in need of special protection;
- Setting performance standards for children with disabilities (pending funding);
- Integrative child protection system;
- Social impact of climate change on children;
- Social impact of reproductive health on children (in progress);
- Performance standard in early education (pending funding);
- Harmful religious and cultural practices on children;
- Awareness campaign on VAC.

Despite the considerable work of the Commission, challenges exist to its mandates and goals: it faces limited resources, both human and financial, as the representatives on the ACWC are not full-time members. Moreover, working on consensus means following the lowest common standards that all member states will agree to, as well as consuming as much time as each member state agrees to for any proposed guidelines. In addition, projects that focus on children receive less attention than other issues.
### 3.3 Policy-Oriented Workshop

- **Panel discussion**

A panel discussion was conducted with the theme: ‘Strategies to Prevent and Respond to Violence against Children who are in Contact with the Justice System’ wherein the questions to the panel members were based on the UN Model Strategies. The questions to the panel members, who were chosen from among the speakers and the participants, sought to elicit their responses broadly on the following issues: reducing the number of children in contact with the justice system; ensuring that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time; preventing and responding to violence against children in places of detention; and detecting, assisting and protecting children who are victims of violence as a result of their involvement with the justice system as alleged or sentenced offenders.

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**BRAINSTORMING EXERCISE: PLANNING THE IMPLEMENTATION OF THE MODEL STRATEGIES – CHALLENGES AND POSSIBLE SOLUTIONS**

Participants in the brain-storming exercise were provided with two strategic objectives, drawn from the Model Strategies:

1. Reducing the number of children in contact with the justice system;
2. Ensuring that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time.

They were then asked to identify two sets of answers. First of all they would have to suggest which specific challenges needed to be overcome in order to achieve the objective. Then they were asked to propose concrete solutions to achieve the given objectives in the national context, according to their professional experience. Below is a report of the main points that were made in the course of the exercise.

<table>
<thead>
<tr>
<th>Strategic Objective</th>
<th>Issues Identified by Participants</th>
<th>Solutions Suggested by Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reducing the number of children in contact with the justice system</td>
<td>• Absence of alternative measures to judicial proceedings; • Unwillingness to implement diversionary and alternative measures; • Lack or scarce consideration of restorative justice programmes.</td>
<td>• Allocate resources favouring prevention and reintegration programmes; • Promote awareness in local communities on restorative justice and alternative measures; • Advocate legislative reform; • Support education; • Determine and study risk factors; • Establish mandated budget cuts for courts that do not reduce the number of children in contact with the justice system; • Strengthen NGO involvement, community (family) involvement and community-based programmes that target children at risk; • Invest in probation services, capacity building and networking (training, etc.); • Involve the media to highlight the issue in a child-friendly perspective; • Provide for simple warning mechanisms that do not lead to involvement in criminal justice; • Promote the action of counsellors from the schools.</td>
</tr>
</tbody>
</table>

Continued on next page >
Ensuring that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time

| Ensuring that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time | Lack of legal provisions indicating diversion and alternatives as primary measures; | Promoting legislative reform at national level; |
| --- | Overreliance of pre-trial detention; | Imposing strict criteria as to when a child can be arrested to minimize the number of children who enter in contact with the law; |
| Lack of trust in informal justice proceedings; | Lack of trust in informal justice proceedings; | Produce research supporting the call for changes in relevant law with evidence-based arguments; |
| Prevailing punishment-oriented attitude. | Prevailing punishment-oriented attitude. | Strengthen NGO services, such as help phone lines, and mediation and counselling centres; |
|  |  | Employ mediation, also in the communities, as well other diversion mechanisms; |
|  |  | Increase motivation of judges through capacity-building programmes; |
|  |  | Set the indicators for reduction of pre-trial detention; |
|  |  | Establish mandatory justification reporting for any detention of a child; |
|  |  | Provide child-friendly police training to shift punitive attitude; |
|  |  | Invest in prevention programmes to strengthen families and communities; |
|  |  | Increase coordination between the police, courts, and probation officers; |
|  |  | Establish mandatory birth registrations to ensure that children and young people are treated according to their real age; |
|  |  | Create “safe houses” for young people in lieu of bringing them to police stations; |
|  |  | Ensure monitoring mechanisms of detention centres. |
Key Readings


- The International Juvenile Justice Observatory, 2013. ‘Ending Violence against Children in Custody’

- UN, 2008. ‘Guidance Note of the Secretary General: UN Approach to Justice for Children’

- UN Human Rights Council. 2012. ‘Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system’


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4. DIVERSIONARY MEASURES AND ALTERNATIVES TO DETENTION

4.1 Theoretical Approach to Diversionary and Alternative Measures

- Definition and Legal Framework

According to UNICEF’s *Toolkit on Diversion and Alternatives to Detention* “diversion means the conditional channelling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable any child to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal proceedings and a criminal record.” Forms of diversion that are available to avoid or minimize the contact of young persons with the justice system vary widely, including: no action or a simple caution; an apology to the victim/survivor; payment for damage done/restitution; referral to a structured diversion programme, such as community work and competency development programme; and a restorative justice process.

On the other hand, ‘alternatives to detention’ refers to measures that may be imposed on children who are being formally processed through the criminal justice system, at both pre-trial and sentencing stages, that do not involve deprivation of liberty.” Examples of alternative measures include: care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes. The aim of these measures is to ensure that children are dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the offense.

Legal support for the implementation of such measures can be found in the *Beijing Rules*. Rule 1.11 states that consideration shall be given, when appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authorities, as well as in the *United Nations Convention on the Rights of the Child*, referring to Article 40.3. Moreover, they are in line with Article 3, establishing the best interest of the child as a primary consideration in all actions concerning children. The States’ responsibility to provide diversion and alternative sanctions, and their crucial value for the respect of young people’s best interest is then reiterated in all international provisions concerning children in conflict with the law.

International standards further specify basic principles to determine the recourse to diversionary and alternative measures. Under the Beijing Rules, diversion can be applied at any stage during the decision-making process and criminal proceedings. In all cases, it is important to obtain the consent of the child and the child’s parent or guardian to the recommended diversionary process. According to the Committee on the Rights of the Child, General Comment N. 10 on Children’s rights in Juvenile Justice, the child must be allowed to seek legal or other appropriate assistance for assessing the appropriateness and desirability of the diversion offered; furthermore, upon the successful completion of a diversion, the case is closed and the confidential records of the diversion should not be considered “criminal records”.

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7 Based on Presentations of Chiam Heng Keng, Grace C. Agcaoili, John Walker, Kattiya Ratanadilok, Siriprakai Worapreecha, Razwana Begum and Elfina L. Sahetapy.
- Origins and Effectiveness of Diversionary and Alternative Measures

It is important to recall that international standards are agreed by national governments, which decide to share and respect these principles of human rights, on the basis of scientific and medical discoveries concerning the adolescent mind.

The brains of adolescents have not yet reached the same level of maturity as that of adults, which implies a series of effects on their behaviour. Scientific discoveries prove that both grey and white matter undergo extensive structural changes well past puberty. Notably, it is in the neo-cortex, which controls planning, reasoning, impulse control, thinking ahead, regulation of emotions, learning from experience, and weighing of risks and rewards, where the latest phase of brain development takes place. A deficiency in these areas can lead to inappropriate behaviour, favouring conflict with the rules deriving from impulsive, reward-seeking instincts, susceptibility to peer pressure to jointly commit crimes, poor decision-making, inexperience, minimal consideration of negative consequences, and emotionality. In other words, young people have a more limited perception of long-term consequences of their actions, and should not be held responsible the same way that adults are.

In addition, it is proven that excessive and repeated stress causes the release of chemicals that impair cell growth and interfere with the formation of healthy neural circuits in the brain. This reinforces the relation between potential risk factors and the propensity to commit crimes.

It is also in light of these scientific reasons for adolescents’ behavioural issues that diversion and alternatives are generally more appropriate sanctions for children than deprivation of liberty, as they are more proportional responses. According to the principle of minimum intervention, as expressed by the CRC Article 40.4 and Beijing Rule 5.4, both the circumstances of the offense, and of the offender, shall be taken into account to decide on the appropriate sanction. Moreover, it is stated that the ‘juvenile justice system shall emphasise the well-being of the juvenile’, and, by allowing the burdensome process of criminal proceedings and the traumatic experience of detention, alternative measures favour the social reintegration of young people.

Accordingly, the key objectives of diversionary or alternative measures shall be interpreted as:

- Favouring reconciliation between perpetrator and victim;
- Avoiding state deprivation of children’s liberty;
- Encouraging community participation;
- Fostering a sense of responsibility in children.

While theoretically diversion can apply to any kind of offence, in practice it is unavailable for serious crimes and persistent offenders. Since a great variety of measures can be considered diversionary, the implementation of such services is often dependent on a multilayered system, and on the contribution of different agencies, including: the police, statutory services, commissions, NGOs, and community- and faith-based organizations. Usually typical diversion options involve forms of both formal and informal support. Hence, in order to provide an effective system from an organizational perspective, the coordination between different services, as well as the training of the different actors who come in contact with children is a crucial aspect. Another important element of good practice is an efficient timeframe to decide on whether to invoke diversion, which requires the police and prosecutor to determine through fact-finding the most appropriate avenue of treatment for the juvenile.
On the other hand, taking into account effectiveness in relation to the final goal of social reintegration of the youth, it is essential to: devise targeted interventions that respond to the single needs of each young person, referring to evidence-based practices, and engaging the community and families through maximum participation. On these bases, the intervention can tackle:

- Behaviour change (individual reporting sessions, rehabilitation programs, addressing family needs, and mental health treatment);
- Engagement (working with schools, sourcing jobs, collaborating with employers, and skills training and apprenticeships);
- Lifestyle development (building strengths, supporting sustainable pursuits, finding new positive friends, and experiencing success in life);
- Community reintegration (performing community service, restoring relationships, building social capital, and referring for supportive services).

**- Challenges of Implementing Diversion**

Despite the advantages that diversion offers to deal with children in conflict with the law and to address the underlying causes of social exclusion, the belief that a purely retributive approach is the only fair and appropriate response to a crime is widespread. Opposition to alternative measures can originate even in the parents and families of those children facing criminal proceedings. Experiencing frustration and often guilt due to the perception of having lost control over their child’s behaviour, parents may ask the competent authorities to give their children a harsh sentence, even opting for detention.

Beyond issues of perception, correct implementation of diversion faces a number of other challenges. First of all, the safeguards and procedural principles that are claimed in international standards are not always applied: for instance the young person may not have the freedom of choice as the prosecutor or the police subtly or implicitly coerce the young person into diversion; or the young person, especially one who is fearful or has difficulty establishing a defence, may accept diversion merely as the path of least resistance. This can easily lead to a lack of personal engagement, and poor outcomes of the process, especially if it is not supported by appropriate monitoring mechanisms.

Finally, a number of problems directly linked with resources availability and organisational capacity of the competent agencies can decisively undermine the objectives of diversionary measures. Problems such as lack of available programs at local level and ineffective allocation of resources in the community, understaffing and lack of appropriate training of staff, lack of coordination between different agencies involved in youth care, and insufficient aftercare services annul the benefits of diversion and alternatives and lead to a determined increased risks of recidivism.
NEW ZEALAND – ALTERNATIVE MECHANISMS TO FORMAL JUDICIAL PROCEEDINGS: THE CASE OF NEW ZEALAND

Presentation by Judge John Walker, District Court and Youth Court of New Zealand

In New Zealand the juvenile justice system is very distinctly separate from the adult justice system. In order to minimize the risk of persistent offending, diversion is held as underlying principle, as it keeps a young person out of the courtroom and the justice system, thus avoiding social stigma and labels. To achieve effective diversion, a specialist youth justice section of the police department with specially trained officers work with young people to keep them from repeating offenses. They all operate on a diversionary principle and influence other police officers to consider young people as needing treatment that differs from what adults normally would receive.

As a result of this emphasis, 75-80% of all police apprehensions of young people result in diversion, though sometimes only a warning is needed: “Sometimes doing nothing is the right thing to do”. In certain cases, by simply returning the child to his/her family, they are afforded an opportunity to work together for a solution. When more intervention is required, the key is providing prompt, community-based alternative interventions, which are available in New Zealand.

Another key element, however, is the good identification and treatment of the underlying causes of the offender. Punitive or accountability measures alone cannot be effective; almost certainly the offender will reoffend if the underlying cause isn’t treated.

In New Zealand, many youth offenders are out of school. Schools play a big role in keeping children out of conflict with the law. Children fall out of the education system because of behavioural issues, or because they lack long-term residence, and therefore have a weaker link to a specific town’s school system. Other issues influencing youth offenders are substance abuse, which drives young people to steal to support their purchases of drugs and alcohol; mental health issues; neuro-development disorders; parenting issues; and a lack of self-esteem, direction, and hope. Many offenders suffer from more than one of these challenges. An effective diversion program must address these underlying causes, or else diversion merely becomes a delay in reoffending.

Only persistent offenders and those accused of serious crimes are usually brought directly to criminal court. If the police declare a diversion ineffective or tried too often and then wish to bring a child to court, they must convene a family group conference to state their intention. The conference may decide to try a new diversionary approach in lieu of court. If that fails and a child is brought to court, he/she appears before a specialist youth court presided over by a specialist youth court judge.

Children coming into court are typically 15-16 years old. Most admit their crimes to the judge, who then calls a new family group conference that includes a “youth advocate”, a specialist youth lawyer. The judge can’t make a ruling until the family conference expresses its views, and has no role in the conference. About 90% of the time, the judge will agree with whatever the conference recommends for the offender, and the court will regularly monitor the agreed-to plan’s progress. Detention is a very last resort. If diversion is successful, then the youth’s record is expunged. The youth justice professionals believe in the opportunity for change in the lives of the young, with the goal of reclaiming young lives for the benefit of all.
THAILAND – UNINTERRUPTED & TAILOR-MADE ROUTING PROGRAM IN THAILAND

Presentation by Dr. Kattiya Ratanadilok, Head of Research and Development Sector, Department of Juvenile Observation and Protection, Ministry of Justice, Thailand

In this research project, funded by the Thai Health Promotion Foundation, an evidence-based solution was applied through the development of a seamless intervention and rehabilitation programme, referred to as the Uninterrupted Tailor-Made Routing for Juveniles. The programme resulted from the DJOP’s search for the best practices of community-based intervention programmes, and was inspired by the Work-Wise Programme of the 180 Foundation of the Netherlands. Work-Wise focuses on working with children post-trial, including an individual routing counselor (IRC), who first works with a child in detention, as well as after the detention is completed by following up as a case manager and ensuring that the child receives all services needed.

The objectives of the pilot research project were:
• to use detention as a measure of last resort, for the shortest possible time, and to take into account the best interests of children and youth by developing alternative treatment measures in lieu of detention, and to have community involvement in the provision of rehabilitation and social reintegration;
• to provide guidelines and procedures for intervention consistent with the problems and needs of each child, and to give equal weight to rehabilitation and treatment in the institution and in the community that emphasise a continuation of services and management from entering an institution through reintegration into society;
• to set up an aftercare system for children, youths and their families after returning to the community with the cooperation of all sectors involved to reduce the risk of future behavioural problems and recidivism; and
• to provide an effective and evidence-based prototype of a comprehensive rehabilitation programme with limited time in an institution.

After receiving a request from the juvenile court judges to add in pre-adjudicated youths to be served by the IRC in this project, the project, then, was organised in two parts: pre-detention and in-detention.

In part one, an IRC could be brought in before formal charges are filed. In this case, the court may call in an IRC to help gather information about the youth for making a plan and then have the IRC work with the youth in his or her community with the family and community members in replacement of detention and pressing charges. If the youth follows the agreed plan, the charges would be dropped.

Part two focused on juveniles already in detention. During the first three months of detention, a “Life Plan” for each juvenile would be created with input from parents or caregivers and related community members. The life plan would include the development of necessities in five areas: family and community relationships, education, occupation, peer group, and housing. The juvenile then, according to the life plan, would be placed in the programmes that address his or her specific needs.

Following the first 6-12 months of detention, a transition to living outside a detention centre would be attempted, whether this is a return to a family home, if one exists, or to an organisation or halfway house, while working with an IRC with comprehensive support services. Given the work required, one IRC could handle only 10-15 children. This action research project was considered to be a pioneer project for juvenile justice reform in adding the systematic use of family and community as diversions instead of long-term placement in pre- and post-trial detention.
INDIA – ALTERNATIVES TO DETENTION IN INDIA’S JUVENILE JUSTICE SYSTEM

Thanks to the Contributions of APCJJ members Bharti Ali NGO HAQ: Centre for Child Rights and Honourable Justice Kanade, High Court of Mumbai, India

The Juvenile Justice (Care and Protection) Act, 2000, regulates the juvenile justice system in India, and states that the Juvenile Justice Board has the exclusive jurisdiction over cases involving juveniles in conflict with the law. While the age of criminal responsibility is set at 7 years old, children between the age of 7 and 12 must demonstrate maturity to admit the existence of a criminal offence. Detention is prohibited according to the law below 18 years of age according to the law. Children below the age of 18 who have been found guilty of a criminal offence may be sent to a Special Home, for a period no longer than three years.

Nonetheless there are various provisions in place in order to avoid the detention of juveniles:
- the child can be released on simple advice or admonition to his or her family, or on bail;
- a fine can be imposed, only in cases where the juvenile is over 14 years old and earning an income;
- the child can also be directed to participate in group counselling or community service activities;
- there is the possibility of placing the child on probation of good conduct, under the care and supervision of their parents, guardians or other fit institution, for a period of three years maximum.

Notably, from the very first appearance/production of the juvenile with the Board, the Juvenile Justice Board shall take steps for preparation and implementation of the after-care plan for the juvenile, by obtaining social investigation report from the Probation Officer. Only in case that the Board has ascertained that the juvenile has not maintained good behaviour during the supervision period or the fit institution was unable or unwilling to ensure the good behaviour and well-being of the juvenile, then it may order the juvenile to be sent to a Special Home.

As a result of these diversionary and alternative measures, out of the total of juveniles apprehended in 2013: 15.2% (6,613) were released after advice or admonition, 19.8% (8,599) were placed under care of parents/guardians, 3.9% (1,689) were sent to institutions, 21.9% (9,549) were sent to special homes, 4.0% (1,756) were dealt with by fine, and 7.4% (3,198) were either acquitted or their cases were otherwise disposed off. (Source: National Crime Records Bureau, Crime in India 2013, Chapter 10, pp 136-137.)

Nonetheless, the system has recently turned towards more restrictive measures, with the approval in May 2015 of the Proposed Amendment to the Juvenile Justice (Care and Protection) Act, 2000, which includes: the transfer of 16-18 year old children alleged to be in conflict with the law for heinous offences to the adult criminal justice system, after preliminary inquiry by the Juvenile Justice Board; the introduction of life imprisonment with the possibility of release; and increased sentencing for such children.
4.3 Policy-Oriented Workshop

- **Group discussion**

Participants were divided into four groups and each group was assigned a different topic for discussion and presentation of the group’s recommendations and responses. The broad-based theme for the group discussion was ‘Implementing Diversion and Alternative Measures for Children in Conflict with the Law’. Questions addressed to the participants pertained to, *inter alia*, risks that children - especially girls - may be routinely exposed to within the juvenile justice system; solutions based on country specific experiences/best practice methodologies’ for each of the identified risks for protection of children within the juvenile justice system; restorative justice programmes; monitoring of diversionary measures; training and guidelines for criminal justice practitioners on the use of diversionary measures; minimum age of criminal responsibility; challenges to implementing diversion and alternative measures to deprivation of liberty; and challenges to implementing non-coercive treatment, education and community-based programmes as alternative measures to judicial proceedings. After discussions within the group, the representative of each group presented their answers, responses, solutions or recommendations to the questions that were addressed to each group.

- **Panel discussion**

A panel discussion was conducted with panel members drawn from among the speakers and the participants. The discussion was based on the broad theme of ‘Diversion, Alternatives and Community BasedSanctions’. The questions to the panellists dealt with were how to address and promote a greater understanding for the humane features of diversion; what are the challenges for the community and its various functionaries and what are the ‘checks and balances’ of community sanctions vis-à-vis protection of rights of the juvenile; challenges in protection of rights of girls and juveniles with special needs during diversion and community sanction processes; how to synergise state led child-centred programming with informal diversion efforts – which are a vibrant feature in the justice landscape across many jurisdictions of the region; how to develop effective and simple costing exercises to help states understand the financial effects of best practice legislative reforms – where detention based remand and sentencing options are reduced and community based options are increased.

**EXERCISE - CHALLENGING ATTITUDES AND PERCEPTIONS**

This exercise was conducted by involving the participants in answering questions from a quiz game. The quiz questions were framed to primarily challenge attitudes and perceptions of the participants on issues pertaining to juvenile justice; children in contact with the law; gender bias; violence against children; juvenile justice processes and others. The questions were not focused on knowledge and information sharing. Some of the questions were framed with ‘true’ and ‘false’ choices, whilst the others provided multiple-choice answers and the participants had to provide the correct answers. When the participant answered a question, he/she was asked to provide the explanation for that answer to acquire a clearer appreciation of the understanding of that concept by the participant and also some scope for discussions and introspection with the other participants.
Key Readings

- The International Juvenile Justice Observatory. ‘Alternatives To Custody For Young Offenders And The Influence Of Foster Care In European Juvenile Justice’

- UN Committee on the Rights of the Child, 2007. ‘General Comment No.10: Children’s rights in Juvenile Justice’


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9 http://www.oijj.org/sites/default/files/general_comment_10_to_crc.pdf


5. RESTORATIVE JUSTICE

5.1 Theoretical Approach to Restorative Justice\textsuperscript{12}

- Definition and Legal Framework

Restorative Justice is a problem-solving approach to crime that involves the parties themselves and the community in general, in an active relationship with statutory agencies, as opposed to the traditional approach of merely establishing innocence and guilt: “retributive justice”. In Restorative Justice, the stakeholders are the victims, offenders and communities, and crime is addressed with a different logic: removing stigma and reducing the uses of proxies such as lawyers.

In international law and standards, Restorative Justice has progressively acquired recognition, and a specific space as part of the criminal justice system, especially for youths. Art. 40.3 (b) of the CRC states: “State parties shall seek to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law...” and “(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected”. This essential article provides to states the basis to promote Restorative Justice, in particular as a way to avoid the burden of criminal proceedings, while at the same time specifying that the same safeguards of fair trial provided for both the victim and the offender shall be respected in informal justice processes.

Furthermore, ECOSOC Resolution 2002/12 contributes to providing a definition of Restorative Justice, as “any process in which the victim and the offender and, where appropriate, any other individuals affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles”\textsuperscript{13} and lays down the basic rules when recurring to Restorative Justice:

\begin{itemize}
  \item It may be used at any stage of the criminal proceeding,
  \item It is based on the agreement of the parties of the basic facts of the case,
  \item Both offender and victim voluntarily agree to take part in the proceeding,
  \item Power imbalances between the parties shall be taken into account,
  \item Safety of the parties is a primary concern to consider when deciding whether to refer a case to Restorative Justice proceeding.
\end{itemize}

\textsuperscript{12} The present Theoretical Approach section is based on the contributions to the morning session of the third day of meeting, including Justice Kanade; Mario Hemmering, Ann-Kristing Vervik; Catalina Gonzalez Moreno, Le Thi Hoa, Wing Cheong Chan.

\textsuperscript{13} Prg. 2 ECOSOC 2002/12.
Overarching Objectives of Restorative Justice

The key rationale behind Restorative Justice is that when having experienced a painful event, the victim should be enabled to meet the perpetrator, learn about their motivations and at the same time explain the trauma that they have experienced. This opportunity facilitates the process of recovery and, through this dialogue both the victim and the perpetrator can overcome stigmatization. On these bases, the procedure followed by restorative processes differs greatly from traditional justice, as it seeks reconciliation rather than following an adversarial logic. Accordingly, three key objectives of a restorative process can be identified:

- Victims of crime should be compensated;
- Perpetrators need to be rehabilitated, restored and reintegrated within the community. They should be made to understand the hurt they have caused to victims and be asked to take the responsibility for the crime, and then need to take action to make amends to the victim by restoring the loss;
- Relationship building should take place among the victim, offender and the community.

The latter is essential to understand how restorative processes aim to heal the relationship between the victim and the person who has caused the harm, but also reach further by including other parties affected, as well as the community. Facilitating the process of reintegration of a young person in conflict with the law is therefore another core aspect of restoring justice.

Beyond the advantages that the restorative approach can bring to the parties involved, they also imply conspicuous benefits to the public administration of justice. First of all, the cost of punitive measures is much higher than the Restorative Justice process, and if the cost-effective argument is true when comparing criminal proceedings with informal proceedings, it is even more compelling when adopting Restorative Justice rather than a sanction that involves deprivation of liberty. Secondly, Restorative Justice produces results in the short and medium term, assuming the intervention is integral, continuous and monitored. Finally, a retributive approach may lead to an increase in violent behaviour - it contributes to the child’s isolation from society and undermines educational objectives, and therefore it often proves ineffective to prevent recidivism. Moreover, when considering that, in the overwhelming majority of cases, children are responsible for petty crimes, the benefits of a restorative approach are even more obvious. In fact, by fostering responsibility-assumption and awareness through a very personal process, dissuasion from future criminal behaviour can be more effective.

In this light, it is worth noting how the Model Strategies and Practical Measures to Eliminate Violence against Children recognise the ‘important and highly effective’ role of diversion measures, and Restorative Justice amongst them, in reducing the number of children in the justice system. In addition, it underlines the importance of available alternatives to ensure that the arrest and detention of children remain a measure of last resort, in view of reducing the risks of secondary victimization in the context of the justice system.
- Challenges to the Implementation of Restorative Justice

While the potential of Restorative Justice has been recognised internationally and most countries in the Asia-Pacific region have integrated legislation providing for it, the actual implementation of the practices often remains limited. Key challenges to extending the use of restorative processes are linked to different motivations.

First of all, in certain countries the lack of specialised juvenile justice systems and the absence of legal provisions that allow for Restorative Justice for children are a fundamental barrier to the development of this process. Even when such provisions exist, normative deficiencies concerning the coordination of different agencies or the lack of national guidelines on minimum standards and uniform procedures at local level can also deeply impact the effectiveness of the restorative approach.

Secondly, there is an issue of perception. On the one hand, the public perception of youth crime, and the media portrayal of particularly serious cases can lead to a more punitive approach by the public authorities. On the other hand, even within the youth justice system, it is at times difficult to recognize that a child in contact with the law is no longer a passive subject needing assistance, but an active subject with rights who is entitled to full protection, and also to active participation. Moreover, key actors of the traditional criminal system may be sceptical of the actual effectiveness of informal justice, as they do not have precise knowledge of the advantages of applying such methods to children. This leads to Restorative Justice being a low priority on the agenda.

Thirdly, there is the issue of resources, which includes financial resources to invest in restorative justice programmes, as well as to provide training and capacity building to the professionals in contact with children in the course of restorative proceedings, and also to invest in data collection, comparative analysis and monitoring systems that can evaluate the effectiveness of such practices.
5.2 Snapshots of Promising Practices

LAO – MEDIATION IN LAO PDR – THE VILLAGE MEDIATION UNIT

Presentation by Justice Chantaly Douangvilay, Supreme Court, Lao PDR

Since 2010, the Lao PDR has committed itself to protect the rights and interests of children and those in conflict with the law. A child must be 15 years old to be criminally responsible; younger children can’t be charged. In case of an offence they are still required to apologize to the victims, according to the law, or the parents or guardian must pay compensation to the victims. For children between 15 and 17, if the offence is punishable with detention of less than three years, and if the offender admits to the crime and the victim consents to mediation, then diversion can be invoked. Overall, in the vast majority of cases, a case involving a child as the offender is dealt with by the village authorities, who use mediation. Such cases may be settled by the parties themselves, referred to village mediators, or to the police at the district level.

In order for mediation to happen, strong evidence of the crime must exist; the child must admit to the offence; the victim and a family member must be present at every mediation session; the outcome of the process should be agreed upon voluntarily; any agreement must be conform to the law and be in the best interests of the children. Sessions can be conducted up to three times; if the parties can’t agree, the case may be submitted to the district justice office.

If a case first goes directly to the police, they can refer it to village authorities for mediation or a rehabilitation centre. Parents and guardians must always be informed on the progress of a case. Detention is considered a measure of last resort and is used only when a child is seen as a danger to the public. The law provides for and makes a priority of pre-trial release, and no bail should be imposed for the release of a child. In addition to mediation, another alternative response to the criminal justice system is the increasing use of drug rehabilitation centres because of drug use by juveniles. These centres do not fall under the juvenile justice system.

One key challenge is that often the Village Mediation Units do not explore the range of options available to resolve the mediation process because of a lack of available services in poor, rural communities, such as good quality education. Education is usually entrusted to the parents, but often their ability to help is limited. Also limited is the Units’ ability to follow-up on the process.
THAILAND – ALTERNATIVE LEGAL PROCEEDINGS FOR YOUTHS IN THAILAND

Presentation by Chareeya Denninnat, Deputy Chief Justice, Central Juvenile and Family Court, Thailand

Thailand employs special measures instead of normal criminal prosecutorial procedures with children in conflict with the law. These measures can be applied to cases in which the punishment does not exceed five years imprisonment and provided that the injured parties consent to a rehabilitation plan. If consent is granted, the director of the Observation Centre proposes a plan to the prosecutor and to the Court for approval, and afterwards, the prosecutor issues a non-prosecution order.

Special measures can also be employed post-prosecution for juveniles charged with criminal offenses punishable with up to 20 years imprisonment, with or without a fine. Young people can have access to such alternative measures as long as they have not been subject to prior convictions, except petty offenses and those committed through negligence. Offenders must feel remorse for their actions, and both victims and the prosecutor must consent. The prosecutor takes into account different criteria: whether the offense shall be considered not very harmful to society, whether the juvenile can change their behaviour for the better, and whether the victim can obtain reasonable compensation.

If all these conditions are met, a conference is arranged. On the day it’s held, the court will provide a chance for the juvenile to express his or her feelings toward the offending actions, while making clear the purpose of the arrangement for a rectification and rehabilitation plan to all the interested parties. The court must consider the consent and the cooperation of the juvenile before it approves the creation of a plan. If the victim agrees, then the court will order the process to proceed.

In creating a plan, court officials, a psychiatrist and a social worker gather information to construct a file for submission to the court, which will appoint a coordinator to arrange a conference with the relevant parties to draft a rectification and rehabilitation plan for submission to the court within 30 days following the appointment. The plan comprises of:

1. Comments and opinions of the conference participants;
2. Various measures for rectification and rehabilitation, such as:
   a. a plan in line with resolving the juvenile's problems and challenges;
   b. a plan that addresses the actors and the environment relating to the juvenile;
3. The rectification and rehabilitation plan must facilitate restitution to the victim;
4. The juvenile and victim must consent to the plan;
5. The plan’s time frame must not extend beyond the offender’s 24th birthday
6. The plan must not restrict the juvenile’s rights and liberties except in the case of offering genuine benefits to the juvenile.

The Supreme Court has established overarching regulations for such alternative plans, which must comply with the following guidelines:

1. The juvenile must report to a probation officer, obtain counselling, or participate in rehabilitating activities, such as vocational training or religion activities.
2. Safety measures must be followed, such as a prohibition on associating with undesirable persons as defined by the plan, restrictions on entering certain venues, and a night-time curfew when one is required to stay at home.

After the court receives the plan from the coordinator, it will hold a meeting to consider it, and if it considers the plan to be appropriate, it will dispose of the case. If the court rules that the plan is flawed, it will order an amendment, and only in case that the amendment is not possible, the case will be brought to trial.

Another specific programme designed to facilitate social reintegration of young people in conflict with the law is The Uninterrupted & Tailor-Made Routing Program, which includes the help of an Individual Routing Counsellor, who works with the child already when they are already in custody, and then during the after-care period, assessing his or her specific needs and challenges to facilitate a comprehensive rehabilitation programme.
5.3 Policy Orientated Workshop

- Panel discussion

A panel discussion was conducted with speakers and some participants at the meeting on the broad theme ‘Promoting Restorative Justice for Children in Conflict with the Law’. Among the questions addressed by the panel members were solutions to address challenges of negative social perceptions/misconceptions among the general public and among lawmakers about children involved in the justice system; procedural safeguards in the restorative justice process through standard operating procedures; standardised assessment forms and interview protocols; judicial review/overview; and training and capacity building for ‘occupational proficiency’; promoting coordination among all restorative justice service providers and justice actors and how governments and justice providers can institutionalise multi-sectoral approaches at national and local levels - involving effective communication and coordination among the multiple service providers across different sectors, including those involved with informal justice systems; strategies on how data, research and evaluation of restorative justice programmes should be promoted as a key dimension of this process so as to build sound evidence to scale up positive experiences and refine policy and law.

EXERCISE: VICTIM-OFFENDER MEDIATION ROLE PLAY

In the scenario enacted for the role play, a young adolescent steals a wallet from a woman, while holding a knife to her neck. The restorative justice process that is presented is a victim-offender mediation, which includes the participation of:

- the mediator;
- the victim;
- the adolescent in conflict with the law;
- the adolescent’s mother.

The APCJJ thanks Judge John Walker of the Youth Court of New Zealand for playing the mediator, and the other participants at the meeting who agreed to take part in the role play.

The mediation process developed in five different phases:

1) The victim started by recounting the events as she experienced them. The trauma and emotions that had affected her appeared evident as it proved difficult for her to relate the incident in a precise chronological order, and she appeared especially nervous and shaken when telling about the weapon that was used by the young person. She also talked about the letter of apology that was written by the adolescent in conflict with the law and said that even though initially she had no inclination to read it, once she did, she could feel that the letter was written with honesty and she was surprised by the level of sincerity expressed in the letter.

2) The mediator then invited the young perpetrator to re-tell the incident and express the feelings that arose while hearing the victim’s perspective. The young person found it difficult to express himself: he was not able to maintain eye-contact with the victim; laughed in nervousness, and could not justify his actions. The adolescent’s mother then intervened, requiring a more respectful attitude from her son and asking him to apologise to the women he hurt. He responded by saying ‘I am sorry’ while staring at the floor, but he had a hard time articulating what he was sorry for.
3) Perceiving how the young person felt under pressure and ashamed, the mediator went back to the victim, and asked her to state how this experience affected her personally. The woman then described the period after the attack and the consequences on her day-to-day life, which included: panic attacks, difficulties sleeping and nightmares, fears of going out alone in her neighbourhood, which she had always considered a safe area, and most importantly the fear of using her immigration status card, which permitted her to work and send the much required money home. She also explained that, being a mother herself of young adolescents of the same age as the boy, she had never expected to be afraid of a young boy before.

4) At this point the mediator turned back to the boy. While still finding it hard to express himself, he slowly explained that he did not expect his act to have such far reaching consequences. He thought that he would never hurt the woman and therefore initially perceived the incident as not very serious. He then apologised for having caused distress to the victim.

5) The mediator asked the adolescent in conflict with the law about what he thought was the purpose of the mediation and explained that he would have to report the conclusion of the process to the judge. The mediator asked the adolescent if he could do something to compensate the victim for the losses that she had incurred as a result of the offence. The adolescent and his mother agreed that the adolescent would pay to the victim an amount of USD 800 over a period of 6 months. The victim agreed to this and confirmed to the mediator that the entire process was fair and satisfactory.

6) Conclusion: after the performance, the audience and the participants in the role play shared their feelings and reactions. Some particularly interesting points were made:

- The person playing the victim expressed how difficult it was, simply imagining to have had a knife pointed at her and fearing for her life, to get in direct contact with the adolescent in conflict with the law and having to speak in front of him. She also expressed conflicting emotions towards the adolescent: anger, pity, sympathy, and fear.

- The guest playing the adolescent in conflict with the law explained that it was challenging to act like a teenager, and that he truly perceived the struggle of this young person to express his feelings. The nervousness and guilt caused inappropriate reactions, such as laughter and silence, and the awareness that these could be perceived as inappropriate responses added to the pressure. He could now relate to a young person struggling to express remorse, and to their frustration.

- The participant who played the mother explained that she felt like a failure, she had the responsibility to teach good behaviour and important values to her son, and she experienced strong guilt. She said she can now better relate to the suffering of a parent in that situation.

Comments from the audience underlined how difficult it was to feel sympathy for the young adolescent in conflict with the law in the first phase of the mediation, but how the overall process shifted that perception. The mediator replied by highlighting the importance of a face-to-face exchange. He also recalled that it is particularly difficult for adults to understand the reactions of a young person, and to keep in mind that they have not developed all the inter-personal skills that are needed to react and express feelings in a way that is appropriate. In this light, the importance of proper training for mediators and related figures is fundamental.
Key Readings

- The Economic and Social Council, 2002. ‘Resolution 2002/12: Basic principles on the use of restorative justice programmes in criminal matters’

- The International Juvenile Justice Observatory, 2015. ‘Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States’

- UNODC Handbook on Restorative Justice Programmes.

- United Nations Special Representative of the Secretary General on Violence against Children, 2013. ‘Promoting restorative justice for children’


6. JUVENILE JUSTICE PRIORITIES IN ASIA-PACIFIC

6.1 The APCJJ towards Sustainable Collaboration on Key Priorities

The first three days of the meeting were conceived as a professional development event, in order to foster a deeper exchange, and a more precise analysis of certain issues that had emerged as particularly relevant in the conclusions of the report: ‘A Voice for the Future of Juvenile Justice in Asia-Pacific’. After this experience, strengthened by the capacity-building sessions, APCJJ Members had the opportunity, during the course of the fourth day, to decide upon the priorities for shared action in the coming years. The meeting was therefore organised as an open consultation on the progress of the Council’s work.

In this context, two subjects were indicated by members as particularly relevant, for different sets of reasons. On the one hand, restorative justice practices were identified as an especially interesting approach to improve the effectiveness of the juvenile justice system, by reason of their multiple effects, such as the reduction of the population in detention, the reconciliation objective which guarantees active participation of the two parties, victim and offender, and the primary role of communities, which can improve the reintegration process. At the same time, most countries indicated a lack of specific provisions and services allowing for effective implementation of restorative justice.

On the other hand, the ASEAN subcommittee called attention to the upcoming opening of the borders between ASEAN members. In this light, they underlined the importance of providing appropriate safeguards to children who may enter into contact with law enforcement and judiciary in a country different from their own. At the same time, they also highlighted the necessity of improving policies of transnational cooperation between the judiciary and law enforcement sectors.

According to these inputs, the roundtable discussion in the course of the fourth day focused in particular on these two themes, and on the specific approach that the APCJJ should prefer to address such relevant issues.

6.2 Restorative Justice for Children

- The APCJJ’s Perspective on Restorative Justice

As was repeatedly underlined in the course of the meeting, a restorative approach to justice is an effective alternative to detention and the disruption that it may cause to a young person’s life, and it can provide the child with an opportunity to actually address the harm that was caused and provide for reparation. Another essential advantage of providing the opportunity of Restorative Justice at the very early stages of criminal proceedings, is that it reduces the contact of the young person with the criminal justice system, therefore notably reducing the risk of secondary victimization that is directly linked to the justice system.

Considering Restorative Justice’s features, and in particular the opportunity to provide reparation to the victims, avoid the perpetuation of stigma and involve the society directly, the APCJJ strongly argues in favour of a broader application of these measures, in particular when it involves more serious cases, where they have proved especially effective in reducing recidivism.

Nonetheless, the contributions from the members highlighted numerous issues at national level, from lack of knowledge of restorative practices, to lack of confidence in its effective outcome, and finally, a lack of efficient allocation of resources to training and services. In this light, members decided to engage directly in this issue and analyse how to facilitate the States’ recourse to these measures, identifying key
elements of promising practices in the phases of legislation, policy, and practice. A working group was formed to start sharing promising practices and drafting a position paper which will serve for research and advocacy purposes. The working groups’ results will move from the essential elements outlined in the following paragraphs.

- Strengthening Implementation through Legislation

Legislation is the first instrument to allow for and promote the use of restorative practices. Firstly this is achieved by making restorative practices more accessible, as it has the most direct influence on the gatekeepers who decide which procedures will be used with young people.

According to international standards and in consideration of its suitability in various contexts, legislation should clarify that restorative justice must be available as a possible alternative to the traditional criminal proceeding at all stages: before trial, during court proceedings and as an alternative to sanctions. Research proves that mandatory rather than permissive legislation\(^{18}\) can achieve better results in terms of increasing rates of referral.

Secondly, legislation is key to ensuring the quality of the service provided by restorative practices.: on the one hand by establishing that fair trial guarantees apply also to restorative measures, for both the victim and the offender, and on the other hand by defining the fundamental conditions for a fair restorative process: voluntary participation; confidentiality; neutrality of the facilitator.

Finally, legislation can play a crucial role in overcoming the resistance of the judiciary and law professionals, who may be sceptical towards Restorative Justice’s application to more serious cases, by encouraging referral without distinctions based on the type of offence.

- Identifying Crucial Interventions at Policy Level

Whether restorative practices are delivered by public agencies or by civil society organisations, inter-agency cooperation and good communication between the judicial gatekeepers and practitioners is essential to enhance effectiveness of the process.

High quality training of practitioners, possibly recognised by independent bodies and institutions such as Universities, ensures the quality of the overall process, as well as its flexibility to accommodate different needs.

Policies on restorative justice should include provisions to collect information and data, for instance concerning: the number of cases that were offered access to restorative practices, the number of cases that were accepted to participate in Restorative Justice, those who completed the process and those who did not and which ratio of cases involved face-to-face exchanges. Such information is crucial for an evidence-based approach to policy-making.

\(^{18}\) In mandatory legislation the prosecutor and the judge are obliged to consider referral to restorative justice, and to report the reasons for not referring in case they do not deem it appropriate.
- Fostering Effective Practices

Policy design cannot disregard effective monitoring mechanisms, to evaluate the delivery of Restorative Justice and address possible shortcomings, ensuring the respect of all participants.

In the phase of actual delivery of restorative practices, the practitioners will be responsible not only for ensuring standards of safety, respect and quality of the service, but also to ensure universal accessibility in practice. This means that the restorative process will be tailored for the participants, taking into account specific needs on the basis of: level of cognitive and social development; linguistic capabilities; emotional awareness; additional physical or learning needs; spoken languages; different cultures, religions, ethnicity; sexual orientations.

Lastly, the use of a restorative method can entail a positive outcome when applied to different contexts: such as to solve conflict in schools or in detention facilities.

6.3 Cross-Border Safeguards for Children in Contact with the Law

The ASEAN subcommittee of the APCJJ was launched and met for the first time in 2014 in order to respond to the specific necessities of ASEAN member states, and favour stronger cooperation in the defence of children’s rights. As the ASEAN member states rapidly proceed towards more economic integration and have engaged to open borders by December of this year, the consequences of such progress on human rights safeguards are not always clear.

In this context, the members of the subcommittee wished to analyse more in depth how trans-national judicial cooperation and collaboration between law enforcement bodies can develop, while at the same time ensuring a minimum level of human rights standards for children in contact with the law.

Minimum safeguards will ensure equal treatment of citizens across state borders, especially in situations of vulnerability, such as getting in contact with the justice system in a different country. In these contexts, children and young people have specific needs, and therefore they deserve enhanced safeguards to be guaranteed a fair experience with justice.

- Reforming Legislation to Include Minimum Safeguards for Children in Cross-Border Instances

Law Enforcement and Judiciary Cooperation: the integration of core principles into national legislation can effectively establish a minimum level of collaboration between different public authorities, to address shared security concerns.

First of all, mutual recognition of judicial decisions allows for overcoming differences between national justice systems, without the need to harmonise them. In the same line, instituting mutual admissibility of evidence between the different countries will simplify cross-border investigations and trial, improving their effectiveness.

Finally, in order to ensure that law enforcement agencies have access to cross-border information, it is necessary to establish rules on data collection and on recording of investigations and judgments.

Minimum safeguards: common agreements, transposed into national legislation, which establish minimum safeguards will provide insurance to persons, and governments, that any citizen will be treated with due respect of his or her fundamental rights, even when entering into contact with the law across national borders. Without minimum safeguards, it will be impossible to establish the principle of mutual recognition.
Minimum rights should be transposed into national legislation for the treatment of victims of crime, as well as of persons who are suspected or accused of having committed a crime. Particular safeguards should apply to people deprived of liberty from the moment of their arrest. Minimum standards shall aim to define and secure fair trial guarantees, to establish a level of treatment that respects the person’s dignity, and to guarantee that any disadvantage deriving from the cross-border context and related aspects (distance from home, different language, etc.) is properly addressed. Particular rules will apply to cases involving children and young people, which take into account the principle of the child best interest as a priority.

- **Establishing Common Policies to Facilitate Law Enforcement**

An effective system of transnational cooperation between law enforcement bodies requires: common systems of information; common investigation techniques for cross-border cases, especially for organised crime and mutual assistance. Specialised training of staff and exchanges can play a crucial role in the development of these assets.

Establishing a common system of arrest warrants that is common to the entire area of countries that share their borders, can drastically improve the effectiveness of investigations and judicial decisions concerning cross-border cases. In particular, it allows countries to overcome cumbersome and lengthy extradition processes. In order for a common system of arrest warrants to be put in place, States will have to agree on a series of crimes recognized by all the parties to the agreement. For these crimes, an arrest warrant issued in one State will be automatically recognized in another one, avoiding issues of double criminality. Furthermore, concerned parties will agree on common procedures for surrender of nationals, as well as on recognized grounds to justify the refusal to execute a warrant (a possible example: the requested person is below the age of criminal responsibility in the executing State).

- **Guidelines for Treatment of Children in Contact with the Law across Borders**

When a public authority comes into contact with a national of a different country, they will have to make sure that this person is in a condition that allows them to perfectly understand oral and written communication, or is able to provide for interpretation for the duration of the proceedings, including during the initial questioning, in order to carry out investigations or arrests linked with criminal behaviour. They will also have to provide the relevant information concerning the accusation.

In case of deprivation of liberty and from the moment of the arrest of a national of a different country, public authorities will have the obligation to provide the necessary information to the related consular authorities. They will also provide the person suspected or accused of a crime with the possibility to inform a third person of his or her situation. In case they have arrested a child, they will have the direct responsibility to contact, without undue delay, the parents of the child or the persons responsible for his or her well-being, to inform them.

When a child has been arrested, in order to guarantee a correct evaluation of the child needs and best interest, an individual assessment will be carried out by the competent authorities. The following proceedings will be tailored to the results of such assessment and to the primary goal of the child’s reintegration. Any questioning involving a child shall be recorded to ensure compliance with minimum safeguards.

Finally, the national of a different country shall be guaranteed the right to access a lawyer to talk to the lawyer in private for the purpose of the case and to maintain confidentiality from the moment he or she is informed of the situation by the competent authorities, until the conclusion of the possible trial including an appeal. He or she, as well as the appointed lawyer, will also have the right to access all the relevant documentation (with related translation where necessary).
7. POLICY RECOMMENDATIONS

The second Meeting of the Asia-Pacific Council for Juvenile Justice presented a valuable opportunity for multiple exchanges between juvenile justice experts, which outlined aspiring standards to deliver a fair and equitable justice service to children who come into contact with the law, and at the same time outlined recurring challenges in the administration of justice.

In consideration of the debates, the presentations, the single policies that were outlined, as well as the international standards on the different issues, and on the basis of the results of the different capacity building exercises, a set of guidelines can be inferred on the different issues that were addressed.

The following recommendations are therefore directed to public administrations, as well as members of the judiciary and law enforcement agencies, and all practitioners who deal with children in conflict with the law.

RECOMMENDATIONS to Prevent and Respond to Violence against Children within the Justice System—In line with the Model Strategies and Practical measures for the Elimination of Violence against Children the Field of Crime Prevention and Criminal Justice

1. Reducing the number of children in contact with the justice system, for instance by avoiding criminalization of statutory offences and setting an appropriate age of criminal responsibility, is an effective way of avoiding the risk of secondary victimization within the justice system;

2. Ensuring that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time, by promoting available and effective options of diversion, as well as alternatives to detention;

3. Prohibiting torture and other cruel, inhuman or degrading treatment or punishment through clear legislative measures;

4. Preventing violence associated with law enforcement and prosecution activities by ensuring that arrest procedures are conducted in a child-sensitive way, and the use of force is clearly limited by law;

5. Preventing and responding to violence against children in places of detention. First of all by reducing the recourse to pre-trial detention and reducing delays in the trial proceedings. Then by avoiding overcrowding, ensuring separation from the adult detainees, and ensuring an appropriate level of care to all children in detention, and fulfilling the specific needs of more vulnerable children;

6. Enhancing cooperation among various sectors: protection and care services, formal justice system, and informal justice mechanisms. Establishing inter-agency ties and collaboration as an effective way of guaranteeing easier detection of cases of violence against children, and a more integrated support to those children;

7. Detecting, assisting and protecting children who are victims of violence as a result of their involvement with the justice system as alleged or sentenced offenders;

8. Ensure appropriate staff recruitment, selection and training of professional staff in contact with children in the justice system is an essential measure of prevention of violence, while at the same, it will
improve detection and responsiveness to cases where violence against a child has been perpetrated;

9. Facilitating **effective investigation and prosecution** of incidents of violence against children, for instance by making the initiative of prosecution independent from any requirement of the child making a complaint, and by clearly criminalizing acts violence against children;

10. Strengthening accountability and oversight mechanisms.

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**RECOMMENDATIONS to Promote Diversionary and Alternative Measures**

1. **Promoting data collection and monitoring** mechanisms ensures that policies and programmes are based on evidence and evaluated against outcomes;

2. **Promoting a fair and proportionate juvenile justice system**, where unserious offenses may not lead to deprivation of liberty but can be dealt with through diversionary and alternative options;

3. **Fostering diversion measures** allows to reduce the cost of court proceedings and generally proves to be more responsive to the needs of first time and non-serious offenders;

4. **Reducing the rates of pre-trial and post-trial detention** by enhancing the use of community sanctions, this affords young people with the possibility of building a healthy relation with society, while cutting the costs related to custodial measures;

5. Ensuring that legislation guarantees the recourse to **diversion at every stage of the criminal justice proceedings**;

6. Ensure access to diversion and alternatives by **effectively allocating resources** to agencies responsible for the delivery of services at local level;

7. Promote, when possible, measures that provide for the **active participation of the victim** and some form of retribution, as well as measures that help the child to develop a healthy bond to the **local community**;

8. **Establishing training and vocational programmes** tailored to the needs of young people in conflict with the law, in order to build their technical abilities, foster social networks and improve their behavioural and social skills facilitates social reintegration;

9. Promote effective research and advocacy on the effects of diversion and alternatives on long-term **recidivism rates**.
RECOMMENDATIONS to Foster Effective Implementation of Restorative Justice

1. Restorative practices should be made available at all stages of the criminal proceedings.
2. During restorative processes, both the offender and the victim shall enjoy fair trial guarantees to avoid secondary victimization and ensure fairness of the proceeding. Restorative principles, such as voluntary participation, confidentiality and neutrality of the mediator, should be guaranteed by law;
3. Legislation should introduce statutory or non-statutory forms of restorative practice that cover more serious offending, in the form of conferencing and circles;
4. Restorative justice services should be provided on the entire national territory;
5. A set of specific indicators should be developed and applied at the national level to establish minimum standards of quality for restorative services;
6. Inter-agency cooperation should be ensure through appropriate policy-design;
7. Government agencies and other entities responsible for delivering the restorative service should gather and collect information on the implementation of restorative justice.
8. Facilitators shall be offered high quality training, both as a precondition to get in contact with children, as throughout their experience in restorative practices;
9. Government agencies and other entities responsible for delivering restorative services should be subject to regular monitoring of their procedures;
10. Awareness-raising action is recommended to provide specific information on the benefit of a restorative approach for victims, offenders and communities at large, and to build support for restorative justice at different levels of society.

RECOMMENDATIONS to Ensure Minimum Safeguards in Cross-border Cases

1. National legislation shall ensure that every child has the right to equal and fair treatment, regardless of their nationality;
2. Ensure the right to promptly receive information concerning the procedural safeguards to which they are entitled. In the case of children, authorities shall make sure to provide this information in child-friendly language, both orally and in writing;
3. Establish the right to be informed, without undue delay, of the circumstances of their accusation;
4. Nationals of a different country who speak a different language shall have the right to be promptly provided with interpretation. The costs of interpretation shall be met by the State;
5. Criminal proceedings involving children must be tailored to their needs and degree of personal development. Thus public authorities will carry out individual assessments, which will be relevant to the determination of the procedure, while avoiding unnecessary reiteration of questioning.
information obtained cannot be used against the child in the course of the proceeding;

6. Upon deprivation of liberty, persons shall be entitled to the **right to communicate with third persons**. In cases involving children, the holder of parental responsibility will be also informed without undue delay, and the child has the right to speak to them;

7. Deprivation of liberty of a citizen of a different country shall be promptly communicated to the **competent consular authorities**. The person should always have the right to communicate with the competent consular authorities;

8. Right to **access a lawyer** to allow the exercise of the defence should be guaranteed. Lawyers will be present during questioning and throughout the proceeding. Exchanges between a lawyer and his or her client will be **private and shall remain confidential**;

9. Nationals of a different country who speak a different language shall have the right to **translation of essential documents** and the right to **access such documents** throughout the proceedings;

10. Legislation shall enshrine the **right to privacy of children**: any information collected in the course of the proceeding, is in principle not to become public, even after the child has reach 18 years of age;

11. Finally, children have the right to **specific treatment in case of detention**. This will include: education, vocational activities, sport, leisure activities and appropriate physical and mental care. Children will have easy access to complaint mechanisms and will be detained separately from adults.
ANNEX: AGENDA OF THE SECOND MEETING OF THE APCJJ

APCJJ Professional Development Training Event – May 5th to 7th 2015

DAY 1 – MAY 5TH
PREVENTION AND RESPONSES TO VIOLENCE AGAINST CHILDREN IN CONFLICT WITH THE LAW

Morning sessions
1. Registration

2. Inauguration
   - Charnchoa Chaïyanukij, Deputy Permanent Secretary, Thailand
   - Veerayuth Sukcharoen, Director General, DJOP MOJ Thailand

3. Welcoming remarks
   - Francisco Legaz Cervantes, IJJO Chairman
   - Natee Chitsawang, Deputy Director of Thailand Institute of Justice – Thailand
   - Margaret Akullo, Programme Coordinator, UNODC
   - Grace C. Agcaoili, Regional Child Protection Specialist, UNICEF East Asia and the Pacific Regional Office


5. Strategies to Prevent and Respond to Violence Against Children who are in Contact with the Justice System – Moderated by Cedric Foussard, IJJO
   - Grace C. Agcaoili, Regional Child Protection Specialist, UNICEF East Asia and the Pacific Regional Office: “Recommendations from the CRC to eliminate all forms of violence against children in conflict with the law”.
   - Datin Paduka Hajah Intan, AWAC ASEAN – Brunei: “ACWC’s role in protecting children in ASEAN”.
   - Kazi Reazul Hoque, Chair, Child Rights Committee, National Human Rights Commission, UNDP – Bangladesh: “Responding to VAC and Diversion & Alternative Measures And Compliance of CRC & UPR recommendations: Bangladesh Scenario”.
   - Alasdair Roy, Children & Young People Commissioner – Australia: “The Role of Independent Oversight in Preventing Violence against Young People in Detention: An Australian perspective”.


**Afternoon sessions:** Planning the Implementation of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice in the Asia-Pacific Region

1. **Introduction by participants** – Moderated by Geeta Sekhon and Mario Hemmerling, UNODC

2. **Training Methodology**
   - Geeta Sekhon, UNODC
   - Cedric Foussard, Director International Affairs IJJO
   - Kattiya Ratanadilok, DJOP MOJ Thailand

3. **Strategies to Prevent and Respond to VAC who are in Contact with the Justice System – Panel Discussion** – Moderated by Geeta Sekhon and Alexandra Martins, UNODC
   - Phiset Saardyen, Director of the Office of External Relations and Policy Coordination, Thailand Institute of Justice
   - Ahmad Taufan Damanik, ACWC Indonesia
   - Sotheavy Chan, Secretary of State, Ministry of Justice, Cambodia
   - Monica Pagunsan, Director IV of the Planning and Management Service of Department of Justice, Philippines

4. **Planning the Implementation of the Model Strategies – Challenges and Possible Solutions – Exchange with the Audience** – Moderated by Geeta Sekhon and Alexandra Martins, UNODC

5. **Empathizing with Children in Conflict with the Law – Role Play** – Facilitated by Geeta Sekhon

6. **Conclusion of Day One and Information about Day 2**
   - Margaret Akullo, UNODC
   - Cedric Foussard, Director International Affairs, IJJO
DAY 2 – MAY 6TH:
DIVERSION AND ALTERNATIVE MEASURES FOR CHILDREN IN CONFLICT WITH THE LAW

Morning sessions:
1. Welcoming words and moderation by Alexandra Martins, UNODC

2. Keynote speech on Diversion and Alternative Measures – Chiam Heng Keng, Professor of Social Psychology, University of Malaysia

3. Plenary Session: International Legal Framework on Diversion and Alternative Measures - Grace C. Agcaoili, Regional Child Protection Specialist, UNICEF East Asia and the Pacific Regional Office

4. Alternative Mechanisms to Formal Judicial Proceedings: validated experiences on diversion and informal justice - John Walker, District Court and Youth Court Judge, New Zealand

5. Deprivation of Children’s Liberty as a Measure of Last Resort: Presentation of evidence-based practices – Moderated by Cedric Foussard, IJJO
   - Kattiya Ratanadilok, Head of Research and Development, DJOP, MOJ: “The Seamless and Tailor Made Reintegration Programs”
   - Siriprakai Worapreecha, Director, Chiang Mai Juvenile Training School, DJOP, MOJ: “Community Involvement in Reintegration Process”
   - Elfina L. Sahetapy, Faculty of Law, University of Surabaya, Indonesia: “The Implementation Of Probation And Diversion Under The Juvenile Criminal Justice System Act 2015”

Afternoon sessions: Implementing Diversion and Alternative Measures for Children in Conflict with the Law:

1. Group discussion – Moderated by Geeta Sekhon, UNODC
   - Alexandra Martins, Crime Prevention Officer - Justice for Children, UNODC
   - Cedric Foussard, Director of International Affairs, IJJO
   - Mario Hemmerling, Justice for Children Expert, UNODC
   - Kattiya Ratanadilok, Head of Research and Development, DJOP, MOJ
   - Phiset Saardyen, Director of the Office of External Relations and Policy Coordination, Thailand Institute of Justice

2. Diversion - Alternatives and Community Based Sanctions – Moderated by Geeta Sekhon, UNODC
   - Chris Graveson, Juvenile Justice Advisor, New Zealand
   - Charereey Demninrat, Deputy Director General, Juvenile and Family Court, Thailand
   - Surangrat Olarmsakul, Juvenile and Family Court, Thailand
   - Maricris Calippa, Deputy Executive Director, Juvenile Justice and Welfare Council, Philippines
   - Shahida Akther Putul, Director, Swanan, Bangladesh

3. Challenging Attitudes and Perceptions – Exchange

4. Conclusion of Day 2 and Information about Day 3
   - Margaret Akullo, UNODC
   - Cedric Foussard, Director International Affairs, IJJO
DAY 3 – MAY 7TH: 
RESTORATIVE JUSTICE FOR CHILDREN FROM THEORY TO PRACTICE IN THE ASIA-PACIFIC REGION

Morning sessions:
1. Welcoming words and moderation by Margaret Akullo, UNODC

2. Keynote speech on Restorative Justice for Children - Justice Kanade, Head of the Juvenile Justice Committee of Maharashtra, India

   - Mario Hemmerling, UNODC: “International restorative Justice for Children: from Legal Framework to Practice”
   - Ann-Kristin Vervik, Office of the SRSG on VAC: “Promoting Restorative Justice for Children”

4. Plenary Session: Restorative Justice for Children in practice – Moderated by Cedric Foussard, Director I.A. IJJO
   - Maria Catalina González Moreno, Directorate of Justice and Security from the National Department of Planning of Colombia: “How to reduce the gap between the regulations and practice of restorative youth justice? The restorative spirit in public policies construction”
   - Chanthaly Douangvilay, Judge, The people’s Supreme Court, Lao: “The Village Mediation Unit”
   - Wing-Cheong Chang, Associate Professor, Faculty of Law, National University of Singapore: “Family Conferencing for Juvenile Offenders: Lessons from Singapore”

Afternoon sessions:
1. Understanding Restorative Justice – ‘Victim - Offender Mediation’ – Role play – Moderated by Geeta Sekhon, UNODC

2. Promoting Restorative Justice for Children in Conflict with the Law – Panel Discussion - Moderated by Geeta Sekhon, UNODC
   - John Walker, District Court and Youth Court Judge, New Zealand
   - Fathimath Sajidha, Probation Officer, Juvenile Court, Maldives
   - Le Thi Hoa, Vice-Head, Criminal Law Division, Ministry of Justice, Vietnam
   - Khin Khin Htue, Judge of the Juvenile Court, Myanmar

3. Documentary on Restorative Juvenile Justice

4. Sharing promising practices on restorative justice - Exchange with audience

5. “Safety Net” - Comprehending the role of different stakeholders in Juvenile Justice

6. Training Concluding Remarks – Alexandra Martins, Crime Prevention Officer - Justice for Children, UNODC

7. Introduction to the APCJJ Policy Event
   - Cedric Foussard, Director I.A., IJJO
   - Giulia Melotti, Project Assistant on International Affairs, IJJO
1. Welcome address
   - Francisco Legaz Cervantes, IJJO Chairman
   - Kattiya Ratanadilok, DJOP MOJ

2. Introduction to the APCJJ - Outcome of the APCJJ Second Meeting and Proposal for a Position Paper on Restorative Justice: ‘Restorative Juvenile Justice in the Asia-Pacific Region’
   - Cédric Foussard, Director I.A., IJJO
   - Giulia Melotti, Project Assistant on International Affairs, IJJO

3. Promoting Youth Justice System Reform: Translating Policy Commitments into Financial Commitments
   - Cédric Foussard, Director I.A., IJJO
   - Bharti Ali, Co-director HAQ, India


5. Guidelines for Cross-border Treatment of Children in Conflict with the Law
   - Christian Ranheim, Head of Office, Raoul Wallenberg Institute, Indonesia: “The current status of juvenile justice in the ASEAN region and cross-border dilemmas”
   - Apichart Jarusiri, Inspector from DJOP, MOJ, Thailand

6. Closing ceremony
   - Francisco Legaz Cervantes, IJJO Chairman
   - Weerayut Sukchareon, Director General, DJOP, MOJ, Thailand