

GUIDANCE NOTE OF THE SECRETARY-GENERAL

UN Approach to Justice for Children


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SUMMARY

This note provides the guiding principles and framework for UN justice for children activities at the national level that apply in all circumstances, including in conflict prevention, crisis, post-crisis, conflict, post-conflict and development contexts. It is framed within the UN mandate to support the realisation of human rights, poverty reduction and the Millennium Development Goals, and is a contribution to the UN coherence agenda in the rule of law area.

The goal of the justice for children approach is to ensure that children, defined by the Convention on the Rights of the Child as all persons under the age of eighteen, are better served and protected by justice systems, including the security and social welfare sectors. It specifically aims at ensuring full application of international norms and standards for all children who come into contact with justice and related systems as victims, witnesses and alleged offenders; or for other reasons where judicial, state administrative or non-state adjudicatory intervention is needed, for example regarding their care, custody or protection.

A. Guiding Principles

1. Ensuring that the best interests of the child is given primary consideration
2. Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination
3. Advancing the right of the child to express his or her views freely and to be heard
4. Protecting every child from abuse, exploitation and violence
5. Treating every child with dignity and compassion
6. Respecting legal guarantees and safeguards in all processes
7. Preventing conflict with the law as a crucial element of any juvenile justice policy
8. Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time
9. Mainstreaming children's issues in all rule of law efforts

B. Framework for Justice for Children

The UN approach to justice for children involves two tracks to ensure that children are better served and protected by justice systems. The first aims to ensure greater attention to children in rule of law initiatives, and the second suggests additional interventions necessary to strengthen rule of law efforts in terms of justice for children specially and to guarantee full respect for child rights. Both these tracks are described below and integrated in the framework for strengthening the rule of law as described in the UN approach to rule of law assistance.

INTRODUCTION

The way children are treated by national legal, social welfare, justice systems and security institutions is integral to the achievement of rule of law and its related aims. Despite important progress over the last two decades, children are yet to be viewed as key stakeholders in rule of law initiatives. Work to implement child justice standards is still frequently handled separately from broader justice and security reform. It is also often undertaken through vertical approaches, aimed at improving either the juvenile justice system or responses to child victims and witnesses, without acknowledging the frequent overlap between these categories and the professionals and institutions with responsibility towards them. Access to justice, though increasingly recognised as an important strategy for protecting the rights of vulnerable groups, and thus for fighting poverty, rarely takes children into account.

This guidance note outlines strategies for a common UN approach towards justice for children within existing rule of law principles and framework as outlined in the UN approach to rule of law assistance. The approach aims to ensure that relevant provisions of the Convention on the Rights of the Child (CRC) and other international legal instruments related to child justice are reflected in broader policy reform and implementation efforts. A common approach will help UN entities to leverage support through partners working on broader agendas around rule of law, including governance, security, social welfare and justice sector reform in which justice for children can easily be integrated.

A. GUIDING PRINCIPLES

The following principles, based on international legal norms and standards, should guide all justice for children interventions, from policy development to direct work with children:

1. Ensuring that the best interests of the child is given primary consideration

In all actions concerning children, whether undertaken by courts of law, administrative or other authorities, including non-state, the best interests of the child must be a primary consideration.

2. Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination

The principle of non-discrimination underpins the development of justice for children programming and support programmes for all children's access to justice. A gender sensitive approach should be taken in all interventions.

3. Advancing the right of the child to express his or her views freely and to be heard

Children have a particular right to be heard in any judicial/administrative proceedings, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. It implies, for example, that the child receives adequate information about the process; the options and possible consequences of these options; and that the methodology used to question children and the context (e.g., where children are interviewed, by whom and how) be child-friendly and adapted to the particular child. In conflict and post-conflict contexts, it is also important to involve children in transitional justice processes.

4. Protecting every child from abuse, exploitation and violence

Children in contact with the law should be protected from any form of hardship while going through state and non-state justice processes and thereafter. Procedures have to be adapted, and appropriate protective measures against abuse, exploitation and violence, including sexual and gender-based violence put in place, taking into account that the risks faced by boys and girls will differ. Torture or other cruel, inhuman or degrading treatment or punishment (including corporal punishment) must be prohibited. Also, capital punishment and life imprisonment without possibility of release shall not be imposed for offences committed by children.

5. Treating every child with dignity and compassion

Every child has to be treated as a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected.

6. Respecting legal guarantees and safeguards in all processes

Basic procedural safeguards as set forth in relevant national and international norms and standards shall be guaranteed at all stages of proceedings in state and non-state systems, as well as in international justice. This includes, for example, the right to privacy, the right to legal aid and other types of assistance and the right to challenge decisions with a higher judicial authority.

7. Preventing conflict with the law as a crucial element of any juvenile justice policy

Within juvenile justice policies, emphasis should be placed on prevention strategies facilitating the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work. Prevention programmes should focus especially on support for particularly vulnerable children and families.

8. Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time

Provisions should be made for restorative justice, diversion mechanisms and alternatives to deprivation of liberty. For the same reason, programming on justice for children needs to build on informal and traditional justice systems as long as they respect basic human rights principles and standards, such as gender equality.

9. Mainstreaming children's issues in all rule of law efforts

Justice for children issues should be systematically integrated in national planning processes, such as national development plans, CCA/UNDAF, justice sector wide approaches (SWAPs), poverty assessments/Poverty Reduction Strategies, and policies or plans of action developed as a follow up to the UN Global Study on Violence against Children; in national budget and international aid allocation and fundraising; and in the UN's approach to justice and security initiatives in peace operations and country teams, in particular through joint and thorough assessments, development of a comprehensive rule of law strategy based on the results of the assessment, and establishment of a joint UN rule of law programme in country.

B. FRAMEWORK FOR JUSTICE FOR CHILDREN

Justice for children issues are to be integrated in the framework for strengthening the rule of law as described in the UN approach to rule of law assistance:

1. **Constitution, or equivalent, and a legal framework and the implementation thereof.** National and international norms and standards pertaining to justice for children need to be taken into account when developing, revising and implementing any legal instrument as described in the UN approach to rule of law assistance. In particular, children's issues must be integrated in:
 - Constitutional reform and/or constitution-making processes;
 - Law and policy reform efforts at national and regional levels. The CRC – the most widely-ratified human rights treaty – and its Committee's General Comment #10, as well as relevant UN norms and standards in crime prevention and criminal justice, including ECOSOC resolution on supporting national efforts for child justice reform (E/2007/23 of 26 July 2007), provide good entry points for broader law and policy reform;
 - Codes of conduct, standards for recruitment and standards of practice for law enforcement and judiciary personnel, detention facilities management and staff, lawyers, social workers, paralegals and other professionals in touch with children in contact with the law.
2. **Institutions of justice, governance, security and human rights.** The UN approach to rule of law assistance requires the establishment and/or maintenance of institutions of justice, governance, security and human rights that are well-structured and financed, trained and equipped to make, promulgate, enforce and adjudicate the law in a manner that ensures the equal enjoyment of human rights for all. In terms of justice for children, this should include the integration of children's issues into rule of law efforts such as:
 - Institutional reform and capacity development for legal and judicial institutions (prosecution, legal assistance and representation, ministries of justice, courts, criminal law, civil law) and law enforcement, parliaments, paralegal professionals, the social sector and prison managers and staff. In terms of security sector reform, capacity building should include a focus on child rights, gender sensitization, mediation and conflict resolution in training for security forces and law enforcement and a focus on their responsibilities as duty-bearers in the protection of children;
 - Programmes promoting the integrity and accountability of justice and law enforcement such as, for example, police accountability mechanisms or citizen review boards of police conduct or inspectorates for closed institutions including police detention;
 - Monitoring bodies (parliamentary committees, ombudsman offices, human rights commissions, etc.), ensuring that due attention is given to children in justice systems, including within closed institutions. These bodies could also play a role in ensuring that non-state mechanisms are compliant with human rights;
 - Promoting integration of child rights into support to non-state/informal justice mechanisms. Non-state justice mechanisms tend to address issues that are of direct relevance to the most disadvantaged children, including protection of land and property for children orphaned by HIV/AIDS or conflict, the resolution of family and community disputes and protection of entitlements, such as access to public services. These systems may be less intimidating and closer to children both physically and in terms of their concerns. In many instances, however, work needs to be done with communities to bring these mechanisms in line with child rights and to remove discriminatory biases towards women and girls. Non-state justice mechanisms might play a particularly crucial role in crisis/conflict and post-crisis/conflict situations, when the formal system is weakened or has collapsed;

- Peace agreements, as these provide important entry points and an opportunity to establish the justice systems' goals and principles and ensure that children are fully taken into account;

Additional interventions are necessary to strengthen rule of law efforts specifically in terms of justice for children and ensure full respect for children's rights. These include the following:

- Building the knowledge base on children in justice systems (formal and informal), such as through the creation and maintenance of national databases and the development of national research agendas on the nature and extent of crimes by and against children;
 - Promoting the establishment of a juvenile justice system in line with international norms and standards, particularly in post-crisis/conflict situations which often provide opportunities for government restructuring and legislative overhaul and to 'build back better'. These efforts should be part of a broader strategy aimed at establishing a national justice system in line with international standards in the mid to long term;
 - Supporting the establishment of restorative justice, diversion and alternatives to deprivation of liberty that promote the child's reintegration into society in line with the principle of deprivation of liberty as a measure of last resort;
 - Enabling the full involvement of the social sector in justice for children issues and strengthening coordination between the social and justice sectors;
 - Assisting governments' ability to prevent crimes against children, particularly in the home, and to detect, investigate and prosecute offenders, including through building the capacity of justice, military, law enforcement and social welfare professionals and reinforcing multi-disciplinary cooperation among sectors;
 - Promoting child-sensitive procedures and methods that ensure the child's full-fledged participation in judicial, administrative and community-based processes. This might require changes in law, legal practice (such as interview techniques), capacities and physical environment and, more generally, attitudes towards child participation.
3. **Transitional justice processes and mechanisms.** Children's concerns need to be included in the discussions related to transitional justice processes and mechanisms from the outset. Provisions are to be made for their full-fledged participation and protection. Procedures need to be in line with the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and children's participation must be guided by the principle of their best interests.
4. **A public and civil society that contributes to strengthening the rule of law and holds public officials and institutions accountable.** Children are also to be targeted in such efforts, for example as follows:
- Ensuring child rights education and legal awareness for all children, as well as for families and communities. Such awareness programmes should be integrated as much as possible in school curricula as well as in existing initiatives such as life-skills education, psychosocial counseling or child-friendly spaces, as part of broader efforts to help children gain control over their lives. Parents and communities at large should also be empowered, in order to bring action on behalf of children (especially the younger) when necessary;
 - Drawing on child participation projects (or establish such projects if not available) to ensure that children are involved from the outset in identifying legal matters important to them, as

well as – in post-conflict situations – the most appropriate transitional justice mechanism(s) and ways to enhance dialogue within the community;

- Supporting community-based legal and paralegal services for children. This includes developing the capacity of lawyers' networks, bar associations and paralegal professionals, including women, from the concerned community; and supporting or establishing NGO services at the community level such as legal information centers, legal aid clinics, and socio-legal defense centers to provide legal information and representation to children;
- Developing the capacity of legal services, civil society and paralegals on legal issues of particular relevance to boys and girls in crisis/conflict and post-crisis/conflict situations, such as guardianship, housing, land and property rights, registration, national identification and citizenship, statelessness and other public law issues, in particular for orphaned, returning child refugees and internally displaced children, as well as grave violations of human rights such as sexual and gender-based violence;
- Supporting civil society organizations in facilitating children's access to non-state justice systems and assisting these mechanisms to become more responsive to the rights and needs of children. In particular, build civil society organizations' capacity in raising awareness on non-state justice mechanisms among the population, train justice providers in human rights issues, monitor the activities of non-state mechanisms, report on human rights abuses and help ensure fair outcomes;
- (Re)building the capacity of local human and child rights/child protection organizations, institutions and agencies, the media and community groups to advocate on behalf of children and monitor fulfillment of their rights;
- Developing the capacity of civil society to design and run programmes in relation to justice for children in crisis/conflict situations, aiming at keeping children away from conflict with the law, improving detention conditions or ensuring rapid disarmament, demobilization and reintegration of children who have been associated with armed forces;
- Raising awareness on the rights of children going through justice systems as victims, witnesses and offenders (or for any other reason), as well as the impact of going through such systems on children.