



UNITED NATIONS  
*Office on Drugs and Crime*



**CROSS-CUTTING ISSUES**  
**Juvenile Justice**

Criminal justice  
assessment  
toolkit

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UNITED NATIONS OFFICE ON DRUGS AND CRIME  
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# **CROSS-CUTTING ISSUES**

## **Juvenile Justice**

**Criminal Justice Assessment Toolkit**



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# **PART A: CHILDREN IN CONFLICT WITH THE LAW**

## **1. INTRODUCTION**

Systems for dealing differently with children in trouble with the law have existed for more than a century, commencing with the establishment of separate institutions for delinquent and ‘at risk’ children, and followed shortly thereafter by legislative provisions to establish separate courts for children. Although different models prevailed from early on, a dominant approach was to focus upon child welfare, that is the best interest of the child. This approach is premised on the idea of interventions in the best interests of children, focusing on their needs rather than their deeds, and based on the involvement of social workers assisting the court in a professional capacity. Frequently, such systems of child justice are surrounded by a variety of therapeutic and education institutions for the rehabilitation and reintegration of child offenders, or those deemed to be at risk. Other juvenile justice systems that can be characterised as distinctive are based on a court system that more closely resembles the adult criminal justice system, or on administrative panels or other informal adjudicative processes.<sup>1</sup> Finally, in some countries, no – or very little – special provision is made for children in conflict with the law. A vast disparity in forms and types of courts, services and institutions that make up juvenile justice systems therefore abounds, and this assessor tool is intended to be used in relation to all of these.

The key players and stakeholders concerned with a juvenile justice may include the usual role players in the criminal justice system generally – police, prosecution and courts, but may, in addition, involve a range of other functionaries and service providers. Examples include social workers and probation officers, local government authorities, child and youth care workers at care and rehabilitation institutions, prison officials, service providers who provide alternative programmes to prosecution for children in conflict with the law (diversion service providers),<sup>2</sup> community workers, and indeed insofar as restorative justice processes and lay panels are concerned, ordinary citizens may be drawn into criminal justice processes where children are accused of an offence.

The central context relative to children in conflict with the law relates to the fact that due to their age and immaturity, children warrant separate and different treatment from their adult counterparts in criminal processes. This is premised on the special vulnerability and limited capacity of children, who are still in a formative stage of development. Not only should any action that is taken be assessed according to the standards of the child’s best interests, but the system should be responsive to the child’s care and developmental needs in order to ensure that children are reintegrated back into their communities as law abiding citizens. Juvenile justice systems should therefore focus not only on the nature of the offence committed, but also on the root causes of the offending and the individual circumstances of the child involved.

However, many (if not most) juvenile justice systems do not in practice operate in the best interests of the child, and children’s rights can be severely comprised in a variety of ways. A recent Defence for Children International Report<sup>3</sup> indicated that there are more than a million children behind bars in prisons, and deprivation of liberty in other institutions linked to the juvenile justice system is often used unnecessarily and for longer than is required. The period during which children are most at risk is that following arrest, whilst in police custody, as it is then that detained children are most likely to become victims of torture and other forms of cruel treatment.<sup>4</sup> Even supposedly child welfare focused systems can violate children’s rights, as they may deny basic due process safeguards, permit interventions for offences that would not otherwise attract the attention of authorities, and use deprivation of liberty in care and education oriented institutions as a primary response to child offending.

A country’s juvenile justice system is often integrally linked to service delivery in other sectors of the society, such as access to education in general, access to health care, and access to social services. Research abounds which indicates the correlation between dysfunctional family and community life and childhood delinquency. Consequently, an assessor may have to have regard to

societal factors and development issues outside the criminal justice arena in assessing the juvenile justice system of a country.

International law in the area of juvenile justice is substantial and detailed, and regard may also be had to more general instruments in the criminal justice and penal policy area. The primary child rights instruments are the **Convention on the Rights of the Child** (1989), the **UN Standard Minimum Rules for the Administration of Juvenile Justice** (1985), the **UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty** (1990), the **UN Guidelines for the Prevention of Juvenile Delinquency** (1990), and the **UN Guidelines for Action on Children in the Criminal Justice System** (1997). A recent child-specific instrument which has an intersecting relevance to juvenile justice is the **ILO Convention 182 concerning the Elimination and immediate prohibition of the Worst Forms of Child Labour** (Convention 182) of 1999, insofar as this Convention identifies children who are used by other young people or by adults to commit offences as a worst form of child labour. Other generally applicable instruments include the **UN Standard Minimum Rules for Non-Custodial Measures** (the **Tokyo Rules**), the **UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters**, The **UN Standard Minimum Rules for the Treatment of Prisoners**, the **Convention against Torture**, and the **Optional Protocol to the Convention against Torture**. At regional level, the **African Charter on the Rights and Welfare of the Child** contains specific juvenile justice provisions.

The focus in this assessment tool will be weighted toward child-specific instruments.

An important recent document that has guided the development of this assessor tool is the **UNICEF/UNODC Manual for the Measurement of Juvenile Justice Indicators** (April 2006), which represents an attempt to define and elaborate global indicators for this sector. The document identifies 15 indicators, all chosen on the basis of their feasibility, and because they will assist local and national officials to assess the extent to which the juvenile justice system for which they are responsible is in place and functioning. The 15 indicators consist of 11 quantitative indicators and 4 policy indicators. The quantitative indicators consist of both ‘snapshot’ measurements’ and measurements that must be made over a period of time – 12 months in some cases.

Four of the 11 quantitative indicators are identified as core. All fifteen juvenile justice indicators are important for the assessment of the situation of children in conflict with the law. However, in situations where a country is unable to measure all fifteen indicators, the core indicators are those that should be measured as a matter of priority.

Indicator		Definition
Quantitative Indicators		
1	Children in conflict with the law	▪ Number of children arrested during a 12 month period per 100,000 child population
2	Children in detention (CORE)	▪ Number of children in detention per 100,000 child population
3	Children in pre-sentence detention (CORE)	▪ Number of children in pre-sentence detention per 100,000 child population
4	Duration of pre-sentence detention	▪ Time spent in detention by children before sentencing
5	Duration of sentenced detention	▪ Time spent in detention by children after sentencing
6	Child deaths in detention	▪ Number of child deaths in detention during a 12 month period, per 1,000 children detained
7	Separation from adults	▪ Percentage of children in detention not wholly separated from adults
8	Contact with parents and family	▪ Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
9	Custodial sentencing (CORE)	▪ Percentage of children sentenced receiving a custodial sentence
10	Pre-sentence diversion (CORE)	▪ Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11	Aftercare	▪ Percentage of children released from detention receiving aftercare

		Policy Indicators
12	Regular independent inspections	<ul style="list-style-type: none"> <li>▪ Existence of a system guaranteeing regular independent inspection of places of detention</li> <li>▪ Percentage of places of detention that have received an independent inspection visit in the last 12 months</li> </ul>
13	Complaints mechanism	<ul style="list-style-type: none"> <li>▪ Existence of a complaints system for children in detention</li> <li>▪ Percentage of places of detention operating a complaints system</li> </ul>
14	Specialised juvenile justice system (CORE)	<ul style="list-style-type: none"> <li>▪ Existence of a specialised juvenile justice system</li> </ul>
15	Prevention	<ul style="list-style-type: none"> <li>▪ Existence of a national plan for the prevention of child involvement in crime</li> </ul>

The four principles that underpin the application of the **Convention on the Rights of the Child** as a whole, including provisions relevant to juvenile justice, are:

- The best interest of the child, which should be a primary consideration in all matters affecting the child, (Article 3).
- The principle of non-discrimination, irrespective of a child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth of other status, (Article 2).
- The child's right to survival and development, (Article 6).
- The right to the child to participate in decisions affecting him or her, and in particular to be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, (Article 12).

The **UN Guidelines for Action on Children in the Criminal Justice System**, 1997, recommend that, in implementing the Guidelines, consideration should be given to the following:

- Respect for human dignity, compatible with the four general principles underlying the Convention, namely: non-discrimination, including gender sensitivity; upholding the best interests of the child; the right to life, survival and development; and respect for the views of the child;
- A rights- based orientation;
- A holistic approach to implementation through maximization of resources and efforts;
- The integration of services on an interdisciplinary basis;
- Participation of children and concerned sectors of society;
- Empowerment of partners through a developmental process;
- Sustainability without continuing dependency on external bodies;
- Equitable application and accessibility to those in greatest need;
- Accountability and transparency of operations;
- Proactive responses based on effective preventive and remedial measures<sup>5</sup>.

The CRC sets an upper age of childhood at 18 years, unless according to law majority is attained earlier. Ideally, any separate juvenile justice system should therefore benefit all persons below the age of 18 years. There are, internationally, many dedicated juvenile justice systems that exclude some children from its operation, either on the basis of age, as in Scotland, where the Children's Hearing system applies to children aged below 16 years, or on the basis of the offence committed, as in the United States, where juvenile court jurisdiction may be waived and the child tried in adult court. In some countries there may be more than one minimum age of criminal responsibility depending on the category of offence concerned. This tool is designed to apply to all children aged under 18, in accordance with the international benchmark distinguishing childhood contained in the CRC, regardless of whether the system differentiates between children and older youth, by, for example, regarding older children as 'juveniles' or as adults and not children. The assessor will thus in some cases have to consider to separate systems.

In some countries, the juvenile justice system also benefits young adults who are aged over 18, typically 18 – 21 year olds. UNICEF/UNODC recommend that for the purposes of measurement of juvenile justice indicators this category of older offender not be considered as required information,

although the tools supplied in their Manual could usefully be (separately) applied. For reasons of consistency, the same approach is advocated in this assessor tool, namely that the juvenile justice system is generally taken to mean the system which applies to all children aged below 18 years who come into conflict with the law.

As regards the lower age limit, the provisions are less clear, as Article 40(3)(a) requires the setting of a minimum age below which children shall be presumed to lack the capacity to infringe the penal law, without specifying a particular age. The monitoring body for the CRC has consistently regarded any minimum age below 10 years as being too low, bearing in mind children's maturity and developmental level, and has regularly requested countries to consider raising the minimum age of criminal capacity to 12 years or higher. There is considerable international disparity in where countries have fixed the minimum age, ranging from 7 years, which prevails in many common law jurisdictions, to ages as high as 16 years in Mozambique.

In some countries, ascertainment of a person's age to determine whether or not that person is a child aged below 18 is no easy task, as effective birth registration systems are not in place, nor are accessible and verifiable means of establishing age (and sometimes identity) available. In these countries, collecting data on the administration of juvenile justice can be frustrated by the fact that the ages of young offenders are falsified by police authorities to enable them to avoid steps required to be undertaken where juvenile offenders are concerned. The **UN Guidelines for Action on Children in the Criminal Justice System** requires states to ensure the effectiveness of birth registration programmes, but in those instances where the age of the child involved in the justice system is unknown, recommends that measures be taken to ascertain the true age of a child by independent and objective assessment, (Guideline 12).

The CRC contains numerous further principles guiding the development and application of systems of juvenile justice, and six of special note can be identified. These are:

- The requirement that children be kept separately from adults (persons 18 years or older) whilst deprived of liberty<sup>6</sup> (Article 37(c)).
- The requirement that deprivation of liberty be used only as a last resort, and then only for the shortest period of time, (Article 37(b)).
- The requirement that children in conflict with the law be treated in a manner consistent with the promotion of a child's sense of dignity and worth, in a manner which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child assuming a constructive role in society, (Article 40(1)).
- The requirement that due process guarantees be observed in juvenile justice processes and proceedings<sup>7</sup>, Article 40 (2).
- The overarching requirements that separate laws, procedures, authorities and institutions specifically apply to children accused of infringing the penal law, Article 40 (3).
- The requirement that measures be established for dealing with children without resorting to judicial proceedings (diversion), provided that human rights and legal safeguards are fully respected, Article 40 (3)(b).

## 2. OVERVIEW

Please refer to **Cross-Cutting Issues: Criminal Justice Information** for guidance on the gathering of key criminal justice statistical data that will help provide an overview of the prison population, the number of offenders sentenced to non-custodial sanctions and the overall capacity of the criminal justice system being assessed.

Listed below are additional indicators that are specific to this tool. Some countries may not have this information available. It is advisable to request it in advance, as it may take time to obtain it.

Written sources of information may include, if they exist:

- Ministry of Justice Reports
- Ministry of Women, Youth and Children Reports

- Children’s Ombudsmen reports
- Juvenile Justice Board Reports
- Penal system reports, including the prosecution, prison and probation systems
- National Police crime reports
- Court annual reports
- Ministry of Social Affairs or Welfare department reports
- Human Rights Commission reports
- Legal Aid Services reports
- Non-governmental organisations reports on the juvenile justice system or aspects related to it (e.g. prisons, diversion)
- Reports of organisations rendering services to children in conflict with the law, including crime prevention services and diversion services
- Education or training institutions reports in respect of places to which sentenced children may be referred
- Reports from or on Private institutions or facilities used as detention or sentence options for children
- Drug treatment centres insofar as children may be referred to these as a sentence
- Reports of independent bodies tasked with monitoring or inspecting places where children are deprived of their liberty
- Donor reports

A diverse array of people might be able to furnish the relevant information, including the Ministry of Justice, the Ministry of Welfare, the Ministry of the Interior, senior probation officers, judges, non- governmental organisations and donor organizations.

Statistical information on juvenile justice systems varies greatly internationally, and the fact the some countries do not include all persons aged below 18 in their juvenile justice systems, as well as the fact that in many countries the statistics for child offenders are not disaggregated from general figures (e.g. statistics on prosecutions, or detention in police custody) often renders it difficult to collect meaningful and comprehensive data. Where a system permits some children to be tried in the adult criminal justice system, general criminal justice statistics may have to be consulted to determine whether separate information concerning children aged less than 18 years can be assessed.

Further, the above difficulties are compounded by ‘mixed’ systems in which children in need of care and protection (who have not come into conflict with the law) are also dealt with in the juvenile court or juvenile justice system. Thus, children in detention may have arrived there either via a system of social services or child protection or by the juvenile (or adult) criminal justice system.

UNICEF/UNODC suggest that for the purposes of the indicators, children who have entered the system mainly through the juvenile justice system or the adult criminal justice system should define the scope of inquiry, which would therefore include children who have been arrested seemingly inappropriately – e.g. for being at risk of delinquency’ or ‘in an irregular situation.’<sup>6</sup>

As regard the difficulties associated with age, it is strongly recommended that assessors consider in all settings – courts, police stations, places of detention – the age of young people that they encounter (both as given by the children themselves and by staff and as recorded, discrepancies will be useful in determining the reality of the system), and how any recorded age has been determined.

Answers to the questions below will assist the assessor to establish the extent and reliability of available data concerning children and the juvenile justice system.

- A. How many people who are aged below 18 years, whether they are defined as children, juveniles, or adults, come into contact with the criminal justice system each year? Are these statistics separately available in a distinct system geared towards alleged offenders aged below 18 years? If not, what sources need to be consulted in order to ascertain this figure? If the applicable system permits trials of children in adult courts, do adult criminal justice statistics disaggregate the numbers of children aged below 18 in conflict with the law?
- B. Are the following statistics available? On an annual basis?
  - The number of children diverted away from the criminal justice system
  - The number of prosecutions of children aged below 18
  - The number of convictions of children aged below 18
  - The number of sentences involving deprivation of liberty involving children aged below 18 years
  - The number of children in the country and the proportion of children entering the juvenile justice system

- C. Are statistics on children deprived of their liberty available in the following categories
  - Children in penal institutions
  - Children in closed remand institutions
  - Children on remand in police custody
  - Children in care or welfare facilities who have been referred there on remand from the juvenile justice system
  
- D. What is the profile of children in the juvenile justice system?
  - By gender
  - By age
  - By ethnic group or minority
  - By national and foreign citizenship status
  - Are there any other overrepresented groups in the system
  - By offence category, e.g. violent/ non- violent
  
- E. Are statistics available on the number of children for whom alternatives to deprivation of liberty whilst awaiting trial are used (bail, home-based supervision, release into parental care)?
  
- F. Are statistics available on the average time a child spends in pre-trial detention before acquittal or conviction? Is there a legal time limit and is this time limit respected?
  
- G. What percentage of children in the juvenile justice system does legal counsel represent?
  
- H. What percentage of children in the juvenile justice system receives a sentence involving deprivation of liberty? And for what kinds of offences? Is there a legal limit to the maximum period for which a child can be deprived of liberty as a sentence?
  
- I. Are there statistics available on the percentage of children in the juvenile justice system who can be regarded as being children in need of special protection measures, such as children who are living or working on the streets, children permanently deprived of a family environment, children with disabilities, and refugees, immigrant and non national children?<sup>9</sup>
  
- J. Are there any statistics on re-offending among children who have been adjudicated to have infringed the penal law, both those who have served community sanctions or alternative measures, and those deprived of their liberty in welfare, education or penal institutions?

### 3. LEGAL AND REGULATORY FRAMEWORK

When assessing any country, it will be important to look at the system inside and outside the capital or main cities. In many countries a separate system might have been set up in theory to cover the whole country, in practice separate institutions will only exist in one or two cities due to lack of resources or real or perceived low number of cases. In such cases, it will be important to look at how children are treated in those regions where no separate institutions have been set up or are they sent to the capital or are they dealt with by the adult system?

#### 3.1 GENERAL MEASURES

- A. Is there legislation establishing a separate system for the administration of juvenile justice? If not, which other legal provisions in general penal law or child protection laws apply specifically to children in conflict with the law? When was legislation relating to children in conflict with the law last reviewed? What is/are the competent authorities provided for in this legislation for the adjudication of cases involving children in conflict with the law? If there is a specific juvenile justice law, are there nevertheless other relevant pieces of legislation, e.g. child care and protection laws, criminal procedure legislation, prison laws or criminal codes that are relevant to the juvenile justice system?
- B. How is a “child” defined in relation to the juvenile justice system? Is this age consistent for all groups of children and for children accused of committing any kind of offence? Are there measures in place to establish the correct ages of persons suspected of being children when they face criminal justice processes? Are these measures administrative, legal or are they measures of another type?
- C. Does the law (statutory or otherwise) establish a minimum age for criminal responsibility, and is this age uniform for all children in the juvenile justice system? Is the minimum age set at a sufficiently high level, i.e. not too low, bearing in mind children’s age and maturity? Are there non-penal supportive measures available for dealing with children below the minimum age of criminal responsibility who might come into conflict with the law? Has the minimum age recently been reviewed? Are children who are below the legal age of criminal responsibility ever subjected to criminal charges?
- D. Is the juvenile justice system premised on emphasizing the well-being of children, and is the principle of proportionality adhered to? **Beijing Rule 5.1.**
- E. Are basic procedural safeguards (such as the presumption of innocence, the right to be notified of charges, the right to confront and cross-examine witnesses) guaranteed at all stage of the proceedings? **Beijing Rule 7.1.**
- F. Is children’s right to privacy protected at all times during the arrest, adjudication and any subsequent process? **Beijing Rule 8.** Are court proceedings held without the public being present? May the identities of children in conflict with the law be revealed in the press or other media?
- G. Does the law make provision for parental or other similar assistance to children in conflict with the law? **Article 40 (2)(b)(iii) of CRC.** Are there legal requirements that parents or guardians be notified that a child has come into the juvenile justice system, and, if so, are these provisions enforced? May parents be present during evidential procedures such as when a confession is noted or when fingerprints are taken? Do parents play a role in adjudicatory phases of the juvenile justice system?

- H. Can children be subjected to the measures of the juvenile justice system for actions or behaviour that, if they were adult, would not be sanctionable or warrant the attention of the authorities, e.g. truancy, being on the street, delinquency, being beyond control?
- I. Are children accused of the commission of serious offences treated in the same system as children charged with less serious offences? If not, for which offences, and for children of which age is there a separate system? Do these children forfeit the benefits of the juvenile justice system? May they receive adult sentences? May they be deprived of their liberty in adult institutions?
- J. Does the law provide for legal representation of children facing charges in the juvenile justice system? **Article 37(d) of CRC.** Is this available freely where children cannot afford to employ private legal representatives? Are their standards in law or policy to which legal representative assisting children in the juvenile justice system must adhere? Is adherence to any such standards monitored, and are there remedies for children with complaints about their legal representation?
- K. Are the services of interpreters available to children who need this assistance free of charge and at all stages of the criminal process? **Article 40(2)(vi) of CRC.**

### 3.2 INITIAL CONTACT

- A. Are contacts between law enforcement agencies and children in conflict with the law managed in such a way as to respect the legal status of the juvenile, and promote his or her well-being and avoid harm? Are the details of children in detention separately recorded? Can a child in conflict with the law be diverted by law enforcement authorities without the necessity of resorting to a formal trial? **Beijing Rule 11.**
- B. Are police officers who primarily deal with children in conflict with the law specially trained and instructed? **Beijing Rule 12.** Is this the case in the whole country or only in limited geographic areas? Does police training in general include special training on children's rights, child development, and international standards applicable to children?
- C. Are there measures in place to ensure that detention in police custody is used only as a last resort and then only for the shortest possible period of time? **Beijing Rule 13.** Are children in police custody separated from offenders over the age of 18 years? Are children in police custody provided with care, protection and all necessary services they may require in view of their age, sex, and personality? **Beijing Rule 13.** Are there differences within the country in this regard?
- D. Are there sufficient and special measures to avoid pre-trial detention in police custody for children provided for in legislation, such as avoidance of arrest, close supervision, placement with families, in an educational setting or elsewhere? **Beijing Rule 13.2.**
- E. Are children in police custody afforded adequate accommodation, food, clothing, bedding, in a child-friendly environment? Are there opportunities for recreation and exercise? Is access to education guaranteed? Are children in police custody permitted maximum access to parents and families? Was this evidenced by children's/parents' statements during visits?
- F. What measures exist, including legal measures, to prevent physical and other forms of harm to children in their contact with the police? What follow-up takes place if a complaint about police brutality or the denial of children's rights is made? Is there an independent and impartial investigation regarding reports of police misconduct? Are

records of such investigations and ensuing disciplinary or other measures against police available?

- G. What is the maximum period after initial contact with the police after which children are brought before a competent authority? Is this complied with?

### 3.3 DIVERSION

Diversion is the channelling of certain cases away from the criminal justice system, usually on certain conditions. In common law systems, it may be achieved through the operation of prosecutorial discretion, but in civil law systems it may be the judicial officer who makes the decision to divert matters. In many systems, diversion decisions are made earlier on the criminal justice process by other professionals such as the police through the use of cautioning programmes, and increasingly legislation is providing a framework for a more rigorous consideration of diversion for children. Diversion is usually premised on an acknowledgement of responsibility for the offence, and an agreement to make amends for the crime, usually by performing community services or compensating the victim. Where children are concerned, diversion frequently entails attendance at a programme, such as a life skills programme, sexual offences programme or anger management programme. For juvenile justice, diversion is one of the key elements of a sound system. It avoids the child getting a criminal record and being branded at an early age, it avoids children being stigmatized or contaminated through contact with criminal processes, it minimizes the deprivation of their liberty and possible contact with more hardened offenders, and the child may learn valuable lessons from programmes, and acquire social responsibility through the performance of community service or by making amends to the victim, all of which can help to reduce re-offending.

- A. Does the juvenile justice system encourage the use of alternatives to prosecution and court-based trials, and to what extent does this occur? How early in the juvenile justice process can diversion take place, and is diversion possible throughout the juvenile justice process?
- B. Is diversion provided for in legislated form, and if not, what is the basis for diverting children out of the juvenile justice system? Who is the actor responsible for exercising discretion in regard to diversion (prosecutor, district attorney, child welfare officer, social worker, reporter)? What information is available to that professional to inform the decision to divert or not, and what are the main reasons that form the basis for the decision? Are these actors trained in diversionary processes and programmes, children's rights and applicable international standards? Do children have access to legal or other representation during the diversionary process? May any case be diverted, if the child's circumstances indicate that this is in the child's best interests? Does diversion require judicial approval? **Please see ACCESS TO JUSTICE: THE PROSECUTION SERVICE, 3.3.2.**
- C. Are community-based programmes available to decision-makers who want to divert a child? Are these available for petty offences and more serious offences? Are there specific programmes to deal with issues such as sexual offences and violence? Are these programmes equally available to all children in conflict with the law? Are programme managers and presenters trained in the management of children in conflict with the law? Are due process safeguards guaranteed in diversionary processes and practices? Are there minimum standards for service providers to safeguard children's rights and promote programme effectiveness?

An example can be drawn from the **National Diversion Minimum Standards** developed in South Africa and released in 2005 by the National Department of Social Development. Standards 72 – 84 provide as follows:

- Diversion programmes include post-intervention assessments that measure changes in factors assessed in the pre-intervention assessment
- The diversion programme is reasonably geographically accessible to the child
- The programme is appropriate to the child's age, physical and cognitive ability
- The development of diversion programmes is based on research evidence of what works in reducing criminal behaviour in children and adolescents
- Diversion programmes design and activities can be shown to address the factors directly associated with offending, and are therefore likely to reduce the problem of re-offending

- Diversion programmes have a system for monitoring the quality of programme delivery
- Diversion programmes have a system for monitoring the child's progress including his or /her compliance with the conditions of his or her diversion order, and a record of reasons for non-compliance, where applicable
- The intensity of a diversion programme (frequency and duration of programme activities) vary according to the level of risk recorded in the pre-intervention assessments of participants (i.e. the most intensive services are delivered to higher risk cases; and less intensive services are provided to lower risk cases)
- A senior staff member regularly supervises diversion staff members
- The manner in which the programme is delivered encourages the active participation of the young offender
- Diversion programmes are subject to regular outcomes evaluations
- Diversion programme staff track participating children within one year of programme completion to establish the overall well-being of the child with an emphasis on further offending behaviour

- D. If diversion is not occurring, or occurring only to a limited extent, what are the impediments to it being practiced or practiced more widely? For example, are prosecutors not permitted to withdraw charges? Are existing programmes viewed as ineffectual?
- E. Is the consent of the child, his/her parents or guardian required for any diversion involving referral to community or other services? **Beijing Rules, 11.3.**
- F. Are there any mediation services to which parties to a case may be referred? Is there a mechanism or protocol for determining when mediation might be appropriate? Are families of children involved in mediations?
- G. Are there traditional or customary law dispute resolution systems that serve as diversionary channels? When do they get utilized in relation to juvenile justice? Are children's basic rights safeguarded in customary or traditional dispute resolution forums, including their rights to physical integrity, their rights to participate and other basic human rights?
- H. Are records of diversions kept, and are these disaggregated in such a way as to provide suitable profiles of which matters get diverted (e.g. by age, offence)? Do diversion statistics reflect children's equal access to diversion, or are geographical, ethnic, gender, racial, or other biases evident? What is the success rate of diversion in terms of preventing recidivism?

### 3.4 ADJUDICATORY PROCESS

- A. Where a child has not already been diverted, are cases dealt with by a competent authority (e.g. family court, juvenile court, criminal court, tribunal, board, council) according to the principles of a fair and just trial? **Beijing Rule 14.1.**
- B. Is the competent authority specialized and its members (judges, prosecutors etc.) to deal with children in conflict with the law? Are child-friendly environments and procedures followed? Are competent authorities specially trained and selected on children's rights and applicable international and national standards?
- C. How is the child's right to express his or her views, and the right to participate, fully respected at all stages of the process? **Article 12 (1) and (2) of CRC.** Are decision makers required by law to provide the child with an opportunity to express views, and to take account of this views, giving due weight to the age and maturity of the child? Does this happen in practice?

- D. Are social inquiry reports, prepared after proper investigation by trained professional, presented in all except cases involving minor offences before a disposition of the case is made? **Beijing Rule 16.**
- E. Do the dispositions of competent authorities reflect the principle that deprivation of liberty be used only as a last resort, and then for the shortest possible period of time? **Article 37(b) of CRC.** In law and in practice is deprivation of liberty restricted to where a child has been adjudicated as having committed a serious act involving violence, or of persistence in committing other serious offences for which there is no other appropriate response? **Beijing Rule 171.** Are the child's well-being and best interests a guiding factor in the consideration of his or her case and any disposition? **Article 3, CRC and Beijing Rule 17.1(d).**
- F. Are capital punishment and corporal punishment for crimes committed by children forbidden? **Article 37 of CRC and Beijing Rule 17.2 and 17.3.**
- G. Are there a variety of dispositions available to competent authorities to minimize recourse to institutionalization to the greatest extent possible, and is the child's right not to be separated from his or her parents or family (unless circumstances make this necessary) respected and protected? **CRC Article 9 and Beijing Rule 18.** Are competent authorities availing themselves of these dispositions?
- H. How long do cases involving children take in average to be considered by a competent authority? **Beijing Rule 20.** Are cases involving children prioritized over and above cases in which children are not involved?
- I. Are records of cases involving children kept strictly confidential and closed to third parties? **Beijing Rule 21.**
- J. Who is responsible for ensuring that any alternative measures which the competent authority may have imposed are followed? Who is responsible for supervision of any such measures? Are these professionals trained and properly qualified to facilitate the reintegration of children back into communities? Does the imposition of alternative measures suitably assist the vocational, educational, housing and psychosocial support necessary for the reintegration process?
- K. Are specialized services available for children with special needs, such as drug or other substance dependency, or physical and mental disability?
- L. Are referrals of cases to non- state justice systems possible, e.g. community or tribal courts or mediation? What is the percentage of cases involving children dealt with by the non-state system, and what is the success rate of reconciliation of disputes in the non-state system?
- M. Are measures imposed by competent authorities when children are adjudicated to having infringed the penal law subject to review by a higher competent, independent and impartial authority or judicial body? **Article 40(2)(b)(v), CRC.** Are dispositions, which involve deprivation of liberty subject to review by higher competent authorities? Is this in all instances? If not, which dispositions are subject to review? What percentage of dispositions and measures are reviewed by higher authorities?
- N. Have competent authorities identified instances where children have been used by adults to commit offences, a worst form of child labour under ILO Convention 182? Have appropriate steps been taken to follow up both as regards the adults and to safeguard and protect such children?

### 3.5 RESTORATIVE JUSTICE

- A. Is restorative justice a feature/element of the juvenile justice system? Does restorative justice form an element of the dispute resolution mechanism of the system? If so, who runs the restorative justice programmes? How often does this happen in practice? If the above are not being applied, what are the reasons?

**Restorative process** means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

**Restorative justice programme** means any programme that uses restorative processes and seeks to achieve restorative outcomes.

**Restorative outcome** means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender<sup>10</sup>

Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law. When used before a case comes to trial or during the trial process, they can lead to the diversion of the case from criminal procedure, provided that an agreement is reached between victim and offender.

Restorative justice processes can be adapted to various cultural contexts and the needs of different communities, and are regarded as being especially suited to juvenile justice systems. Restorative justice has its roots in informal dispute resolution processes that still play an important role in a number of countries in Africa, South Asia and Latin America. Informal dispute resolution takes place in non-State justice settings/institutions, ranging from largely visible intra-family negotiations to quasi-state bodies that apply customary norms to resolve disputes. Non-State justice systems are more affordable and accessible to the poor, and allow for conflicts to be resolved without having to go through a long formal criminal justice process. They also have their drawbacks, such as lack of adequate accountability, discrimination based on social status, gender and wealth, as well as lack of human rights safeguards.

Further information see **CUSTODIAL AND NON-CUSTODIAL MEASURES: SOCIAL REINTEGRATION**; and **ACCESS TO JUSTICE: THE PROSECUTION SERVICE**; and the **UNODC Handbook on Restorative Justice**.

- B. Are children's rights protected, and their responsibilities promoted, during restorative justice processes?

**Standards 85–87** of the **South African Minimum Norms and Standards for Diversion programmes** (2005) specifically concern restorative processes. They provide that:

- The details of the participants involved in the restorative justice initiative, and the possible consequences of the restorative justice initiative, are [to be] discussed with all parties involved in the process before their participation
- Participation in restorative justice initiatives is truly voluntary for both the offender and the victim (i.e. totally non-coercive)
- A key objective of restorative justice initiatives is increasing children's investment in and agreement with the decisions made

Standard **89** provides that a key objective of restorative justice initiatives is enhancing the perceived fairness of the process.

- C. Are restorative justice elements found in programme content?

This might require an investigation of the actual activities undertaken during programmes to identify whether restorative features are included, such as reparation to the victim, letters of apology or other means of acceptance of accountability.

- D. Is budgetary provision made for restorative justice as an element of the juvenile justice system, and if so, which agencies or government departments receive financial allocations for restorative justice? Is the budget sufficient and who monitors spending? When NGO's run restorative programmes do they receive funding for this? On a contract basis?
- E. What records of restorative outcomes are kept? To whom are these records available? Who is responsible for monitoring compliance with any agreement reached through a restorative process?

### 3.5 INSTITUTIONAL TREATMENT

Institutional treatment as used here refers to prevailing conditions at all places where children are in detention or are otherwise deprived of their liberty, and from which they may not leave at will. In juvenile justice systems, this could include an array of possible institutional settings, including welfare, penal and education institutions.

- A. Are annual figures available on child deaths in all forms of detention? What measures existing in penal law, policy and practice to follow up and investigate any deaths of children in detention? If deaths in detention are reported are reports of such investigations available?
- B. Are children kept separately from adults aged 18 or older in all forms of detention, and are females held separately from males? **Beijing Rule 26.3.** Are untried children separated from convicted children in detention? Does the legal system ensure that no child is received in a detention facility without a valid commitment order of a judicial administrative or other public authority? **JDL Rule 20.**
- C. Are children in detention provided with care, protection and all necessary services, including vocational, educational, and psychosocial services? Are personnel appropriately qualified and selected? **JDL Rule 81 and 82.** Have they received training in child psychology, child welfare, international standards?
- D. Which authority does management and staff in institutions where children are held report to? What's the proportion of male vs. female staff? Are teachers, psychologists, social workers and medical staff available and specially trained? Are these staff part of the staff of the institution or are they delegated by the relevant Ministries (Health, Education etc.)?
- E. With regard to education and vocational training is training offered inside institutions recognized by the general education system? Is education and vocational training offered in several levels/classes to adapt to the needs of the children?
- F. Are sufficient measures in place to ensure that children deprived of their liberty maintain contact with the outside world? Are parents and families allowed access to children in detention at least once per week? **Beijing Rule 26.5, JDL Rule 59.** Are friends and representatives permitted to visit? Are home visits permitted? Is contact between children and their parents or families encouraged and fostered by personnel? Is contact with the outside community permitted, including access to education and vocational opportunities in community settings?
- G. Is the physical accommodation at facilities where children are deprived of their liberty satisfactory with respect to:
  - Adequate and suitably prepared food at normal mealtimes?
  - Clean drinking water?
  - Lighting and ventilation?

- Health and hygiene?
  - Sanitary installations?
  - Clothing?
  - Sleeping facilities, access to sufficient bedding and warmth?
  - Adequate space?
  - Opportunities for privacy as well as opportunities for association with peers?
  - Exercise opportunities and the availability of meaningful day-to-day activities?
  - Access to reading material or other recreational materials, including newspapers, and other periodicals, and is access to other media permitted (radio and television)?
  - Adequate supervision by staff?
  - Effective measures to minimize the risk of fire?
  - Provision for complaints and requests?
- H. Are institutions where children are deprived of their liberty subject to a regular system of inspections by a duly constituted body that is not attached to the detention facility concerned? **JDL Rule 14, Optional Protocol to the Convention against Torture, 2002.** Is there a system of inspection of facilities where children are deprived of their liberty by qualified persons, on a regular basis and unannounced? **JDL Rule 72.** Are reports available to the assessor or the public? Do qualified medical officers participate in these inspections to evaluate the physical environment, medical services and all other aspects affecting the physical and mental health of children? **JDL Rule 73.**
- I. Are international standards on the admission of children to detention facilities complied with, regarding their being informed upon admission of their rights whilst in detention, insofar as an assessment of their needs must be undertaken to plan for their detention, and information concerning the rules and regulations, and complaints procedures, of the detention facility is provided to the child upon admission? **JDL Rules 18, 24, 25 and 27.** Are proper written individualised treatment plans prepared when special rehabilitative treatment is required?
- J. Are adequate, complete and secure records containing the following information maintained at every place where children are detained? **JDL Rule 21 and 22.**
- Information on the identity of the child
  - The fact of and reasons for commitment and the authority therefore
  - The day and hour of admission, transfer or release
  - Details of notifications to parents and guardians on every admission, transfer or release of the child in their care at the time of commitment
  - Details of known physical and mental health problems, including drug and alcohol abuse
- K. Is the transport of children in the juvenile justice system carried out in conveyances with adequate ventilation and light, in conditions that maintain dignity and do not cause hardship? **JDL Rule 26.** Are children separated from adults during transfer from one facility to another? Who/which authority/ies are responsible for transporting children in the juvenile justice system between places of detention?
- L. Are religious, cultural and other rights of children in detention adequately protected? Do children from linguistic heritages that differ from that prevailing at the institution have access to interpreters, particularly during medical examinations and disciplinary proceedings? **JDL Rule 6.**
- M. Are there rules in place to ensure that in all institutions where children are deprived of their liberty, instruments of restraint are used only in exceptional cases where all other control methods have been exhausted? Is physical chastisement as a disciplinary measure prohibited in all institutions linked to the juvenile justice system? Is the

carrying of weapons prohibited in all facilities where children are deprived of their liberty? **JDL Rule 65.**

- N. What legal rules and regulations govern the disciplinary regime in all juvenile institutions – education, welfare and penal? Are these rules and regulations consistent with the child’s right to dignity? Do they prohibit placement in a dark cell, closed or solitary confinement, reduction of diet, restriction of contact with family members, group or collective punishment, and other forms of cruel inhuman and degrading treatment or punishment? **JDL Rule 66.**
- O. Is there a complaints system for all children deprived of their liberty or in detention?<sup>11</sup> Do children deprived of their liberty have the right to make complaints or requests to the person in charge of the facility or his or /her authorized representative? Do they have the right to a prompt response to any such request or complaint? Is the complaint system protected by law or policy? Is it efficient? Effective?
- P. Where children are deprived of their liberty in privately run (non-state) institutions, do adequate mechanisms for state oversight of the delivery of services and protection of children’s rights by the state authorities exist? Is this oversight spelt out in law? How regularly are services at private institutions evaluated and monitored by the state authorities? What recourse does a child deprived of liberty whose rights have been violated in a private institution have?

### **3.6 AFTER-CARE AND REINTEGRATION**

- A. Do legal rules exist to enable children to benefit from early release schemes? Are they different from those of adults?
- B. Are specialised services – e.g. probation services – available for the monitoring and supervision of children after formal adjudication/release from detention? Is there specially trained staff available for this purpose?
- C. What provisions, if any, have been made in laws and regulations relating to social support and education for children after their release from any place where they have been deprived of their liberty after having been adjudicated to have infringed the penal law?
- D. Are children released from institutions where they have been deprived of their liberty assisted with respect to:
- A suitable residence?
  - Employment?
  - Sufficient means to maintain themselves upon release to ensure reintegration? **JDL Rule 80.**
- E. What happens to children released from the system upon attaining adulthood? Are special measures of reintegration assured to this category of young adults?

## 4. VULNERABLE GROUPS

### 4.1 CHILDREN LIVING OR WORKING ON THE STREET

A. Are status offences (truancy, being beyond control, for example) interpreted with regards to the best interest of the child where street children are concerned? Are arrests of street children undertaken with due regard to international standards on children's rights? Is the right to be free from arbitrary detention (**Article 37(b) of CRC**) upheld with regard to street children? Are there mechanisms in place to control and prevent systematic violence against street children?

B. Are there laws that prohibit or regulate the sale of glue and solvents to children? Is the use of children in any form of begging proscribed?

C. Are there laws and programmes that provide effective reintegration services and material support to street children? Are police authorities obliged to notify social services or non-governmental organizations about the apprehension of street children? Is legal assistance provided to street children in the juvenile justice system?

### 4.2 CHILD SOLDIERS AND ARMED GANG MEMBERS

One of the most alarming trends relating to children and armed conflicts is their participation as soldiers. Children are fighting in nearly every major armed conflict in the world today.<sup>12</sup> Former child soldiers are often vulnerable to become involved in crime in the aftermath of the conflict due to the lack of alternatives, lack of reintegration schemes and difficulties such as stigmatization, loss of family ties and drug or alcohol addiction.

A. Are there child soldiers or former child soldiers present in the country? If yes, has a formal demobilization, disarmament and reintegration (DDR) been put in place? Did it encompass all such children and was it successful?

B. In case of child involvement in armed violence and gangs, have special prevention programmes been put in place? Is the way a child joined a government force or an armed group – whether voluntarily or by force- taken into account and given the due weight when subjecting a child soldier to any criminal justice process? Are factors such as loss of a parent(s) or poverty as a driving force for becoming a child soldier/gang member taken into account to the benefit of the child in the criminal justice system?

C. Have specific offences relating to participation in armed gangs been created, if yes, how does the system ensure that children are still considered individually and treated in accordance with international standards?

### 4.3 GIRLS IN CONFLICT WITH THE LAW

Within the context of the fact that only a small proportion of offenders who come into contact with the criminal justice system are female,<sup>13</sup> the numbers of girls in conflict with the law usually constitute a tiny segment of the population of children in conflict with the law in a country. This may mean less access to specialised services, such as institutions supporting the juvenile justice system – education, penal and welfare institutions – and in violation of the principle that children should at all times be separated from adult offenders, as female children are frequently mixed with adult females in institutions where they are deprived of their liberty. Female children who are deprived of their liberty may also have special needs related to their gender, which the system may not adequately accommodate and might be at higher risk to be abused. In some countries, girls are detained for “their own protection” or for offences that are not applied to boys (e.g. prostitution). It is also important to note that while the proportion of girls as compared to boys is often low, in many countries it tends to be increasing.

- A. How are girls in conflict with the law treated? Are they held separately from boys, and from adults, including female prisoners, when deprived of their liberty in any way? Do they enjoy the same rights as boys in the juvenile justice system? If they are held in general women's institutions are they provided with separate facilities? Is access to education and vocational programmes ensured for children when they are held in general women's institutions?
- B. Do girls have equal access to services as boys, including alternative dispositions, and access to education and vocational programmes? Do they have access to the equal recreational facilities? Are their special hygiene and sanitary needs respected?
- C. Are special measures being taken to protect girls from all forms of violence whilst in the juvenile justice system? Are the staff of the institutions specially trained and selected to deal with girls? What is the ratio of male vs. female staff in the institutions where girls are held? Are girls who have been victims of violence provided with reintegration services, including mental health care? Are there records of rapes or other gender-based violence against girls in institutions? Are there records of investigations or disciplinary measures being taken against staff in such cases?
- D. Are special programmes/facilities available for girls in conflict with the law who are/become pregnant? How does the juvenile justice system deal with pregnant girls who come into conflict with the law?

## 5. MANAGEMENT / COORDINATION

### 5.1. RESEARCH, POLICY FORMULATION, AND PROGRAMME DEVELOPMENT

The Commentary to **Beijing Rule 30** notes that the utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. This mutual feedback between research and policy is especially important in this sphere because of rapidly changing life-styles amongst the young, technological advances, new forms of delinquency, and changing societal and justice responses to children's involvement in crime. Research is also vital to the improvement of interventions designed to address child offending and to promote more effective reintegration. The Commentary promotes the notion of research by independent bodies and persons, to be facilitated by responsible agencies.

- A. Has research been carried out on the causes, trends and problems pertaining to juvenile delinquency? **Beijing Rule 30**? Is this research available publicly? Has it been used as the basis for developmental planning in the juvenile justice system context?
- B. Has research been carried out on specific issues in the juvenile justice system, for instance, the extent to which children are used or made instruments by adults in the commission of offences?<sup>14</sup> Is detailed information, based on evidence-driven research, available on the identity, prevalence, operation and functioning of gangs involving children? Has research been conducted on the extent and nature of children's involvement in drug or other substance abuse? Is research available on the causes of, and extent to which, children are living or working on the street? Is research available on the experiences or over-representation of children from minority groups in the juvenile justice system? Is there any research on children involved in organized armed violence in non-conflict situations?<sup>15</sup>

- C. Is there national, regional or local strategy aimed at the reduction of children's involvement in gangs or to address their involvement in organised armed violence? Is there a national drug and substance abuse reduction strategy that includes specific measures that target children and youth?<sup>16</sup> Is there a strategy aimed at the reduction and prevention of children living or working on the street? To what extent are national anti-poverty strategies in place, and support or social assistance programmes available, to prevent children becoming involved in offending? Are these strategies effectively implemented and evaluated?
- D. Is research used as the basis for regular review and planning within the juvenile justice system, or for the redesign of programmes and interventions? Is a process in place to enable the collection on a routine and systematic basis of the data required to provide the minimum information required by the UNODC/UNICEF juvenile justice indicators?
- E. Is there a planning system for the continued development of the juvenile justice system in place? **Beijing Rule 30.4, UN Guidelines for Action on Children in the Criminal Justice System, Guideline 42.** Do plans identify clear priorities, aimed at ensuring more equitable and effective services to children in the juvenile justice system? Do plans ensure better co-ordination of services, including those provided by communities, volunteers, non-governmental organizations, donors and other agencies?

## 5.2 SYSTEM COORDINATION AND MANAGEMENT

- A. Is there a national, regional or local system of co-ordination of services in the juvenile justice system? Who are the stakeholders involved? Is this co-ordination established by law? To which authority does the co-ordination mechanism report? Are written reports publicly available? How often does the co-ordination mechanism meet (quarterly, monthly)? Does the co-coordinating agency cover all aspects of the juvenile justice system, including police, courts, diversion service provision, probation, and all institutions – welfare, educational and penal – linked to the juvenile justice system? If not, are aspects of the system covered by separate co-coordinating mechanisms?
- B. What government departments and ministries or agencies are involved in the delivery of services in the juvenile justice system (prosecutors, social workers and probation officers, police and prisons and so forth) and how is the management of the services structured within each of these as far as juvenile justice is concerned? Is there a specialised division in each institution dealing with juvenile justice? Are officials working in any specialized units provided specific training on children's rights, child development and child psychology?
- C. How is policy in the juvenile justice sphere formulated? How is it reviewed and implemented? Are written policies available in relation to aspects of juvenile justice, such as the minimum standards for diversion programmes, minimum standards for the treatment of children in institutions linked to the juvenile justice system (welfare, educational and penal institutions), or written guidelines for the exercise of prosecutorial or other discretion to divert cases away from formal court proceedings?
- D. Are there written policies for service providers, government officials and agencies dealing with children in the juvenile justice system on how the treatment of children should occur?
- E. Are separate statistics kept regarding children in relation to all aspects of the juvenile justice system and all government agencies involved, including arrests, prosecutions,

diversions, dispositions, and how is the data collected? Is it accurate? If it is collected on an automated system, who is responsible for the data entry and what quality control mechanisms are in place to ensure accuracy? How is the collection of data across multiple agencies - e.g. police and court – synthesized? Is this done manually? How are children’s rights to privacy and confidentiality protected?

- F. Are non-governmental agencies involved in services in the juvenile justice system? If so, how is coordination achieved between these non-governmental organisations and state actors in the juvenile justice system?
- G. Has technical assistance been sought in the field of juvenile justice in order to strengthen national capacities and infrastructures in the field?<sup>17</sup> What was the nature of assistance sought or provided? Was an evaluation of its impact carried out? Are evaluation reports available?
- H. Has the state committed financial or other resources to strengthen project activities designed to further the **Guidelines for Action for Children in the Criminal Justice System**? What was the nature of these projects, and where were they situated, either within or outside the country concerned?
- I. Is there a national plan for the prevention of child involvement in crime/youth crime prevention?<sup>18</sup> Is this plan comprehensive and does it exist in law or in policy? Does it contain mechanisms for its implementation and co-ordination? Does include the following:
  - Support to families
  - Community network support for vulnerable children
  - Services for low income families and support for flexible working arrangements
  - Employment or vocational training opportunities for children
  - Prevention of drug, alcohol and substance abuse by children
  - Alternatives to formal schooling and education
  - Sport and cultural activities for children

### 5.3 FISCAL CONTROL AND BUDGETS

- A. How is the juvenile justice system funded? Is there a central budget for all functions and functionaries involved in the juvenile justice system, or are aspects allocated to different government departments (e.g. police, prosecution, welfare and probation authorities)? If so, who determines the budget allocation? Who prepares and submits the budget? Who oversees the efficient spending of identified allocations?
- B. Can spending on the juvenile justice system be disaggregated and identified in national, provincial or local budget processes? If so, what proportion of allocation for criminal justice generally does it constitute? And what proportion of spending on services to children (child protection or child welfare services)? Has the overall costs of implementation of a right’s-compliant juvenile justice system been fully planned, taking account of the need for a variety of diversion options, and alternative dispositions such as care, guidance, supervision orders, counselling, probation, foster care, education and alternative training programmes and other alternatives to institutional care? **Article 40(4) of CRC**. Have suitable fiscal arrangements been made for the transportation of children in the juvenile justice system in conditions which promote their dignity and well-being and which provide for separation from adults?
- C. If the budget is available at national, regional or local level, is this budget sufficient for the funding of the tasks, programmes, activities and personnel? Are institutions

where children may be deprived or their liberty provided with sufficient resources, relative to the numbers of children expected to be accommodated there annually, to ensure fulfilment of the needs of children? Are sufficient personnel for the care, education and psychosocial support of children provided for in annual budgets related to institutions where children are deprived of their liberty?

- D. Where budgetary allocations are available, are these timely received? Are there other fiscal constraints to the efficient management and development of the juvenile justice system?
- E. If non-governmental organisations are involved in the delivery of services in the juvenile justice system, what sources of funding do they rely on? Do they receive funding from government? If so, is this sufficient to enable them to perform the required services? Do they receive donor funding? How can fiscal sustainability be maintained by the non-governmental sector providing services in the juvenile justice system?
- F. Where a budget or budgets for services and functions in the juvenile justice system has been identified, is this information publicly available? How are budgets accounted for?

#### **5.4 DONOR COORDINATION AND PARTNERSHIPS**

- A. Which donor /development partners are active in the juvenile justice sector?
- B. Are there donor strategy plans for the coordination and strategic direction of juvenile justice development?
- C. What projects related to juvenile justice have donor agencies supported in the past? What projects are currently underway? Were evaluations of previous projects undertaken, and if so, what lessons can be derived from these projects?
- D. What linkages exist between donor agencies and ministries, departments or other agencies (e.g. local authorities, administrative tribunals, professional legal assistance bodies) involved in the juvenile justice system? How are relations between donor agencies and other bodies managed? Is there a formal agreement or strategy document in place?
- E. Are partnerships in existence between agencies and government actors involved in the juvenile justice system, and other social services professionals dealing with children generally, such as education and health authorities? **UN Guidelines for Action on Children in the Criminal Justice System, Guideline 42.**

## PART B. CHILD VICTIMS AND WITNESSES

### 1. INTRODUCTION

Millions of children throughout the world suffer harm as a result of crime and abuse of power, and as a result come into contact with the criminal justice system. Their vulnerability in criminal justice processes, due to their age and immaturity, requires that special measures be taken to ensure the protection of their rights and the delivery of enhanced justice to them. The UN has recently focused increased attention on the position of victims of crime generally and, in 2005, the **United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime** were adopted by the Economic and Social Council. These principles elaborate on the standards contained in other international treaties and instruments, notably the **Convention on the Rights of the Child**, and suggest specific principles and protections that should be afforded child victims and witnesses in criminal justice systems and processes.

Child victims of crime can appear as witnesses in a variety of legal and institutional settings, not limited to criminal proceedings. These may include care or welfare proceedings, as complainants in dismissal or disciplinary proceedings, in family violence tribunals, and array of other settings. A wide range of CRC child protective provisions are relevant to the position of child victims and witnesses, not the least of which is Article 19, which proscribes all forms of violence against children, whilst in the care of a parent, legal guardian or any other person having responsibility for the care of the child, and which requires the establishment of effective procedures, social programmes and follow-up in instances of child maltreatment, including where appropriate, judicial involvement, (Article 19(2)); Article 34, which deals with the sexual exploitation of children; and Article 39, which requires State Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse, torture or other form of cruel inhuman or degrading treatment or punishment, or armed conflict. The **Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography**, adopted in 2000, requires State Parties to take appropriate measures to protect the rights and interests of child victims of the practices prohibited under the Protocol. The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**<sup>19</sup> which entered into force in 2003 is also relevant in particular its Articles 6, 7 and 8.

International instruments are increasingly being developed to highlight and address the special vulnerability of victims and witnesses, not the least of which are child witnesses. Central is the **Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power**, 1985. A further relevant document is the **UN Guidelines for Action on Children in the Criminal Justice System** (1997), which includes within its ambit, plans concerning child victims and witnesses in Part 111. This document is, however, focused particularly on children as victims or witnesses in the criminal justice system. This was followed by the **Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime**, 2005<sup>20</sup> which provide a practical framework for achieving more child-sensitive responses to child victims and witnesses, including through legal reforms, rules of procedure and evidence, attitudes and training of professionals, and through elaborating the right to effective assistance to victims and witnesses who are aged below the age of 18 years. The Guidelines recognize and are premised on the cross-cutting principles of the child's rights to dignity, non-discrimination, recognition of the best interests of the child (which include the right to protection<sup>21</sup> and the right to a chance for harmonious development<sup>22</sup>), and the right to participation, which includes the right to express views and to contribute to decisions affected his or her own life, including those taken in any judicial processes, and to have these views taken into consideration.

The Guidelines contain two important definitions: first, the definition of "professionals" which refers to persons who, within the context of their work, are in contact with child victims and witnesses of crime and, hence, for whom the Guidelines are applicable. They include: child victim advocates and support persons, child protection service practitioners, child welfare agency staff, prosecutors and defence lawyers, diplomatic and consular staff, domestic violence programme staff, judges, law enforcement officials, medical and mental health professionals and social workers.

Second, the definition of a “justice process” is a very inclusive one. It encompasses the detection of the crime, the making of a complaint, investigation, prosecution and trial, post trial procedures, and the term applies whether it is a national, regional or international criminal justice system dealing with both adults and children, and whether or not this is effected in a formal or the informal customary system of the administration of criminal justice.

Guideline 6: “The guidelines should also be applied to processes in informal and customary systems of justice such as restorative justice and in non-criminal fields of law including but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.”

Of future relevance may be **Guidelines for the Protection and Alternative Care of Children Without Parental Care**, which are being developed by UNICEF and International Social Services, in collaboration with the NGO Working group on Children Without Parental Care. A comprehensive draft was produced on December 5, 2006, and this contains some relevant principles to alternative care and child protection.

## 2. OVERVIEW

Please refer to the **Cross-Cutting Issues: Criminal Justice Information** for guidance on the gathering of key criminal justice statistical data that will help provide an overview of the prison population, the number of offenders sentenced to non-custodial sanctions and the overall capacity of the criminal justice system being assessed.

Listed below are additional indicators that are specific to this tool. Some countries may not have this information available. It is advisable to request it in advance, as it may take time to obtain it.

- Ministry of Justice Reports
- Ministry of Women and Children Reports, including reports on child victimization contained in National Child Protection Registers
- Juvenile Justice Board Reports
- Penal system reports, including the prosecution, prison and probation systems
- National Police crime reports
- Court annual reports
- Welfare department/Ministry of Social Affairs reports
- Human Rights Commission reports, or the reports of any ombudsperson for children
- Victim surveys
- Non-governmental organisations reports on child victimization
- Reports of organisations rendering support services, such as trauma counselling or rape crisis counselling to child victims
- Donor reports

A diverse array of people might be able to furnish the relevant information, including the Ministry of Justice, the Ministry of Welfare, any Ministry of the Women and Children’s Affairs, health officials dealing with trauma, abuse and violence against children, senior probation officers, judges, statutory or non-statutory child protection organisations, non-governmental organisations and donor organizations.

It is likely to be difficult to find comprehensive and detailed data that accurately reflects child victimization rates, and that presents a composite picture of child witnesses and their experiences of legal proceedings, criminal and otherwise. This is an emerging field of enquiry, and is hampered by the fact the children’s evidence is usually presented behind closed doors and in private. It is unlikely that in most countries a detailed array of statistics on child witnesses can be obtained, although some courts may keep disaggregated records that identify and single out children as witnesses (e.g. family courts, children’s courts, domestic violence courts, specialized courts dealing with sexual offences). National, regional and local victimization studies are increasingly being conducted, and it is important to ascertain whether children are identified and reported on as a separate group when victimization surveys are being undertaken.

- A. What statistics on child victimization and child witnesses exists? The following statistics may be available:
- National figures of children appearing as witnesses and/or victims in criminal matters

- National statistics of children appearing as witnesses due to being victims in non-criminal matters (e.g. domestic violence, parental abuse or maltreatment)
  - National statistics of children requiring special protection due to abuse (e.g. a National Child Protection register)
  - National, regional or local figures of children requiring specialized services in order to testify (e.g. using an intermediary, video link up services etc)
  - National, regional or local statistics derived from victimization surveys amongst the general population
  - Police statistics which disaggregate crimes against children aged below 18 years
  - Prosecution services statistics which disaggregate crimes prosecuted where witnesses and or victims were aged below 18 years
  - Number of crimes against children reported via telephone help lines/hotlines or other services designed to render assistance to child victims
  - Data held by child protection agencies
  - Data on child witnesses held by refugee tribunals, immigration authorities or boards hearing applications for any form of residence from non- national children or their parents
- B. What is the profile of children in the available statistics collected above?
- By gender
  - By age
  - By ethnic group or minority
  - By national and foreign citizenship status
  - Are there any other overrepresented groups?
  - By offence category, e.g. violent/ non- violent offence against child
- C. Can the data be disaggregated according to whether the perpetrator was known or unknown to the child? Living with the child or not? Can unaccompanied non-national children be identified in available statistics?
- D. Are statistics available on the number of children for whom social reintegration services were provided due to their having been victims or crime, or witnesses in legal proceedings arising out of a criminal act (e.g. care and protection proceedings, domestic violence proceedings)? What professional can be identified in the statistics as having provided reintegration services to child victims (social workers, psychologists, counsellors, health workers)?
- E. Are there statistics available on child victims of abuse and deliberate neglect? Of children removed from parental care via the child protection system? Are statistics available on children in the residential care system as a result of abuse or deliberate neglect by their caregivers?
- F. Are statistics available on how many children have been victims of trafficking on an annual basis? Or child victims of commercial sexual exploitation? What forms did this exploitation take? Are there records of convictions for any form of possession or production of child pornography?

### 3. LEGAL AND REGULATORY FRAMEWORK

#### 3.1 LEGISLATION

- A. At the level of detection and investigation of crimes against children, are there laws, policies or specific procedures that protect and advance the rights of such children to be found in laws or regulations governing the police? Are there specific operational procedures for securing evidence from child victims, for the police to inform a child of his or her rights to the availability of health and other relevant services (e.g. psychological services, legal advice)?
- B. Is there a legal obligation to report child abuse and neglect to the authorities? Who is duty bound to report child abuse and neglect? Are persons in authority in relation to children (teachers, nurses, child focused facility staff) under such a duty? Are these people obliged to take steps to secure the safety of the child from risk of harm or further harm?
- C. Is there a legal and policy framework for following up on reported cases of child abuse and neglect? Does this legal or policy framework include duties to provide a child victim with assistance and support services, such as counselling, legal advice, health and social services, physical and psycho-social recovery services?
- D. Do legal provisions exist to protect the privacy and the identity of child victims and witnesses? Are these adequately implemented in practice in all cases? Is information related to the child's involvement in the justice process adequately protected, e.g. through rules relating to non-disclosure? Do legal rules exclude the media and the public from a courtroom during the testimony of a child witness?
- E. Are prosecutors required to consider the views of victims when their personal interests are affected, and ensure that victims are informed of their rights in accordance with the Basic Principles of Justice for Victims of Crime and Abuse? **See also ACCESS TO JUSTICE: THE PROSECUTION SERVICE, Section 5.4.**
- F. Does the law make provision for child-sensitive procedures during the justice process, such as the use of child-friendly interview rooms, modified court environments where children give testimony, screens or one-way glass to protect the child witness from facing the person accused, the acceptability of pre-recorded video testimony, giving evidence through an intermediary or using other testimonial aids to enable child witnesses to testify?
- G. Does the regulatory framework include protecting children from hardship in justice processes by including interview rooms designed for children, modified court environments to take child witnesses needs into account, recesses during a child's testimony, and hearings scheduled at the time of the day that are appropriate to the age and maturity of the child? Are child witnesses interviewed out of sight of alleged perpetrators and provided with separate waiting rooms at court? **Guideline on Justice Involving Child Victims and Witnesses, 31(d).**
- H. Does the law provide for other protective measures to ensure the safety and well-being of the child, such as restraining orders against a perpetrator, orders that will enable a child victim to avoid direct contact with a perpetrator, "no contact" bail conditions, or orders planning an accused person under house arrest? Do these types of protections apply in respect of all spheres of potential victimization of children, including in relation to criminal acts perpetrated by non-family members, in relation to domestic violence within the home, and in relation to acts against child victims in schools and institutions?

Note: a broad range of legislation may have to be surveyed in order to determine the adequacy of the protection afforded child victims and witnesses, including legislation in the education sphere, the family violence sphere, criminal codes, and child care and protection laws, divorce laws, immigration laws, to mention a few.

- I. Do the rules of evidence adequately reflect the principle that the age of a child witness should not be a barrier to participation in the justice process, that every child has the right to be treated as a capable witness, and that his or her testimony should be presumed valid and credible at trial unless proven otherwise and as long as his or her age and maturity allow the giving of intelligible testimony, with or without communication aids and other assistance?
- J. Does the law provide adequately for reparations to child victims in any form, whether by means of restitution ordered by criminal courts, restorative justice programmes, victim compensation programmes administered by the state, or damages in civil proceedings? Does the law provide for recompense in respect of the child's social and educational reintegration, medical treatment, mental health care and legal services?
- K. Does the law provide avenues for hearing child victims' voices even where they do not testify, and during post-trial processes, such as permitting victim impact statements to be introduced at sentencing stage or when an incarcerated offender is considered for release?

### **3.2 INSTITUTIONAL FRAMEWORK**

- A. Who are the primary stakeholders concerned with the protection of child victims of crime? Are specialized services available at all stages of the criminal process, from detention and investigation to post-trauma support and counselling? Are these services primarily state funded, or are other role players, such as non-governmental and welfare organisations, involved? What is the respective area of collaboration of those involved in the sector, i.e. who is responsible for what services?
- B. What access do children have to justice where they have been victims of crimes, including abuse and neglect? Are there, for example, toll free telephone numbers available to children? Is information about accessing assistance freely available to children in language or other form that they understand?
- C. Do professionals working with child victims receive adequate training on the needs of children, on subject specific information such as the detection of child abuse, collection of medical and other appropriate evidence, battered child syndrome, and on the preparation of trials involving children (e.g. children's evidence)? Does this apply at all levels and across disciplines, e.g. to police, social workers, health professionals, prosecutors and judges? What measures are being taken to minimize the number of professionals that a child victim will have to "tell his or her story"? What technical and other strategies have been developed to minimize child victims and witnesses exposure to offenders during all stages of the procedure?
- D. Does the public have confidence that the child protection system works effectively to promote children's rights, including their rights to a responsive justice system?
- E. Is the institutional framework geared to meet the special needs of particularly vulnerable children, such as the girl child victim of sexual assault?

## 4. CHILD VICTIMS

### 4.1 CHILD VICTIMS OF TRAFFICKING

- A. Does the law deal adequately with trafficking of children internally and internationally, declaring it a criminal offence and providing effective remedies for victims of trafficking? Have legal and administrative measures been adopted to ensure that children abducted within the jurisdiction are found as speedily as possible and returned?

**See Article 5 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 35 of CRC, the Optional Protocol to the CRC on the involvement of children in armed conflict, and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.**

- B. Does the law and does practice indicate that child victims of trafficking are not detained in police custody nor subjected to criminal procedures for offences related to their situation as trafficked persons?
- C. Are measures in place to prevent the use of adoption procedures as a tool for concealing trafficking in children? Are there national time bound programmes in place to reduce the numbers of children exposed to the worst forms of child labour, including being trafficked, and the use of slavery or other forms of debt bondage?

### 4.2 CHILD VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION

- A. Are adequate legal provisions in place to ensure that children are not used, offered or procured for prostitution, child pornography or for pornographic performances? Is it an offence to possess, produce and to disseminate child pornography? Can nationals or citizens be prosecuted in domestic legal systems for offences committed abroad involving the sexual exploitation of children?
- B. Are children exposed to commercial sexual exploitation treated as child victims, and not subjected to the criminal justice system for any offences they may have committed whilst being victims of commercial sexual exploitation?
- C. Is there an age set by law below which children are presumed to lack the capacity to consent to sexual activities? What is this age? Is the age the same for girl children and male children?
- D. Are measures in place to ensure that the child victim of sexual exploitation is not subjected to further victimization during investigation, intervention and further legal or administrative procedures?

## 5. MANAGEMENT / COORDINATION

### 5.1 GENERAL

- A. Is there a national, regional or local framework for ensuring that all personnel dealing with the child victims co-ordinate their activities? Who are the stakeholders involved? Is this co-ordination established by law? To which authority does the co-ordination mechanism report? Are written reports publicly available? How often does the co-ordination mechanism meet (quarterly, monthly)? Does the co-coordinating agency cover all service providers dealing with child victims, including police, prosecution services, courts, social welfare service provision, and all institutions linked to the child care and protection system? If not, are aspects of the system covered by separate co-coordinating mechanisms (e.g. in relation to trafficking of children, child labour, child care and protection)?
- B. What government departments and ministries or agencies are involved in the delivery of services to child victims (prosecutors, social workers, police, labour department officials) and how is the management of the services structured within each of these? Is there a specialised division in each organization/agency dealing with child victims? Are officials working in any specialized units provided specific training on children's rights, child development and child psychology?
- C. How is policy in relation to child victims formulated? How is it reviewed and implemented? Is there a national strategy or protocol to encourage co-operation between different service providers dealing with child victims and witnesses? **UN Guidelines on Justice for Child Victims and Witnesses, Guideline 44.** Are written policies available in relation to distinct aspects, such as written guidelines for prosecutors dealing with child victims or witnesses, access to witness protection programmes, protocols for action concerning child victims of domestic violence?
- D. Are there written policies for service providers, government officials and agencies dealing with children in the justice system on how the treatment of children as victims or witnesses should occur?
- E. Are measures in place to ensure international co-operation in relation to child trafficking and unaccompanied non-national children? Is inter-country adoption effectively controlled at national, regional or local level in order to prevent trafficking of children? Are there measures to facilitate the collection and exchange of information and the detection, investigation and prosecution of transnational crimes involving child victims? **UN Guidelines on Justice for Child Victims and Witnesses, Guideline 45.**
- F. Are groups of vulnerable child victims and witnesses not covered in national laws, policies or practices? If so, which groups are these? What is being done to ensure that effective measures in relation to these groups are adopted?
- G. Are persons dealing with child witnesses selected and trained to meet the special needs of child witnesses?

**Guideline 43** on of the **UN Guidelines on Justice for Child Victims and Witnesses** provides that training for professionals dealing with child witnesses should include:

- Relevant human rights norms and standards,
- Principles and ethical duties of their office,
- Appropriate adult child communication techniques,
- Methods to protect and present evidence and to question child witnesses; and
- Roles of and methods used by professionals working with child victims and witnesses.

## 5.2 FISCAL CONTROL AND BUDGETS

- A. How are services to child victims and witnesses funded? Is there a central budget involved, or are aspects allocated to different government departments (e.g. police, prosecution, and welfare authorities)? If so, who determines the budget allocation? Who prepares and submits the budget? Who oversees the efficient spending of identified allocations?
- B. Can spending on child victims and witnesses be disaggregated and identified in national, provincial or local budget processes? Is there an allocation in criminal justice budgets for services to child victims and witnesses? If so, what proportion of allocation for criminal justice generally does it constitute? And what proportion of spending on services to children (child protection or child welfare services)?
- C. If the budget is available at national, regional or local level, is this budget sufficient for the funding of the tasks, programmes, activities and personnel? Are sufficient trained personnel available to provide services – including welfare services, counselling, reintegration and psychosocial support – of child victims and witnesses provided for in annual budgets?
- D. Where budgetary allocations are available, are these timely received? Are there other fiscal constraints to the efficient management and development services to child victims and witnesses?
- E. Is budgetary provision made for infrastructural development such as child friendly interview rooms, and equipment (such as testimonial aids and recording equipment)?
- F. If non-governmental organisations are involved in the delivery of services to child victims and witnesses, what sources of funding do they rely on? Do they receive funding from government? If so, is this sufficient to enable them to perform the required services? Do they receive donor funding? How can fiscal sustainability be maintained by the non-governmental sector providing the required services?

## 5.3 DONOR COORDINATION

- A. Which donors /development partners are active in the child protection sector insofar as child victims and witnesses are concerned? Are specific groups of child victims identified by donors in their support, e.g. victims of sexual abuse, victims of trafficking, or unaccompanied non-national children?
- B. Are there donor strategy plans for the coordination and strategic direction of services to child victims and witnesses?
- C. What projects related to child victims and witnesses have donor agencies supported in the past? What projects are currently underway? Were evaluations of previous projects undertaken, and if so, what lessons can be derived from these projects?
- D. What linkages exist between donor agencies and ministries, departments or other agencies (e.g. local authorities, administrative tribunals, professional legal assistance bodies) involved in the juvenile justice system? How are relations between donor agencies and other bodies managed? Is there a formal agreement or strategy document in place?

- E. Are international technical assistance programmes in place regarding any matters concerning child victims, e.g. trafficking or harmful and exploitative labour practices? Who is involved in technical assistance in this field, and how are activities co-ordinated?

## 5.4 RESEARCH

- A. Has research been carried out on the causes, trends and problems pertaining to the victimization of children, including all forms of violence and abuse? Is this research available publicly? Is research available on especially vulnerable child victims, such as trafficked children or victims of harmful and exploitative labour practices?
- B. Are policies, programmes and services to child victims and witnesses based on appropriate, detailed and targeted evidence-based research? Is research regularly updated to reflect changing societal and other circumstances?
- C. Is there national, regional, or local strategy aimed at the reduction of child victimization and the prevention of all forms of abuse and neglect? To what extent are national anti-poverty strategies in place, and support or social assistance programmes available, to prevent children becoming victims, for example of sexual exploitation, trafficking and labour? Are these strategies effectively implemented and evaluated? Is a process in place to enable the collection on a routine and systematic basis of the data required to provide the minimum information required to show improved services to child victims and witnesses, and to measure any reduction in child victimization? Is a process in place to enable the collection on a routine and systematic basis of the data required to provide the minimum information?

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<sup>1</sup> UNICEF, 2005, p 2.

<sup>2</sup> Diversion means the referral of matters away from formal proceedings, often to programmes or to community based sanctions.

<sup>3</sup> Defence for Children International 'Kids behind bars' (2006).

<sup>4</sup> Innocenti Digest No 3 "Juvenile Justice" Unicef, Florence, 1998.

<sup>5</sup> Guideline 8.

<sup>6</sup> 'Deprivation of liberty includes any placement of a child – detention or imprisonment in a public or private setting, from which the child is not permitted, by order of any competent authority, to leave at will (Rule 11.2 of the UN Rules for the Protection of Juveniles Deprived of their Liberty). This might include a range of institutions, such as police stations, detention or remand centres, prisons, including adult prisons, closed specialized school, borstals or reformatory schools, secure facilities for awaiting trial children, and treatment facilities which are used as a sentence (drug treatment facilities).

<sup>7</sup> Such as the right to be presumed innocent, the right to prompt access to legal assistance, the right to notice of charges, and the right to have the matter determined without delay by a competent impartial and independent authority or judicial body in a fair hearing.

<sup>8</sup> UNICEF/UNODC Manual for the Measurement of Juvenile Justice indicators (2006).

<sup>9</sup> See UN Guidelines for Action on Children in the Criminal Justice System, guideline 17.

<sup>10</sup> Definitions as in "UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters", E/2002/INF/2/Add.2.

<sup>11</sup> UNODC/UNICEF Manual on the measurement of child justice indicators, indicator 13.

<sup>12</sup> J Becker 'Child soldiers: Changing a culture of violence' (2005) 32 *Human Rights Winter* 16.

<sup>13</sup> Normally the percentage of women in prison as a whole, including pre-trial detention is between 2% and 9% worldwide: see also Custodial and Non-Custodial Measures: Detention Prior to Adjudication, Section 5.2.

<sup>14</sup> See further UN General Assembly Resolution 45/115 of 1990 on the use of children in criminal activities.

<sup>15</sup> See [www.coav.org](http://www.coav.org) for information about projects and research concerning children involved in organised armed violence in non-conflict situations. See further C Frank 'Children in organised armed violence' vol 8 (1) Article 40 p 6 available at [www.communitylawcentre.org](http://www.communitylawcentre.org).

<sup>16</sup> See UN General Assembly Resolution 43/121 (1988) on the use of children in illicit traffic in narcotic drugs and on the rehabilitation of drug addicted minors.

<sup>17</sup> See Preamble to the UN Guidelines on Action for Children in the Criminal Justice System.

<sup>18</sup> UNODC/UNICEF indicator no 15.

<sup>19</sup> General Assembly resolution 55/25 of 15 November 2000.

<sup>20</sup> ECOSOC resolution 2005/20 of 22 July 2005.

<sup>21</sup> Article 8 (c) (i) defines this as follows: Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse or neglect.

<sup>22</sup> Article 8 (c)(ii) defines this as follows: Every child has the right to a chance for harmonious development and to a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development.

## **ANNEX A. KEY DOCUMENTS**

### **UNITED NATIONS**

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights, 1966
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Convention on the Rights of the Child, 1989
- ILO Convention 182 on the Elimination of the Worst Forms of Child Labor, 1999
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution and Child Pornography, 2000
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000
- Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, 2000
- Optional Protocol to the Convention against Torture, 2002 (in force from 2006)
- Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power (UN Doc. A/RES/40/34)
- Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, 1988
- Standard Minimum Rules for Non-Custodial Measures, 1990 (Tokyo Rules)
- Rules for the Protection of Children Deprived of their Liberty, 1990
- Guidelines for Action on Children in the Criminal Justice System, 1997
- Guiding Principles on Drug Demand Reduction of the General Assembly of the UN, 1998
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002
- Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime 2005
- General Comment No. 6 of the UN Committee on the Rights of the Child on “Treatment of unaccompanied and separated children outside their country of origin,” 2005
- General Assembly Resolution 43/121 (1988) on the use of children in illicit traffic in narcotic drugs and on the rehabilitation of drug addicted minors, 1988
- General Assembly Resolution 45/115 of 1990 on the use of children in criminal activities
- Handbook on Alternatives to Imprisonment, UNODC, 2006
- Handbook on Restorative Justice, UNODC, 2006
- A Manual on the Measurement of Juvenile Justice Indicators, UNICEF/UNODC, 2006
- UNICEF and Penal Reform International, Juvenile Justice Training Manual, 2006

### **REGIONAL**

- African Charter on Human and Peoples’ Rights 1986
- African Charter on the Rights and Welfare of the Child 1990
- Council of Europe Convention on Cybercrime 2003
- Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, 1953
- American Convention on Human Rights 1969
- American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1989

### **BOOKS / ARTICLES**

- Defence for Children International ‘Kids behind bars’ (2006).
- Innocenti Digest No 3 “Juvenile Justice” Unicef, Florence, 1998
- Gallinetti, J and Sloth-Nielsen, J (eds) Child Justice in Africa: A Guide to Good Practice (Children’s Rights Project, Community Law Centre, University of the Western Cape 2004).
- Hodgkin, R and Newell, P “Implementation Handbook on the Convention on the Rights of the Child 2002 Fully revised edition, UNICEF Geneva
- Geraldine Van Bueren, the International Law on the Rights of the Child, 1998

- Marie Wernham, An outside chance, Street Children and Juvenile Justice – An international perspective, Consortium for Street Children
- Marie Wernham with Savina Geerickx and Elanor Jackson, Police Training on Child Rights and Child Protection: lessons learned and manual
- Protecting the Rights of Children in Conflict with the Law, Programme and Advocacy Experiences From Member Organisations of the Inter-Agency Coordination Panel on Juvenile Justice 2005
- Geert Cappelaere and Anne Grandjean, Enfants privés de liberté. Droits et réalités, Editions Jeunesse et Droit, Liège, Belgium, 2000.

## **OTHER USEFUL SOURCES:**

### **UNITED NATIONS**

United Nations Human Rights Committee

- General Comment No. 13 “Article 14 (Administration of Justice)” (21st session, 1984) Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (1992), UN Doc. HRI/GEN/1, 32
- General Comment No. 17 “(Article 24) Rights of the Child” (35th session, 1989)
- General Comment No. 20 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Forty-fourth session, 1992), reproduced in: UN Doc. HRI/GEN/1, 29

### **REGIONAL**

- Abuja Declaration on Alternatives to Imprisonment: The Abuja declaration results from a national conference on alternatives to imprisonment held in Abuja between 8 and 10 February 2000.
- International Conference of American States 1948
- Bangkok Declaration calling for action on organized crime and terrorism 2005
- Kampala Declaration on Prisons in Africa 1996

### **NATIONAL**

- Constitution
- Child protection laws
- Juvenile or youth justice legislation
- Legislation governing the social services or welfare sector
- Legislation regulating institutions linked to juvenile justice (penal institutions, prisons, education and welfare institutions)
- Criminal and Criminal Procedure Codes
- Penal Enforcement Statutes—including Probation Act
- Laws on trafficking
- Child labour laws/employment laws
- Immigration laws
- Research and evaluation reports by independent bodies, NGOs, academicians
- Reports by National Human Rights Commissions or bodies exercising independent oversight over persons deprived of their liberty

### **WEBSITES**

- Inter-agency Panel on Juvenile Justice: <http://www.juvenilejusticepanel.org> (links to all member organisations and resources)
- Children’ s Rights Information Network: <http://www.crin.org>
- International Association of Youth and Family Judges and Magistrates, <http://www.judgesandmagistrates.org>
- Amnesty International [www.amnesty.org](http://www.amnesty.org)
- Children in Organized Armed Violence <http://www.coav.org.br>
- Human Rights Watch <http://www.hrw.org>

## ANNEX B. ASSESSOR'S GUIDE / CHECKLIST: JUVENILE JUSTICE

The following are designed to assist the assessor in keeping track of what topics have been covered, with whom, and with what sources

	TOPIC	SOURCES	CONTACTS	COMPLETED
2.0	OVERVIEW: GENERAL STATISTICAL AND DATA	<ul style="list-style-type: none"> <li>▪ Ministry of Justice reports</li> <li>▪ Ministry of Women, Youth and Children Reports</li> <li>▪ Juvenile Justice Board Reports</li> <li>▪ Penal System Reports including the prosecution, prison and probation systems</li> <li>▪ Ministry of Interior reports</li> <li>▪ National Police Crime reports</li> <li>▪ Court Annual Reports</li> <li>▪ Welfare Department/Ministry of Social Affairs Reports</li> <li>▪ Human Rights Commission Reports</li> <li>▪ Legal Aid Services Reports</li> <li>▪ Education or training institutions reports in respect of places where children referred as a sentence may be sent</li> <li>▪ Reports from or on Private institutions used as detention or sentencing options for children</li> <li>▪ Drug treatment centres insofar as children may be referred to as a sentence</li> <li>▪ Reports of independent bodies tasked with monitoring or inspecting places</li> <li>▪ Donor reports</li> <li>▪ NGO reports: penal system and administration of alternatives</li> <li>▪ Reports/studies of think tanks and academic institutions</li> <li>▪ Children's Ombudsmen Reports</li> <li>▪ State Party Reports to the UN Committee on the Rights of the Child</li> <li>▪ State Party Reports to the UN Torture Committee</li> <li>▪ Reports from UNICEF</li> <li>▪ State party reports to regional organizations</li> <li>▪ Community/traditional/religious leaders involved in dealing with children</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Women, Youth and/or Children</li> <li>▪ Ministry of Welfare/Social Affairs</li> <li>▪ Prosecutors office</li> <li>▪ Senior Prison Service Officers</li> <li>▪ Police Commissioners and high ranking officers</li> <li>▪ Senior Probation Service Officers</li> <li>▪ Ministry of Interior</li> <li>▪ Human Rights Commission</li> <li>▪ Legal Aid Service</li> <li>▪ Education and training institutions</li> <li>▪ Drug treatment centres</li> <li>▪ Children's Ombudsmen</li> <li>▪ UN Committees</li> <li>▪ Regional Organizations</li> <li>▪ High Court Judges and other senior judges</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Intergovernmental organizations</li> <li>▪ Community/traditional/religious leaders</li> <li>▪ Donor organisations working on the criminal justice sector</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.0	LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE	<ul style="list-style-type: none"> <li>▪ The Constitution</li> <li>▪ Penal Code</li> <li>▪ Penal Procedure Code</li> <li>▪ Penal Enforcement Code</li> <li>▪ Probation Act and any other relevant acts of parliament</li> <li>▪ Regulations to these codes and acts</li> <li>▪ Amendments to all laws mentioned above</li> <li>▪ Acts governing semi-formal/informal justice systems</li> <li>▪ Directives</li> <li>▪ White papers on crime, punishment, detention etc</li> <li>▪ Standing orders</li> <li>▪ Law Commission/Committee reports/issue papers</li> <li>▪ Submissions to parliament on law reforms</li> <li>▪ Relevant international instruments ratified by a country</li> <li>▪ Relevant regional instruments ratified by a country</li> <li>▪ Prosecutors Policy Document</li> <li>▪ Judicial Sentencing Policy Document</li> <li>▪ Judicial Practice Directions, Circulars and Sentencing Guidelines</li> <li>▪ Government policy documents/ National Reform Programmes</li> <li>▪ Independent reports made by non-governmental organisations.</li> <li>▪ Legal textbooks or academic research papers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Women and Children</li> <li>▪ Ministry of Interior</li> <li>▪ Human Rights Commission</li> <li>▪ Legal Aid Service</li> <li>▪ UN/Regional treaty bodies</li> <li>▪ Senior Probation Service Staff</li> <li>▪ Senior Prison Service Staff</li> <li>▪ Legislative offices (at all local, provincial and national levels)</li> <li>▪ Law reform offices</li> <li>▪ High Court Judge</li> <li>▪ Senior Court personnel</li> <li>▪ Law schools and academic institutions</li> <li>▪ Public libraries</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Bar Associations</li> <li>▪ Senior and local police staff</li> <li>▪ Local courts</li> <li>▪ Judges and magistrates</li> <li>▪ Local probation service offices or other relevant bodies</li> </ul>	
3.1	GENERAL MEASURES	See SECTIONS 2.0 and 3.0 ABOVE	See SECTIONS 2.0 and 3.0 ABOVE	
3.2	INITIAL CONTACT	<p>See SECTIONS 2.0 and 3.0 ABOVE as relevant</p> <p>Plus</p> <ul style="list-style-type: none"> <li>▪ NGO reports on diversion from prosecution and restorative justice programmes;</li> <li>▪ Curriculum of police colleges/universities</li> <li>▪ Training reports conducted for police officers</li> <li>▪ Evaluation reports done on the qualifications of police officers</li> <li>▪ Media reports</li> </ul> <p><b>SITE VISITS</b></p> <ul style="list-style-type: none"> <li>▪ Police detention centres</li> <li>▪ Police colleges/universities</li> </ul>	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus</p> <ul style="list-style-type: none"> <li>• Police colleges/universities</li> <li>• Former juvenile detainees</li> <li>• Families of juvenile detainees</li> <li>• NGOs and community groups running support programmes for children in detention</li> <li>• Bar associations and lawyers working on children</li> <li>• Media agencies especially those working on investigative journalism</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.3	DIVERSION	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Rules regulating the power of police to divert</li> <li>▪ Rules regulating the power of the prosecutor to divert and also withdraw charges on children</li> <li>▪ Rules regulating the power of the social worker to divert</li> <li>▪ Diversion minimum standards</li> <li>▪ Rules regulating the power of a judicial authority to divert</li> <li>▪ Guidelines on mediation</li> <li>▪ Probation Service, police, prosecutors and NGOs reports on diversion from prosecution and restorative justice programmes;</li> <li>▪ Rules of Eligibility for diversion;</li> <li>▪ Relevant Ministry (Ministry of Justice/Interior) financial reports/budget documents relating to funding of restorative justice or medical treatment programmes</li> <li>▪ Probation service/police/court/prosecution financial reports and budget relating to restorative justice</li> <li>▪ Reports by/interviews with health services undertaking the treatment of those diverted</li> <li>▪ Contracts/agreements concluded with NGOs to run diversion programmes</li> <li>▪ NGO activity reports</li> </ul> <p>Interviews with community/traditional/religious leaders involved in dealing with children</p>	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Children in conflict with the law</li> <li>▪ Families of children in conflict with the law</li> <li>▪ NGOs running special programmes for children in conflict with the law</li> </ul> <p>Community/traditional/religious leaders</p>	
3.4	ADJUDICATORY PROCESS	<p>See SECTIONS 2.0,3.0 and 3.2 ABOVE as relevant</p> <p>Plus</p> <ul style="list-style-type: none"> <li>▪ Mandates of prosecutor, district attorney, child welfare officer, social worker, or reporter to exercise the discretion to resort to diversion</li> <li>▪ Court registrar records</li> <li>▪ Social enquiry reports</li> <li>▪ Reports on the exercise of corporal punishment for crimes committed by children (both as a sentence of a court or as disciplinary measure in prisons/detention centres)</li> <li>▪ Reports on the exercise of capital punishment for crimes committed by children</li> <li>▪ Review reports of bodies on the institutionalization of children</li> <li>▪ Reports of juvenile courts</li> <li>▪ Reports of community or tribal courts</li> </ul>	<p>See SECTIONS 2.0, 3.0 and 3.2 ABOVE as relevant</p> <p>Plus</p> <ul style="list-style-type: none"> <li>• Social workers</li> <li>• Human rights/juvenile justice Commissions</li> <li>• Intergovernmental organizations like Amnesty International and Human Rights Watch</li> <li>• Appeal Courts</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.5	INSTITUTIONAL TREATMENT	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p><b>Plus</b></p> <ul style="list-style-type: none"> <li>▪ Reports on child death in detention</li> <li>▪ Reports of hospitals on deaths of children</li> <li>▪ Reports of education institutions where children are kept</li> <li>▪ Budget reports (preferably with breakdowns) allocated for running a detention centre</li> <li>▪ Financial reports indicating expenditure preferably with breakdowns</li> <li>▪ Audit reports of detention centres by the Auditor general or an auditor</li> <li>▪ Medical reports from hospitals/clinics dealing with children in detention centres indicating number, frequency, type and causes of illness</li> <li>▪ Rules/practice pertaining to lodging a complaint</li> <li>▪ Media reports</li> <li>▪ Any institutional reviews conducted by an independent body</li> <li>▪ Rules and regulations in detention centres</li> <li>▪ Reports/records on disciplinary measures taken on staff in detention centres</li> <li>▪ Organizational chart/accountability structure of detention centres and staff</li> </ul> <p><b>SITE VISITS:</b></p> <ul style="list-style-type: none"> <li>▪ Juvenile centres</li> <li>▪ Adult prisons where children are also housed</li> <li>▪ Police detention centres</li> <li>▪ Education institutions where children are kept</li> </ul>	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <ul style="list-style-type: none"> <li>• Former juvenile detainees</li> <li>• Families of juvenile detainees</li> <li>• Prison/detention guards</li> <li>• Medical practitioners involved in the medical examination of detainees</li> <li>• Medical associations</li> </ul>	
3.6	AFTER-CARE AND REINTEGRATION	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p><b>Plus:</b></p> <ul style="list-style-type: none"> <li>▪ Probation service strategic plans and policy documents relating to pre-release preparation of and post-release support to prisoners</li> <li>▪ NGO reports</li> <li>▪ Research reports by academic institutions</li> <li>▪ Prison/detention rules on early release</li> <li>▪ Reports/interviews with families of children and children</li> <li>▪ Laws and regulations addressing social support and education for children after release</li> </ul>	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p><b>Plus</b></p> <ul style="list-style-type: none"> <li>• Juvenile courts / Juvenile police</li> <li>• Juvenile probation staff</li> <li>• Children in conflict with the law</li> <li>• Families of children in conflict with the law</li> <li>• NGOs running special programmes for children in conflict with the law</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.7	RESEARCH, POLICY FORMULATION AND PROGRAMME DEVELOPMENT	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Strategic plan for the administration of juvenile justice</li> <li>▪ Government policy documents on the administration of juvenile justice</li> <li>▪ White papers on detention, crime, juvenile justice etc</li> <li>▪ Penal system reports</li> <li>▪ Probation service reports</li> <li>▪ Reports by Law Society</li> <li>▪ Reports by bar Association</li> <li>▪ Reports/interviews: Judicial authorities</li> <li>▪ Reports/interviews: Prosecutors</li> <li>▪ Reports/interviews: Social workers</li> <li>▪ Evaluations of probation and prison system</li> <li>▪ Research reports and availability of courses/trainings on juvenile justice in academic institutions</li> </ul>	<p>See SECTIONS 2.0</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>• Research centres</li> <li>• Academic institutions</li> <li>• Law societies</li> <li>• Bar Associations</li> </ul>	
4	SUBJECT SPECIFIC ISSUES	See BELOW	See BELOW	
4.1	RESTORATIVE JUSTICE	<p>See SECTIONS 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Standards on the procedure in restorative justice processes</li> <li>▪ Interviews with community/traditional/religious leaders involved in restorative justice processes</li> </ul>	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Children in conflict with the law</li> <li>▪ Families of children in conflict with the law</li> <li>▪ NGOs running special programmes on restorative justice</li> <li>▪ Community/traditional/religious leaders involved in restorative justice</li> </ul>	
4.2	CHILDREN IN ARMED CONFLICT	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Country reports on the use of child soldiers and how they are dealt in the criminal system</li> <li>▪ Reports to the UN treaty bodies</li> <li>▪ Reports to regional organizations</li> <li>▪ Reports of the Special Representative on the Involvement of Children in Armed Conflict</li> <li>▪ Reports from Ministry of Defence</li> <li>▪ Reports from intergovernmental organizations like the ICRC</li> <li>▪ Reports from military tribunals/courts martial</li> <li>▪ Reports on the demobilisation and reintegration of child soldiers into the community</li> <li>▪ Reports of UN/regional missions in respective countries</li> <li>▪ Media reports</li> </ul>	<p>See SECTIONS 2.0 and 3.0 ABOVE</p> <p>Plus:</p> <ul style="list-style-type: none"> <li>▪ Ministry of Defence</li> <li>▪ Court martial judges</li> <li>▪ High ranking officials in the military</li> <li>▪ Intergovernmental organizations like ICRC</li> <li>▪ UN agencies involved in the disarmament, demobilisation, and reintegration of child soldiers</li> <li>▪ Child soldiers</li> <li>▪ Families of child soldiers</li> <li>▪ The media</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.3	GIRLS IN CONFLICT WITH THE LAW	<ul style="list-style-type: none"> <li>▪ Reports from women's rights lawyers associations</li> <li>▪ Reports from NGOs running special programmes for female offenders</li> <li>▪ Research reports by academic institutions</li> <li>▪ Prison/detention rules on treatment of girls in conflict with the law</li> <li>▪ Reports/interviews with prison/detention guards and officials</li> <li>▪ Reports/interviews with families of girls in conflict with the law and girls in conflict with the law</li> </ul>	<ul style="list-style-type: none"> <li>▪ Female offenders on whom alternative measures or sanctions have been imposed</li> <li>▪ NGOs running special programmes for female offenders</li> <li>▪ Women's rights lawyers associations</li> <li>▪ Prison/detention staff</li> </ul>	
5.1	SYSTEM COORDINATION AND MANAGEMENT	<p>See 2.0, 3.0, 3.1, 3., 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, and 4.4 ABOVE plus:</p> <ul style="list-style-type: none"> <li>▪ Budget documents and financial reports by social support services, employment, housing agencies and health services, if providing any assistance to former prisoners.</li> <li>▪ Directory of NGOs/organizations working on juvenile justice</li> <li>▪ White papers for service providers</li> <li>▪ Guidelines for service providers</li> <li>▪ Minimum standards on undertaking any diversion programmes</li> <li>▪ Criteria's for becoming involved to undertake any activity in juvenile justice</li> </ul>	<p>See 2.3, 3.2 and 4.4 ABOVE Plus:</p> <ul style="list-style-type: none"> <li>▪ Staff responsible for financial reports and accounts</li> <li>▪ Directors of NGOs</li> <li>▪ Universities and academic institutions</li> </ul>	
5.2	FISCAL CONTROL AND BUDGETS	<ul style="list-style-type: none"> <li>▪ Government policy documents/National reform programmes</li> <li>▪ Reports from Ministry of Finance</li> <li>▪ Budget documents and financial reports of government agencies working on juvenile justice</li> <li>▪ Budget documents and financial reports of NGOs and intergovernmental organizations working on juvenile justice</li> <li>▪ Reports of the Auditor General</li> <li>▪ Reports of anti-corruption commissions/bodies</li> <li>▪ SITE visits to be used to gather information on the disbursement of funds</li> <li>▪ Bank transfer and withdrawal reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ministry of Finance</li> <li>▪ Ministry of Justice</li> <li>▪ Government policy documents/National reform programmes</li> <li>▪ Anti-corruption commissions/bodies</li> <li>▪ Auditor General</li> </ul>	
5.3	DONOR CO-ORDINATION AND PARTNERSHIPS	<ul style="list-style-type: none"> <li>▪ Donor Strategy papers</li> <li>▪ Progress reports by donor organizations</li> <li>▪ Independent studies conducted by universities/NGOs</li> <li>▪ Ministry of Justice strategy papers relating to cooperation and coordination with donors</li> <li>▪ Reports/documents of networks working on juvenile justice</li> <li>▪ Directory of donors/NGOs working on juvenile justice</li> <li>▪ Reports of government offices in charge of regulating and issuing licenses for donors</li> </ul>	<ul style="list-style-type: none"> <li>▪ Donor organisations</li> <li>▪ Ministry of Justice</li> <li>▪ Directors of Penal System and Probation System</li> <li>▪ Directors of networks</li> <li>▪ NGOs, universities and academic institutions</li> </ul>	

## ANNEX C. ASSESSOR'S GUIDE / CHECKLIST: CHILD VICTIMS AND WITNESSES

The following are designed to assist the assessor in keeping track of what topics have been covered, with what sources, and with whom.

	TOPIC	SOURCES	CONTACTS	COMPLETED
2.0	OVERVIEW: GENERAL STATISTICAL AND DATA	<ul style="list-style-type: none"> <li>▪ Ministry of Justice reports</li> <li>▪ Ministry of Women and Children Reports</li> <li>▪ Juvenile Justice Board Reports</li> <li>▪ Penal System Reports including the prosecution, prison and probation systems</li> <li>▪ National Police Crime reports</li> <li>▪ Court Annual Reports</li> <li>▪ Welfare Department Reports</li> <li>▪ Human Rights Commission Reports</li> <li>▪ Legal Aid Services Reports</li> <li>▪ Education or training institutions reports in respect of places where children referred as a sentence may be sent</li> <li>▪ Reports from or on private institutions used as detention or sentencing options for children</li> <li>▪ Victim surveys</li> <li>▪ NGO reports on child victimisation</li> <li>▪ Reports of organisations rendering support services, such as trauma counselling or rape crisis counselling to child victims</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Women and Children</li> <li>▪ Ministry of Welfare</li> <li>▪ Prosecutors office</li> <li>▪ Senior Prison Service Officers</li> <li>▪ Police Commissioners and high ranking officers</li> <li>▪ Senior Probation Service Officers</li> <li>▪ Family courts, children's courts, domestic violence courts, specialized courts dealing with sexual offences</li> <li>▪ Human Rights Commission</li> <li>▪ Legal Aid Service</li> <li>▪ Education and training institutions</li> <li>▪ Drug treatment centres</li> <li>▪ Children's Ombudsmen</li> <li>▪ UN Committees</li> <li>▪ Regional Organizations</li> <li>▪ High Court Judges and other senior judges</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Intergovernmental organizations</li> <li>▪ Donor organisations working on the criminal justice sector</li> </ul>	
3.0	LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE	<ul style="list-style-type: none"> <li>▪ The Constitution</li> <li>▪ Penal Code</li> <li>▪ Penal Procedure Code</li> <li>▪ Penal Enforcement Code</li> <li>▪ Rules on evidence</li> <li>▪ Regulations to these codes and acts</li> <li>▪ Amendments to all laws mentioned above</li> <li>▪ Children's Acts/laws</li> <li>▪ Rules on court procedure</li> <li>▪ Acts governing semi-formal/informal justice systems</li> <li>▪ Directives</li> <li>▪ White papers on crime, punishment, detention etc</li> <li>▪ Standing orders</li> <li>▪ Law Commission/Committee reports/issue papers</li> <li>▪ Submissions to parliament on law reforms</li> <li>▪ Relevant international instruments ratified by a country</li> <li>▪ Relevant regional instruments ratified by a country</li> <li>▪ Judicial Practice Directions and Circulars and</li> <li>▪ Independent reports made by non-governmental organisations.</li> <li>▪ Legal textbooks or academic research papers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Women and Children</li> <li>▪ Human Rights Commission</li> <li>▪ Legal Aid Service</li> <li>▪ UN/Regional treaty bodies</li> <li>▪ Senior Probation Service Staff</li> <li>▪ Senior Prison Service Staff</li> <li>▪ Legislative offices (at all local, provincial and national levels)</li> <li>▪ Law reform offices</li> <li>▪ High Court Judge/ Senior Court personnel</li> <li>▪ Social Workers and psychologists/psychiatrists</li> <li>▪ Police Officers (investigators and those working in child protection units)</li> <li>▪ Law schools and academic institutions</li> <li>▪ Persons in authority in relation to children (teachers, nurses, child focused facility staffs)</li> <li>▪ Bar Associations</li> <li>▪ Local courts</li> <li>▪ Local probation service offices or other relevant bodies</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
3.1	INSTITUTIONAL FRAMEWORK	<p>See SECTIONS 2.0 and 3.0 ABOVE plus</p> <ul style="list-style-type: none"> <li>▪ Reports of courts</li> <li>▪ Reports of community or tribal courts</li> <li>▪ Curriculum of colleges/universities which train judges, prosecutors, police officers, psychiatrists, social workers, interpreters, etc.</li> <li>▪ Training reports conducted for judges, police officers, psychiatrists, social workers, and staff of NGOs dealing with child victims</li> <li>▪ Evaluation reports done on the qualifications of staff dealing with child victims and witnesses</li> <li>▪ Any institutional reviews conducted by an independent body</li> <li>▪ Polls/assessments on the child protection system</li> <li>▪ Reports of witness protection programmes</li> <li>▪ Media reports</li> </ul> <p><b>SITE VISITS</b></p> <ul style="list-style-type: none"> <li>▪ Police stations</li> <li>▪ Colleges/universities</li> <li>▪ Courts where child victims or witnesses are involved in the criminal justice system</li> <li>▪ Children's homes where child victims or witnesses are housed</li> <li>▪ NGOs offering service to child victims or witnesses</li> </ul>	<p>See SECTIONS 2.0 and 3.0 ABOVE plus</p> <ul style="list-style-type: none"> <li>▪ Court clerks/interpreters/staff</li> <li>▪ Former child victims or witnesses</li> <li>▪ Families of former child victims or witnesses</li> <li>▪ Trainers/academicians dealing with judges, police officers, psychiatrists, social workers, and staff of NGOs</li> <li>▪ Staff of NGOs offering services to child victims or witnesses</li> <li>▪ Medical Associations</li> <li>▪ Psychiatrists' Associations</li> </ul>	
4	SUBJECT SPECIFIC ISSUES	See BELOW	See BELOW	
4.1	CHILDS VICTIMS OF TRAFFICKING	<p>See SECTIONS 2.0,3.0 and 3.1 ABOVE Plus</p> <ul style="list-style-type: none"> <li>▪ Reports from NGOs</li> <li>▪ Review reports of bodies on the institutionalization of children</li> <li>▪ Reports of juvenile courts</li> <li>▪ Reports of professionals working on child trafficking</li> <li>▪ Bilateral/multilateral cooperation agreements on trafficking</li> <li>▪ Reports from UN agencies such as IOM</li> </ul>	<p>See SECTIONS 2.0, 3.0 and 3.1 ABOVE</p> <p>Plus</p> <ul style="list-style-type: none"> <li>▪ Social workers</li> <li>▪ Intergovernmental organizations like Amnesty International and Human Rights Watch</li> <li>▪ Appeal Courts</li> <li>▪ Medical Associations</li> <li>▪ Psychiatrists' Associations</li> <li>▪ IOM</li> </ul>	
4.3	CHILD VICTIMS OF COMMERCIAL SEXUAL EXPLOITATION	<p>See SECTIONS 2.0,3.0, 3.1 and 4.1 ABOVE Plus</p> <ul style="list-style-type: none"> <li>▪ Interviews with clients of child victims of commercial sexual exploitation</li> <li>▪ Interviews with child victims of commercial sexual exploitation</li> </ul>	<p>See SECTIONS 2.0,3.0, 3.1 and 4.1 ABOVE Plus</p> <ul style="list-style-type: none"> <li>▪ Families of child victims of commercial sexual exploitation</li> <li>▪ Child victims of commercial sexual exploitation</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5	SYSTEM COORDINATION	See BELOW	See BELOW	
5.1	GENERAL	<p>See 2.0, 3.0, 3.1, 3., 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, and 4.4 ABOVE plus:</p> <ul style="list-style-type: none"> <li>▪ Budget documents and financial reports by social support services, employment, housing agencies and health services, if providing any assistance to former prisoners.</li> <li>▪ Directory of NGOs/organizations working on juvenile justice</li> <li>▪ White papers for service providers</li> <li>▪ Guidelines for service providers</li> <li>▪ Minimum standards on undertaking any diversion programmes</li> <li>▪ Criteria for becoming involved to undertake any activity/offer services in the child victims and witnesses sphere</li> </ul>	<p>See 2.0, 3.0, 3.1, 3., 3.3, 3.4, 3.5, 3.6, 4.1, 4.2, 4.3, and 4.4 ABOVE plus:</p> <ul style="list-style-type: none"> <li>▪ Staff responsible for financial reports and accounts</li> <li>▪ Directors of NGOs</li> <li>▪ Universities and academic institutions</li> </ul>	
5.2	FISCAL CONTROL AND BUDGETS	<ul style="list-style-type: none"> <li>▪ Government policy documents/National reform programmes</li> <li>▪ Reports from Ministry of Finance</li> <li>▪ Budget documents and financial reports of government agencies working on juvenile justice</li> <li>▪ Budget documents and financial reports of NGOs and intergovernmental organizations working on child victims and witnesses</li> <li>▪ Reports of the Auditor General</li> <li>▪ Reports of anti-corruption commissions/bodies</li> <li>▪ Site visits to be used to gather information on the disbursement of funds</li> <li>▪ Bank transfer and withdrawal reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ministry of Finance</li> <li>▪ Ministry of Justice</li> <li>▪ Government policy documents/National reform programmes</li> <li>▪ Anti-corruption commissions/bodies</li> <li>▪ Auditor General</li> </ul>	
5.3	DONOR CO-ORDINATION AND PARTNERSHIPS	<ul style="list-style-type: none"> <li>▪ Donor Strategy papers</li> <li>▪ Progress reports by donor organizations</li> <li>▪ Independent studies conducted by universities/NGOs</li> <li>▪ Ministry of Justice strategy papers relating to cooperation and coordination with donors</li> <li>▪ Reports/documents of networks working on child victims and witnesses</li> <li>▪ Directory of donors/NGOs working on child victims and witnesses</li> <li>▪ Reports of government offices in charge of regulating and issuing licenses for donors</li> </ul>	<ul style="list-style-type: none"> <li>▪ Donor organisations</li> <li>▪ Ministry of Justice</li> <li>▪ Directors of Penal System and Probation System</li> <li>▪ Directors of networks</li> <li>▪ NGOs, universities and academic institutions</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.4	RESEARCH	See SECTIONS 2.0,3.0, 4.1, 4.2, 4.3,and 4.4 ABOVE Plus: <ul style="list-style-type: none"> <li>▪ Strategic plan for dealing with child victims and witnesses</li> <li>▪ Government policy documents on issues pertaining to child victims and witnesses</li> <li>▪ White papers pertaining to child victims and witnesses</li> <li>▪ Reports by Law Society</li> <li>▪ Reports/interviews: Judicial authorities</li> <li>▪ Reports/interviews: Prosecutors</li> <li>▪ Reports/interviews: Social workers and medical experts</li> </ul>	See SECTIONS 2.0,3.0, 4.1, 4.2, 4.3,and 4.4 ABOVE	





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