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***Session 11: Panel Discussion: "The Rights of Children around the world –  
including the concept of Restorative Justice"***

***CHILD-FRIENDLY JUSTICE***  
***The Rights of Children in Conflict with the Law***  
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**Introduction**

More than 1 million children world-wide are deprived of their liberty by law enforcement officials. Most of these children are under arrest or awaiting trial and the majority of them are not serious criminals. In fact a significant number have not even committed a criminal offence. They are instead detained for the so-called '*status offences*' such as vagrancy, begging, smoking, dropping out from school and alcohol use. Other cases show children detained because they were accompanying a parent to detention or seeking asylum in another country. Some children are jailed for reasons such as race, religion, nationality, ethnicity or political views.

Depriving children who are in conflict with the law of their liberty is often unnecessary or even counter-productive.

The notion that children deserve special attention in the legal system is not a new one, and has taken on various forms and a number of different names throughout its development. You may come across other terms that reference the ideas and principles related to children and justice system - "child-friendly justice" and "child-sensitive justice" to "justice for children" and "children in contact with the law." Recognising that these terms all cover similar ground, I prefer to use the term "child-friendly justice" in my presentation today.

**International standards**

There are many international laws relevant to juvenile justice::

- *Convention on the Rights of the Child (CRC) 1989*
- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)*

- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (Havana Rules)*
- *United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines)*

The CRC reflects the basic principles and standards contained in the above rules and guidelines, which provide more detailed guidance on juvenile justice. Articles 37, 39 and 40 of the Convention on the Rights of the Child pertain to children's rights with respect to the juvenile justice system and, more generally, the criminal justice system as a whole.

**Article 37: Torture, capital punishment, deprivation of liberty**

Obligation of the State vis-a-vis children in detention.

**Article 39: Recovery and reintegration**

State obligations for the reeducation and social reintegration of child victims of exploitation, torture or armed conflicts.

**Article 40: Juvenile justice**

Treatment of child accused of infringing the penal law shall promote the child's sense of dignity.

Other articles of the Convention (arts. 2, 3, 6 and 12) set out the general principles that must be taken into account in addressing the situation of children in conflict with the law.

The Committee on the Rights of the Child has produced a General Comment in 2007 on Children's Rights and Juvenile Justice – which lays down the core principles for juvenile justice policies. In 2009 the Committee also produced a General Comment on Children's Right to be Heard, which provides ample guidance on the implementation of child-friendly justice principles before, during and after legal proceedings.

Apart from the above, there is the 2005 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. While this does not specifically focus on juvenile justice, it still applies to proceedings involving accused juveniles when the victim is also a child. In addition to these, the UN Commission on Human Rights has adopted a number of resolutions in relation to children and juveniles in detention.

**Creating a protective environment**

UNICEF believes that in order to create a protective environment for children in conflict with the law, the following core elements must be addressed in any policy for juvenile justice:

### ***1. Prevention***

Preventing offending is an essential part of any juvenile justice policy. Prevention policies should facilitate the successful socialisation and integration of all children. In practice this means that prevention programmes should focus on supporting vulnerable families, providing services to most at risk young persons and developing programmes for children repeatedly in conflict with the law amongst others. The Committee on the Rights of the Child also emphasize that measures should also focus on the promotion of the social potential of parents, given the important role of parents in the upbringing of children. The Riyadh Guidelines provide more guidance on measures to prevent offending.

### ***2. Minimum Age of Criminal Responsibility***

The CRC requires State parties to establish a minimum age below which children are presumed not to have the capacity to commit a crime. Meanwhile, the Beijing Rules state that the beginning of that age shall not be fixed at too low an age, and should be based on children's emotional, mental and intellectual maturity. In its General Comment # 10 on Children's Rights in the Juvenile Justice System (2007), the UN Committee on the Rights of the Child recommended that the age of 12 years be set as the absolute minimum age and that States continue to increase this to a higher age level.

Evidence from countries show that there exists a wide range of minimum ages of criminal responsibility, starting from as low as 7 to a high of 14 or 16. It should be noted that the level at which this age is set is no indication of how the child in conflict with the law is dealt with. Certain countries have a low minimum age of criminal responsibility but in practice adopt a non-punitive approach.

### ***3. Diversion and other interventions***

As part of a comprehensive policy on juvenile justice, it is necessary to develop a wide range of measures for dealing with children in conflict with the law without resorting to judicial proceedings as well as develop measures in the context of judicial proceedings. This has been emphasised in the CRC, which also provides that any measures must ensure respect for human rights and legal safeguards. In addition to avoiding stigmatization, this approach has also proven to be cost-effective.

In the context of interventions without resorting to judicial proceedings, a variety of community-based programmes have been developed, such as community service, supervision and guidance, family conferencing and other forms of restorative justice approach to diversion which can include restitution, and compensation of victims.

The Beijing Rules which provides guidance on diversion state that police, prosecutors or other agencies dealing with children's cases must be empowered to dispose of cases at their discretion without initiating formal proceedings, in accordance with the criteria laid down for that purpose. The Rules further state that any diversion involving referral to an appropriate community or other services must require the consent of the child and must be subject to review by a competent authority. In order to facilitate the discretionary disposition of children's cases, efforts must be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Meanwhile, with respect to interventions in the context of judicial proceedings, measures such as guidance and supervision orders, probation, community monitoring or day report centres, should be used. A restorative justice process can also be used at this stage.

#### **4. Detention**

The CRC and the Beijing Rules clearly provide that detention should be used as a last resort and only for the minimum possible period. The Beijing Rules further states that, whenever possible, alternatives such as close supervision, placement with a family or in an educational or home setting should be used.

Pre-trial detention must only be used in exceptional circumstances, and all efforts should be made to impose alternative measures. Furthermore, as emphasized by the Committee on the Rights of the Child, State parties should take adequate legislative and other measures to reduce the use of pre-trial detention and limit the duration of pre-trial detention.

When detention is used, courts and investigators must give the highest priority to expediting the process to ensure the shortest possible period of detention. Additionally, every child who is detained must be guaranteed their procedural rights. Meanwhile, children detained at the pre-trial stage must be separated from convicted juveniles, and should have opportunities to pursue work and to continue their education or training.

#### **5. Fair Trial**

The CRC states that children alleged or accused of a violation of law have the right to have the matter determined without delay by a competent, independent and impartial authority in a fair hearing. Throughout the proceedings, children have the right to have a parent present, and to have appropriate legal or other assistance. In addition, children must be provided the opportunity to express their views and to be heard in any judicial or administrative proceedings affecting them. Children also have the right to be presumed innocent until proven guilty, not to be compelled to give testimony or to confess guilt, to examine adverse witnesses, and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality. These are a few of the many guarantees for a fair trial that are contained in the CRC.

The Beijing Rules furthermore state that proceedings must be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate fully and to express herself or himself freely. In addition, both the CRC and the Beijing Rules require that juveniles' right to privacy be respected at all stages of the criminal proceedings in order to avoid harm being caused to them through publicity or by the process of labelling.

In order to promote a more specialised approach to court proceedings for children, many countries have established special children's courts, and have developed separate procedures designed to reduce formality and facilitate the participation of children and their parents. Specially designated and trained magistrates and judges help ensure a consistent, child-sensitive approach to handling children's cases.

## **6. Sentencing**

Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response. A wide variety of sentencing options should be available, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible. Furthermore, in order to promote minimum use of detention, appropriate authorities should be appointed to implement alternatives, and volunteers, local institutions and other community resources should be called upon to contribute to the effective rehabilitation of juveniles in a community setting.

The CRC clearly prohibits the use of the death penalty as well as life imprisonment without the possibility of parole or release for any crimes committed when the person was under the age of 18. This is irrespective of the age the person was at the time of the trial or sentencing or of the execution of the sanction.

## **UNICEF and Children in Conflict with the Law**

Juvenile justice is part of UNICEF's overall commitments to Child Protection, an area which addresses prevention and response to violence, abuse and exploitation of children, as well as the particular rights of children not in the care of their families.

In the majority of countries where UNICEF works, activities are underway to promote the reform of justice systems for children in conflict with the law. This work is undertaken in various legal and social contexts, including areas undergoing armed conflict, where instrumental use of children can put them in conflict with the law and endanger their rights to due process and child-specific treatment before the law.

UNICEF works to support the reform of legal systems by encouraging local actors to revise and implement legislation that is in conformity with international standards. UNICEF also builds the capacity of actors within the juvenile justice system so as to specialise in a child rights-based approach to their work. In order to coordinate inter-sectoral reform, UNICEF acts as a convenor among NGOs and the various ministries of government, including Justice, Corrections, Social Welfare, Youth, and Interior. UNICEF also works with the media and NGOs to support child justice reforms and educate the public about children's rights.

UNICEF has recently also issued a *"Toolkit on Diversion and Alternatives to Detention"*, available online. The toolkit provides clear, user-friendly guidance and practical tools for those who work in the area of juvenile justice.

UNICEF is also partnering with the UN Office on Drugs and Crime to strengthen juvenile justice systems to promote reforms and to protect the rights of child victims and witnesses worldwide. As part of the collaborative efforts, the two organizations have issued a number of joint tools and online training modules.

### **Some Good Practices from the region**

#### ***Bangladesh***

Aparajeyo, a local child rights NGO, has been promoting alternatives to pre-trial detention in selected districts through its Juvenile Justice Project. The project is staffed by a team of legal advisers, social workers and child rights officers. The social workers regularly visit the target police stations to facilitate the monitoring of children in conflict with the law and to negotiate the release of children from police stations. The legal advisor and panel of lawyers represent the children in court and

advocate for the release of the child on bail. In some cases, Aparajeyo provides funding for bail bond if the child's parents cannot be located, or cannot afford to pay. Children released from police custody or granted bail by the Court are taken to one of Aparajeyo's 24 safe shelters. The social worker attempts to locate the child's parents and turn the child over to them, and provides follow-up visits to check on the child after he/she has been returned.

## ***India***

Through new legislation passed in 2000, India has introduced an innovative partnership approach for the management of children's institutions. Under the law, State governments must establish special children's homes on their own, or under agreement with voluntary organizations or NGOs. This partnerships approach is being actively encouraged by the central government, and has shown considerable success. In some cases, NGO personnel are providing education, vocational training and other programmes in institutions that are managed and staffed by the government. The state of Andhra Pradesh has put into practice a scheme of co-management of the state's children's institutions, under which each institution will have a key NGO co-managing the institution. In other cases, the State government has certified institutions that are fully operated and managed by a trusted NGO, with State funding support. This has reportedly improved the quality and range of services being provided to the children, since NGOs generally have specialised staff and are able to mobilise community involvement and volunteer professional services from doctors, lawyers, etc.

## ***The Philippines***

ABAY is a unique, church-based initiative that endeavours to help juveniles in conflict with the law by promoting restorative justice through community-based alternative programmes and services. ABAY applies diversion approaches for disputes of a non-serious nature. As soon as the Family Court Diversion Committee completes conferencing, and the proceedings are signed by all parties (the juvenile, guardians/parents and complainants), the Family Court social worker refers the juvenile to ABAY for community-based rehabilitative services (the Family Court provides ABAY with a copy of the document signed by all the parties). ABAY immediately conducts a home visit and orients the juvenile and his/her family regarding the programme to be provided by ABAY for the juvenile.

## **Conclusion**

In conclusion, let me summarise the leading principles of a comprehensive policy on juvenile justice based on the Convention on the Rights of the Child.

These include the following:



- Non-discrimination – all children in conflict with the law are treated equally
- Best interests of the child – in all decisions taken within the context of administrative juvenile justice, the best interests of the child should be a primary consideration
- The right to life, survival and development – the inherent right of every child should guide national policies and programmes on juvenile justice – the death penalty and a life sentence without parole are explicitly forbidden
- The right to be heard – the right of the child to express his/her views freely in all matters affecting the child
- Dignity – treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society

It is very important that when children come into contact with the law as victims, witnesses, offenders or complainants, they are met with a system that understands and respects both their rights and their unique vulnerability. Child-friendly justice embraces the idea that courts can be a powerful tool to positively shape children's lives and at the same time recognises the reality that contact with the legal system is all too often more a source of additional trauma than a remedy for children.

Child-friendly justice demands of us to appreciate and minimise the challenges that children face at each step in each aspect of a legal proceeding, building confidence in the view of the justice system as a solution to children's legal issues rather than another of an already long list of problems. Respecting child-friendly justice principles will not only eliminate many of the traumatic experiences children face in the legal system, it will foster greater respect for their rights by providing children the full access to justice they need to bring violations of these rights forward.

There is no shortage of international standards, legal principles and guidance to assist Government and courts seeking to reform the system of juvenile justice in the country. What is needed is an effective and rights-based approach to juvenile justice and children in conflict with the law – based on the principles and provisions of the CRC.

**THANK YOU.**