

MODULE EIGHT

**POLICY ANALYSIS AND LAW
REFORM**

FACILITATOR'S GUIDE

MODULE EIGHT

OVERVIEW

OBJECTIVES

At the end of this module participants will:

- Be familiar with legislative reform requirements and possible
- Interventions within the existing framework.
- Identify measures to be taken in order to develop child-centered policies.

TIME [3 Hours]

CONTENT

8.1 Reform by Law

8.2 Initiatives and Progress in the Absence of a Comprehensive Legislative Framework

MODULE OUTLINE

Sessions	Method	Resources	Time
8.1 Reform by Law	Slide Presentation	Handout 1, Reform by Law; Handout 2, Examples of Selected Indicators; Slides 1-10; Manual for the Measurement of Juvenile Justice Indicators	1 hr 20 mins
	Groups discussion		
	Group discussion		
	Slide Presentation		
8.2 Initiatives and Progress in the Absence of a Comprehensive Legislative Framework	Group discussion	Handout 3, Juvenile Justice Initiatives and Progress can Occur in the Absence of a Comprehensive Legislative Framework	1 hr 40 mins
	Group work		

SESSION 8.1 REFORM BY LAW

- Purpose** To become familiar with legislative reform requirements. Look at ways to improve the situation analysis and indicator framework used in country programmes.
- Preparation** Write objectives on flip chart, review slides, photocopy handouts.
Pre workshop assignment – ask all participants to bring situational analysis from their country on juvenile justice.
 Write on cards, ‘Children in Conflict with the Law’, ‘Legal Framework’, ‘Political Framework’, ‘Reality of Children in the Juvenile Justice System’, ‘Juvenile Justice in Practice’, ‘Aftercare and Social Reintegration’. Put on pin boards around the room.
- Materials** Handout 1, Reform by Law; Handout 2, Examples of Selected Indicators; Slides 1-10; Manual for the Measurement of Juvenile Justice Indicators.
- Equipment** Laptop with PowerPoint, projector, 4 pin boards, cards and marker pens.

Activities	Time Estimate (minutes)
<ul style="list-style-type: none"> • Introduce the module objectives and outline on flip chart. 	5
<ul style="list-style-type: none"> • Introduce the session purpose 	
<ul style="list-style-type: none"> • Show slides 1-2 to introduce the topic of reform by law. 	5
<ul style="list-style-type: none"> • Group work developing the key elements in a situation analysis. 	
<u>Steps:</u>	
<ol style="list-style-type: none"> 1. Explain that a situation analysis is an important initial step if a State wants to provide an enabling environment, ensure coordination and provide resources to guarantee children’s rights. 	
<ol style="list-style-type: none"> 2. Divide the participants into 6 groups. Ask participants to get out their country situational analysis, if they have it, and use the document as an additional resource in the exercise. 	15
<ol style="list-style-type: none"> 3. Allocate one topic from the following key elements for a situation analysis for each group: children in conflict with the law, legal framework, political framework, reality of children in the juvenile justice system, juvenile justice in practice, aftercare and social reintegration. 	
<ol style="list-style-type: none"> 4. Ask the groups to list the issues that a situation analysis should address for the key areas that they have been allocated. 	20

Example. Responses include; age of criminal responsibility, who are decision makers on individual cases?

5. Participants should write each issue on coloured card and add them to the boards under the appropriate heading.
 6. Encourage the groups to walk around and visit each others' boards. They can add issues that they think are missing on a different coloured card.
 7. Distribute Handout 1 and refer participants to the table of key elements for a situation analysis. Debrief in plenary, asking the groups to identify any issues they have come up with that are not included in the handout.
- Arrange for the groups' output to be typed up and distributed
 - Group discussion of the indicators participants use in their countries.

Steps:

1. Give out Handout 2, Examples of Selected Indicators. Explain that indicators are meant to support monitoring of State Parties' adherence to the relevant provisions of the CRC and other international juvenile justice standards. The indicators include two types; 1) children's status indicators, which quantify the level of child rights violations or violations of international standards for juvenile justice; 2) protective environment indicators, which reveal the structures in place and gaps in the protection environment for children.
- 15
2. In the same groups as the previous exercise, ask the participants to respond to the following questions:
 - i) What are your experiences of developing a good indicator framework in your country?
 - ii) What strategies have you used to improve the use of indicators for programme planning with partners in your country?
 3. Explain that they should use Handout 2 as an additional resource in responding to the question.
- 10
4. Instead of a formal presentation to plenary, ask the participants to share some of the key points from their discussion verbally. Quickly note their responses on flip chart.
 5. Conclude by explaining that there is a lack of data. Refer them to the 'Manual for the Measurement of Juvenile Justice Indicators'

- and distribute a copy for them to look at.
- Show slides 3- 10 10

SESSION 8.2 JUVENILE JUSTICE INITIATIVES AND PROGRESS CAN OCCUR IN THE ABSENCE OF A COMPREHENSIVE LEGISLATIVE FRAMEWORK

Purpose To identify possible interventions within the existing policy framework. To look at the issues involved in drafting a laws and particularly the environmental factors required.

Preparation Write purpose on flip chart, photocopy handouts.

Materials Handout 3, Juvenile Justice Initiatives and Progress can Occur in the Absence of a Comprehensive Legislative Framework.

Equipment Flip chart, cards and marker pens.

Activities

Time Estimate (minutes)

- Introduce the session purpose.
- Group discussion of the obstacles and opportunities from the absence of a comprehensive legislative framework.

Steps:

1. Explain that although there is always room for legal reform, the most intransigent problem lies not only with the text of the law but also with the lack of implementation of the law and the way professionals are acting. Appropriate behaviour and implementation of existing laws might be more important than law reform.
2. Divide the participants into country groups (or if this is not possible into four groups) and ask participants to respond the following:

Identify the obstacles and opportunities arising from the absence of a comprehensive legislative framework and give your recommendations for strategies for change within the current system. Give each group a flip chart and ask them to pick a presenter to present their findings to plenary.

15
3. Ask each group to present to plenary in turn. Ask one group to present and the other groups to cross off any points already mentioned. The other groups should only comment on any points not already mentioned.

25

Conclude by mentioning the following points: Legislative reform can be a long, time-consuming process. It is not sufficient to limit the intervention to this process and exclude the possibility of promoting changes that could have an impact on the ground.

It may not always be possible to reform the law. A more effective way of improving the justice system for children will be to work within the framework of existing law.

It is sometimes preferable for transformation to precede legislative reform, so that proposals can be tested and adjusted where necessary.

Even without the existence of legislation dealing directly with juvenile justice, there is much scope within the current systems for choices to be made and decisions taken which contribute to a reform agenda. Reforms in the juvenile justice sphere can be accomplished within existing systems and without a vast amount of resources. For example, there is an opportunity at the very first step to use alternatives to arrest without resources.

Explain that you will look at these opportunities together next.

- Making your own law and supporting environment

Steps:

30

1. In threes (if possible keeping those from the same country together) ask participants to write their own law that would protect child offenders in the juvenile justice system. Ask the participants to draft the core issues of their own law that will protect child offenders. Ask them to cover as many issues as possible.
2. Write the following pointers on chart paper ahead of time and present them as a guide to the participants:

In what ways does the government currently limit the rights contained in your law?

In what ways would the government need to change?

How can you influence this change?

In what way could the government support and enforce your law?

In what ways do culture, tradition, custom, public attitude and habit currently limit the rights contained in your law? In what way would these things need to change? How can you influence that change?

In what ways do religion, culture, tradition, custom, public attitude and habit support and enforce your law?

30

In what ways do children support and enforce your law?

In what ways could the changes recommended occur without a new law?

3. Give each group a flip chart and marker pens and ask them to select a presenter.

- After 30 minutes give the participants the second task. Develop a checklist¹ of actions required in order to introduce this law into domestic order and identify the key stakeholders to be involved.
- Ask each group to present back to plenary in turn with their responses to both questions.
- To conclude, check how many groups had a strategy for children's participants in their law reform? Refer the participants to the South African example in Handout 1, Reform by Law.
- Refer participants to Handout 3, Juvenile Justice Initiatives and Progress can occur in the Absence of a Comprehensive Legislative Framework.

¹ Type up the checklist and send to the website for posting, (<http://www.extranet.unicef.org/PD/UNCPJJ.nsf> facilitators can check the website for examples before conducting the training. Facilitator can look at Canadian <http://canada.justice.gc.ca> for examples.

Power Point Slides 1-10

The slides are available on the CD-ROM

Slide No	Speaking Points
<p style="text-align: center;">Reform by law</p> <p style="text-align: center;">State's obligation under the CRC (article 4)</p> <p>States parties shall adopt all appropriate legislative, administrative, educational, economic, social or other measures to ensure the implementation of children's rights and to fully harmonize national law and policy with the Convention</p> <p style="text-align: right;"><small>United Nations Children's Fund (UNICEF)</small></p>	
1	
<p style="text-align: center;">Reform by law</p> <p>Criteria</p> <ul style="list-style-type: none"> • Legislation provides the framework for practice in juvenile justice • Many aspects of policy work that relates to juvenile justice require a statutory framework • It is necessary to encourage the development of a comprehensive juvenile justice policy in order to support the legislative process. <p style="text-align: right;"><small>United Nations Children's Fund (UNICEF)</small></p>	
2	
<p style="text-align: center;">Reform by law</p> <p>Objectives of a juvenile justice system</p> <p>A juvenile justice system tries to reconcile two apparently conflicting aims:</p> <ul style="list-style-type: none"> ◊ The need to punish for the offending behavior ◊ The need to attend to the child offender's individual welfare needs <p>The objective is to strike a fair balance between punishment and rehabilitation.</p> <p style="text-align: right;"><small>United Nations Children's Fund (UNICEF)</small></p>	
3	
<p style="text-align: center;">Promoting a comprehensive approach for effective law reform</p> <p>Link between child welfare and juvenile justice</p> <ul style="list-style-type: none"> • Laws relating to children should be brought together • When legislation is fragmented, children can fall through the gaps • With major revision of any one area of the law relating to children other pieces of legislation need to be made consistent • Separation of the criminal justice system and the social welfare system is needed • Children who are not in conflict with the law (i.e. children in need of care and protection) should not be being processed through the criminal justice system <p style="text-align: right;"><small>United Nations Children's Fund (UNICEF)</small></p>	<p>Fundamental link between childcare and child protection laws and legal provisions on juvenile justice: The link is apparent in view of the holistic approach of the CRC. The link assumes a practical relevance when juxtaposed with the reality of children who encounter criminal justice authorities.</p>
4	
<p style="text-align: center;">Law reform requirements</p> <ul style="list-style-type: none"> • Compatibility with the Convention requires a studied process of review, enactment and enforcement of a country's legislation • The whole body of existing and proposed domestic law that applies or affects children must be systematically and regularly audited • The CRC must be considered as a whole and the interconnections between its articles considered <p style="text-align: right;"><small>United Nations Children's Fund (UNICEF)</small></p>	<p>Refer to article 37 and article 40 of the CRC.</p>
5	

Promoting children's participation to law reform

- Measures which fail to take into account the views and experiences of children themselves will inevitably fail, as they will not relate to their life experiences.
- Children have an important contribution to make to the enactment of laws and the development of policies for dealing with youth delinquency.

6

Priorities

National legislation might need to be reviewed in order to:

- Ensure that children below the age of 18 are accorded the protection of separate justice provisions and are not treated as adults
- Decriminalize "vagrancy", "loitering", victims of commercial sexual exploitation and labour offences such as slavery and trafficking
- Set the minimum age of criminal responsibility at a suitable level, with due regard for the protection of all children, above and below that age
- Outlaw the death penalty for crimes committed by children under the age of 18 at the time of the offence and commute any existing death sentences passed on children
- Ensure the protection of all children, regardless of gender, race, ethnicity, sexuality, disability and social, economic or any other status from discriminatory laws and practices

7

Policy requirements

In addition to amending legislation, child-centered and child rights-based policies and procedures in the following key areas should be developed:

- Prevention
- Diversion
- Alternatives to detention

8

Evidence-based approach

- Punitive measures are less effective and less cost-effective.
- Punitive measures are more harmful to the child, perpetuate his/her stigmatization and might be an obstacle to his/her reintegration into his/her community and society as a whole.
- States can look at initiatives previously undertaken when formulating new juvenile justice policies to familiarize themselves with what works, what does not, and what types of obstacles may interfere with policy implementation

9

Legislative change must be achievable in practice

If new laws are to be credible and win support, governments must have the capacity to implement them

Public attitude

It is essential that the debate about new legislation be extended to the general public at the community level as well as the professionals and other groups which may be extremely influential or opposed to supporting change.

Without the investment in debate and discussion, legislation may be passed but not implemented.

10

Prevention: Political will and resources for the development of child rights-based comprehensive prevention policies.

Law and practice reform and resources' allocation to ensure that arrest and detention are only used as a last resort.

Diversion: Promoting diversion programmes as an additional procedural mechanism to allow/propose exit points at each stage of criminal proceedings, with an emphasis on restorative justice and child rights-friendly proceedings and services.

Alternatives to detention: Prioritization of the use of non-custodial sentencing options as measures at the disposal of the judiciary (to constitute diversion from imprisonment, but not necessarily diversion from criminal proceedings) and implementation of immediate review of children currently in detention with a view to withdrawing them from detention for placement in alternative programmes

ADDITIONAL READING

The UNICEF Juvenile Justice Indicators Project and the field-test in the Philippines, Alberto Muyot, Alexandra Yuster and Mecedita Tia
http://www.icclr.law.ubc.ca/Publications/Reports/11_un/muyot%20final%20paper.pdf

South African Law Commission, Project 106, juvenile justice report, 2000:
<http://www.law.wits.ac.za/salc/report/proj106.pdf#search='South%20African%20Law%20Reform%20Commission%20Report%20on%20juvenile%20justice'>

More information is available on juvenile justice reform in South Africa, including on child participation to the drafting process at: <http://www.childjustice.org.za/background.htm> or at <http://www.communitylawcentre.org.za/children>

More information on the reform and system in Canada is available at <http://canada.justice.gc.ca/en/ps/yj> and in French at <http://www.canada.justice.gc.ca/fr/ps/yj/index.html>

CHECKLIST FOR FACILITATORS

Key Message/ Reflective Questions
Even though law reform is necessary to bring national law in line with international standards and law reform may be in already in progress, don't wait for it to happen before promoting change with the existing framework.
Indicators are critical and you need to push for appropriate monitoring and reporting to occur.

QUALITIES OF A GOOD FACILITATOR

A facilitator guides a group process, who is substantively neutral and has no decision-making authority and intervenes to improve the group's effectiveness.

Facilitator catalyzes decision-making by:

- Managing group process
- Listening to understand rather than appraise or refute
- Assuming responsibility for accurate communication among members
- Being sensitive to unexpressed feeling: protecting minority points of view
- Keeping the discussion moving
- Ensuring that the discussions are appropriately documented
- Limiting her or his own content-related contribution
- Avoiding evaluating or judging participant ideas
- Not making the decision for the participants but allowing them to decide what to do.

An effective facilitator must possess a number of skills and be able to apply them well. First is the capacity to listen actively to participants as they express their thoughts and ideas – either through strictly verbal presentations in a plenary discussion or by sharing outputs produced in a small group activity. Active listening includes: the ability to check for understanding; the ability to be silent until the entire message is delivered; and, awareness of and appropriate use of posture, gestures and facial expressions. The practice of listening actively must be employed throughout the session.

A facilitator must be interested in learning from others in a general sense but should also be interested in learning through the process of interpersonal feedback, how participants respond to his or her professional performance. One of the differences between facilitation and teaching is this sharing of experience. A facilitator should not ask participants to reveal anything that s/he would not reveal s/himself.

60 % of the work a trainer does is behind the scenes this is also true for facilitators. There are many big and small functions that need to be done to make a training event successful – facilitators should be a jack of all trades and willing to perform a number of tasks from moving the chairs to ensure a good seating plan to photocopy the handouts.

The facilitator must have trust and belief in the group. Facilitation involves sets of activities that are done with the group not activities that are done to the participants. When a facilitator demonstrate is or her trust in the group it is nearly always reciprocated

MODULE EIGHT

POLICY ANALYSIS AND LAW

PARTICIPANT'S MATERIALS

OBJECTIVES

At the end of this module participants will:

- Become familiar with legislative reform requirements and possible interventions within the existing framework.
- Identify measures to be taken in order to develop child centered policies,

TIME [3 Hours]

CONTENT

8.1 Reform by law

8.2 Initiatives and progress in the absence of a comprehensive legislative framework²

Reform by Law

The Convention on the Rights of the Child requires States Parties to adopt all appropriate legislative, administrative, educational, economic, social or other measures to ensure the implementation of children's rights and to fully harmonize national law and policy with the Convention (article 4).

Reform of existing juvenile justice systems is an integral part of the international human rights agenda. Legislation provides the framework for practice in juvenile justice; many aspects of policy work that relate to juvenile justice require a statutory framework and to support the legislative process, it is necessary to encourage the development of a comprehensive juvenile justice policy.

Most States while reviewing legislation will have to balance conflicting social, political and professional interests. While children in conflict with the law shall be afforded the full panoply of fair trial safeguards required for adult criminal defendants, it is not sufficient to ensure that the law provides children with the same range of protections. The complexity of the objectives of the juvenile justice system which try to reconcile two apparently conflicting aims, the need to punish for the offending behaviour and to address the child offender's individual welfare needs, make the fundamental problem of striking fair balance between punishment and rehabilitation far more pronounced than in adult cases. Excessive emphasis on the overall legitimate objective to provide protection carries the risk of denial of due process rights to children. Shifting the emphasis entirely to rehabilitation at the expense of other aims of criminal justice gives the State virtually unrestrained powers to act on behalf of the child. This is likely to result in a conclusion that the child no longer needs the formal protections of due process, ultimately distorting the true meaning of juvenile justice.

PROMOTING A COMPREHENSIVE APPROACH FOR EFFECTIVE LAW REFORM

- **Link between Child Welfare and Juvenile Justice**

Ideally, laws relating to children should be brought together; when legislation is fragmented, children can fall through the gaps. The problem with major revision of any one area of the law relating to children is that it tends to have a domino effect, so that other pieces of legislation also need to be made consistent. The most obvious example is in the area the area linking juvenile justice and welfare/childcare laws.

For example, where there is a minimum age of criminal responsibility, there will be a need for appropriate provisions for those below this age, who will require places of safety. The rights of children will be undermined if the two areas are guided by principles that conflict each other. In order to avoid this, it seems necessary for both areas of law to be revised at the same time, and for practitioners from both areas to collaborate.

The fundamental link between childcare and child protection laws and legal provisions on juvenile justice cannot be ignored, primarily for two reasons. Firstly, the link is apparent in view of the holistic approach of the CRC. Secondly, the link assumes a practical relevance when juxtaposed with the reality of children who encounter criminal justice authorities. A common denominator of this group of children is that a good proportion belong to the category of children who may not be criminal offenders per se, but could be defined as those in need of care, due to different factors such as poverty.

Separation of the criminal justice and social welfare systems is however needed. It does not mean that social welfare departments should not be involved in the handling of children in conflict with the law but rather that children who are not in conflict with the law (i.e. children in need of care and protection) should not be processed through the criminal justice system.

- **Conducting a Comprehensive Situation Analysis**

A situation analysis is an important initial step if a State wants to provide an enabling environment, ensure coordination and provide resources to guarantee children’s rights. The situation analysis needs to assess current legal and policy frameworks that exist for children in conflict with the law and also existing methods for monitoring and reporting infractions of such policies and laws. It needs to look at how current frameworks are implemented, identify gaps that leave children in conflict with the law with little or no legal recourse to protect their rights and pinpoints areas of practice that could result in immediate and measurable improvements.

A situation analysis should cover all aspects of juvenile justice, including delinquency prevention, the role of the police, prosecution, adjudication (including diversion) and rehabilitation. It should contain different types of information, including background information, information about the law, statistical data, and qualitative evaluations of the prevailing practices in the various areas which make up a juvenile justice system.

The following is a possible outline for a situation analysis, which can be adapted to national conditions.

Key Elements for a Situation Analysis:

Children in conflict with the law	<ul style="list-style-type: none">- What is considered for children under the age of 18 to be ‘in conflict with the law’? (delinquency–anti-social behavior–irregular situation etc.)- What are the major public and political perceptions/concerns over the problem of children in conflict with the law?- From a child rights perspective, what are the problems and what are the opportunities?
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<p>Legal framework</p>	<ul style="list-style-type: none"> - What is the existing legal framework? - Did the country make any reservations/declarations upon ratification with regard to articles 37 and 40 of the CRC? - Are the Parliamentary and other bodies responsible for possible review of legislation? Who are other (potential) key agents of change in favour of more and better compliance with international children’s rights norms and standards? - Do Codes of Conduct exist for the different professionals involved in the area of juvenile justice (social workers, magistrates, judges, lawyers, penitentiary personnel, educators etc.)? Are there existing standards and norms applicable (standards of care – regulations) to institutions and services, involved in juvenile justice (national – per category of institution/service – etc.)?
<p>Political framework</p>	<ul style="list-style-type: none"> - Which are the ministries involved with/responsible for juvenile justice? - Are other (political or administrative) bodies, such as Commissions, Committees etc. responsible, or to which governmental departments are responsibilities delegated? - Who are the (potential) key political agents of change in favour of more and better compliance with international children’s rights norms and standards?
<p>Juvenile justice in practice</p>	<ul style="list-style-type: none"> - Who are the decision-makers for individual cases (law enforcement officials (police) judiciary administrative bodies such as School Commissions and Regional Commissions – etc.)? - What are the administrative, judicial and other decision-making procedures? - Who are auxiliaries to the decision-making process such as social workers etc.? - DIVERSION: what happens to those children reported to the police but not referred to the court? To those children referred to the court but not prosecuted? What are current initiatives or activities? Please consider all possible frameworks: the law does foresee the possibility for, or the law does not provide the possibility for, diversion. However, it does not exclude diversionary practices, they are applied informally OR applied illegally. They exist ‘de facto’ and ‘de jure’ against the law of juvenile justice? What are, from a children’s rights perspective, the obstacles or difficulties involved in traditional justice systems?

<p>Juvenile justice in practice</p>	<ul style="list-style-type: none"> - Are there any forms of restorative justice (actively involving the victims) used for dealing with children in conflict with the law? What are current initiatives or activities? If not used but existing, to what extent could the traditional justice systems be useful in the framework of juvenile justice? What are, from a children’s rights perspective, the obstacles or difficulties involved in using restorative justice? - What are the existing residential and non-residential structures and services for the execution of sentences and educational measures applicable to children in conflict with the law? How many structures/services exist for each kind of sentence/measure and what is their capacity? - What are the current initiatives, services and facilities used as alternatives to deprivation of liberty (including alternatives to arrest, pre-trial detention and imprisonment or any other sentence in a closed institution)? What is their capacity? - How is legal assistance organized for minors arrested, brought before a judge, a court, an administrative, or other body, having committed an offence? - How is the situation of children undergoing a sentence monitored? Are there any independent monitoring bodies reviewing the functioning of the juvenile justice system? - Is there a formal review process of the imposed or agreed measures, in each individual case? - Who are the (potential) professional key agents of change in favour of more and better compliance with international children’s rights norms and standards?
<p>Aftercare and social reintegration</p>	<ul style="list-style-type: none"> - What are the means put at the disposal for aftercare and social reintegration of children, alleged, accused or convicted of being in conflict with the law, and particularly of those children undergoing a placement in an institution, prison or detention centre? - What are the structures and services and who are the professionals involved? Who are the (potential) professional key agents of change in favour of more and better compliance with international children’s rights norms and standards?

<p>Reality of children in the juvenile justice system (information if possible over the last 5 years)</p>	<ul style="list-style-type: none"> - How many children are reported to the police or any other official body, annually, alleged of being in conflict with the law? What is their proportion compared to the total population under the aged of 18? On what specific grounds are children reported? Are there any regional disparities? - Are there any estimates of unreported offences committed by children? - Who are those children in conflict with the law? (age, sex, ethnic origin, etc.) - What are our sources for information and how valid and reliable are the data? (Statistics, studies etc.) - How many children are arrested annually alleged of being in conflict with the law? On what specific grounds? - How many children are annually put in pre-trial detention? For what reasons? - How many children annually are prosecuted, accused of being in conflict with the law? On what grounds? - How many children are going through 'diversion' schemes? On what grounds? Please specify as far as possible, the number of children per specific scheme? - How many children are going through 'traditional justice' schemes? On what grounds? Please specify as far as possible, the number of children per specific scheme? - How many children are going through 'restorative justice' schemes? On what grounds? Please specify as far as possible, the number of children per specific scheme? - How many children are convicted every year of being in conflict with the law? On what grounds? Please specify as far as possible, the number of children per specific conviction? - What are the different sentences applied, and to what extent (how many children, each year)? - What are the conditions of children deprived of their liberty? To what extent are their rights met? - Are there any studies on the perceptions/experiences of children involved in the juvenile justice system? If yes, what are their main findings? - Are there any studies on the impact of the juvenile justice system on the lives of children once they leave the system? (Recidivism (un)successful re-integration in the family, school, work, etc.)
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- **Indicators/Data**

In juvenile justice systems data are often missing or are not reliable in. In order to improve the availability of data on children's rights within juvenile justice systems, UNICEF convened a meeting of experts to identify a set of global indicators for juvenile justice. Indicators are meant to support monitoring of State parties' adherence to the relevant provisions of the CRC and other international juvenile justice standards.

The indicators include two types:

- Children's status indicators, which quantify the levels of child rights violations or violations of international standards for juvenile justice;
- Protective environment indicators, which reveal the structures in place and gaps in the protection environment for children.

Strategies for law reform

Law reform is essential for full realization of children's rights. Compatibility with the Convention requires a studied process of review, enactment and enforcement of a country's legislation. However, law reform is often undertaken sector-by-sector: family law, education law, the juvenile justice system and so on.

The whole body of existing and proposed domestic law that applies to or affects children must be systematically and regularly audited and any adjustments made to ensure there are no conflicts and that the rights in the Convention can be realized and enforced.

In addition, when the Convention is used as a framework for reviewing law and policy practice, it must be considered as a whole. Whatever the process for law reform, it is essential that the holistic nature of the Convention and the interconnections between its articles are considered³.

Several lessons can be learned, and cautions should be heeded, when policymakers consider revising juvenile justice legislation. One lesson relates to the impact that a new programme will have on the juvenile justice system as a whole. Changes made to one part of the system will not exist in isolation, but will have an impact on the delivery of juvenile justice services for all who have contact with it. This phenomenon, which is compounded by limited programmes, services, and budgets, may mean that appropriations to pay for a new programme may come at the expense of other juvenile justice programmes.

³ However, with regard to the specific articles relevant to juvenile justice, the Implementation Handbook for the CRC contains a checklist (articles 37, 39 and 40) to highlight the questions to be asked and answered in the review and enforcement of law.

This question should be addressed in order to avoid the negative consequences of well-intentioned policy initiatives. On a similar note, policymakers should be aware that a comprehensive change in juvenile justice policy or law will affect not only the juvenile justice system but also other agencies whose primary responsibility is to provide services to children and families.

The review of legislation is a process that should involve a variety of players. Legislators, including governments, have an important role to play. In addition, it requires the perspectives of those who apply the law, those who seek to use it to protect the rights of children, those working with and for children, and children themselves.

Aside from resource obstacles and unintended consequences, logistics, system inconsistencies, and administrative burdens may impede the implementation of well-designed legislation. States enacting comprehensive juvenile justice reform legislation should consider the practices already in place and calculate whether changes are necessary, how difficult the changes will be, and what new administrative options are available.

- **A Limited Approach**

An approach with limited objectives to changing the law may be more appropriate and can happen in a number of ways. However, even with amendments and rules, consultation is necessary before the changes are introduced and advocacy and training will still be needed for their implementation.

- **Promoting Children's Participation in Law Reform**

Measures which fail to take into account the views and experiences of children themselves will inevitably fail, as they will not relate to their life experiences, including in the juvenile justice system. Children have an important contribution to make to the enactment of laws and the development of policies for dealing with child delinquency.

- **Priorities**

In line with the UN Convention on the Rights of the Child and other UN guidelines on juvenile justice, national legislation might need to be reviewed with the view to:

- Ensure that children below the age of 18 are accorded the protection of separate justice provisions and are not treated as adults.
- De-criminalize 'vagrancy', 'loitering', victims of commercial sexual exploitation and status offences such as truancy and 'running away'.

- Set the minimum age of criminal responsibility at a suitable level, with due regard for the protection of all children, above and below that age, according to comprehensive implementation of international human rights standards, and with special regard for children who may end up in the custodial system through welfare or administrative rather than criminal provisions.
- Outlaw the death penalty for crimes committed by children under the age of 18 at the time of the offence and commute any existing death sentences passed on children.
- Ensure the protection of all children, regardless of gender, race, ethnicity, sexuality, disability and social, economic or any other status from discriminatory laws and practices.

In addition to amending legislation, child-centered and child rights-based policies and procedures in the following key areas should be developed:

Areas	Requirements
Prevention	Political will and resources for the development of child rights-based comprehensive prevention policies
Diversions	Law and practice reform and resources allocation to ensure that arrest and detention are only used as a last resort. Promoting diversion programmes as an additional procedural mechanism to allow/propose exit points at each stage of criminal proceedings, with an emphasis on restorative justice and child rights-friendly proceedings and services.
Alternatives to detention	Prioritization of the use of non-custodial sentencing options as measures at the disposal of the judiciary (to constitute diversion from imprisonment, but not necessarily diversion from criminal proceedings) and implementation of an immediate review of children currently in detention with a view to withdrawing them from detention for placement in alternative programmes.

- **Evidence-based Approach**

Many of the system reforms being undertaken, whether traditional or innovative, are based on little evidence to support their efficacy.

However, policies and practices have in recent years been increasingly based on the current knowledge of the main factors that put children at risk of coming into conflict with the law and on the evidence of the most effective ways of preventing delinquency and the most effective means of dealing with children when they commit an offence. Evidence is that punitive measures are less effective and less cost-effective, may be more harmful to the child, perpetuate his/her stigmatization and might be an obstacle to his/her reintegration into his/her community and society as a whole.

Programs designed with evaluation in mind will contribute the most to the future of juvenile justice policy development by determining what works and what does not. Further, States need tools that are more effective for determining what implementation challenges are inherent in juvenile justice reform and administration. Much of the information available to State policymakers focuses on the types of policies being initiated. Information is available on what works, why it works, how it came to be effective, and what factors States need to consider in replicating it. By looking beyond policy initiation to the formulation of programmes and the implementation and evaluation of existing policies, States may be better able to decide what types of juvenile justice prevention, sanction, and treatment programmes should be made available to children.

One tool that States have available, in the absence of empirical analysis, is to study existing juvenile justice policies and initiatives in other States. States can look at initiatives previously undertaken when formulating new juvenile justice policies to familiarize themselves with what works, what does not, and what types of obstacles may interfere with policy implementation.

- **Legislative Change must be Achievable in Practice**

If new laws are to be credible and win support, governments must have the capacity to implement them. Raising community awareness of children's rights will cause a greater demand for services and an insufficient capacity to provide them will lead to frustration and disillusionment. Financial and institutional capacity to provide services in response to changes is therefore essential. For this reason, states should also be able to monitor their own institutions at local level. For example, it is essential to have systems for tracking an individual child through judicial processes and national statistics to evaluate trends.

- **Public Attitude**

It is essential that the debate about new legislation be extended to the general public at the community level as well as at the professional level and other groups which may be extremely influential or opposed to supporting change.

Without the investment in debate and discussion, legislation may be passed but not implemented. Promoting changes in attitude involves listening to the public as well as

transmitting new ideas and requires public debate through the media the training of implementers.

Example: Juvenile Justice Law Reform in Canada

On February 4, 2002, the House of Commons passed Bill C-7, the Youth Criminal Justice Act (YCJA). The new law replaces the Young Offenders Act (YOA), and is in force as of April 1, 2003, following a period of preparation for its implementation. The YCJA builds on the strengths of the previous law and introduces significant reforms that address its weaknesses.

Background: There have been many concerns in Canada about the previous law, the Young Offenders Act and the youth justice system. Some of these concerns have been based on misperceptions about child crime, the legislation and how the system operates. Some concerns have been based on a misunderstanding of the limits of legislation and unreasonable expectations about what legislation can accomplish.

Significant problems in the child justice system include:

The system lacks a clear and coherent child justice philosophy.

Incarceration is overused.

The courts are over-used for minor cases that can be dealt with outside the courts.

Sentencing decisions by the courts have resulted in disparities and unfairness in child sentencing.

The previous Act does not ensure effective reintegration of a child after being released from custody.

The process for transfer to the adult system has resulted in unfairness, complexity and delay.

The system does not make a clear distinction between serious violent offences and less serious offences.

The system does not give sufficient recognition to the concerns and interests of victims.

Preamble and Declaration of Principle:

The Preamble, while not legally enforceable, contains significant statements from Parliament about the values on which the legislation is based. These statements can be used to help interpret the legislation and include the following:

Society has a responsibility to address the developmental challenges and needs of children.

Communities and families should work in partnership with others to prevent child crime by addressing its underlying causes, responding to the needs of children and providing guidance and support.

Accurate information about child crime, the child justice system and effective measures should be publicly available.

Children have rights and freedoms, including those set out in the United Nations Convention on the Rights of the Child.

The child justice system should take account of the interests of victims and ensure accountability through meaningful consequences and rehabilitation and reintegration.

The child justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on incarceration.

The Declaration of Principle sets out the policy framework for the interpretation of the legislation: the nature of the system's response to an offence should reflect the needs and individual circumstances of a child. However, the needs or social welfare problems of a child should not result in a longer or more severe penalty than is fair and proportionate to the seriousness of the offence committed.

The Declaration provides that:

- The objectives of the child justice system are to prevent crime; rehabilitate and reintegrate children into society; and ensure meaningful consequences for offences. In these ways, the system can contribute to the long-term protection of society.
- The child justice system must reflect the fact that children lack the maturity of adults. The child system is different from the adult system in many respects, including: measures of accountability are consistent with children's reduced level of maturity; procedural protections are enhanced; rehabilitation and reintegration are given special emphasis; and the importance of timely intervention is recognized.
- Children are to be held accountable through interventions that are fair and in proportion to the seriousness of the offence.
- Within the limits of fair and proportionate accountability, interventions should reinforce respect for societal values, encourage the repair of harm done, be meaningful to the child, respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal children and of children with special requirements.
- Child justice proceedings require special guarantees to protect the rights of children; courtesy, compassion and respect for victims; the opportunity for victims to be informed and to participate; and that parents be informed and encouraged to participate in addressing the child's offending behaviour.

In addition to the Preamble and the Declaration of Principle, the YCJA includes other more specific principles to guide decisions at key points in the child justice process: Extrajudicial Measures, Youth Sentencing, and Custody and Supervision.

Example: Consulting Children on Law Reform, the South African Experience

The law reform process in South Africa entailed an unusual degree of public participation. Numerous consultative workshops and dedicated meetings were held with specific interest groups. The Project Committee in charge also felt the need to consult the views of children and, to this end, included child participation in the process of drafting legislation that directly affected their interests.

Consultation with children occurred on two occasions. The first consultation was commissioned by the South African Law Reform Commission in 1999 and the second by the Child Justice Alliance in 2001.

First child participation process

The South African Law Reform Commission (SALRC) released a first draft of its legislative proposals in December 1998. In an effort to access the voices, opinions and views of children, the SALRC commissioned a non-governmental organization, the consult with children in this regard. The participants were mainly children who had some contact with the juvenile justice system. A control group of high school learners, who never had prior contact with the criminal justice system, was also chosen to participate.

The children involved in the study included:

- Children in a diversion programme.
- Children over the age of 14 years and awaiting trial in a place of safety.
- Children under the age of 12 years and awaiting trial in a place of safety.
- Children awaiting trial in prison.
- Children serving a sentence in a reformatory.
- Children serving a sentence in prison.
- A group of grade nine learners who had never been in trouble with the law.

The recruited children participated in a series of interactive workshops in which the specifics of the proposed Bill were debated. Participation was voluntary. Staff at the various institutions who engaged in this study were asked to select or recruit children who were willing to participate in the process. They were also asked not to subject their choices to the types of crime committed or alleged, nor to home language. However, children had to be able to write and read since some of the exercises required written responses.

The children were grouped according to the various 'stages' of the criminal justice system. This was to establish whether there were any differences of opinion between

those entering the system, those being tried, those being sentenced and those serving a sentence in an institution.

The inclusion of the control group made measuring differences of opinion between this and the other groups possible. The inclusion of a group of children under the age of twelve years allowed gathering the experiences and perceptions of very young children.

The children were asked to comment on certain key themes, in order to obtain specific information for the Project Committee. Topics concerned the minimum age of prosecution and age determination, police powers and duties, assessment and referral, diversion, the proposed preliminary inquiry, the child justice court, sentencing, legal representation and the expunging of records.

The methods used to obtain the required information included role-playing, small group discussions, individual written feedback and the completion of worksheets. A total of 70 worksheets were processed and the responses reflected as percentages of the total sample. Children were also asked to share their personal experiences and make recommendations. For the children under 12 years of age, the workshops were less formal and made more use of role-play and fantasy.

This first consultation, even though it was a relatively new experience in South Africa, proved an extremely valuable exercise for those involved in drafting the Bill in the Project Committee in July 2000.

Second child participation process

In the light of the success of the first consultation and the valuable insights it supplied into gaps in the South African criminal justice system, it was decided that there was a need to build on the previous study and ascertain children's current experiences of the justice system, as well as their opinions on the Child Justice Bill, before its submission to Parliament.

While the first consultation took place when the Bill was still in the form of a discussion paper and a number of options were being explored by the project committee, the focus of the second consultation was on anecdotal experiences of the criminal justice system in its current form. The aim was to ascertain what (if anything) had changed over the past few years and to identify gaps and problems that would be rectified by the implementation of the Bill. The purpose of the second consultation was also to inform parliamentarians and policy makers about the specific experiences of children at the hands of the criminal justice system, and to illustrate how the Bill would remedy these problems. Thus, the two processes had very clear but different purposes.

Like the first process, the participants included children at various stages of the criminal justice system, together with a control group of children who had no contact with the formal legal system. The children were selected from a range of institutions and schools in four South African provinces.

The children were consulted on topics such as age of criminal capacity, police powers and duties, detention of children and release from detention, assessment, diversion, the preliminary enquiry, the child justice court, sentencing, legal representation and records of conviction. Child-friendly worksheets were used to obtain specific information on each of the proposed stages of the new child justice system, the views of the children as well as individualized responses to particular experiences. These worksheets were not used as questionnaires for the children to fill in, but rather as

guidelines for facilitators to use via a process of role-playing, information input and small group discussions. The facilitators consisted of trained social workers from NICRO who had all received training in restorative justice, life skills facilitation and the specific content of the Child Justice Bill.

Lessons learnt from South Africa's child participation process: Consulting with children on law reform is a relatively new process in South Africa and proved extremely valuable in shaping new child justice legislation. In addition, the processes themselves presented various challenges and highlighted new lessons to be learnt by facilitators for future consultations with children. Some of these include:

Language: The language used in the workshops was predominantly English, although this was often not the first language of the children. The children spoke a wide range of languages and it was not always possible to use a facilitator who could interpret. Hence, the language needed to be simplified as far as possible so that the children could understand and answer to the questions. Choice of language is thus a serious consideration when consulting with children.

Skills required of facilitators: The facilitators involved in the process were generally social workers with previous experience in working with children. They also needed to be adequately briefed before the process began so as to be acquainted with the content of the legislation.

Interpreting data collected: Once the information was collected, the facilitators made certain that they had correctly interpreted what the children had said.

Example: Costing Law Reform in South Africa

Background: South Africa's efforts to improve child justice systems have been underway for several years. However, in the absence of significant planning and advocacy regarding necessary allocation of funding, it proved difficult to significantly reduce the numbers of children in detention.

The current Draft Bill seeks to place emphasis on effective action in the period immediately following arrest and before trial. Cases which do go to court will be prioritized, and an increased range of sentencing options, including many alternatives to imprisonment, are provided for.

Project: Firstly, the costing exercise involved establishing (on the basis of data) a 'baseline' estimate of expenditure on the current juvenile justice system. This entailed modeling and costing programmes spanning five different sectors (police, welfare, justice, correctional services and education) across national and provincial spheres of government. Variables included such diverse items as salaries, court time, and police transport and residential care and the cost of imprisonment. This had to be estimated based on overall arrest figures, the proportion of children as a percentage of the total population and comparative international data on children's criminality. Further assumptions were developed such as the likely differential crime rates for metropolitan, urban and rural areas, and the average number of remands in court per case. All this information was used to establish the cost of the present system over an annual period.

The next step involved modeling the expected impact of the changes proposed by the Draft Bill. The 'full' scenario seeks to replicate the flow of children through the child justice system as set out in the Draft Bill. Wherever possible the greatest number of children is dealt with in the most efficient, child-friendly manner envisaged by the Draft Bill. By contrast the 'rollout' scenario seeks to replicate how the new child justice system is likely to function at about the halfway point in the process of its

implementation. In other words, the basic elements of the new system are assumed to be in place, but they are not being uniformly applied or used.

Running these three scenarios ('baseline', 'rollout' and 'full') through the costing model produced a set of process and expenditure results. Analysis of these results suggests that the changes proposed by the Draft Bill will not only enable the government to realize substantial savings, but also to ensure that the remaining expenditure is spent more effectively.

Achievements:

The costing study concluded that the government currently spends about R675 million per year on the current juvenile justice system. Figure shows that the implementation of the draft Bill could reduce this to about R429 million per year. This implies a saving of about R246 million or 35 percent per year on current expenditure.

The draft Child Justice Bill it is the first piece of draft legislation in South Africa for which the costs of implementation have been explored in detail prior to it being tabled in Parliament. The process has not only greatly supported child justice advocacy efforts, but has also set a precedent for other legislation in South Africa. Section 35 of the Public Finance Management Act now requires all national legislation in South Africa to be subjected to prior costing.

Lessons learned:

Support from the Treasury was a key factor in influencing parliamentarians of the future benefits of the Child Justice Bill. Advocate could show clearly that there would be a savings for the Department of Correctional Services, but that spending would be necessary in the Social Development Ministry.

Example: Pilot Project before Law Reform in Kazakhstan

Partners: Kazakh Bureau for Human Rights and Rule of Law, Kazakh Ministry of Internal Affairs, Kazakh Ministry of Justice. Office of the General Prosecutor, Kazakhstan Soros Foundation-â€”Kazakhstan, State and Legal Affairs Division of the Administration of the President, Kazakhstan ,Supreme Court of Kazakhstan, Women Lawyers of Kazakhstan.

Background:

Kazakhstan has the highest rate of children's incarceration in the region of Central Asia and the former Soviet Union: each year between 900 and 1,500 children are deprived of their freedom, often for terms of two years or more. A number of factors

make this a good time for reform of the treatment of under-eighteens in Kazakhstan's justice system (juvenile justice). Firstly, several high-level officials in the criminal justice arena are concerned that the justice system is not well equipped to protect children's rights. Secondly, since children's welfare is not politically controversial, agencies such as the Ministry of Internal Affairs and the Office of the General Prosecutor are open to reform in this area. Thirdly, the United Nations Committee on the Rights of the Child reported on Kazakhstan's report in 2003.

Juvenile justice is a key issue for introducing practices consistent with international standards into a criminal justice system that might otherwise be resistant to change.

In late 2001, the Justice Initiative (then COLPI) convened a seminar for government officials in Kazakhstan entitled 'Introducing International Standards on Children's Rights: Juvenile Justice Pilots in Kazakhstan'. The seminar led to an agreement to improve the justice system's treatment of child offenders signed, in February 2002, by the Kazakh Ministries of Justice and Internal Affairs, the Supreme Court and the Prosecutor's Office, as well as the Justice Initiative and the Soros Foundation-Kazakhstan. Following this agreement, a pilot project was co-designed by an expert committee of ranking government officials together with a working group of specialists who work hands-on with those criminal justice actors with the power to affect the rights of children.

Project:

The project on juvenile justice in Kazakhstan has been designed to operate within the existing structures of the Kazakh justice system and seeks to assist police, investigators, prosecutors, judges and lawyers in applying standards of treatment consistent with the International Convention on the Rights of the Child (CRC). The application of a model approach to child suspects and defendants in two pilot locations will provide a basis for replication elsewhere.

Objectives

The pilot models attempt to ensure that the treatment of children in conflict with the law in the Kazakh criminal justice system complies with international standards. In particular, they aim to provide every arrested child with a lawyer from the point of arrest to ensure protection of their right to remain silence; (conditional) pretrial release; and a fair trial, including the right not to self-incriminate. The models involve a range of actors, including the police, the prosecution and the judiciary as well as private lawyers and social workers. The pilots focus on four factors: the accountability of law-enforcement and the courts; their observance of human rights; the use of pre-trial detention; and access to legal aid.

Activities

The pilot project has been launched in two districts: Almaty and Karasaiiskii to establish a model system of justice for children accused of crimes.

Project recommendations were drawn up on the basis of original research, following negotiations with the working group. These will be amended and adapted to address specific issues highlighted during the project's execution. Procedures were established

for recording data on child suspects and their treatment at every stage of the criminal justice process, from arrest through sentencing or acquittal. Police officers, prosecutors and judges were selected for specialized work with child offenders in the pilot regions, and the Justice Initiative and Soros Foundation Kazakhstan selected lawyers and social workers on a competitive basis.

Following an intensive five-day training seminar for implementing personnel, the project was launched on March 17, 2003.

In the first six months, regular contact between the agencies and professions involved had already raised important questions about the justice system in Kazakhstan,

demonstrating that there has been little shared understanding about the very meaning of human rights and juvenile justice among most criminal justice actors. Daily collaboration in the project pilot sites among law-enforcement, defence attorneys, judges and social workers is leading gradually to the identification of disincentives to rights compliance as well as to short- and long-term solutions.

Results

- The project has activated the right to counsel as a matter of policy for the first time in all cases involving children in the Auezovsky district of Almaty. Moreover, law enforcement officers are not just formally contacting a limited pool of attorneys they believe compliant with their wishes. Rather, they consistently call in attorneys specially trained in juvenile rights from a duty roster compiled as part of the project. On three occasions, in the Auezovsky district, lawyers were called directly to the scene of the crime, prior to the defendant's transfer to the police station. In all, as of September 2003, the project lawyers had represented 61 children in the two pilot districts. In only one case was a defendant held in custody from the moment of arrest. Lawyers have unanimously reported that the judges and police who attended the project training sessions are noticeably more humane and respectful and less inclined toward punitive measures than others.
- Parents or guardians are present during the earliest stages after a child's arrest, before police interrogation takes place, in 90% of cases in which the project lawyers have been involved, up from 50% in 2002, according to Ministry of Internal Affairs statistics. The project has ensured the presence in all cases of a defence team consisting of a lawyer and social worker whose efforts to track down parents or guardians have been generally successful.
- The project has redefined the moment of arrest for purposes of triggering the right to counsel and related rights. As a rule, police have observed the project's definition of arrest as occurring from the moment at which the defendant is not at liberty to leave, rather than from the moment of a filing of an Arrest Certificate, which can take place many hours after the child has been in de facto police custody. With only a few exceptions, interrogations have taken place only after private consultations between attorney and client.
- Police are re-examining the practice and usefulness of interrogation immediately after arrest. Police are questioning whether the time-worn practice of interrogating defendants at the first opportunity is in fact necessary. The realization is that the first interview with under-eighteen defendants might just as productively be deferred to a time when the individual is less shaken and more aware of the risks confronting him/her. This recognition would discourage the use of detention as a technique to persuade defendants to submit to questioning as a precursor to release. Moreover, police in the pilot areas are discovering that lawyers and social workers assigned to individual cases can facilitate meetings for them where necessary.

- Police, prosecutors, judges, defenders and top-level government officials and policy-makers are engaged in a running dialogue on children's and human rights. This is the first time that professionals involved in the daily administration of justice have had ongoing and open access to policymakers on issues that touch them directly.

MODULE EIGHT

HANDOUT 1

Project lawyers and social workers are increasingly committed to upholding their client's rights. The fifteen lawyers involved in the project are coordinating their practice standards, submitting motions in writing, citing international standards in their motions and conferring on standardizing remedies to abuses in the system.

- The social worker assistants, who provide background information on defendants enabling an individualized assessment of each child defendant, have become devoted child advocates, searching for information to supplement the information immediately available to police.

Future steps include:

Public awareness campaign

A comprehensive public awareness campaign on the need to establish a functional juvenile justice system in Kazakhstan will build on the results of the project in its first year. It will focus on the benefits of a juvenile justice system to the public at large, the status of children in prisons and on the streets, and the ineffectiveness of current government approaches to dealing with child offenders.

Developing recommendations to amend the law

Ultimately, the project aims to provide data and practical experience on the basis of which the Working Group and Expert Committee can propose amendments to the Criminal and Criminal Procedure Codes and to regulations affecting the rights of juvenile defendants and offenders. Such changes will seek to maximize the observance of human rights in the daily workings of the criminal justice system as it applies to child suspects and defendants.

Examples of Selected Indicators

1. Children in Detention	<ul style="list-style-type: none"> • Total number of children in detention. • Proportion of children in detention at pre-trial stage, over the total number of children in detention.
2. Duration of Detention	<ul style="list-style-type: none"> • The number of children sentenced to detention for: less than one year, one to five years, five to ten years, more than ten years, life imprisonment, and the average length of pre-sentence detention.
3. Children coming into contact with the juvenile justice system	<ul style="list-style-type: none"> • Number of children: arrested, referred to pre-trial diversion measures, tried (<i>dismissed, acquitted, convicted</i>), sentenced to custodial measures, sentenced to non-custodial measures.
4. Existence of a juvenile justice system	<ul style="list-style-type: none"> • Existence of specialized courts and/or procedures and/or dispositions or measures applicable to children • Ratio per 1000 arrested children of trained, specialized professionals among: judges, lawyers, prosecutors, police, social workers/probation officers.
5. Separation from adults	<ul style="list-style-type: none"> • Proportion of children in detention who are not separated from adults: in police cells, in detention facilities/prisons.
6. Conditions for quality control of services for children in detention	<ul style="list-style-type: none"> • Existence of a system guaranteeing mandatory visits by magistrates/judges. • Existence of a system guaranteeing regular visits by external, independent persons and bodies. • Proportion of children not being visited by parents or relatives over the last six months.
7. Protection from torture, violence, abuse and exploitation	<ul style="list-style-type: none"> • Existence of legal provisions prohibiting torture, inhuman and degrading treatment or punishment. • Existence of safe, accessible and child-sensitive complaint mechanisms for children. • The number of reported cases of violations. • Proportion of reported cases followed by penal or administrative sanctions.
8. Prevention	<ul style="list-style-type: none"> • Existence of a national program for the prevention of children's offending that has at least 3 out of 5 of the following components: <ul style="list-style-type: none"> - Family support services. - Community-based programmes for vulnerable groups. - Programmes for prevention of drugs, alcohol abuse. - Educational support programmes. - Involvement of mass media in prevention.
9. Aftercare	<ul style="list-style-type: none"> • Proportion of children in detention benefiting from an aftercare programme lasting at least six months following release.

Juvenile Justice Initiatives and progress can occur in the absence of a comprehensive legislative framework

Although there is always room for legal reform, the most intransigent problem lies not only with the text of the law but also with the lack of implementation of the law and the way professionals are acting. Thus, appropriate behaviour and implementation of existing laws might be more important than law reform.

1. Opportunities and Constraints in Law Reform

Legislative reform can be a long-time-consuming process. It is not sufficient to limit the intervention to this process and exclude the possibility of promoting changes that could have an impact on the ground. In addition, it may not always be possible to reform the law. In some circumstances, a more effective way of improving the justice system for children will be to work within the framework of existing law. Even where good laws exist, juvenile justice systems often fail to implement them in practice.

Although juvenile justice reform initiatives and policies vary from State to State, several common themes characterize State responses to child delinquency. Further, the opportunities and obstacles encountered by States that have undertaken comprehensive juvenile justice reform efforts can provide useful lessons for other States looking to undertake broad law reform, or for those looking to amend and revise very specific pieces of legislation governing juvenile justice. In addition, it is sometimes preferable for transformation to precede legislative reform, so that proposals can be tested and adjusted where necessary.

2. Identification within Current Systems of Possibilities for Reform and Transformation

Even without the existence of legislation dealing directly with juvenile justice, there is much scope within the current systems for choices to be made and decisions taken which contribute to a reform agenda. Starting with police discretion, there is an opportunity at the very first step to use alternatives to arrest.

When discussing juvenile justice reform, one is frequently confronted by responses that focus exclusively on the demand for more and better-equipped facilities. There are indeed situations where physical improvement is sorely needed, or where the lack of access to facilities results in violations of children's rights. These include conditions of detention and in particular the lack of access to clean water, basic sanitation, food and warmth where this is needed and so forth.

However, it must be countered that reformers in the juvenile justice sphere have accomplished much within existing systems and without a vast amount of resources. There are practical examples of where change has come about through concerted efforts to do things differently without necessarily requiring more resources, provided that there are individuals and organizations willing to make a difference.

Example: Initiatives and progress can occur in the absence of a comprehensive legislative framework

Camp courts, or case screening in prison by magistrates (not specific but applicable to children)

Country: India.

Agencies: Magistrates, police prosecutor, prisons, PRI.

Cost: Transport to prison.

Background:

In Bihar, India, judicial officials periodically visit prisons to review cases and dispense rulings on the spot. These 'camp courts' only handle matters involving 'small time offenders'. The courts are 'seen as a useful way to reduce overcrowding, speed up justice delivery, and restore the 'hope' factor in the life of prisoners'.

Prior to the camp courts, over 12,000 pre-trial prisoners were "lodged in various jails of Bihar, waiting to be tried for minor offences." Many had been "languishing for more time than the sentences" when the local high court "directed jail authorities to organize camp courts in the State's jails to hasten the disposal of in or cases." The camp courts handle only petty offences, such as breach of the peace. The camp courts are organized under the auspices of the Bihar State Legal Services Authority, by order of the Chief Judicial Magistrate. "Judicial magistrates and executive magistrates of respective districts" preside over the camp courts. Before each session, a superintendent of the local prison submits a list of prisoners eligible to participate.

The Bihar camp has been highly effective in reducing the backlog of "simple bailable criminal cases and other simple compoundable cases of criminal nature."

In Malawi, magistrates have applied this practice. They visit prison to screen the pre-trial caseload and weed out those who are there unlawfully or unnecessarily and fix dates for trial. The exercise has been effective in reducing congestion and in restoring prisoners' confidence in the justice system by seeing justice in action.