

International Expert Consultation on Restorative Justice for Children – from Concept to Realization

Using diversion and alternative measures as key strategies to prevent and protect children from all forms of violence in the justice system

Concept paper

The Special Representative of the Secretary General on Violence against Children and the Governments of Indonesia and Norway are co-organizing an international Expert Consultation on Restorative Justice for Children. The meeting will be hosted by the Government of Indonesia, in Bali, and will be held from 26 to 28 of June 2013.

Restorative justice is an approach to criminal offending which involves the victim, the offender, their social networks, justice agencies, and the community. Restorative justice programmes are based on the fundamental principle that criminal behaviour not only violates the law, but also injures victims and the community. Any efforts to address the consequences of criminal behaviour should, where possible, involve the offender as well as injured parties, whilst also providing the help and support that the victim and offender require. <http://www.unodc.org/unodc/en/justice-and-prison-reform/criminaljusticereform.html#restorative>

Objectives and expected outcomes of the expert consultation

The International Expert Consultation will focus on sharing of good legislative, policy and program examples, taking into account possible challenges in countries where law reform and a paradigm shift from punitive approaches to child sensitive restorative justice programs have led to rehabilitation and reintegration of children at community level. It will in particular:

- Provide an overview of available models of restorative justice for children and of legal structures that support such programmes at the national, regional and community levels;
- Draw attention to positive developments, promising practices, as well as shortcomings and challenges in the use of restorative justice processes for children within formal and informal justice systems;
- Highlight legal obligations, roles and responsibilities of state institutions and the need to integrate efforts at all levels and with all stakeholders

- Suggest policy- and practical recommendations to support the development of child sensitive restorative justice programs that safeguard the rights of the child.

Expected Outcomes

1. A thematic Report informed by the expert consultation with concrete recommendations for the development of restorative justice programs that safeguard the rights of the child and form part of a violence prevention strategy. The report will document promising practices from different regions, as well as lessons related to challenges in developing and effectively implementing child friendly restorative justice and reflections on ways of overcoming those challenges.
2. Launch of the thematic report: In order to present the main findings of the report and promote greater awareness among governments, UN agencies and civil society partners on the development and implementation of child sensitive restorative justice programs, the co-organizers will host with partners a side event during the UN General Assembly's debate on the Rights of the Child in October 2013.

Suggested participants

Government representatives, experts from international and regional organizations, representatives from human rights/children's rights independent institutions, academia and civil society.

Background

A juvenile justice system framed by the rights of the child is critical for preventing and responding to violence against children; it secures a justice environment that is child- and gender sensitive, and non-intimidating, and safeguards children's access to justice and to a meaningful participation in administrative and judicial proceedings.

During the High-Level Meeting of the 67th session of the General Assembly on the Rule of Law at the national and international levels, the adopted Declaration¹ emphasized the right of equal access to justice for all, including disadvantaged and vulnerable groups and acknowledged that informal justice mechanisms in accordance with international human rights law, play a positive role in dispute resolution, and everyone should enjoy full and equal access to these justice mechanisms (para 14 and 15). The Declaration also recognized the importance of the rule of law for the protection of the rights of the child, including legal protection from discrimination, violence, abuse and exploitation, and ensuring the best interests of the child in all actions (para 17).

¹ A/67/L.1

The United Nations Study on Violence against Children urged states to prohibit, prevent and respond to all forms of violence against children, in all settings, including in the justice system.

Across regions, countless children involved in the juvenile justice system are victims of physical, psychological and sexual violence by staff and adult detainees in detention centres; during arrest, interrogation, or in police custody; and as a form of punishment or sentencing, including stoning, amputation, capital punishment or life sentence.

There are a number of contributing factors to violence against children within the juvenile justice system, including weak legislation and enforcement, ill-qualified professionals, lack of effective oversight and inspection mechanisms in institutions when children are deprived of liberty, and lack of cooperation between the justice, social welfare and child protection sectors.

A new joint thematic report by UNODC, OHCHR and the SRSG² on the *Prevention of and Responses to Violence against Children within the Juvenile Justice System* highlighted inter alia:

- a) Risks and systemic factors contributing to violence against children within the juvenile justice system;
- b) Concrete measures, recommendations and strategies to prevent and respond to violence against children within the juvenile justice system.

Among these important strategies, States are urged to develop and use, in the light of international standards including article 40 of the Convention on the Rights of the Child, effective alternative mechanisms to formal criminal proceedings that are child- and gender-sensitive, such as diversion, restorative justice processes, mediation, and community-based programmes, including treatment programmes for children with substance abuse problems.

Mandates of the organisers

The Special Representative of the Secretary-General on Violence against Children (SRSG) is a global independent advocate on violence prevention and children's protection from violence. Her mandate is anchored in human rights standards, including the Convention on the Rights of the Child and its Optional Protocols, and is framed by the recommendations of the UN Study on Violence against Children.

The SRSG promotes advocacy and policy dialogue to keep this topic high in the international agenda, generating visibility and renewed concern at the negative impact of violence on children, and mobilizing support to prevent and combat this child rights violation. The Special Representative acts as a bridge builder and a catalyst of actions by a wide network of partners, within and beyond the UN system - including international and regional

² A/HRC/21/25

organizations, human rights treaty bodies and mechanisms, national governments, independent human rights institutions, civil society organizations, and children and young people themselves.

In this overall framework, the SRSG devotes a special attention to the prevention and elimination of violence against children in the juvenile justice system and promotes measures to build a child sensitive justice system guided by the rights of the child and designed to promote alternative measures to children's deprivation of liberty

Governments of Norway and Indonesia

For the past 11 years, the Governments of Indonesia and Norway have cooperated both at a political and technical level in the annual Bilateral Human Rights Dialogue.

The human rights dialogue's ***working group on the promotion and protection of the rights of the child*** has a special focus on children in conflict with the law and the administration of juvenile justice. The working group includes Indonesian and Norwegian experts within the field of child protection and juvenile justice and was established during the human rights dialogue in Jakarta in 2008. The group has met on an annual basis to exchange views and experiences from the two respective countries.

The working group's objectives in the dialogue are:

1. To use the standards and obligations in the UN Convention on the Rights of the Child and the UN Study on Violence against the Child as the basis for an open dialogue on children's issues, with a special focus on protection of children in conflict with the law
2. To create a common understanding on the situation and causes why children get in conflict with the law and the consequences of detention/prison on the child's development and society in general
3. To share best practices and alternatives to detention that are in the best interest of the child (with a special focus on restorative justice)
4. To agree on concrete steps for follow-up

Any response to a child's offending behaviour should take into account the child's age and the need to promote the child's recovery and reintegration. The objective of a juvenile justice system should underline the human rights and help the child's reintegration and assumption of a constructive role in society.

During the latest dialogue meeting in Jakarta in November 2012, the two governments decided to organize the human rights dialogue biannually and encouraged the working groups to organize meetings, seminars etc. between the dialogues. The working group on the rights of the child has agreed to host in cooperation with the SRSG on Violence against Children an international expert consultation on child sensitive restorative justice.