

CHILD FRIENDLY JUSTICE SYSTEM

The juvenile justice system is the structure of the criminal legal system that deals with crimes committed by minors, usually between the ages of 10 and 18 years. The upper age of eligibility is determined by the juvenile law of each state, which varies.¹

The juvenile justice system is needed since the children have different needs and characteristics than adults. As it is known, children cannot fully understand and foresee the consequences of their actions. Also, several studies show that as one grows and matures their brain does as well.²

Children who come into contact with the justice system at any stage and in any way must be protected and treated according to **best interests of the child**.

In addition to maintaining public safety the primary goals of the juvenile justice system, are skill development, habilitation, rehabilitation, addressing treatment needs, and successful reintegration of youth into the society.³

One of the most important aspects of child friendly justice is access to justice. Access to justice is both a fundamental human right and a means to enforce human rights. It is key to achieving all the Sustainable Development Goals (SDGs). Children's access to justice covers all judicial and administrative proceedings affecting children, including customary and religious justice mechanisms, alternative dispute resolution and quasi-judicial mechanisms (e.g. national human rights institutions). Access to justice requires the legal empowerment of every child and must consider their age, maturity, and evolving capacity.⁴ In this context, children's participation should be provided and their opinions be taken into account seriously an given due respect, according to their age, maturity and the circumstances of the case, subject to national procedural law.⁵

Also, target 16.2 of the Sustainable Development Goals of the 2030 Agenda is closely related with the juvenile justice. All States are called upon to **“promote peaceful and inclusive societies by ending abuse, exploitation, trafficking and all forms of violence against and torture of children”** according to target 16.2.

The Convention on the Rights of the Child, the most widely ratified human rights treaty provides that, in all actions concerning children, **the best interests of the child shall be a primary consideration** (art. 3). In particular, **deprivation of liberty of children shall be used only as a measure of last resort and for the shortest appropriate period of time** (art. 37 (b)). Since children are in their formative years, when deprivation of liberty may have highly detrimental effects on their physical and mental health, their further development and their life, States are required to apply non-custodial solutions when dealing with children.⁶

1 <https://legalbeagle.com/6627173-definition-juvenile-justice-system.html>

2 Molly Millet, *Is Alternative Sentencing More Beneficial Than Incarceration: A Focus on Juveniles*, 2017.

3 <https://youth.gov/youth-topics/juvenile-justice>

4 UNICEF, *Reimagine Justice for Children*, p. 2.

5 *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, para.32.

6 *UN Global Study of Children Deprived of Liberty*, para. 20.

International law recognizes the family as the natural and fundamental group unit of society. Children should grow up in a family environment where they experience love, protection and security. If children, for whatever reason, cannot grow up in a family, States shall ensure that they are cared for in a family-type environment.⁷ Therefore, placing the children in the wider family, and failing that, in the community in a family-type environment is the best option for the States.⁸ With dedicated juvenile justice systems absent in many developing countries, young people caught breaking the law often end up in places of detention that are inappropriate for their age and development, and, as such, will not increase the likeliness of their reintegration into society.⁹ Also, it [has been seen in many studies that children deprived of their liberty tend to commit crimes again.](#)¹⁰

Depriving children of their liberty also has negative effects on their health. All children have the right to the enjoyment of the highest attainable standard of health and States shall strive to ensure that no child is deprived of his or her right of access to health care services (Convention on the Rights of the Child, art. 24.). Researches have shown that deprivation of liberty of children has negative effects on their physical and mental health. Especially the COVID-19 pandemic generated enormous pressure on rule-of-law systems worldwide, with challenges for children. As countries locked down, we saw many children's rights curtailed in the name of public health and security with little or no oversight or opportunity for redress. In particular, children deprived of their liberty being at increased risk of contracting COVID-19 and being more vulnerable to neglect, abuse, exploitation, and gender-based violence. In particular, children deprived of their liberty were at risk of contracting COVID-19. They also faced the risk of being more vulnerable to neglect, abuse, exploitation and gender-based violence. In addition, COVID - 19 has also had positive effects on juvenile justice. Globally, since the start of the pandemic more than 45,000 children were released from detention in at least 84 countries, as a COVID-19 measure against infection, showing the existing evidence about the value of diversion and of non-custodial measures, and the ineffectiveness of detention. Through innovative and technological solutions, many countries have been able to continue justice services for children and women.¹¹

Although it varies from country to country, alternative sentences may consist of practices such as probation, placement, residential custody and community service.¹² Alternative sentencing allows for offenders to remain in society, in a monitored manner, thus giving them the opportunity to turn their life around not be isolated from society and their family. The application of alternative punishments will also prevent the child from being labeled as a criminal in the future. Alternative sanctions will reduce the burden on the judicial system and in this way, they will have both material and moral contributions to the whole society.

The data collected for the study indicate significant gender disparities in the situation of children deprived of liberty. Altogether, there are far more boys deprived of liberty worldwide than girls.¹³ While boys are overrepresented in detention, girls often suffer gender-based discrimination.¹⁴

7 UN Global Study of Children Deprived of Liberty, para. 2.

8 UN Global Study of Children Deprived of Liberty, para. 20.

9 <https://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>

10 Molly Millet, *Is Alternative Sentencing More Beneficial Than Incarceration: A Focus on Juveniles*, 2017.

11 UNICEF, *Reimagine Justice for Children*.

12 <https://www.aecf.org/blog/what-is-juvenile-justice>

13 UN Global Study of Children Deprived of Liberty, para.35.

14 UN Global Study of Children Deprived of Liberty, para.38.

In this context, children should be protected against all kinds of discrimination especially on the basis of disability and gender. National equality mechanisms can contribute in this regard. In addition, national preventive mechanisms are of great importance for the monitoring of places where children are deprived of their liberty. For example, on its website, UNICEF has included the Juvenile Justice Department, which was implemented in Guyana with the new Juvenile Justice Law adopted in 2018 and it is stated that its offices are flooded with stories of young offenders, where they are given an opportunity for rehabilitation, rather than being treated as criminals.¹⁵

INTERNATIONAL FUNDAMENTAL PRINCIPLES ON JUVENILE JUSTICE

Universal and regional mechanisms have adopted fundamental principles and standards to establish a child friendly justice system. United Nations (UN) Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules¹⁶), UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules ¹⁷) and UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines¹⁸) are the basic regulations in this area. Besides these regulations, UN Committee on the Rights of the Child General Comment No. 10: Children's Rights in Juvenile Criminal Justice¹⁹ , Guidance Note of the Secretary-General: UN Approach to Justice for Children ²⁰ and Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice²¹ are also important documents.

According to these documents, fundamental standards on juvenile justice can be summarized as follows:

The basic principles to be followed and the procedural safeguards to be taken during the investigation and prosecution phases after the juveniles are taken into custody are arranged as follows:

- ▶ All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them. (*Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*)
- ▶ When a child detained, their parents or legal representatives should be informed about the situation immediately. (*Beijing Rules*)
- ▶ Children and their parents should be promptly and adequately informed about their rights, the system, and procedures, from the beginning to the end of the process. (*Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*)

15 <https://www.unicef.org/guyanasuriname/stories/alternative-sentencing-juveniles>

16 <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

17 https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf

18 <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>

19 <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

20 https://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_for_Children.pdf

21 <https://rm.coe.int/16804b2cf3>

- ▶ Competent authority should investigate the child's liberation without delay and if possible, decide on immediate release. (*Beijing Rules*)
- ▶ Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. (*Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*)

The basic standards to be followed in the juvenile justice system regarding the stages of trial and sentencing are discussed as follows:

- ▶ Trial should be held without detention and any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period. (*Beijing Rules*)
- ▶ When deprivation of liberty is imposed, children should, as a rule, be held separately from adults. In all circumstances, children should be detained in premises suited to their needs. (*Beijing Rules*)
- ▶ As far as possible, alternative measures should be implemented instead of detention of children, such as close surveillance and placement in a family or educational institution. (*Beijing Rules*)
- ▶ Attention should also be paid to the needs of young offenders, which may arise from a variety of reasons. Therefore, during detention, all children should benefit from all social, cultural, educational, psychological and medical assistance and care required by their age, gender and personality. (*Beijing Rules*)

Courts should consider the following issues when adjudicating:

- ▶ The punishment to be given should not only be proportional to the nature of the crime and the way it was committed, but also to the conditions and needs of the child and the needs of the society. (*Beijing Rules*)
- ▶ Deprivation of liberty should not be granted unless the offense is a serious offense against another person or the child has a habit of committing a serious offense. In this context, it is emphasized that prison sentence is a way to be resorted to when there is no other option to ensure public safety. (*Beijing Rules*)
- ▶ The privacy and personal data of children who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. (*Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*)



References

- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*
UN Global Study of Children Deprived of Liberty
UNICEF #Reimagine Justice for Children
Molly Millet, Is Alternative Sentencing More Beneficial Than Incarceration: A Focus on Juveniles, 2017
- <https://www.aecf.org/blog/what-is-juvenile-justice>
<https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>
[https://www.coe.int/en/web/children/child-friendly-justice#%2212440309%22:\[5\]}](https://www.coe.int/en/web/children/child-friendly-justice#%2212440309%22:[5]})
<https://legalbeagle.com/6627173-definition-juvenile-justice-system.html>
<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>
<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>
<https://www.un.org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>
https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf
https://www.unodc.org/pdf/criminal_justice/Guidance_Note_of_the_SG_UN_Approach_to_Justice_for_Children.pdf
<https://rm.coe.int/16804b2cf3>
<https://www.unicef.org/guyanasuriname/stories/alternative-sentencing-juveniles>
<https://youth.gov/youth-topics/juvenile-justice>