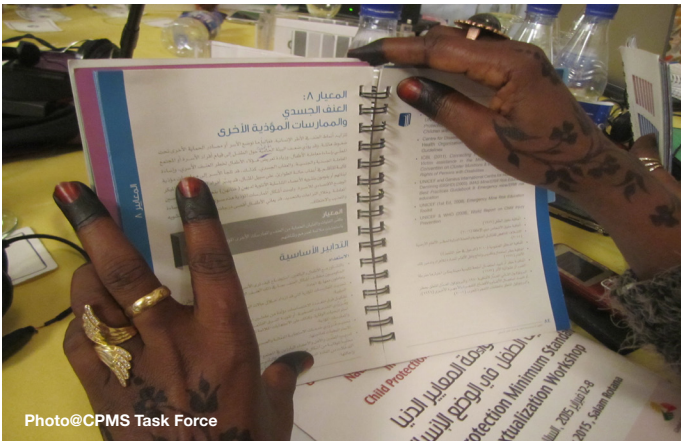




# Interagency review of justice for children in a humanitarian context (CPMS 14)



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## Report summary

This report suggests that the number of child-victims and the number of children in conflict with the law rise significantly during all types of emergencies. According to practitioners, conflict and civil unrest negatively impact justice for children more than natural disasters.

Strengthening justice systems for children in humanitarian contexts requires both a long-term perspective -- including the preparedness and reconstruction phases -- as well as a short-term perspective, when an emergency strikes. Since many relevant programmes fall under a development umbrella, emergency preparedness is often weak or altogether lacking. While general systems-strengthening can *de facto* be emergency preparedness, this may not be sufficient if political risks or the breakdown of the justice system that regularly occur in a crisis are not foreseen and addressed. Important gaps exist between development programmes addressing justice for children and activities or projects undertaken in humanitarian contexts. Justice for children issues are therefore more likely to be addressed in emergency contexts where programmes have already been in existence before the disaster.

Funding and programming models for justice for children are a significant challenge: Programmes addressing specific groups of children often take justice aspects into account but concentrate advocacy and capacity building around those groups of boys and girls and not the justice for children system itself. Other programmes address juvenile justice issues in country situations but focus mainly on development and only minimally on emergency preparedness and response. Programmes on rule of law or security sector reform in post-emergency settings sometimes do not have a dedicated focus on children and child-friendly systems. The fact that the issue is thematically split over several sectors further hinders effective evaluation of the impact of justice-related programmes and projects on children.

Informal and traditional justice systems play a significant role in emergency situations if formal security and the judicial infrastructure have collapsed. Apart from the question about the relative child-friendliness of many informal and traditional measures, very little is known about how they work, who the actors are and how to influence them in the best interest of the child. Informal justice systems need to be better researched and analysed.

In order both to improve child-friendly interventions for boys and girls who come in contact with the justice system in emergency settings and to increase awareness of the child protection minimum standard on justice for children, specific guidance and tools should be developed for humanitarian practitioners and capacity developed around Standard 14 to make it more applicable in the field.

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## Acronyms

CICL	Children in Conflict with the Law
CPMS	Child Protection Minimum Standards
CPWG	Child Protection Working Group
DPKO	Department for Peacekeeping Operations
DRC	Democratic Republic of Congo
IBCR	International Bureau for Children's Rights
IDP	Internally Displaced Persons
ILO	International Labour Organisation
IJS	Informal Justice System
JRC	Juvenile Rehabilitation Centre
SaWC	Street and Working Children
SGBV	Sexual and Gender Based Violence
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office for Drugs and Crime
UNRWA	United Nations Relief and Works Agency
WFCL	Worst Forms of Child Labour

## Key definitions and terms

As with other distinct areas of child protection, Justice for children uses a number of specialised terms. For the purpose of this review, the following definitions will be used, mostly as they appear in the CPMS or the Sphere project. It was difficult to verify whether the people interviewed or answering the survey had the same understanding.

### **Access to Justice**

Access to justice refers to the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child. It applies to civil, administrative and criminal spheres of national jurisdictions, including customary and religious justice mechanisms, international jurisdictions, as well as alternative and restorative dispute resolution mechanisms, and covers all relevant judicial proceedings, affecting children without limitation, including children alleged as, accused of, or recognised as having infringed the penal law, victims and witnesses or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection.<sup>1</sup>

### **Child Protection**

The Child Protection Working Group defines child protection as “the prevention of and response to abuse, neglect, exploitation and violence against children”. The term does not therefore include the protection of all children’s rights but a subset thereof.<sup>2</sup>

### **Emergency/ Disaster**

An emergency can be defined as an unexpected and difficult or dangerous situation, arising suddenly and requiring quick action. Effective emergency action can avoid the escalation of such an event into a disaster, which is seen as a serious disruption of the functioning of a community or society involving widespread human, material, economic or environmental losses and impacts that exceeds the ability of the affected community or society to cope using its own resources, and which therefore requires urgent action. The CPWG uses the word “disaster” to refer to natural disasters as well as to conflict, slow- and rapid-onset situations, rural and urban environments and complex political emergencies in all countries. The term thus covers natural and manmade disasters and conflicts and encompasses related terms such as “crisis” and “emergency”.<sup>3</sup>

### **Child Protection in Emergencies (CPiE)**

Includes specific activities supporting local capacities by child protection actors, whether national or community based, and humanitarian staff. It also includes activities in other humanitarian sectors that prevent or mitigate violence, harm, exploitation and/or neglect of children, even where this is not their specific purpose.

### **Humanitarian Action**

The CPMS are grounded in Sphere and therefore define Humanitarian Action as activities aiming “to save lives, alleviate suffering and maintain human dignity during and in the aftermath of manmade crises and natural disasters as well as to prevent

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<sup>1</sup> Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, A/HRC/25/35, 16 December 2013.

<sup>2</sup> Minimum Standards for Child Protection in Humanitarian Action, p. 13. <http://cpwg.net/wp-content/uploads/sites/2/2014/03/CP-Minimum-Standards-English-2013.pdf> (last accessed 5 February 2015).

<sup>3</sup> Idem, p. 225.

and strengthen preparedness for the occurrence of such situations”.<sup>4</sup> The two dimensions of humanitarian action are protecting people and providing assistance. Humanitarian action is rooted in the principles of humanity, impartiality, neutrality and independence.

### **Justice for children**

The term “Justice for children” recognises that children can come into contact with justice systems in various ways and contexts – as victims, witnesses, in conflict with the law or as part of a justice process (e.g. custody arrangements). Often, children come into contact with the law in a combination of these roles. During emergencies, the number of child-victims and also the number of children in conflict with the law rises dramatically. “Justice for children” aims to implement fair and child-friendly procedures for all girls and boys including those in contact or conflict with the law.

### **Child victims and witnesses of a crime**

“Child victim or witness” means a person under the age of 18 who is a victim or witness to a crime, regardless of his or her role in the offence or in the prosecution of the alleged offender or groups of offenders.<sup>5</sup> This definition does not include children in contact with the law for reasons, where judicial, state administrative or non-state adjudicatory intervention is needed, for example regarding their care, custody or protection.

### **Juvenile Justice**

“Children in conflict with the law”, or “Juvenile justice” refers to a system of justice dedicated to children alleged as, accused of or recognised as having infringed the law, and therefore only relates to part of the group included in the definition of justice for children.<sup>6</sup> In some countries, there are actions that are against the law if they are carried out by children, usually designed to tell boys and girls how they should behave. These are called “status offences” because it is the status of being a child that makes it illegal. Status offences can include vagrancy, not attending school or drinking alcohol.

### **Informal justice systems**

A single definition of Informal Justice System (IJS) is difficult as local systems can vary considerably, encompassing many different mechanisms. It may comprise a religious leader deciding about marriage or divorce or a village elder ruling on custody or inheritance issues. IJS may have formal state recognition, such as alternative dispute resolution that operates at a community level. A landmark UNDP, UNICEF and UN Women study distinguishes between informal justice mechanisms “anchored in (i) customary and tribal/clan social structures, (ii) religious authorities, (iii) local administrative authorities, (iv) specially constituted state customary courts,

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<sup>4</sup> *Idem*, p. 16.

<sup>5</sup> Justice Matters involving Child Victims and Witnesses of crime: model law and related commentary, New York 2009, available online at [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf)

<sup>6</sup> The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, Commission on Crime Prevention and Criminal Justice, A/C.3/69/L.5, Annex 6 (k): “juvenile justice system is comprised of laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children alleged as, accused of or recognized as having infringed the law”.

and (v) community forums specially trained in conflict resolution, particularly in mediation”.<sup>7</sup>

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<sup>7</sup> Informal Justice Systems: Charting a Course for Human Rights-Based Engagement. UN Women, UNICEF, UNDP, p. 8/9.

## Introduction

Safeguarding fair and age-appropriate interventions for boys and girls who come into contact with the justice system is an important yet challenging task in emergency settings. The global Minimum Standards for Child Protection in Humanitarian Action (CPMS) were established to tackle such challenges.<sup>8</sup> They include Standard 14 on Justice for children, with a particular focus on juvenile justice systems undermined during emergency situations. While child protection actors partially address the problem in their wider emergency responses, there is a significant need to raise awareness and strengthen the implementation of Standard 14 through the provision of further guidance.

Each Standard<sup>9</sup> describes in one sentence what should be achieved in the specific area of humanitarian action by all actors – whether working on child protection or related areas of humanitarian action. While implementation of the Standard should be adapted to specific contexts and key actions and indicators, the one sentence Standards themselves should not be changed in a way that diminishes the child protection level. There may be important reasons why one or several Standards cannot be met in all emergency situations; however, they still apply as agreed universal benchmarks.<sup>10</sup>

### STANDARD

All girls and boys who come into contact with the justice systems as victims, witnesses or alleged offenders are treated in line with international standards.

The International Bureau for Children’s Rights (IBCR)<sup>11</sup> undertook this review on behalf of the global Child Protection Working Group (CPWG).<sup>12</sup>

<sup>8</sup> The CPMS were finalised in September 2012, following consultations with 400 individuals from 30 agencies in over 40 countries, and gained companionship status to Sphere in 2013. They aim to:

- “Establish common principles among those working in child protection;
- Improve the quality of child protection programming;
- Improve accountability within child protection work;
- Provide a synthesis of good practice and learning to date;
- Enable better advocacy and communication on child protection risks, needs and responses.”

<sup>9</sup> For the purpose of this review, when referring to “the Standard” in singular, Standard 14 is meant whereas “the Standards” in plural refers to the entirety of the CPMS. Both singular and plural respectively refer to both the one-line, un-changeable sentence and the supporting text of the CPMS.

<sup>10</sup> Child Protection Minimum Standards, p. 19-22, in <http://cpwg.net/wp-content/uploads/sites/2/2014/03/CP-Minimum-Standards-English-2013.pdf> (Last accessed on 5 February 2015).

More information about the International Bureau for Children’s Rights can be found in the Annex and at [www.ibcr.org](http://www.ibcr.org).

<sup>12</sup>The CPWG is the UNICEF-led coordination body for protecting girls and boys in emergency settings. ([www.cpwg.net](http://www.cpwg.net))



## Objectives and methodology

### **Objectives**

The global CPWG's CPMS Task Force is keen to strengthen the knowledge base relating to Standard 14. This review is the first step towards a sharpened focus and better understanding of this important area of work. It aims to be a stocktaking exercise, examining the current level of awareness and knowledge of the Standard among the humanitarian and child protection communities.

The review aims to identify lessons learned on how justice for children is implemented in humanitarian contexts, highlight promising practices as well as strategies that have not worked, challenges to implementation at institutional, policy, operational, and funding levels, as well as available technical expertise (tools, training etc.) to prevent and respond to associated justice issues in emergencies.

The Standard focuses on juvenile justice, with a lesser emphasis on accountability and redress of victims; thus this review also focuses mainly on juvenile justice although child victims and witnesses are also taken into account. Standard 14 makes no explicit mention of accountability and redress even though these concepts are of course connected to justice for children. Some areas of accountability are relevant for improving justice for children. In this review accountability and redress are only mentioned where interlocutors specifically referred to them.

### **Methodology**

The process involved a literature review, a survey, and interviews with key field and headquarters-based practitioners. The literature review involved a comprehensive search to collect relevant programmatic reports and documents, particularly of CPWG and CPMS Task Force members as well as those organisations known in the sector. The open call for information was complemented by an internet-based search. 198 documents were analysed, of which most were relevant for this review. Nevertheless, the bibliography of analysed material in this report is by no means exhaustive. The search and analysis included many documents from a development context on justice for children, due to the fact that important insights can be gathered for the systems-building aspect, and to the limited amount of relevant documents from a genuinely humanitarian context.

For the survey, a questionnaire was drafted in English and French and sent out via the CPWG and CPMS Task Force networks with a response time of 17 days. Several reminders were sent and the deadline was extended twice in an attempt to collect additional responses. The questionnaires asked respondents about approaches to prevention, the effective provision of Justice for Children in emergencies; Standard 14; coordinated approaches; barriers and challenges; recommendations and priorities for the future. The survey had 23 respondents (14 in English and 9 in French).

22 interviews with 27 key interlocutors were undertaken both on the phone and in person with a mix of child protection practitioners and juvenile justice experts (see list in the annex for details.).

The analysed findings of the literature review, the survey, and the interviews have been included in this report. The development of certain subjects in this report

reflects the input given by the respondents and key informants.

### Limits to the review

Despite repeated efforts from the International Bureau for Children's Rights and the CPWG, the number of organisations and individuals responding to the call for information was relatively small. Few respondents filled in the survey and contributions from practitioners in key countries such as South Sudan are missing completely in the review. Only documents in English and French could be reviewed. Literature was mostly found through desk research with only a limited amount of organisations contributing programme documentation or studies.

The timing of the review at the end of the year may have contributed to the low response rate. Several contacts indicated that they were unable to fill the questionnaire due to other obligations and international organisations were reluctant to distribute the call for information widely and/or urge their field-based colleagues to respond. Likewise scheduling interviews over the holiday period and at the beginning of the New Year proved difficult as interlocutors were unavailable.

The majority of survey respondents and interviewees did not come from a humanitarian background, nor were they working purely in humanitarian situations. Some juvenile justice experts were not familiar with humanitarian settings nor with emergency programming, as they work more in the long-term development settings. It is likely that the low awareness of the CPMS found among interlocutors is also connected to this fact. Within the humanitarian world, little response was received from people working in clusters<sup>13</sup> other than child protection. This proved a limitation to understanding the existing linkages between justice for children and other sectors, such as livelihoods, food security or education. Likewise, actors working in justice sector reform and rule of law programmes (potentially also addressing the issue) could not be reached during this review.

Both the outcome of the survey and the documents reviewed were not geographically balanced. Latin America was hardly represented with the exceptions of Colombia and Haiti. In addition, Asia was largely limited to the Philippines and Indonesia. Most responses came from the Middle East, which can partially be explained by the current focus on the Syrian crisis. Likewise, some of the issues connected to justice for children were not brought up by practitioners in this review. The issue of children and armed conflict for example, had to be covered largely through existing literature.

Some confusion existed over the scope of the review. Despite the guidance provided in the call for information, the impression may have been given that only those that have worked explicitly with Standard 14 in-country were asked to contribute to the review rather than everyone with experience in working on justice for children. An example is the Democratic Republic of Congo, where the reply was received that Standard 14 had not been contextualised and therefore the local CPWG decided to skip the survey.

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<sup>13</sup> A cluster is a group of agencies that gather to work together towards common objectives within a particular sector of emergency response. The cluster approach, instituted in 2006 as part of the UN Humanitarian Reform process, aims to improve the predictability, timeliness, and effectiveness of humanitarian response, and pave the way for recovery.

## The humanitarian context and justice for children

Justice for children is included both in development and emergency programming. The humanitarian context includes natural and manmade disasters, conflicts and other emergency situations. Before, during and after such crises it is sometimes difficult to draw the line between a humanitarian and a development situation. And in both contexts, different kinds of interventions should take place that protect children in contact with the law. The following sections aim to explain the different concepts more in detail.

There seems to be a lack of research and analysis on justice for children in humanitarian settings. While a plethora of literature exists on juvenile justice, most focus on specific country situations and few focus specifically on emergency settings. Few studies on juvenile justice include children in contact with the law, whilst some focus exclusively on victims and witnesses of a crime. Analysis showing connections between children as victims of human rights violations and subsequently coming in conflict with the law are routinely made within single issues like children associated with armed forces and groups or street and working children. Although insufficient research and low general knowledge about the connections between emergencies and justice for children were mentioned repeatedly, a few general observations are worth noting.

A basic assumption of this review is that in emergencies the number of child victims and witnesses as well as the number of children in conflict with the law (CICL) rise significantly. However, there were no figures collected for this report and only anecdotal evidence to support this assumption. Views from practitioners for the report highlight the impacts of various types of crisis upon children:

According to the survey, conflict and civil unrest have even greater consequences for justice for children than natural disasters: 73% of participants in the survey felt that conflict and conflict-related emergency settings very much increase the risk of children coming into contact with the justice system and 59% of participants believed protracted or post-emergency contexts increased the risk of children entering into contact with the justice system. Natural disasters were mentioned by only 27 % of participants as a significant risk factor for children coming into contact with the law.

According to practitioners who answered the survey, the following factors contribute most significantly to children coming into contact with the justice system in emergency contexts:

- Loss or reduction of family income: 77%
- Living on the streets: 63%
- Loss of home, physical safety, displacement: 59%

## Justice for children on the continuum of development and emergency programmes

As with all the CPMS, Standard 14 covers both the emergency preparedness phase as well as emergency response and lists some concrete suggestions for activities in each phase.

91% of survey respondents felt that justice for children was an important issue to be addressed through all stages of an emergency (including preparedness, assessment, response and reconstruction).

The activities described under emergency preparedness in the standard are mostly undertaken in a development context. During this review, very few practitioners could give examples of activities regarding justice for children that have formed part of dedicated emergency preparedness strategies.

Justice for children should be addressed within broad protection and governance frameworks with the overall intention to establish resilient structures, which can ensure children's rights are met even during shocks and crises and to encourage resilient children and communities. When thinking about justice for children in humanitarian contexts, it is clear that system-building requires both a long-term perspective (before and after an emergency), as well as a short-term perspective (when an emergency strikes). This double perspective does not seem to be taken into account in emergency preparedness strategies.

Most programmes that do include justice for children components come under a development umbrella. While general systems strengthening can *de facto* be emergency preparedness (even if not labelled so), this may be insufficient if political risks or the breakdown of the justice system that regularly occur in a crisis are not foreseen.

Post-conflict and reconstruction scenarios are sometimes difficult to classify as humanitarian or development contexts. Typically, in these situations both humanitarian and developmental programmes run alongside each other. Often, effective rule of law has not been re-established or is not yet complete, so violations and abuses persist and conditions frequently remain life-threatening and degrading.<sup>14</sup> Risk factors of children coming into contact with the law remain, although usually there is more attention to justice and the rule of law than in the early stages of an emergency.

This is typically the phase when programmes to strengthen access to justice, support for transitional justice and support to reform the security sector increase.<sup>15</sup> In the Democratic Republic of the Congo, for example, activities around justice for children increased mainly around advocacy for a new child protection law and after the law had been adopted in 2009, well into the reconstruction period.<sup>16</sup> This and other examples show that the post-conflict phase is usually the most conducive to justice for children programming, although post-conflict efforts naturally focus more at the system-building level, rather than on case management. Those children already in contact with the justice system often have to wait a long time before seeing the impact of these measures.

"In many contexts where I have worked during emergencies there were projects specifically dealing with the juvenile justice system but the integration of ongoing programming and emergency programming was in my experience limited." *Respondent*

<sup>14</sup> ALNAP, Slim, Hugo/ Bonwick, Andrew: An ALNAP Guide for humanitarian agencies, Overseas Development Institute, London 2005, p. 22. [<http://mhpps.net/?get=76/1336631947-ALNAPprotectionguide.pdf>], last accessed 11 February 2015]

<sup>15</sup> Respondent # 20.

<sup>16</sup> Interview with key informant #20.

## Types of emergencies

“All human or environmental crises exacerbate the vulnerability of children in contact with the justice system.” *Respondent to the survey.*

### **Conflict and civil unrest**

Although most of the respondents felt that conflict situations increase the risk of children coming in contact with the justice system, there seems to be very little research on or examination of root causes and consequences. Most studies extending their analysis to the interaction between children and the justice system focus on those associated with armed forces and groups or sexual violence in conflict situations.

Children come into contact with justice systems in different ways, often simply on suspicion of past association with armed actors or with opposing political factions. The situation is often made worse when the (formal) justice system has all but broken down -- in several such situations children are deliberately targeted by security forces as they are easier to “hold responsible” than adults and thus stigmatised after being arrested and detained. Due to non-existent or unsuccessful child reintegration programmes, failure to reintegrate into their communities can lead to petty crime or theft when children are striving to survive. Children are both in conflict with the law for reasons directly and indirectly related to the larger armed conflict. Since the civil war erupted in the Central African Republic in 2013, one respondent reported that many children have been arrested, detained or otherwise punished because they were recruited by armed forces but also because of accusations such as theft which can be indirectly linked to the desperation engendered by the conflict.<sup>17</sup>

Trying to stop the recruitment of children and their use in hostilities is not only an action to prevent human rights violations but also a preventive measure of the potential consequences of coming in conflict with the justice system, such as apprehension, detention, interrogation or abuse of children suspected of belonging to an armed group. However, prevention of recruitment is seldom mentioned in the context of justice for children.<sup>18</sup> There is a separate standard in the CPMS covering children associated to armed forces and groups – Standard 11. While it is suggested to select those standards that are priorities in a specific situation, it is also important to embrace the inter-connectivity of all the standards in order for example not to neglect the justice-related aspects of children recruited or used by armed forces and groups.

Situations of civil unrest can lead to outright armed conflict or remain as a low intensity conflict over a period of time. Justice for children programmes may be particularly difficult to implement in the early stages of a large-scale conflict; it appears to have been possible in lower intensity situations, such as those that flared up in Egypt since 2011 or in Côte d’Ivoire after the elections in 2010.

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<sup>17</sup> Respondent #16.

<sup>18</sup> Respondent #17.

## Post-conflict, ‘chronic crises’ and protracted emergencies

It is often difficult to differentiate between post-conflict and protracted emergency situations, as it is unclear whether change is genuinely lasting or temporary. ALNAP describes situations of protracted social conflict as “civil strife or political oppression that falls short of the official armed conflict but nevertheless involves the crisis in which discrimination, violence, exploitation and impoverishment are constant risks.”<sup>19</sup> In situations of chronic crisis or protracted emergencies, often little can be done through these programmes to address the root causes of the situation.

Protracted emergencies are often the reason for large influxes of refugees or IDPs who, as a consequence, may destabilise the country or region of the crisis, as well as neighbouring countries or regions. While one of the most extreme cases is of course the Palestinian camps in the West Bank and in the South of Lebanon, other long-lasting crises like the war in Syria, in its fifth year in 2015, have a similar effect. In Lebanon for example, the number of street and working children has dramatically increased as a consequence of the Syrian crisis and more specifically due to the huge influx of refugees.

Resources to deal with the phenomenon of street and working children were already limited prior to the crisis. Children in the street who are begging, shoe shining, or selling small items are often arrested by the police and enter in contact with a justice system that is not always child-friendly.<sup>20</sup>

In post-conflict situations, low-intensity crises or situations

where security improves and worsens in regular intervals, it is often difficult to decide on a good moment to embark on long-term justice for children projects. However, there are some examples of projects – the IBCR for example has initiated capacity building projects in the Central African Republic, Yemen and in Northern Iraq with very different results (see below). Similarly, Terre des hommes is piloting innovative approaches in Jordan and potentially in Mali, Syria, and countries in chronic crisis, such as Afghanistan, South Sudan, and Palestine.<sup>21</sup>

“My organisation works in Côte d’Ivoire. We have been able to act in a humanitarian context with children in conflict with the law during the military crisis that divided the country in two, and in the post-election violence of 2010. Our work essentially consists of advocating to belligerents and key players in the justice system to improve juvenile detention conditions. My organisation also advocated for improvements to the legal and institutional framework. In addition, we’ve directly provided aid for children in regards to food, legal services, psychological needs, health and reintegration.” *Respondent to the survey.*

## Natural disasters

These situations combine a natural hazard -- or an epidemic -- with poverty and social vulnerability to render people materially, personally and socially at extreme risk.<sup>22</sup>

Prior to the 2010 earthquake, Haiti was already politically and socially unstable with serious problems in the justice sector concerning children associated with gangs

<sup>19</sup> ALNAP, Slim, Hugo/ Bonwick, Andrew: An ALNAP Guide for humanitarian agencies, Overseas Development Institute, London 2005, p. 23. [<http://mhps.net/?get=76/1336631947-ALNAPprotectionguide.pdf.pdf>, last accessed 11 February 2015]

<sup>20</sup> Respondent #4.

<sup>21</sup> Respondent #15.

<sup>22</sup> ALNAP, Slim, Hugo/ Bonwick, Andrew: An ALNAP Guide for humanitarian agencies, Overseas Development Institute, London 2005, p. 23. [<http://mhps.net/?get=76/1336631947-ALNAPprotectionguide.pdf.pdf>, last accessed 11 February 2015]

and violence against boys and girls. This was exacerbated by the earthquake and subsequent cholera outbreak. The Ebola crisis in Western Africa has created a similar situation in fragile countries where the magnitude of the epidemic renders justice for children a low priority.

In the immediate chaos following earthquakes, cyclones or typhoons, the separation of families and children poses key protection risks. During the emergency phase children face a heightened risk of malnutrition or disease from a lack of appropriate food or sanitation. As a consequence, children lacking food and other basic provisions – either on their own or together with members of their families or communities -- may resort to stealing food from neighbours or breaking into shops and warehouses, as in the case of the Philippines after Typhoon Haiyan.<sup>23</sup> After natural disasters, protection actors often seek to mainstream protection and more specifically child protection as access to basic needs need to be maintained, access to education should be guaranteed and child labour and trafficking prevented.

### **Non-humanitarian situations**

While the line between humanitarian and development work is sometimes hard to draw -- especially in post-conflict settings -- the majority of justice for children programmes and projects takes place in non-humanitarian settings. Although the CPMS only partially apply in those settings, there is much to learn from juvenile justice projects that take place in politically sensitive environments. Only a handful of projects from development contexts were analysed for this review as this was beyond the scope of this initial study but many activities suggested in CPMS Standard 14 are similar to those undertaken in development contexts. The degree to which activities in development contexts strengthen justice for children systems to withstand emergencies is an area where more research should be undertaken and potential lessons learned drawn from situations like Indonesia after the Indian Ocean tsunami or the Philippines after typhoon Haiyan. It is too early for general lessons learned from the Ebola crises in West Africa, but anecdotal evidence from Sierra Leone, Liberia and Guinea could give important clues on how justice for children was affected and addressed during the epidemic. Unfortunately, only very few examples surfaced during this review.

### The different steps in a legal procedure -- Child victims and witnesses and children in conflict with the law

The CPMS define justice for children in a broad way and use the same definition as the UN Secretary-General's 2008 Guidance Note on justice for children.<sup>24</sup> In contrast, child justice programming tends to be undertaken through "vertical approaches" which focus either on juvenile justice issues (dealing with CICL) or responses to child victims and witnesses, without recognising the overlap between these categories in terms of institutions, professionals and services.<sup>25</sup>

Most practitioners agreed with the integrated approach set out in Standard 14 to include both children in contact with the law as victims, witnesses or other *and* juvenile justice. This view was particularly strong for emergency situations when children often come in contact with the law in a combination of roles. However, interlocutors pointed out that the two areas differ fundamentally in approach and ways of programming. Many interlocutors find that the aspect of victims and

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<sup>23</sup> See below under key issues.

<sup>24</sup> UN Secretary General. Guidance Note of the Secretary-General: UN Approach to Justice for Children. (2008).

<sup>25</sup> UNICEF, De Sas Kropiwnicki Z. Protecting children from violence: a synthesis of evaluation findings. New York, p. 71.

witnesses should be strengthened, especially regarding access to justice. (See recommendations).

The following provides an overview of the different steps in a legal procedure, how they are determined by international norms and standards and therefore in line with Standard 14 (see annex for a detailed overview of the legal, normative, and policy framework for justice for children). The typical legal procedure includes: **arrest, interrogation, diversion, pre-trial detention, trial/audition, adjudication and detention**. According to international standards, at each step of the justice process general principles or standards apply, independently of the profile of the child, the circumstances of the case or the steps of the proceeding. There are also specific standards that will vary regarding these elements.

### General principles

Following the Convention on the Rights of the Child, the decisions in any part of the proceedings have to be taken primarily in the best interest of the child,<sup>26</sup> who shall not be subjected to torture, cruel, inhuman or degrading treatment or corporal punishment at any stage of the proceedings from the arrest to the end of their sentence.<sup>27</sup> The child is entitled to the right to life, survival and development<sup>28</sup> and must also be treated without discrimination.<sup>29</sup> He or she has a right to participate and to be heard in any judicial or administrative proceedings<sup>30</sup> and decisions affecting her or him.

Among the general principles should also be mentioned:

- The right to “be treated in a manner which promotes the [child’s] sense of dignity and worth, and which facilitates [his or her] reintegration into society”.<sup>31</sup>
- Due process guarantees to be observed in juvenile justice processes and proceedings,<sup>32</sup> including the right to a free interpreter,<sup>33</sup> effective legal assistance<sup>34</sup> and the right to privacy and protection against intrusive searches.<sup>35</sup>
- In case of existing doubts as to whether a person is minor or not, they must be treated as a child, until their age be properly determined.<sup>36</sup>
- Notification of parents or recognised caregiver “of any arrest, detention, transfer, sickness, injury or death”.<sup>37</sup>
- Officials dealing with juveniles shall be specially trained and personally suited for that purpose.<sup>38</sup>

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<sup>26</sup> Art. 3 Convention on the Rights of the Child (1989).

<sup>27</sup> Art. 37(a) CRC ; Rules 17.2, 17.3 and 27 UN Minimum Rules for the Administration of Juvenile Justice [hereinafter Beijing Rules]; Rules 64, 66, and 67 UN Guidelines for the Prevention of Juvenile Delinquency (1990) [hereinafter Havana Rules] .

<sup>28</sup> Art. 6 CRC.

<sup>29</sup> Art. 2 CRC; Art. 15-18 UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crimes (2005) [hereinafter Guidelines on Child Victims and Witnesses].

<sup>30</sup> Art. 12 CRC; Rule 14.2 Beijing Rules; Art. 21 Guidelines on Child Victims and Witnesses.

<sup>31</sup> Art. 3 and 37 CRC; Rules 1, 5, and 6 Beijing Rules; Rules 1, 4, 14, 31, 79, and 80 Havana Rules.

<sup>32</sup> Art. 40 (2) CRC; Rule 7.1 Beijing Rules.

<sup>33</sup> Art. 40(2) b) vi) CRC.

<sup>34</sup> Art. 40(2) b) iii) CRC; Art. 22-25 Guidelines on Child Victims and Witnesses.

<sup>35</sup> Art. 40(2) b) vii) CRC; Rule 8 and 27 Beijing Rules; Art. 26-28 Guidelines on Child Victims and Witnesses.

<sup>36</sup> Art. 40(3) a) CRC; United Nations Committee on the Rights of the Child (2007) General comment No. 10 Children’s Rights in Juvenile Justice, paras 35 and 39; Art. 5.11 c) Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum.

<sup>37</sup> Art. 40(2) b) ii) CRC; Rules 10.1 and 26.5 Beijing Rules; Rules 37 and 44 Standard Minimum Rules for the Treatment of Prisoners [hereinafter SMRTP]; Rules 56-58 Havana Rules.

<sup>38</sup> Rules 6, 12.1 and 22 Beijing Rules; Rules 81-88 Havana Rules.



In addition, child victims and witnesses of crime have the right to be treated with compassion<sup>39</sup> and be informed of the judicial process developments.<sup>40</sup> They have the right to safety<sup>41</sup> and to be protected from hardship during the justice process.<sup>42</sup> Special preventive measures also apply.<sup>43</sup> Child victims also have the right to reparation for any prejudice caused to them because of the crime committed.<sup>44</sup>

### **Specific principles**

Other standards will change depending on the specificity of the case, the child's profile and the step of the proceedings. Important differences occur depending on whether the child is considered to be in conflict with the law or otherwise in contact with the justice system.

#### Arrest

The arrest is generally the point of entry to the justice system. It "refers to the act of apprehending a person for the alleged commission of an offence, or to the action of a competent authority to arrest and detain a person as otherwise authorised by law".<sup>45</sup>

In criminal matters, the arrest can occur following a complaint by the victim or his/her parents, following the report of a witness or in case of *flagrante delicto*. In all cases, it must be motivated by reasonable grounds and legitimised by an appropriate authority. Children shall therefore not be accused for an action or omission that was not forbidden at the time of the commission of the alleged infraction.<sup>46</sup>

Children under arrest have the right to be informed directly and without delay of the charges against them, in a language they can understand and that is adapted to their age.<sup>47</sup> They have also the right to see their parents or legal guardians within the shortest time after their arrest.<sup>48</sup> Moreover, after an apprehension, the authorities must write down all information regarding the case in a confidential record.<sup>49</sup>

#### Interrogation/questioning

The interrogation refers to an interview conducted by a law enforcement authority with a child suspected having committed a criminal infraction or participated in a criminal act, in order to obtain his or her version of the facts, rather than a confession. According to the principle of presumption of innocence,<sup>50</sup> the child has no legal obligation to testify or to admit his guilt or responsibility in the alleged infraction, or to sign any document.<sup>51</sup> At this stage, the child under arrest is still held, but has the right to legal or other appropriate assistance during questioning.<sup>52</sup>

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<sup>39</sup> Art. 10-14 Guidelines on Child Victims and Witnesses.

<sup>40</sup> Art. 19-20 *Ibid.*

<sup>41</sup> Art. 32-34 *Ibid.*

<sup>42</sup> Art. 29-31 *Ibid.*

<sup>43</sup> Art. 38-39 *Ibid.*

<sup>44</sup> Art. 35-37 *Ibid.*

<sup>45</sup> African Commission on Human and Peoples' Rights. Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, p.8.

<sup>46</sup> Art. 40(2) a) CRC.

<sup>47</sup> Art. 40(2) b) ii) *Ibid.*

<sup>48</sup> Rule 10.1 Beijing Rules

<sup>49</sup> Date, name, age, circumstances and reason of the arrest, etc.

<sup>50</sup> Art. 40(2) b) i) CRC.

<sup>51</sup> Art. 40(2) b) iv) *Ibid.*

<sup>52</sup> Rule 12.1 Beijing Rules; Rule 58 UN Guidelines for the Prevention of Juvenile Delinquency (1990) [hereinafter Riyadh Guidelines].

Child victims or witnesses have also the right to effective assistance.<sup>53</sup> They remain free in their movements and interviews must take place out of sight of alleged perpetrators.<sup>54</sup>

For all cases, special rooms must be designated and child-sensitive techniques applied. It is generally recommended that interviews be carried out by a person of the same sex.

### Diversion

Diversion refers to procedures outside the formal justice system and applies exclusively to children in conflict with the law (extra-judicial procedures).

As the contact with the judicial system can be harmful for a child, especially because of the stigmatisation it causes, diversion procedures are usually considered preferable.<sup>55</sup> Indeed, following the juvenile justice principles, constructive and educative responses promoting rehabilitation and social reintegration, and involving the child's family and community, should be privileged instead of legal proceedings. Diversionary measures should be applied to all types of offence and at the earliest stage possible after the arrest. However, this alternative is generally available at every stage of the process before the verdict.<sup>56</sup> Such procedures require the consent of the child, his/her parent or guardian and a voluntary admission of the child's guilt.<sup>57</sup> Warnings, victim's compensation, curfews, mediation, community programmes and counselling are a few examples of possible non-judicial proceedings.<sup>58</sup>

### Pre-trial (or preventive) detention

Pre-trial detention refers to the incarceration of the child after the arrest and before the verdict of a competent judge. If there is no application of diversionary measures or detention alternatives, the child is kept in custody in police cells (during the police custody) and should then be placed in an age and sex-appropriate residential centre.<sup>59</sup> However, "pre-trial detention shall be used as a means of last resort in criminal proceedings"<sup>60</sup> and alternatives to detention must be distinguished from diversion as they do not necessarily lead to extra-judicial management of the child's case, especially if it is decided at the end of the trial after a guilty verdict. Alternatives to detention can be understood "...as close supervision, intensive care or placement with a family or in an educational setting or home".<sup>61</sup> Thus, limited to exceptional cases, the decision to detain must be based on objective and legal criteria notably if there is a serious risk that the child can cause significant harm to other people or to himself or herself.<sup>62</sup>

If detained, the child has the right to be presented to a competent judicial authority regarding the question of his release as soon as possible after the arrest.<sup>63</sup> If the

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<sup>53</sup> Rules 22 to 25 Guidelines on Child Victims and Witnesses.

<sup>54</sup> Art. 31(d) *Ibid.*

<sup>55</sup> Hamilton, Carolyn. *Guidance for Legislative Reform on Juvenile Justice*. UNICEF. (2011), p. 52. Available online at: [http://www.unicef.org/policyanalysis/files/Juvenile\\_justice\\_16052011\\_final.pdf](http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf) ; Art. 40(3)(b) CRC; Rules 6 and 11 Beijing Rules

<sup>56</sup> Art. 40(3)(b) CRC; Rules 6.1, 11.1 and 11.2 Beijing Rules; Rule 15 UN Guidelines on the Administration of Juvenile Justice (1997); Rule 5(1) UN Standard Minimum Rules for Non-custodial Measures [hereinafter Tokyo Rules]; Rules 2, 17 and 30 Havana Rules.

<sup>57</sup> Rule 11.3 Beijing Rules.

<sup>58</sup> Art. 40(4) CRC; Rule 11.4 Beijing Rules; Rule 2.5 Tokyo Rules.

<sup>59</sup> Rule 13.4 and 26.4 Beijing Rules; Rule 8(a) SMRTP; Rules 1, 36-39 and 40-56 Tokyo Rules.

<sup>60</sup> Rule 6.1 UN Standard Minimum Rules for Non-custodial Measures.

<sup>61</sup> Art. 13.2 Beijing Rules; Rule 6.2 Tokyo Rules.

<sup>62</sup> Rule 17 Beijing Rules.

<sup>63</sup> Rules 10.2 and 13.1 Beijing Rules; Art. 37(b) CRC; Rules 1 and 2 Havana Rules; Art. 40 (2)(b)(iii) CRC; Art. 9 International Covenant on Civil and Political Rights (1966) [hereinafter ICCPR].

child is to remain in detention, this decision has to be reviewed periodically to consider if new circumstances would justify the child's release under conditions.<sup>64</sup> During pre-trial detention and detention, the child is entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations, including "care, protection and all necessary individual assistance (...) that they may require in view of their age, sex and personality."<sup>65</sup>

### Trial

The trial represents the stage of the proceedings during which all the evidence is presented and assessed by a judge (or a jury) to shed light on the precise circumstances of the alleged infraction. At the end of the trial, the judge renders a verdict of guilt or an acquittal.

The child's trial should be heard without delay<sup>66</sup> by a specialised juvenile competent instance or authority, which is independent, impartial<sup>67</sup> and child-friendly. The facilities and the procedures must not be intimidating and adapted to child's needs, language and level of understanding.

If there are child victims or witnesses, they shall be provided with separate waiting rooms at the court.<sup>68</sup> The hearing is strictly confidential and closed to third parties.<sup>69</sup>

The child has the right to appropriate assistance for the preparation and presentation of the defence<sup>70</sup> and any evidence or confession obtained following corporal or psychological abuse is illegal and inadmissible in court for the trial.<sup>71</sup>

During the trial, the minor has the right to express his or her views and to participate fully but cannot be forced to testify or to admit his or her guilt.<sup>72</sup> His or her parents or guardian has the right also to participate in the hearing. The child has also the right to interrogate the witnesses under equal and fair conditions.<sup>73</sup>

Under international rules, the competent authority shall have the power to discontinue the proceedings at any time.<sup>74</sup> Finally, if the child is recognised guilty, he or she has the right to appeal of the verdict and the sentence.<sup>75</sup>

### Sentence

Following a verdict of guilt, the child is sentenced by the judge. The juvenile justice system foresees specific sentencing rules for young offenders allowing judges to pronounce sentences adapted to the child's development, needs and situation and that are less harsh than those given to adults. Moreover, capital punishment, life imprisonment and corporal punishment are formally prohibited by international laws.<sup>76</sup>

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<sup>64</sup> Art. 37(b) CRC; Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice (Forty-fourth session, 2007), U.N. Doc. CRC/C/GC/10 (2007), para 80.

<sup>65</sup> Rules 13.3 to 13.5 Beijing Rules; Art. 9 and 10(2)(b) and (3) ICCPR.

<sup>66</sup> Rule 20 Beijing Rules.

<sup>67</sup> Art. 40(2) b) ii) and iii) CRC.

<sup>68</sup> Rule 31(d) Guidelines on Child Victims and Witnesses.

<sup>69</sup> Rule 21.1 Beijing Rules.

<sup>70</sup> Art. 40(2) b) iii) CRC.

<sup>71</sup> Art. 15 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Art. 37 a) CRC; Art. 14(3) g) ICCPR; Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice (Forty-fourth session, 2007), U.N. Doc. CRC/C/GC/10 (2007), paras 56-58.

<sup>72</sup> Art. 40(2) b) iv) *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> Rule 17.4 Beijing Rules.

<sup>75</sup> Art. 40(2) b) v) CRC.

<sup>76</sup> Art. 37(a) CRC; Rules 17.2, 17.3 and 27 Beijing Rules; Rules 64, 66, and 67 Havana Rules.

In order to allow the child's social reintegration, the sentencing process should take in proportion the circumstances and gravity of the offence, the child characteristics and the needs of the society.<sup>77</sup> The best interest of the child remains the core principle and alternative educative family and community based measures, based on social inquiry or pre-sentence reports should be prioritised<sup>78</sup>.

### Post-trial detention

Measures involving deprivation of liberty shall be the last to be considered<sup>79</sup> and only if the circumstances of the crime are serious and exceptional, and unless there is no other appropriate response.<sup>80</sup> If decided upon, the detention period must be the shortest possible. As for the pre-trial detention, the child has the right to legal aid<sup>81</sup> and to challenge the legality of the detention.<sup>82</sup>

Detained children shall be treated in a manner which respects their sense of dignity and worth, and which facilitates their reintegration into society<sup>83</sup> Thus, they must be held separate according to their gender<sup>84</sup> and from adults.<sup>85</sup> They shall have access to recreation,<sup>86</sup> education, vocational training and employment,<sup>87</sup> as well as appropriate conditions with respect to their health<sup>88</sup>, safety and dignity.<sup>89</sup> Specific attention and adapted interventions must be provided to girls and to other vulnerable children.

Correctional staff must ensure that all children are protected from violence and be held accountable of any violation of children's rights while in detention. The use of solitary confinement, physical restraints and force are to be exceptional and never used as a means of punishment.<sup>90</sup> They can only be employed when all other control measures have been exhausted and failed, and for the shortest possible time.<sup>91</sup> Detained children shall be able to receive visits and correspondence from family members,<sup>92</sup> and have contact with the outside world.<sup>93</sup>

## Key issues

The following section provides an overview of some of the thematic areas that emerged during the review. It is not an exhaustive list of the ways in which children come in contact with the justice system; for example, risks and vulnerabilities for victims of trafficking was one topic that did not feature very strongly among responses.

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<sup>77</sup> Rule 17.1(a) Beijing Rules.

<sup>78</sup> Art. 16.1 *Ibid.*

<sup>79</sup> Rule 17.1(b) *Ibid.*

<sup>80</sup> Rule 17.1(c) *Ibid.*

<sup>81</sup> Rule 15.1 Beijing Rules; Guideline 4 Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

<sup>82</sup> Article 37 (d) CRC.

<sup>83</sup> Art. 3 and 37 CRC; Rules 1, 5, and 6 Beijing Rules; Rules 1, 4, 14, 31, 79, and 80 Havana Rules.

<sup>84</sup> Rule 26.4 Beijing Rules; Rule 8(a) SMRTP; Rules 1, 36-39 and 40-56 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

<sup>85</sup> Art. 37(c) CRC; Art. 10(2)(b) and 10(3) ICCPR; Rules 13.4 and 26.3 Beijing Rules; Rule 8(d) SMRTP.

<sup>86</sup> Art. 17 and 31 CRC; Rules 21, 39 and 40 SMRTP; Rules 18(c), 41, 47 and 62 Havana Rules.

<sup>87</sup> Art. 28 and 32CRC; Rules 65, 66 and 71-77 SMRTP; Rules 26.1, 26.2 and 26.6 Beijing Rules; Rules 12, 18(b) and 38-46 Havana Rules.

<sup>88</sup> Art. 24 CRC; Rule 26.2 Beijing Rules; Rules 22-26 SMRTP; Rules 49-55 Havana Rules.

<sup>89</sup> Rules 31-37 Havana Rules; Rules 9-20 and 43 SMRTP.

<sup>90</sup> Rules 63, 64 and 67 Havana Rules; Rules 33 and 34 SMRTP.

<sup>91</sup> Art. 19 CRC; Rules 13.3 and 17.2 Beijing Rules; Rules 27-34 SMRTP; Rules 63, 64 and 66-71 Havana Rules.

<sup>92</sup> Art. 9 and 37(c) CRC; Rules 37 SMRTP; Rules 59-61 Havana Rules; Rules 13.3, 26.5 and 27.2 Beijing Rules.

<sup>93</sup> Rules 39 and 40 SMRTP; Rule 26.5 Beijing Rules; Rules 41, 59 and 62 Havana Rules.

Many of the issues may also require more research as far as their connection to justice for children is concerned.

### Refugee and IDP children

While the CPMS are based on the international legal framework, including international human rights and international humanitarian law, there is a third body of law that is especially important for this particular group of children, their families and communities: international refugee law. This body of law covers the rights and protection of people who are outside their country of origin; have well-founded fear of persecution because of their race, religion, nationality, membership of a particular social group or political opinion; and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.<sup>94</sup> The legal and normative framework for IDPs is far weaker than that for refugees, resulting in significant protection gaps including access to justice and other justice-related issues.<sup>95</sup> The organisations dealing with internally displaced children overlap but are not identical to those working for refugee children.

Children and their communities crossing international borders may come in contact with the law when they are registered as refugees and go through the asylum process.

During an emergency, UNHCR and its partners aim to ensure that the national legal system including law enforcement and courts of law cater to the needs of refugees and other persons of concern. The UNHCR Handbook stipulates, “Complaints made by refugees should be registered by the police, proper investigations should be conducted and principles of due process should be followed. It may be necessary to ensure that refugees and others of concern have physical access to these mechanisms, so that they are aware of how to use these systems.”<sup>96</sup> This is especially difficult in the case of children as they have a limited awareness of their legal situation. UNHCR recommends “to sensitise the police and judiciary in responding to cases brought by or brought against refugees and the internally displaced and to provide some basic support to the courts and police so that they can function effectively.”<sup>97</sup>

Despite these efforts, it is clear that the problem of refugee children in contact with the law is not fully addressed in practice. While covered by UNHCR’s mandate, many aspects of protection are not applied, especially in countries that have not signed the 1951 Refugee Convention such as Jordan or Lebanon.<sup>98</sup>

### Issues around detention

UNHCR works to ensure that persons of concern are not arbitrarily arrested or detained, that decisions to detain or to extend detention are subject to minimum safeguards, that appropriate alternatives to detention are available in law and in practice, and that immigration detention conditions -- where

“In Dadaab, Kenya a four-year-old girl was held for murder, as she had allegedly kicked another child while playing and that child died as a consequence.”

*Interview with key informant*

<sup>94</sup> The CPMS make explicit reference to International Refugee Law, CPMS, p.14.

<sup>95</sup> See Global Protection Cluster (GPC), Handbook for the Protection of Internally Displaced Persons, June 2010, available at: <http://www.refworld.org/docid/4790cbc02.html> [accessed 6 February 2015].

<sup>96</sup> Office Of The United Nations High Commissioner, Handbook For Emergencies, UNHCR (2007). Available at:

[http://www.ifrc.org/PageFiles/95884/D.01.03.%20Handbook%20for%20Emergencies\\_UNHCR.pdf](http://www.ifrc.org/PageFiles/95884/D.01.03.%20Handbook%20for%20Emergencies_UNHCR.pdf)

[Accessed 18 February 2015] para. 80.

<sup>97</sup> Ibidem, para. 81.

<sup>98</sup> Respondent #7.

detention is unavoidable - meet international standards. UNHCR supports non-discriminatory access to the justice system, including legal advice and representation, for all asylum-seekers and refugees who require this support. This also applies for children who should benefit from all general principles outlined in *UNHCR Detention Guidelines*<sup>99</sup>; indeed, the agency seeks to ensure that the necessary specific standards and procedures for children are in place.<sup>100</sup> In principle, UNHCR conducts these activities in all countries where persons of concern are affected.

As per its mandate, detention for immigration-related purposes is one of the issues that UNHCR deals with regularly. The agency intervenes on individual cases and supports governments to develop care arrangements and alternatives to detention for children and families, and to prevent the use of detention for these groups. Immigration detention, including of children, is a significant problem in many refugee situations.<sup>101</sup>

In several countries, children displaced by conflict face a high risk of being arrested and detained for immigration offences, or for administrative offences that are not considered crimes, for example anti-social behaviour, breaking curfew, or survival-related activities like begging, stealing, living and working in the streets.

In Jordan, there have been reports of children living in refugee camps engaged in petty commerce and as a consequence being arrested and detained by national police.<sup>102</sup> Terre des hommes, for example, has responded to this by building the capacities of the security forces and staff in detention centres who regularly deal with children from refugee communities, encouraging them to adopt a more child-friendly approach.<sup>103</sup> In addition, in cases of arrest or detention of refugee children, UNHCR and UNICEF have established a good collaboration with the Juvenile Police Departments. In Lebanon, street and working children (SaWC) are routinely detained and fined before being released again. Exact numbers of arrest and detention cases are hard to obtain, but since refugee children from Syria currently constitute up to 80% of Beirut's SaWC population,<sup>104</sup> it can be assumed that refugee children are affected.

In a recent case in Cameroon, 15 refugee children were arrested for petty offences and imprisoned. They could only be released after advocacy by UNHCR.<sup>105</sup> Like other groups of vulnerable children, refugee and IDP children are at risk of spending longer periods in detention because they have few relatives or community members advocating for their release or paying a fine, especially those that are unaccompanied or separated. International agencies are often overstretched and unable to follow each individual case.

### **Vulnerability and access to justice**

Unaccompanied refugee children are considered to be a particularly vulnerable group. The United Nations General Assembly requested that unaccompanied children be given special assistance and care because they face particular risks,

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<sup>99</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to detention*, 2012.

<sup>100</sup> Key informant interview #9.

<sup>101</sup> Interview with key informant #20.

<sup>102</sup> Respondent #12.

<sup>103</sup> *Ibidem*.

<sup>104</sup> Key informant interview #5.

<sup>105</sup> Respondent #22.

including neglect, violence, forced military recruitment, sexual assault, abuse, and infectious diseases.<sup>106</sup>

In Jordan, a clear gap was identified in terms of protection and assistance of refugee children in contact with the law both in the formal system and the non-formal one that is not covered by UNHCR. Refugee children are often at increased risk of sexual and gender based violence (SGBV) and child labour.<sup>107</sup>

In Côte d'Ivoire, the socio-political crisis after 2002 and the post-election violence in 2010 caused massive displacement. Several of displaced children ended up committing petty theft, and other offences, which led them into contact with the justice system.<sup>108</sup>

An important aspect that seems under-analysed is the difficulty of IDP and refugee children in accessing justice. During a crisis, refugees might be living in urban contexts, camps and/or other settlements/collective centres. Most of them do not want to come into contact with formal justice, particularly the security forces of the host country as they often live in fear of arrest or *refoulement*.<sup>109</sup> This makes children and their communities less likely to seek justice and access services, including police, legal, judicial and social services, as well as shelters for child survivors of violence and/or neglect. If violence against a displaced child comes from within his or her own community, the chance of a case being brought to the attention of the official justice system is even less likely.

In large-scale refugee and IDP crises, the caseload is often too large to provide individual attention. In addition, security concerns hamper the access of justice for children actors to the camps. A well-known example is Dadaab and the other Somali refugee camps in Kenya. While Kenyan law applies, the local security forces and justice actors are overwhelmed with only one police post in each camp and mobile courts coming in irregular intervals. Therefore, the caseload involving children is huge and is additionally hampered by language barriers between the refugee community and the Kenyan authorities. Despite efforts by UNHCR and partners by conducting regular training for the police in camps and establishing all female police desks, security forces sent to these tough and unpopular settings are often poorly trained and/or low performers.<sup>110</sup> As a consequence, national and international standards for justice for children are poorly applied. Breaches of confidentiality relating to victims and perpetrators are common as translators from the community have to be included in hearings and interrogations or children have to wait for a long time. International standards relating to children in conflict with the law are equally disregarded; for example, the minimum age of criminal responsibility is not respected. Also, because of the enormous caseload, organisations only intervene when a victim actually brings the case forward, which is the exception rather than the rule.<sup>111</sup>

When security forces and justice officials are sensitised and trained on issues concerning refugee children and their communities, it is necessary to promote gender balance and access of survivors to justice. However, the UNCHR states, “it

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<sup>106</sup> International Bureau for Children's Rights: Children and Armed Conflict: Guide to International Humanitarian and Human Rights Law (2010). Available at: <http://www.ibcr.org/images/contenu/publications/IBCR-int-low-en.pdf> [Accessed 18 February 2015].p. 161.

<sup>107</sup> Respondent #7.

<sup>108</sup> Respondent #17.

<sup>109</sup> The principle of *refoulement* is a central tenet of refugee law. It concerns the protection of refugees from being returned or expelled to places where their lives or freedoms could be threatened.

<sup>110</sup> Key informant interview #9.

<sup>111</sup> *Ibidem*.

is important to ensure that in all cases, the victims of these offences (such as survivors of rape) are not ‘forced’ to use these systems, but rather provided with the information and access to these systems so that they can make an informed choice.”<sup>112</sup>

A recent study on the child protection risks and mechanisms of refugee populations living in host communities in northern Burkina Faso<sup>113</sup> found that the crisis in Mali increased the vulnerability and risk factors for children of both the refugee and local communities. Some risks are more directly related to the emergency than others; for example, both communities perceived the idleness of children and youth who do not go to school and do not work because of their situation as a significant factor leading to increased delinquency and consumption of drugs and alcohol, therefore bringing the refugee children in conflict with the law more frequently than the children of the host community.<sup>114</sup>

To address the needs and vulnerabilities through a child protection lens, a multi-faceted approach is necessary, of which improving access to justice is but a small part. In terms of legal protection for example, one of the biggest needs expressed was continuing birth registration. However, access to the formal justice system was often found to be difficult for refugee children. Justice officials lacked resources and the system was unable to cope.<sup>115</sup> In addition, both the refugee and the host communities often preferred to apply traditional justice mechanisms. In many cases of sexual violence against a child for instance, the communities preferred an “amicable” solution between families.<sup>116</sup>

### **Use of traditional justice mechanisms among refugee communities**

As stated, the application of informal justice or traditional justice mechanisms is sometimes preferred by displaced communities and there may be a particular desire by such communities to avoid contact with the police or formal justice system. While there is generally little information and data on Informal Justice Systems (IJS, see below), there is particular lack of information on the use of traditional justice in refugee settings. In order to work on juvenile justice with refugee communities, outside actors would have to identify both the actors that play a role in the relevant traditional systems, as well as research the mechanisms applied by these communities, how child-friendly they are and how they can be used in specific emergency situations. The additional difficulty in understanding who has influence in emergency situations is that often new actors emerge, exploiting the situation for their own personal gain.<sup>117</sup> Therefore, it is important for organisations wanting to work for refugee and displaced children within the IJS to differentiate between effective traditional actors and impostors. Terre des hommes is one of the organisations pioneering this work in several Middle Eastern contexts and is planning to put a focus on additional research and analysis in that regard over the coming years.<sup>118</sup>

It becomes more complicated if refugee children come in conflict with the law

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<sup>112</sup> Office Of The United Nations High Commissioner, Handbook For Emergencies, UNHCR (2007). Available at: [http://www.ifrc.org/PageFiles/95884/D.01.03.%20Handbook%20for%20Emergencies\\_UNHCR.pdf](http://www.ifrc.org/PageFiles/95884/D.01.03.%20Handbook%20for%20Emergencies_UNHCR.pdf) [Accessed 18 February 2015]. para. 81.

<sup>113</sup> Conseil Danois des Réfugiés (DRC). Dominique de Juriew. Étude Des Risques Et Mécanismes De Protection De L’enfant En Région Sahélienne - Burkina Faso. Dakar, 2014.

<sup>114</sup> Idem, p. 37-39.

<sup>115</sup> Idem, p. 57.

<sup>116</sup> Idem, p. 52-54.

<sup>117</sup> Key informant interview #21.

<sup>118</sup> Key informant interview #13.



outside their community, as their traditional justice mechanisms do not normally apply in the host country.

One of the oldest refugee camp situations in the world is the Palestinian refugee camps in Tyre, Southern Lebanon. The Palestinian refugees registered with the United Nations Relief and Works Agency fall outside the scope of the 1951 Refugee Convention.<sup>119</sup> The Lebanese laws -- including Law 422 on protective measures for risk or in conflict with the law apply to all girls and boys regardless of their nationality.<sup>120</sup> However, due to the *de facto* autonomy of the camps, Lebanese justice actors do not enforce national law within the camps, which is why these communities have long resorted to an IJS based on tradition.<sup>121</sup> There are no formal, written rules in Palestinian refugee camps. Similar to other IJS contexts, this means that the process of determining what constitutes an offence or crime can shift; however, in essence it comes down to something that compromises the preservation of harmony in the community. This also means that in the overwhelming majority of juvenile justice cases, community harmony will be the priority and not the best interest of the child – whether the child is in the role of the offender or the victim.<sup>122</sup> Influencing the application of traditional justice systems in a way that makes them more child-friendly requires not only a good knowledge of the mechanisms applied but also the trust of the traditional actors.<sup>123</sup>

Owing to the limitations of the formal justice system described above, plus the strong traditions of the Somali refugee communities, the Kenyan camps are another setting, where informal or traditional justice plays an important role alongside the formal national system. The two systems often clash: for example, Kenyan law stipulates 18 years as a minimum age for marriage, whereas under Somali tradition, girls can be married at 15 years or younger in some cases.<sup>124</sup>

In some contexts, the rights of women and children are often not represented or addressed properly in traditional systems. For instance, in responding to rape, one solution imposed by informal mechanisms is that a girl is forced to marry her rapist. However, this type of perceived resolution can also be found in formal systems, such as in Lebanon or Egypt.<sup>125</sup> Furthermore, the adjudicators may often only be men or not truly representative of the community. From UNHCR's perspective, it is important to work with the community and traditional mechanisms, but it is also essential to agree on which issues they can and cannot address through these mechanisms to ensure individual child rights are respected. "A person should not be prevented from accessing the formal national legal system either before, during or after the matter is heard by the traditional court."<sup>126</sup>

## Street and Working Children (SaWC)

Children who live on the street and/or who engage in economic activities in emergency situations are amongst the most vulnerable and therefore subject to a

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<sup>119</sup> United Nations Convention relating to the status of Refugees Paragraph 1, Article D states "This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance." Palestinian refugees however, benefit from assistance of UNRWA.

<sup>120</sup> See International Rescue Committee: Fact Sheet Law 422.

<sup>121</sup> Key informant interview # 2.

<sup>122</sup> Key informant interviews # 2 and # 1.

<sup>123</sup> Terre des hommes. An Informal Juvenile Justice System Assessment: Palestinian refugee camps and gatherings - Tyre Area, South Lebanon. Lausanne. (2011).

<sup>124</sup> Key informant interview # 9.

<sup>125</sup> Respondent #10.

<sup>126</sup> Office Of The United Nations High Commissioner, Handbook For Emergencies, UNHCR (2007), para.

81. Available at:

[http://www.ifrc.org/PageFiles/95884/D.01.03.%20Handbook%20for%20Emergencies\\_UNHCR.pdf](http://www.ifrc.org/PageFiles/95884/D.01.03.%20Handbook%20for%20Emergencies_UNHCR.pdf)

[Accessed 18 February 2015].

high risk of coming in contact with the law. CPMS Standard 12 -- which focuses on the worst forms of child labour (WFCL) -- covers some of the reasons why children come in conflict with the law. In particular, the review carried out on behalf of the Child Protection Working Group covers a lot of ground in that regard.<sup>127</sup> As with other child protection concerns, justice for children and child labour, particularly the worst forms are interlinked in a complex way. However, both in analysis and in programming, there are few examples where justice for children projects address the WFCL.<sup>128</sup>

There are however quite a few SaWC projects that take the justice implications into account. Gathering of data and analysis on street and working children can be challenging, as access to these groups can be difficult. They move around a lot and do not necessarily want to come in contact with organisations or other outsiders; this is exacerbated when they are refugee or internally displaced children.

“The [military] police bother us at night. They ask for money, and if we have none, they threaten us with arrest and beat us.”

*Street boy in Goma, DRC, cited in HRW: What Future?*

### **Vulnerability and access to justice**

The reasons why SaWC come into contact -- and often *in conflict* -- with the justice system are well-documented. Due to dated legislation, their actions are criminalised and they face harsh sentences for (often ‘survival’ related) petty theft, substance abuse, begging and ‘vagrancy’. Furthermore, they are very vulnerable to abuse once within the system due to limited or no contact with responsible adults who can advocate on their behalf, and lack of funds to bribe their ways out of the system. “In short, street children are discriminated against and have their rights violated because they are poor.”<sup>129</sup>

Prevention activities targeting street children before coming in contact with the law show that outreach is important to protect the most vulnerable. Especially when fleeing from conflict or seeking better circumstances in a war-torn economy, early action and assistance for street children rather than criminalisation is decisive. Reaching newly street-engaged girls as early as possible can also prove prevent sexually exploitation.<sup>130</sup>

Interviews by Human Rights Watch (HRW) with street children in DRC revealed a common pattern of routine abuse by police, soldiers, and members of the military police. The police regularly arrested street children when crimes were committed in areas where they were known to gather. Although these boys and girls were sometimes involved in crimes, the police often held them collectively responsible for crimes or knowledgeable about the events or the perpetrators. HRW also noted as a particular concern “the deliberate and opportunistic recruitment of street children to participate in political demonstrations with the intention of provoking public disorder, events in which dozens of street children have been killed or wounded”.<sup>131</sup> This suggests, in some contexts, that SaWC are not only in danger of physical violence but also deliberately victimised in a way that then brings them in conflict with the law as perceived troublemakers.

<sup>127</sup> Eynon, A. (2014). Responding to the Worst Forms of Child Labour in Emergencies. Global Protection Cluster: Child Protection Working Group.

<sup>128</sup> Cf. *idem*, p. 31.

<sup>129</sup> Wernham, M. (2004). *An Outside Chance: Street Children And Juvenile Justice - An International Perspective*. London, Consortium For Street Children, p. 11.

<sup>130</sup> Eynon, A. (2014). Responding to the Worst Forms of Child Labour in Emergencies. Global Protection Cluster: Child Protection Working Group, p. 50.

<sup>131</sup> Human Rights Watch. *What Future? Street Children In The Democratic Republic Of Congo*. (2006).

In Lebanon, the IRC is currently implementing a specific project on Street and Working Children. Their number has dramatically increased since the onset of the Syrian crisis and hence the project was conceived as part of the overall child protection response. Of the 228 streets and working children with whom the IRC currently works in Beirut, 210 are Syrian, and 18 are Lebanese. While not focusing specifically on juvenile justice, the beneficiaries of the project often come into contact with the juvenile justice system and IRC has engaged in training the police and is currently working on an advocacy strategy to be able to trigger a more coordinated, national response to the need of these children who come in contact with the juvenile justice system.<sup>132</sup>

In humanitarian emergencies, girls and boys are frequently sent to work to supplement the family income. In addition to the violence they may experience from security forces while working or sleeping on the street, they may also experience physical violence from passers-by, sexual exploitation and abuse, or robbery of their income. In the project in Lebanon, IRC recorded that of those children who experienced violence or attempted violence, the predominant reported form was physical violence (65.9%), followed by payment for sexual acts (20.5 %).<sup>133</sup> Similar to refugee children, SaWC often have no access to justice if crimes are committed against them. This is exacerbated if the children are foreigners as is the case with the Syrian children in Lebanon for example.

#### **Issues around arrest and detention**

SaWC are vulnerable to arrest and face the daily risk of being detained while working on the street. They often face the additional threat of violence while in police custody. All too frequently, release from detention is only possible if the family pays a fine; this study came across multiple examples from Lebanon, Afghanistan, Jordan, DRC and others.<sup>134</sup>

In Afghanistan, two trends document the risk of SaWC being arrested and detained in conflict and post-conflict situations: between 2008 and 2014 the number of children in detention has more than doubled – and CICL are predominantly street and working children, with 76% of boys and 32% of girls reporting that they were working before their arrest and detention.<sup>135</sup> SaWC accused of having committed petty crime are of particular concern to child protection service providers in Afghanistan, due to the fact that, following their arrest by the police, they are generally detained in Juvenile Rehabilitation Centres (JRC) with no consideration of alternatives to detention. Most street-involved children who come into conflict with the law complained that they were not informed by police of their rights after their arrest and some reported to have been physically and sexually abused. Often, parents were not informed that the child was arrested and sent to detention.<sup>136</sup> Furthermore, running away from home is considered an offence in Afghanistan. Since 2012, girls in particular have been arrested and prosecuted for running away from home, as the police view this as an attempted crime. However, criminalising this action makes the child more vulnerable in the community particularly after release.<sup>137</sup>

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<sup>132</sup> Respondent # 4.

<sup>133</sup> International Rescue Committee. Fact Sheet IRC Street And Working Children. (2014).

<sup>134</sup> Interviews with Key informants #2, 5, 10, 16 and Respondents #3, 4, 7 and others.

<sup>135</sup> Terre des Hommes. Afghanistan: Juvenile Justice Today. (2014), p 5/6.

<sup>136</sup> Respondent # 23.

<sup>137</sup> Ibidem.

The majority of street children's experiences in the justice system are negative – marked particularly by extensive (and often unjust) periods of detention where conditions are poor and abuse rampant. Detention isolates children from their communities and support networks. Furthermore, it also does little to break the cycle of street life and institutionalisation into which street children are trapped.<sup>138</sup>

In many contexts, detention is not used as a last resort as international standards and some national juvenile justice laws suggest. This is particularly the case in conflict or post-conflict situations. For example, a visitor to Rumbek prison in today's South Sudan in April 2005 noted that approximately one third of the prisoners were apparently children, and that the circumstances of their detention did not appear to indicate that this was a last resort as they had been rounded up in the market.<sup>139</sup> In Afghanistan, detention in JRCs is still mostly the first option,

“Street children are highly likely to come into contact with the criminal justice system in the first place due to discrimination and the circumstances in which they are forced to survive, regardless of whether or not they have actually committed a crime.”

*Marie Wernham, An Outside Chance*

although the use of alternatives to detention has been increasing as a result of the training, which international NGOs like WarChild UK and others have provided to police and prosecutors.<sup>140</sup>

Whether or not detention as a last resort is actually inscribed in national

juvenile justice laws, experience with street children in both humanitarian and development contexts shows that detention of street children is still often the first resort.

### **Worst forms of child labour and justice**

Whilst the WFCL are not discussed in detail in this report because of the in-depth review that already exists, there are a couple of areas touching specifically on justice for children that seem under-discussed and where little analysis exists: the connection of children's involvement in illicit activities and their subsequent contact with the justice system.<sup>141</sup>

A specific phenomenon that touches on children associated with armed forces and groups is the involvement of underage, or possibly underage, boys in piracy activities. There seems to be a specific link with emergency situations as countries most affected by piracy activity fall within the top 15 most fragile states, including Somalia, Côte d'Ivoire, Guinea, Pakistan, Yemen and Nigeria.<sup>142</sup> Suspects are typically detained or arrested at sea by warships involved in international anti-piracy activities. Most of the states involved in the international coalition that undertakes anti-piracy patrols are parties to the International Labour Organization (ILO) conventions on the worst forms of child labour and have therefore agreed to prevent injuries and protect children from the worst forms of child labour as well as to protect them from reprisals and to provide for their rehabilitation and social integration. Piracy is an issue that is not specifically mentioned in the conventions and has been a relatively new issue to gain international attention; however, it has

<sup>138</sup> Wernham, M. (2004). *An Outside Chance: Street Children And Juvenile Justice -- An International Perspective*. London, Consortium For Street Children, p. 71.

<sup>139</sup> Save The Children Sweden. Julia Sloth Nielsen. *Measures To Strengthen Children's Rights In The Constitution Of Sudan*. Nairobi. (2005), p. 12, para. 4.

<sup>140</sup> Respondent #23.

<sup>141</sup> Key informant interview #22.

<sup>142</sup> Whitman, S., Williamson, H., Sloan M., & Fanning, L. (2012). *Dalhousie Marine Piracy Project: Children and Youth in Marine Piracy - Causes, Consequences and the Way Forward*. (Marine Affairs Program Technical Report #5), p. 2.

not yet benefited from a child protection perspective, let alone from a justice perspective. A study on youth in marine piracy notes that in article 3c of ILO Convention 182, the term ‘worst forms of child labour’ include the use of procuring or offering a child for illicit activities. While the section specifically mentions trafficking in drugs, it is not restricted to that activity alone.<sup>143</sup> Releasing a group of suspected pirates, who include those believed to be less than 18 years old, would be returning the juveniles to a worst form of child labour or at least releasing them into emergency or fragile state systems where they continue to be at risk. In other words, once a child pirate is in the custody of anti-piracy forces, it may be extremely difficult for international actors “to discharge obligations with respect to the rights of the child, being unwilling to criminally prosecute them, and unable to release them into a potentially criminal situation”.<sup>144</sup> In practice however, no programmes or projects assisting minors that have been captured by international forces at sea exist, which makes access to justice for these minors an important problem.

Other issues falling under this subject but which did not come up during the review, are indeed justice-related issues concerning children involved in drug cartels operating in emergency situations, or the issue of prostitution and legal reprisals against under-age prostitutes.

### Children and armed conflict and children perceived as a security threat

In armed conflict or during civil unrest, children are at great risk – as children in conflict with the law or as victims or witnesses of crime. There is a wealth of documentation on children associated with armed forces and groups and many programmes and projects have been trying to prevent recruitment, respond to the use of children in hostilities and work towards family reunification and reintegration. As the release and reintegration of children is extensively documented, most aspects will not be covered here<sup>145</sup>.

Issues around justice have focussed largely on trying to hold to account the adults who are responsible for recruitment and use<sup>146</sup> of girls and boys and to end impunity for violations against children that occur in armed conflict. This aspect of accountability has not been covered during this review, as it is not an explicit component of the Standard.

### Accountability of children and prosecution

Touching on the question of children as victims and children as perpetrators, courts and tribunals after conflict have repeatedly deliberated over the issue of prosecuting children for their involvement in armed conflict. When a State or one of the international courts considers prosecuting a child, the two key questions are whether the court has jurisdiction to try a case against the child and whether the child has criminal responsibility.<sup>147</sup>

After the 1994 genocide in Rwanda, it was decided not to prosecute children under 14 years of age since this was the national criminal age of responsibility; and to

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<sup>143</sup> *Idem*, p. 11.

<sup>144</sup> *Idem*, p. 12.

<sup>145</sup> For example, see resources listed under:

<http://resourcecentre.savethechildren.se/search/site/reintegration%20justice?sort=score>

<sup>146</sup> ‘Use’ of children is of course to be understood to include all roles and capacities that children are subjected to after recruitment, including as fighters, cooks, porters, messengers, spies, for sexual purposes, trafficking, etc. Cf. Paris Commitments and Principles on children associated with armed forces or armed groups (2007).

<sup>147</sup> For the ongoing debate on the age of criminal responsibility, as well as the practices at international and national courts and tribunals cf. Office Of The Special Representative Of The Secretary-General for Children in Armed Conflict. Children And Justice During And In The Aftermath Of Armed Conflict. Working Paper No. 3. United Nations. New York. (2011), p. 34-38.

prosecute children between 14 and 18 years in national courts rather than the International Criminal Tribunal for Rwanda.<sup>148</sup> ‘Gacacas’, or semi-traditional courts, were established to speed up prosecution and used a traditional method of transitional justice system recognising that sometimes telling the truth is more important for healing within a community than sentencing all perpetrators.<sup>149</sup>

The special Court for Sierra Leone was the first court with international involvement that had explicit jurisdiction to prosecute children aged 15 to 18 years. This is reflected in the fact that many children took part in the worst atrocities committed during the conflict. Nevertheless, the Prosecutor for the court in a landmark decision announced that he would not prosecute individuals for crimes committed while under 18 years old, because the courts mandate was to prosecute individuals bearing “the greatest responsibility” for crimes.<sup>150</sup>

“Since the start of the conflict in 2003, hundreds of children have been detained by both the Multi-National Force in Iraq (MNF-I) and the Iraqi security forces. These children have been detained on security and terrorism charges, and a number of them have been tried and convicted in Iraqi courts. Approximately 1,500 children were held in detention, the youngest of which only ten years old, at the time of the visit of the SRSG-CAAC to Iraq in April 2008.”

*SRSG CAAC: Children and Justice, p. 33*

Over the years, the international community has generally acknowledged the need for some form of accountability when children commit grave crimes during armed conflicts. However, following a child-friendly juvenile justice approach, more effective and appropriate methods -- other than detention and prosecution -- have been encouraged. This approach enables girls and boys to come to terms with their past and the acts they committed: “Alternatives that take the best interest of the child as the primary consideration and promote the reintegration of the child into his or her family, community and society, are recommended.”<sup>151</sup> This includes the use of restorative measures, truth-telling, traditional healing ceremonies, and reintegration programmes.

Children who have been affected by armed conflict increasingly play a role in both national and international courts as victims and witnesses, as well as in truth and reconciliation commissions. The challenges connected to their involvement and the aspect of reparations and recommendations have not been covered in this review but are well documented.<sup>152</sup>

### **Children linked with jihadist or terrorist groups**

In recent years, children linked with jihadist or terrorist groups have become a more prominent phenomenon, yet one where not much data beyond anecdotal evidence is available and which has not been raised as an important topic during this review. It is clear however, that linking children with terrorist groups has serious implications for justice for children.

International norms and standards and a human rights approach have led the international child protection circle to take a position that boys and girls are above

<sup>148</sup> International Bureau for Children’s Rights: Children and Armed Conflict: Guide to International Humanitarian and Human Rights Law (2010), p.287.

<sup>149</sup> Ibidem.

<sup>150</sup> Idem, p. 104.

<sup>151</sup> Office Of The Special Representative Of The Secretary-General for Children in Armed Conflict. Children And Justice During And In The Aftermath Of Armed Conflict. Working Paper No. 3. United Nations. New York. (2011), p. 10.

<sup>152</sup> Cf. Idem, pp. 14-26.

all victims of human rights violations and their victimisation is an important factor if they become perpetrators of crime. Nevertheless, in many countries the belief remains that children who commit crimes and who come in conflict with national or international law as a result of involvement in armed conflict are child criminals and should be treated accordingly.<sup>153</sup>

Perception in the applicable context therefore plays an important role in stigmatising young people, and has therefore important implications on justice, particularly on access to justice, regardless of what national or international laws and standards foresee.

In the Philippines for example, where a comprehensive national Juvenile Justice and Welfare Law exists and advocacy efforts have done much to change public opinion about 'juvenile delinquents', public opinion was ready to accept that children involved in theft after Typhoon Haiyan had primarily been victims. Yet, despite the Child Soldiers Act of 2008, there was no sympathy for a couple of children detained in Mindanao after having been caught in crossfire between security forces and their rebel-associated relatives who had brought them to a "peace rally".<sup>154</sup>

### **Children as a 'security threat' and in civil unrest**

Similar to the accusation of being part of a terrorist group, there is also a continuing trend during civil unrest and in other situations that children who are labelled as a 'security threat' can be arrested and detained without further explanation. They are frequently placed in administrative detention (see below). While national governments often resort to this measure in situations of civil unrest, arrests and internments of boys and girls that are alleged to pose a security threat have also been made by the international coalitions in Iraq and Afghanistan.<sup>155</sup>

Minors arrested by the Egyptian police in the course of political protests have sometimes been bystanders rather than active protestors; however, security forces see them as 'soft targets' -- easy to arrest, likely to confess, and implicate others. Amongst some security forces the perception exists that the children are paid to participate in protests and civil unrest.<sup>156</sup>

Children arrested in the context of armed conflict, civil unrest or during protest have often not been provided with the safeguards that the respective national laws provide to their peers arrested for 'normal' crimes such as theft. In the past, children in Egypt have been detained alongside adults, abused during interrogation, unable to access lawyers, been processed through military courts and received death sentences.<sup>157</sup> Despite a clear provision in Egypt's child law that children cannot be detained with adults and that officials that do so should be sentenced to no less than three months in jail, these legal standards seem to have been widely disregarded during the civil unrest. Military courts in particular fail to meet minimum due process standards and children that have been prosecuted in front of such a court have not had access to lawyers, and often to their families, until after military authorities have investigated and sentenced them.<sup>158</sup>

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<sup>153</sup> International Bureau for Children's Rights: Children and Armed Conflict: Guide to International Humanitarian and Human Rights Law (2010), p. 269.

<sup>154</sup> Interview with key informants #4.

<sup>155</sup> For administrative detention and internment and applicable international law, cf. Office Of The Special Representative Of The Secretary-General for Children in Armed Conflict. *Children And Justice During And In The Aftermath Of Armed Conflict. Working Paper No. 3*. United Nations. New York. (2011), p. 30-33.

<sup>156</sup> Respondent #11.

<sup>157</sup> Ibid.

<sup>158</sup> Human Rights Watch. *Egypt: Children on Trial*. New York. (2012). Available online at <http://www.hrw.org/news/2012/03/27/egypt-children-trial> [Accessed 25 May 2015]

Times of civil unrest are a tough test of the resilience of a juvenile justice system. Capacity building initiatives and other projects on justice for children undertaken in development contexts often do not build in dedicated emergency preparedness. Since 1996, Save the Children and an Ethiopia-based NGO Forum have been working on a far-reaching programme to establish Child Protection Units within police stations in Addis Ababa. One of the central motivations for developing this programme was a growing awareness of the violence, abuse and neglect that children living on the streets experienced when they were arrested and detained in police stations. The project in itself proved a success in creating Child Protection Units and working with child-friendly courts; clear lessons were learned for example about the importance of close collaboration between society and the police.<sup>159</sup> However, the project was not prepared for civil unrest. A consultant working on the project between 2004 and 2007 reported that after contested elections in Ethiopia and mass arrests in the capital, the child-friendly system fell apart and that the same Child Protection Units that had been trained on the concerns of street children were suddenly saying that justice for children did not apply in times of civil unrest.<sup>160</sup> Once political agendas have taken over and civil unrest has broken out, attitudes are hard to change. This is why eventualities of natural disasters, civil unrest or armed conflict need to be taken into account in system and capacity building activities: “It should have been made explicit that to stand a chance, systems need to be really strong to withstand the test of conflict”.<sup>161</sup>

### **Issues around detention, interrogation and trial**

In some situations, children are released from armed forces and groups and then undergo reintegration programmes. More frequently, such programmes either do not exist, or these young fighters are captured and detained anyway. They are likely to find themselves placed in administrative detention. A reduced or non-existent justice system can contribute to them staying for extended periods of time in administrative or judicial detention awaiting trial or release.<sup>162</sup> Minors held in administrative detention during armed conflict are virtually invisible. Few are granted access to a lawyer or are given reasons why they have been detained. Many are held for long periods without charge and often without any contact with their family.<sup>163</sup>

“Children perceived as a ‘threat to security’ and accused of terrorism completely fall through the safety net of juvenile justice - it is a question of how they are perceived rather than what they have actually done.”

*Key informant interview*

The International Committee of the Red Cross considers that deprivation of liberty in relation to non-international armed conflict is one area where existing International Humanitarian Law provisions need to be strengthened, including with regard to the most vulnerable groups like children. One issue that is being discussed with States is the significance of Standard Operating Procedures for personnel arresting or

<sup>159</sup> Save the Children: Child Protection and Child Friendly Justice: Lessons Learned from Programmes in Ethiopia, 2012.

<sup>160</sup> Interview with key informant #6.

<sup>161</sup> Ibidem.

<sup>162</sup> Office Of The Special Representative Of The Secretary-General for Children in Armed Conflict. Children And Justice During And In The Aftermath Of Armed Conflict. Working Paper No. 3. United Nations. New York. (2011), p. 32.

<sup>163</sup> Ibidem.



capturing children, which should ensure that access to justice and fair trial rights are not compromised.<sup>164</sup>

In Libya, UNICEF reported that children arrested during the conflict period, as well as those arrested prior to the outbreak, were frequently moved from one detention facility to another as detention facilities had to be made available to house (adult) political prisoners.<sup>165</sup>

In early 2014, forty children associated with the armed group *Seleka* were arrested and detained at the CAR-Chadian border. For three months, they were detained along with their adult counterparts. Although they had been identified by UNICEF prior to incarceration, the agency could not prevent their transfer to prison because it required permission of Chad's Ministry of Defence for their verification and separation. The children were then brought to the detention centre in Koro Toro – a notorious prison in the middle of the desert. They were only released after multiple negotiations between the UN and the government, including the Minister of Social Affairs, the Ministry of Defence, the Ministry of Justice, the Director of the prison administration, the prosecutor and the investigating judge. Since the incident, a memorandum of understanding between the Government of the Republic of Chad and the UN on the transfer of children associated with armed forces or groups was signed.<sup>166</sup>

In DRC, UNICEF and the Child Protection section of MONUSCO regularly intervened and advocated on behalf of children that had been associated with the Lord's Resistance Army and captured by the Ugandan People's Defence Forces and the Congolese armed forces. While in most cases they were not detained for long periods of time, the child protection actors also advocated against them being interrogated to gather intelligence before being transferred to family tracing and reunification programmes.<sup>167</sup>

The situation between Israel and the Palestinian National Authority/the State of Palestine is one of protracted crisis, where the rights of children in conflict with the law as well as those of victims and witnesses are regularly violated and their access to justice denied. The different legal provisions applying to Palestinian children in East Jerusalem, the West Bank and Gaza respectively further complicate the situation and make assistance to these children even harder.<sup>168</sup> The Convention on the Rights of the Child lists a number of safeguards that should be ensured when children are deprived of their liberty. So far, these have not been implemented by the Palestinian Authority. The two old regulations "from the Egyptian and Jordanian administrations, enforced respectively in the Gaza Strip and West Bank, are driven by a philosophy that sees children in conflict with the law as criminals and tends to punish them instead of offering necessary social support. This is a major factor contributing to children coming in conflict with the law."<sup>169</sup>

Furthermore, since 2000, over 5,500 Palestinian children, some as young as 12, have been imprisoned by Israeli authorities for alleged security offences ranging from distributing pamphlets and stone-throwing to being associated with an armed

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<sup>164</sup> Cf. International Committee of the Red Cross. Strengthening International Humanitarian Law, ongoing consultation processes, available at <https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/index.jsp> [accessed 15 May 2015].

<sup>165</sup> Respondent #12.

<sup>166</sup> Respondent #18.

<sup>167</sup> Respondent #3.

<sup>168</sup> Key informant interview #11.

<sup>169</sup> The Impact Of Child Detention: Occupied Palestinian Territory, Save the Children Sweden & EJ-YMCA Rehabilitation Program 2012, p. 30.

group.<sup>170</sup> In all phases of the judicial treatment – from arrest, detention and interrogation to sentencing and incarceration – a legal regime is used with little or no procedural safeguards for children. In this system, children accused of offences are tried in military courts, and many spend a long period of time in detention before coming to trial.<sup>171</sup> Defence for Children International – Palestine and other organisations have been giving legal assistance for children in Israeli military detention and at military trials for many years.<sup>172</sup>

## Sexual and gender-based violence

"In times of humanitarian crisis, the destabilisation of social and family structures exacerbates gender-based power imbalances, making women and girls even more vulnerable to violations of their rights, but particularly their sexual and reproductive rights and their right to live free from violence."

*Plan: Because I am a girl*

The issue of sexual and gender-based violence (SGBV) has been well-documented over the past years and remains a pressing issue. However, its links to justice for children have received significantly less attention; indeed, it was not emphasised by respondents during this

review. It is possible that some justice for children actors simply do not make the link with SGBV and instead leave it up to SGBV colleagues to address the problem from the point of view of access to justice for survivors of sexual violence.

In some emergency contexts, like post-conflict DRC, the problem has been so severe and persistent that international attention has been focused on the fight against impunity. Alongside medical and psychosocial assistance to the survivors, victims' access to justice is also increasingly addressed by organisations working in humanitarian contexts, including but not limited to conflict and post-conflict scenarios.

In closed settings like refugee communities, access to justice might be even more difficult as described above. UNHCR frequently needs to provide legal support for children and their families who are victims of sexual violence.<sup>173</sup> However, in many cases UNHCR or other organisations can only act when the victims of sexual violence or early marriage speak out; otherwise, cases go unnoticed.<sup>174</sup>

In Jordan, the work of a task force composed of Save the Children, UNHCR, UNICEF, UNFPA and the National Council for Family Affairs led to the adoption of Inter-Agency Emergency Standing Operating Procedures for Prevention of and Response to Gender- Based Violence and Child Protection, involving over 40 ministries, organisations and institutions. These describe guiding principles, procedures, roles and responsibilities in the prevention of and response to gender-based violence and in child protection for those affected by the Syrian crisis living in urban contexts, camps and other settlements and collective centres. The Standard Operating Procedures have a focus on Syrian refugees, but include information on services for other refugees or the host population where available; the response section includes chapters on legal response, police procedures and judicial

<sup>170</sup> Office Of The Special Representative Of The Secretary-General for Children in Armed Conflict. Children And Justice During And In The Aftermath Of Armed Conflict. Working Paper No. 3. United Nations. New York. (2011), p. 42.

<sup>171</sup> For a detailed overview of the various violations of children's rights in Israeli detention including administrative detention, mistreatment in detention, transfer of children from OPT to Israel see idem, p. 42/43.

<sup>172</sup> Cf. for example <http://dci-palestine.org/sites/default/files/annualreport2012.pdf> (accessed 15.02.2015).

<sup>173</sup> Respondent #22.

<sup>174</sup> Respondent #9.

procedures, as well as referral pathways, including access to national services.<sup>175</sup>

In post-earthquake Haiti, many agencies documented increasing rates of rape, other types of gender-based violence and child marriage. The underlying problem was impunity and absence of justice because girls and women's access to justice and proper protection was limited. Judges, policemen and prosecutors were not well-trained.<sup>176</sup>

The difficulty with SGBV cases in emergency situations is often the availability of trained and specialised actors who know the referral pathways. Particular issues are the right of survivors to be interviewed by well-trained actors and the respect for victims' wishes as to where or with whom to seek help. Issues of confidentiality during medical care, parental consent and judicial referral cause difficulties in emergency situations with widespread sexual violence, such as DRC, Syria or South Sudan.<sup>177</sup>

The issue of child abuse and sexual exploitation by humanitarian workers and UN personnel was not covered during the review but would be an important issue in relation to justice for children in humanitarian settings.

### Issues after natural disasters

Whether disasters are manmade, or natural like volcanic eruptions, floods, droughts and landslides, the vulnerabilities of children are significant. However, manmade disasters like oil spills and gas leaks such as the one in Bhopal, India in the 1980s, or nuclear catastrophes such as Chernobyl or Fukushima do not seem to be sufficiently taken into account and analysed in terms of access to justice for children in the aftermath.

In the immediate chaos following earthquakes and cyclones, the separation of families and children has been noted as a key protection risk.<sup>178</sup> During the emergency phase children also faced a heightened risk of malnutrition or disease from a lack of appropriate food or poor sanitation. "Protection actors also sought to maintain access to education and to prevent child labour and trafficking."<sup>179</sup>

Apart from the children who are directly affected by the consequences, there are also children who have already been in contact, or rather in conflict, with the law before the emergency. They will often be at the bottom of the list of priorities. In the fight against Ebola in Guinea Conakry, several NGOs including Plan and Terre des hommes teamed up to encourage legislation that would permit children already in detention to be tried and receive justice as fast as possible.<sup>180</sup>

Despite these initiatives, justice for children is often overlooked in natural disasters. Even during the large scale humanitarian response following typhoon Haiyan in the Philippines, most NGOs, government agencies, and UN agencies acknowledged the issue but there were no concrete projects or programmes: "After such an emergency, local government agencies are not prepared nor have the capacity to respond to case management needs."<sup>181</sup>

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<sup>175</sup> Inter-Agency Emergency Standard Operating Procedures for Prevention of and Response to Gender-Based Violence and Child Protection in Jordan. IASC, 2013.

<sup>176</sup> Plan: Because I am a Girl. The State of the World's Girl 2013: In Double Jeopardy: Adolescent Girls and Disasters, 2013, p. 72.

<sup>177</sup> Respondent #13.

<sup>178</sup> Cf. for example Eynon, A. (2014). Responding to the Worst Forms of Child Labour in Emergencies. Global Protection Cluster: Child Protection Working Group. p.50; see also case study on Aceh below.

<sup>179</sup> United Nations High Commissioner for Refugees. The world turned upside down: A review of protection risks and UNHCR's role in natural disasters. Geneva. (2013). p 28, para. 94.

<sup>180</sup> Respondent #16.

<sup>181</sup> Respondent #9.

Cases of criminality increased in a couple of municipalities affected by Haiyan two to three months after the storm hit, according to one informant interviewed. In these municipalities, children were used by adults to break into houses by entering through small windows and, once inside, the child opened the front door. The police have caught both adults and children involved in such crimes.<sup>182</sup>

In Haiti, crime and urban violence were a major concern before the earthquake. Improvements in the security situation had brought the weaknesses of the judicial system to the fore. Particular concerns were arbitrary arrests, unlawful police custody, ill treatment and excessive use of force.<sup>183</sup> Directly after the earthquake in 2010, the focus of attention was on separated children and family tracing.<sup>184</sup> Preventing trafficking was also a major concern. The global CPWG supported agencies to distribute a set of guiding principles for unaccompanied and separated children, designed to help the government and responding organisations protect children left extremely vulnerable by the earthquake<sup>185</sup>. Reports estimate that between 1000 and 2000 children left Haiti as adoptees but it is unclear whether any children were trafficked for child labour or sexual exploitation, or sold to inter-country adopters.<sup>186</sup>

Five years after the earthquake, many of these problems persist in Haiti. Since statistics are mostly unavailable, UNICEF has started to implement a data management system on children in detention, and guidelines have been issued on how to deal with children that come in conflict with the law, suggesting that this topic is only slowly gaining importance. "In the emergency preparedness strategies, child protection was included as well as strategies on street children, but justice for children as such was not an issue."<sup>187</sup>

**Case study: Aceh after the tsunami.**  
**Indonesia**

A dedicated effort by humanitarian organisations after the Indian Ocean tsunami in 2004, prevented concerns of trafficking of children for adoption or for sexual exploitation and addressed other immediate child protection concerns. It led to the establishment of women and children police units and eventually also led to the adoption of a new justice programme, including progressive approaches to restorative justice. As opposed to the example of Haiti, the tsunami in Indonesia provided some good opportunities for justice for children with funding readily available and good initiatives between the government and humanitarian agencies working together. The experience from Aceh, also contributed to the elaboration of a new juvenile justice law that entered into force in Indonesia in 2014.

How issues related to justice for children can be made a priority after natural disasters was demonstrated by Indonesia after the tsunami hit Aceh in 2004 (see

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<sup>182</sup> Ibidem.

<sup>183</sup> Save the Children Canada and Plan International Canada. *The Impact Of Armed Violence On Children In Haiti*. Peacebuild, Forum On Children And Armed Conflict. Ottawa. (2008). p.21.

<sup>184</sup> Key informant interview #18.

<sup>185</sup> Child Protection Working Group, 2010, Unaccompanied and Separated Children Following the Haiti Earthquake January 2010, Child Protection Working Group Guiding Principles: <http://www.crin.org/docs/CPWG%20Guiding%20Principles%20Haiti%20FINAL%2019%20Jan.docm>

<sup>186</sup> Eynon, A. (2014). Responding to the Worst Forms of Child Labour in Emergencies. Global Protection Cluster: Child Protection Working Group. p.50.

<sup>187</sup> Key informant interview #18.

boxed case study above).<sup>188, 189</sup>

## Lessons learned

The examples in this section are based mainly on the experience of the practitioners who took part in this scoping review. Justice for children in emergencies is still quite an unknown and fragmented field, with organisations trying a variety of approaches. The knowledge base is insufficient to decide in a general manner what works and what does not, and of course rigorous contextual analysis is necessary before general statements can be made about which approaches are most suitable for any given response. Nevertheless, the following section provides examples of areas where lessons have been learned and about what appear to be promising approaches.

### Funding for Justice for children activities

As the table below shows, 90% practitioners indicate that the lack of donor interest in justice for children is either extremely or very significant. At least 69% view the fact that donors fund justice for children mainly via development programmes as an extremely significant or very significant barrier to addressing the issue in emergency settings. In addition, 65% of participants thought it to be significant or very significant that short term funding – as is mostly the case in emergencies -- is not suitable for justice for children programming.

In the Philippines there was no budget for awareness-raising, training and capacity building on the progressive Juvenile Justice Welfare Law, and a similar situation has been described in Indonesia.<sup>190</sup>

It obviously depends on the type of crisis, but when facing mounting needs of a huge population displacement, often the situation of children in contact with the law gets overlooked as resources are overstretched. When attention is finally given to this Standard, funding is already decreasing, thus making it very difficult for the various actors to decide what to prioritise.<sup>191</sup>

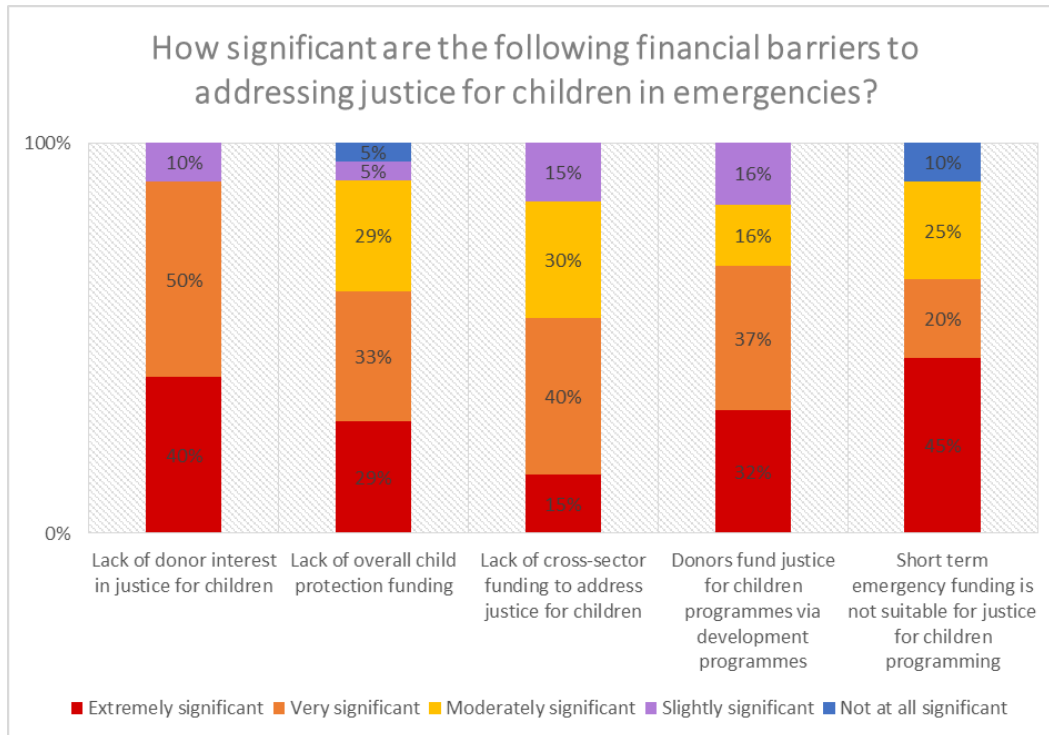
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<sup>188</sup> UNICEF. Children and the 2004 Indian Ocean Tsunami: UNICEF's Response in Indonesia (2005-2008) Child Protection Evaluation Report. New York. (2009), p.iii.

<sup>189</sup> Key informant interview #3.

<sup>190</sup> Key informant interviews #3 and 4.

<sup>191</sup> Respondent #4.



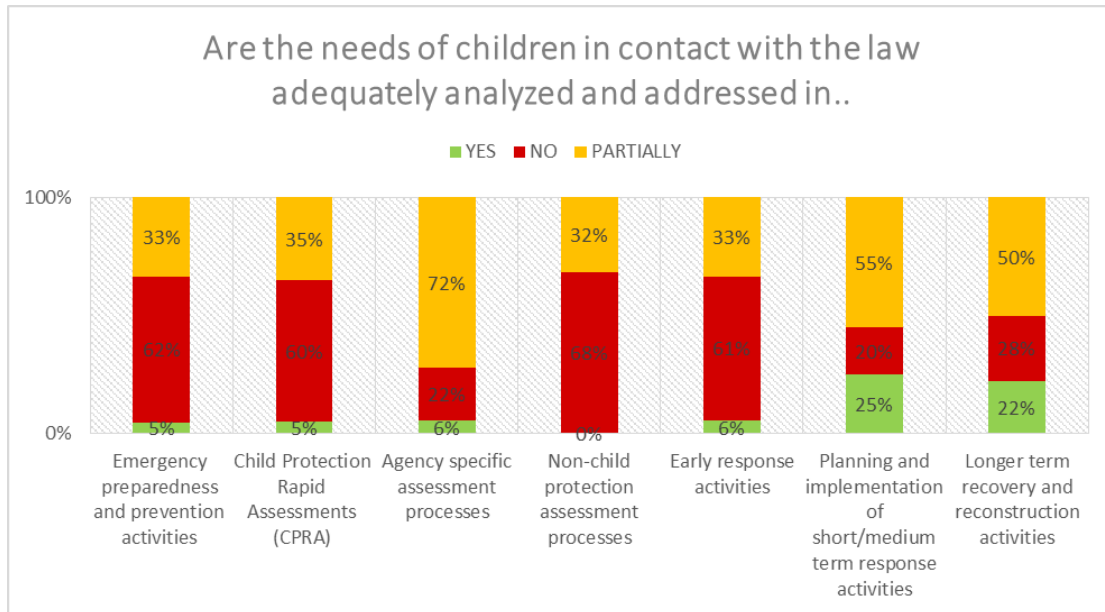
### Analysis, preparedness and mapping

From the diagram below it becomes clear that most survey respondents did not think that there is sufficient analysis of the needs of children in contact with the law in emergency situations. Non-child protection assessment processes have been particularly poorly rated in this regard with 68% of respondents stating that needs of children are not sufficiently analysed or addressed. For emergency preparedness and prevention, 62% of practitioners stated the needs of children are not sufficiently analysed or addressed and 33% thought that they are only partially well analysed or addressed. Similarly, early response activities have been poorly rated. Experience also indicated that especially in the early stages of an emergency, justice for children is often inadequately addressed.

The need for adequate mapping and analysis of actors working on justice for children in emergencies is mentioned in the preparedness and response activities of Standard 14. Practitioners mentioned that it was particularly important to have an accurate map of the detention centres and a network of focal points for monitoring and reporting, to know who does what in the field, to ensure immediate responses and monitoring of situations where children were detained abusively during the conflict; to strengthen the judicial system; and to protect children in the context of reconstruction and peace building.<sup>192</sup> Yet, some participants also pointed out that many of these activities were less realistic in the early stages of an emergency.<sup>193</sup>

<sup>192</sup> Respondent #20.

<sup>193</sup> Key informant interview #13.



Of all phases of the juvenile justice procedure, it is during first contact, “on arrest and immediately thereafter while in police custody, that an accused juvenile is most likely to become the victim of torture and other forms of cruel treatment.”<sup>194</sup> Girls can be especially vulnerable to sexual harassment and abuse on arrest and during interrogation. At this stage the juvenile is particularly likely to be without or even denied the presence of parents, social workers, and legal representatives who could provide protection against such acts. Access by these and humanitarian actors during this critical phase in the process might be even more difficult in an emergency, either because detaining authorities obstruct access to places where children are detained and interrogated, the nature of the emergency makes access difficult or dangerous or because there are too few actors on the ground. Certain organisations, for example the ICRC, UNICEF or peacekeepers might have access to children at this stage during emergencies but their institutional working practices and their concern to maintain confidentiality in the interests of the child mean that little documentation or statistics can be shared.<sup>195</sup>

In conflict situations, the Monitoring and Reporting Mechanism established under Security Council Resolution 1612 and developed further through other resolutions on children and armed conflict has proven an important tool to flag existing violations, map both the actors allegedly responsible and the locations in a country or region where they occur. Expanding the Monitoring and Reporting Mechanism to explicitly include the issue of detention of children could help professionals in a peacekeeping context to better understand the trends and patterns.<sup>196</sup>

In general, sharing of data on juveniles in prisons, connected with advocacy and regular monitoring helps to ensure that juvenile detention is reduced to a minimum.<sup>197</sup>

Very few programmes in humanitarian settings seem to focus exclusively on justice

<sup>194</sup>UNICEF International Child Development Centre. Juvenile Justice. *The Innocenti Digest*. (1998), p. 8.

<sup>195</sup>Key informant interview # 8.

<sup>196</sup>Respondent #3.

<sup>197</sup>Respondent #8.

for children, which makes it also harder to evaluate what is being done for children and analyse progress. Often, the humanitarian literature concentrates on several protection themes such as: protection in situations of armed conflict; protection from sexual exploitation and abuse and from SGBV; the protection of children; the protection of refugees.<sup>198</sup> As has also been experienced during this review, justice for children is fragmented over several topics, approaches, and situations, which makes evaluation very difficult.

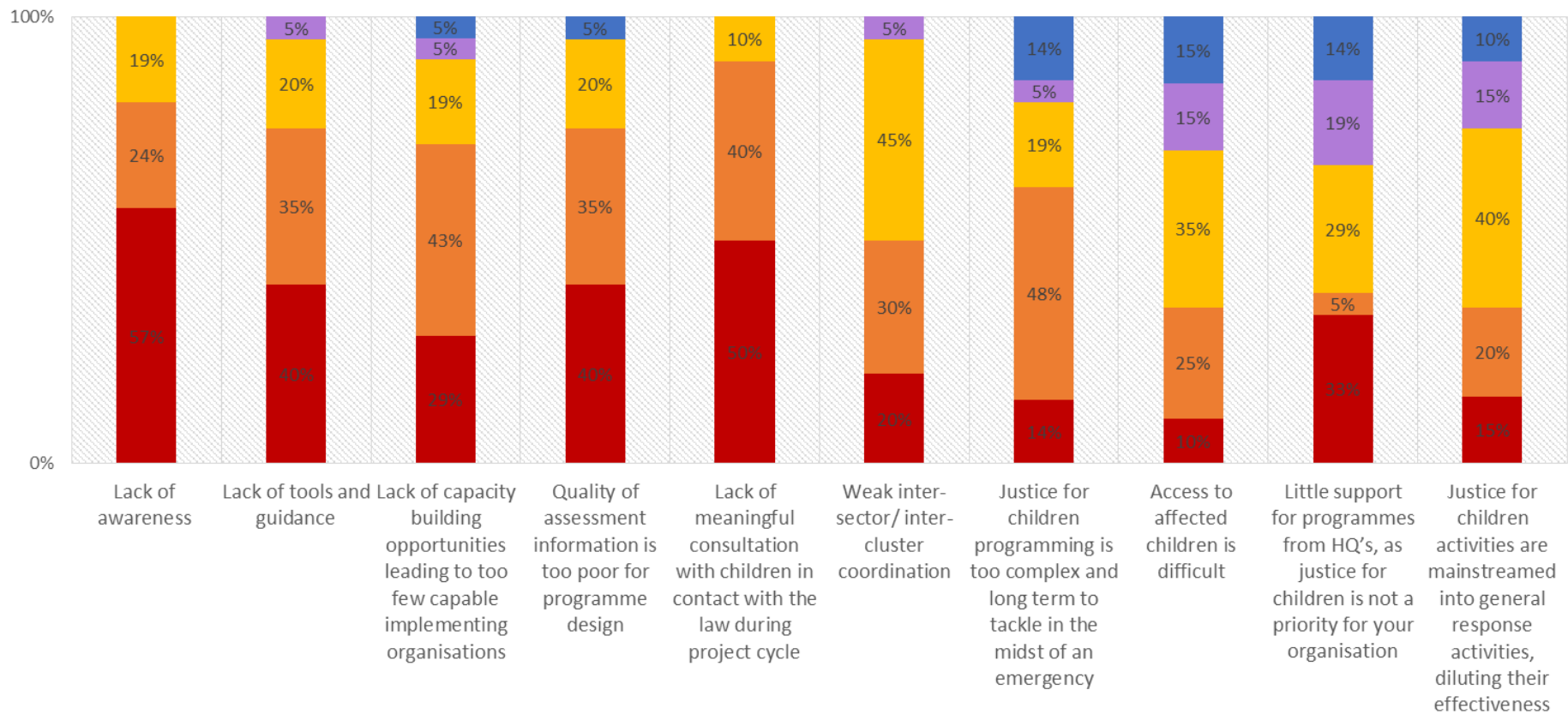
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<sup>198</sup>Bonino, F. (2014) Evaluating protection in humanitarian action: Issues and challenges. ALNAP Working Paper. London: ALNAP/ODI, p. 9.



## How significant are these non-financial barriers to effective emergency programming for justice for children?

■ Extremely significant  
 ■ Very significant  
 ■ Moderately significant  
 ■ Slightly significant  
 ■ Not at all significant



## System-building

For 81% of respondents, the lack of awareness about the issue of justice for children and Standard 14 was the greatest barrier to implementing effective programmes. Building a strong, crisis-resilient, child-friendly justice system has been mentioned as one of the most effective measures to prevent children from coming into contact with the law in humanitarian situations.<sup>199</sup> Most system-building initiatives happen in development contexts and not in humanitarian situations; indeed, there is some evidence to suggest that only in contexts where justice for children initiatives had already been undertaken *before* the emergency, could the activities foreseen under Standard 14 be carried out with some effect for the children caught in the emergency. This is especially true with regard to developing new child-friendly legislation, including juvenile justice laws and amending current criminal legislation – these activities happen almost always pre-emergency in a development context or several years post-emergency. Initiatives undertaken post-emergency in the recovery period also provide good opportunities. Recent examples where child-friendly legislation has been adopted after interventions of justice for children actors in the post-emergency period are the DRC, which adopted a child protection law in 2009 and Indonesia, which adopted a progressive juvenile justice law in 2014.<sup>200</sup>

“Child Protection Units within the police are no good if they only work when the sun is shining.”

*Key informant interview*

Cases shown above indicate that system-building initiatives undertaken before the emergency and which do not have an explicit emergency preparedness component, often do not stand the test of crises.<sup>201</sup> However, even those measures that evolved out of a crisis do not guarantee their effectiveness in a new disaster. Indonesian law for example, does not foresee any special provisions for emergencies and the capacities to implement it effectively are not yet there – “at the moment, the authorities would be as helpless in case of emergency as they were before the tsunami”.<sup>202</sup> In the Philippines, the Juvenile Justice and Welfare bill had been passed in 2006 but implementation has also been slow. The situation of children affected by armed conflict in the Philippines also has justice-related aspects, with the MRM up and running in the country for some years. However, these measures did not seem to prepare actors for the situation after Typhoon Haiyan.<sup>203</sup> A similar situation could be seen in Haiti.

For 75% of respondents, the lack of tools and guidance was either extremely or very significant. While significant guidance exists on what effective legislation should look like and tools on training on juvenile justice and other related issues, these are rarely adapted for emergency contexts. However, taking these specific situations into account would be critical in establishing an effective basis for system-building in humanitarian settings.

More in-depth research and analysis would be needed to find out in detail what makes a system resilient to crisis. The effectiveness of several kinds of national legislation could also be an interesting topic for analysis. A key question is just how far national legislation is already aligned to international norms, standards and guidance.<sup>204</sup> This, combined with the fact that there is a recognised lack of quality assessment and data, may have led 75% of practitioners that responded to the survey to state that this might hamper effective programme design in an extremely or very significant way.

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<sup>199</sup>Key informant interview #6.

<sup>200</sup>Key informant interviews #3 and 19.

<sup>201</sup>Key informant interview #6.

<sup>202</sup>Key informant interview #19.

<sup>203</sup>Key informant interview #4.

<sup>204</sup>See annex for a detailed overview.

International guidance is constantly evolving with the most recent adoption of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice. Unfortunately, the model strategies contain few references explicitly designed for humanitarian situations. Furthermore, some pressing issues that increase vulnerability of children in emergencies, such as harmful practices, were not reflected in the strategies due to the lack of political will by some UN member states.<sup>205</sup> Norms and standards as well as tools and guidance exist, but they need to be applied and to a larger extent adapted to the humanitarian context.

A good example is Jordan, where humanitarian actors and national authorities have adopted Inter-Agency Emergency Standard Operating Procedures for the Prevention of and Response to Gender-Based Violence and Child Protection, which includes a section on Juvenile Justice and a referral pathway.<sup>206</sup> The Juvenile Police Department is present in the refugee camps and are collaborating with actors like UNHCR when a refugee child is arrested or detained.

Few respondents or interviewees had any successful strategies to report on how to encourage diversion in emergency situations. However, in March 2010 in Afghanistan, a Letter of Agreement was signed by the Ministry of the Interior, the Ministry of Justice, the Ministry of Social Affairs, Martyrs and Disabled, the Ministry of Education, the Attorney General's office and the Supreme Court. This agreement introduced the role of social workers in complementing the work of Police and Prosecutors. At the arrest and investigation stages and to ensure that detention and custodial services are used only as a last resort and for the shortest possible period of time. In the Letter of Agreement, each ministry commits to support the use of alternatives to detention and close collaboration between social workers, police and prosecutors. The use of a social inquiry report, which looks into the background, family situation and characteristics of the child in conflict with law should enable the judge to make a better decision on what will be the most appropriate measure in the best interest of the child.<sup>207</sup> In line with this development, War Child UK in Herat, Western Afghanistan provided training to social workers in preparing the social inquiry reports, which are submitted to the prosecutor's office. Between 2008-2012, a total of 118 children benefited from alternatives to detention in heart, the highest number of cases where children benefited from alternatives to detention throughout Afghanistan. The increasing use of alternatives to detention in Juvenile Justice can be seen as a direct consequence of the training provided to police officers and prosecutors and of the involvement of social workers.<sup>208</sup>

In Liberia, close collaboration with UNMIL's Legal and Judicial System Support Division and Juvenile Courts has helped ensure that juvenile cases pending before Magisterial Courts are transferred to the Juvenile Court and that juveniles are released into the custody of their relatives pending determination of their cases by the court.<sup>209</sup> UNMIL also supported the Bureau of Corrections to ensure that the juvenile detainees admitted to prisons are accommodated separately from the adults to protect them from bad influences as required by the international protocols on treatment of young offenders.<sup>210</sup>

The examples of street children and violent crimes against children show the importance of system-building and coordination. Coordination between the police force, general prosecution and social services are to be included in system-building initiatives, to ensure that any social or legal interventions play in the best interests of the child and take their child's long-term welfare into consideration.

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<sup>205</sup> Key informant interview #7.

<sup>206</sup> Respondent #7.

<sup>207</sup> Respondent #23.

<sup>208</sup> Ibidem.

<sup>209</sup> Respondent #8.

<sup>210</sup> Ibidem.

No matter what stage of the emergency, effective coordination with police and security forces, including military and intelligence forces, facilitates better access to children in detention, in contact and conflict with the law. Such coordination also leads to more effective advocacy for their release and ensures proper implementation of due process.<sup>211</sup>

Corruption -- as in Afghanistan, Somalia, and South Sudan -- can also be an important challenging factor to improving the juvenile justice system. Emergency situations often make things worse. It has not been possible to explore this aspect in this review but it would be important to analyse in detail to what extent corruption is having a negative impact on justice for children.

### Advocacy with authorities and community engagement

Advocating for the release of children in detention is one of the key response activities foreseen under Standard 14. Although mentioned by several respondents, it was difficult to get a coherent picture of what is being done in terms of prevention and response within existing programmes, as well as current gaps. It seems that coordinating monitoring activities and exchanging data on detention is one weak point (see also below under coordination). Another issue with assessing these activities effectively is the confidential nature with which many organisations undertake monitoring and advocacy activities for the release of children. The ICRC is in many cases the only organisation that is both present and able to get access to detention facilities but at the price of not being able to share data and details with other organisations in country and globally.<sup>212</sup> Both UNICEF and UN DPKO missions also monitor and advocate for the release of detained children in places like South Sudan, DRC and Somalia.<sup>213</sup>

In addition, advocacy for immediate measures after an emergency strikes can be important. UNICEF advocacy in the early stages of the response to the tsunami in Indonesia seems to have contributed significantly to the prevention of children being moved out of Aceh and therefore becoming victims of trafficking or in contact with the law through dubious adoption cases of separated children.<sup>214</sup>

In Côte d'Ivoire, the establishment of a tracking system for children in detention facilities has been effective, as has advocacy for the liberty of children in abusive detention.<sup>215</sup>

In Egypt, groups of social workers have been present during political protests – an unusual but effective approach to protect children from arrest.<sup>216</sup>

In Colombia, successful advocacy with officials has helped prevent the government renegeing on promises/steps to harmonise local law with the international child rights commitments and standards.<sup>217</sup>

Like advocacy with policy makers and government institutions, raising awareness among children, their parents and community is an essential preventative measure. It serves to alert them to actions that could bring them in conflict with the law. Experience shows that enabling girls and boys to talk about their problems, go to school, learn a skill, and get involved in organised recreational activities can distract or prevent them from entering into conflict with the law.<sup>218</sup> Yet engaging children and their communities on issues relating to justice for children is often neglected. 90% of respondents believed that the lack of

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<sup>211</sup> Respondent #3.

<sup>212</sup> Key informant interview #8.

<sup>213</sup> Cf. Secretary General's annual reports on Children and armed conflict and DPKO mission reports.

<sup>214</sup> Eynon, A. (2014). Responding to the Worst Forms of Child Labour in Emergencies. Global Protection Cluster: Child Protection Working Group. p. 25.

<sup>215</sup> Respondent # 20.

<sup>216</sup> Respondent #11.

<sup>217</sup> Respondent #2.

<sup>218</sup> Respondent #5.

meaningful consultation with children in contact with the law during the project cycle is an extremely or very significant barrier to effective emergency programming.

The ground for these activities must clearly be prepared in the emergency preparedness phase. Starting only when the emergency strikes might be too late and there are limits to what can be achieved during the early stages of a response/crisis. Raising awareness must be implemented as a preventative measure and must be deeply rooted in the community if it is to remain effective in an emergency situation.

Nevertheless, continuing to engage with the population during an emergency is fundamental to help reach the most vulnerable. In emergencies, there is usually a fine line between a child in conflict with the law and a vulnerable child in need of protective measures;<sup>219</sup> humanitarian actors need to be aware of how the two concepts are closely interlinked. Awareness-raising has to happen irrespective of how child-friendly local juvenile justice laws are. It can be helpful to create a child protection committee or a community network for Child Protection and Advocacy; although ideally, these community networks need to be rooted in the pre-emergency period.<sup>220</sup> Defence for Children International started setting up such community networks in Palestine since 2007. Originally financed by UNICEF, the Ministry of Social Affairs has increasingly become involved demonstrating some success in institutionalising the networks.<sup>221</sup> In focus group discussions with children at the JRC in Herat, Afghanistan some of the girls said that they were not aware that leaving home could result in their detention. A 16-year-old married girl from a village went to Herat city to visit her family but was arrested by police for running away from home and was put in detention. Cases like this can be prevented if the girl and her family were aware of the consequences of the action.<sup>222</sup>

To provide support to families whose children are in conflict with law, War Child UK in the western region of Afghanistan is piloting a model on establishing family support groups. Family members of children in conflict with law who were released from JRC meet twice a month in a session facilitated by trained social workers. The idea is to lessen the social stigma by bringing together these families and building a peer support system for girls and boys who were released from detention. Affected families support each other and raise community awareness to help prevent children from entering into conflict with law. They are also given psychosocial support and support with parenting skills to help them understand their children better and to provide guidance.

When the formal justice system has broken down, ensuring community-level programmes for alternative measures (such as “vigilance committees”) can also be helpful, although they have their own set of risks and problems for children.<sup>223</sup> In the MENA region, Terre des hommes is currently exploring how to engage with traditional, customary and community-based dispute resolution to encourage a more holistic approach to access to justice that takes into account formal and informal mechanisms.<sup>224</sup>

It is also helpful to involve community leaders and service providers in advocacy sessions to prevent and respond to violations of children’s rights. Mediation and conciliation with victims, as well as parental involvement and community involvement, all have a positive impact. Effective interventions include systematic follow-up with parents of young offenders and coordinated case management.<sup>225</sup>

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<sup>219</sup> Respondent #4.

<sup>220</sup> Respondent #13.

<sup>221</sup> Key informant interview #11.

<sup>222</sup> Respondent #23.

<sup>223</sup> Respondent # 22.

<sup>224</sup> Respondent #10.

<sup>225</sup> Among others, Respondent #17, #19.

However, community-based mechanisms can be a double-edged sword; community harmony may supersede the interests of individual children when it comes to serious and/or highly stigmatised crimes may be hidden.<sup>226</sup>

### Capacity building and training

Capacity building was the activity most frequently mentioned by respondents, both in terms of the programmes undertaken in the past, as well as regarding its importance for the future. 72% cited the lack of capacity building, training and mentoring as either an extremely or very significant barrier to effective programming for justice for children.

In developing training toolkits for police and other security forces, stakeholders in several countries have expressed the need to include practical exercises on how security forces can deal with cases involving children that have been victims of trafficking, refugee or migrant children that get in contact or conflict with the law outside their country of origin.

*IBCR training toolkits for Burkina Faso, Cote d'Ivoire, Niger, Yemen, Tchad*

Capacity building efforts have been general child protection training – both as a preventative measure, as well as responding to specific country situations or issues (i.e. unaccompanied and separated children).

Raising awareness and capacity building around child-friendly juvenile justice for judges, lawyers, police officers, personnel working in detention facilities, and social workers have in many situations helped these actors to know what the rights of children are, what alternatives could be used and how they should be applied in their daily work.<sup>227</sup>

Additionally, training in mediation at police stations is a useful tool.<sup>228</sup> In Côte d'Ivoire, this has been done with local community leadership, municipal social services, law enforcement officials and the judiciary. The hope is to bring these stakeholders together and form a venue for continuous dialogue to ensure the best interest of the children in conflict with the law.<sup>229</sup> Also, training police and local authorities specifically on the rights of (child) refugees has proven helpful, as has improving prison conditions and training those workers.<sup>230</sup>

In Cairo it proved helpful to set up teams of social workers in areas where political protests were ongoing or imminent. Social workers talked explicitly/directly to groups of children about the risks they might face. Having prior relationships with these children (often children who were living in shelters) helped immensely, as did the offer of food and activities in the shelter.

*Respondent to the survey*

Similarly, in Lebanon, IRC found that training on children's rights, policy and more specifically, on the national legislation on child protection, has proved quite successful. According to the national provisions, juvenile justice focal points should be present in all the police stations but due to limited resources, this is often not the case. Skills-based learning on communicating with children was also highly appreciated by the police, who often found themselves lost as to what to do in

the absence of social workers. Bringing them together with social workers, judges, and other actors was a useful exercise to elaborate recommendations and operational procedures for cases of street and working children despite limited resources<sup>231</sup>

In Egypt, the establishment of a network of committed and capable lawyers to represent children arrested during political protests ensured that nearly all had representation.

<sup>226</sup> Key informant interview #2.

<sup>227</sup> Respondent #5.

<sup>228</sup> Respondent #17.

<sup>229</sup> Respondent #14.

<sup>230</sup> Respondent #17.

<sup>231</sup> Respondent #14.

Success was contingent upon the commitment of lawyers to act without payment and to travel to different police stations across each city to track down minors suspected of being in detention. It is important to document individual cases to build up a cumulative picture of treatment of children arrested during political protests to counter arguments that ill-treatment a one-off event affecting just a few girls and boys.<sup>232</sup>

Since 2009, the International Bureau for Children's Rights (IBCR) has been engaged in raising awareness on child rights and the principle of the best interests of the child in the context of police practice. Over the course of its engagement, there has been the realisation that while many police forces seemed to master the vocabulary and terminology of children's rights, the actual meaning and practical application remained vague. Moreover, while several police institutions noted that they offer child rights training, these mostly consisted of a one-time session carried out by external consultants. These training sessions were not evaluated, were often too short and did not appear to have any impact on the integration of children's rights into police practice.<sup>233</sup> Likewise, the reform towards a more child-friendly judicial system often only concentrates on legislation and leaves the law enforcement aside. As a consequence, competency-based, practical training -- is a mandatory component of the curricula of police training and also integrates other actors that play a role for justice for children -- has been identified by the IBCR, UNICEF and other partners as a promising practice. Between 2012 and 2014, 20 countries in Africa and the Middle East have participated in national programmes, and in many cases schools for magistrates and social workers are also taking part in the project.<sup>234</sup> In a sustainable way, these various projects are also instrumental to support setting up child-friendly courts and spaces in police stations and in establishing family and child protection units. While they generally work better as emergency preparedness activities, there has also been some success in establishing the programme in post-conflict situations, protracted crises or low intensity conflict like in Northern Iraq, Chad or Yemen.<sup>235</sup>

In Afghanistan, a project funded by UNICEF provided training to police officers on child protection, child-friendly arrest and alternatives to detention. The police officers who participated in these trainings admitted that in the police training institutions in Afghanistan they had previously not been taught the different procedures of arresting a child compared to arresting an adult and generally did not have a good understanding of child rights and child protection.<sup>236</sup> In response to this, War Child UK has developed a child protection induction module for police officers currently being piloted at the Regional Police Training Centre in Western Afghanistan. By including child protection in the induction package for newly recruited police in the service, it is hoped that police will act in a more child friendly manner and will opt for alternatives to detention rather than sending children to JRCs.

Training and education on child rights and child protection for military before, during and after armed conflict has also shown to be an essential preparedness activity. In times of emergency, military forces and peacekeepers are often among the few actors on the ground that can protect children and their communities. On the other hand, they can also aggravate the risks for girls and boys during emergencies. Sexual exploitation and abuse,

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<sup>232</sup> Respondent #11.

<sup>233</sup> International Bureau for Children's Rights. Fifth Workshop on the Integration of the Six Core Competencies on Child Friendly Policing into the Training and Practise of Police Officers and Gendarmes in Africa. Workshop Report. 2013. Cf. p. 12. Cf. also: International Bureau for Children's Rights. Justice for Children in the Middle East and North African Region, especially the Family and Child Protection Units: Regional Workshop Report 2013. Montreal. (2013).

<sup>234</sup> These countries are: Afghanistan, Benin, Burundi, Cameroon, Chad, Côte d'Ivoire, Djibouti, Ghana, Guinea, Iraq, Jordan, Libya, Morocco, Niger, Nigeria, Senegal, Togo, Tunisia, Yemen.

<sup>235</sup> International Bureau for Children's Rights. Police Training on Children's Rights in the Republic of Yemen: Needs Assessment Report. Montreal. (2014). IBCR, Cartographie Et évaluation du système de protection de l'enfant et de la formation des forces de sécurité sur les droits de l'enfant au Tchad. Montréal. (2014). & International Bureau for Children's Rights. *Police Training on Children's Rights in The Kurdistan Region of Iraq: Mapping Report*. Montreal. (2014).

<sup>236</sup> Respondent #23.

abuse of power and alcohol-related incidents are prevalent problems in peacekeeping settings.<sup>237</sup>

There is nearly two decades of global experience in training the military on children's right to protection, including justice for children. Save the Children started its work in Africa with a focus on pre-deployment training of peacekeepers in 1998. In some countries, these training programmes have been adapted to the national context, as in Côte d'Ivoire where Save the Children, in close collaboration with the national armed forces, has established a training programme that includes situations concerning children before, during and after conflict.<sup>238</sup> UN DPKO has also stepped up the training programmes for its peacekeepers with an initial and a specialised training package on children's rights that include several aspects of Justice for Children in emergencies.<sup>239</sup> An improved training package for the police component in UN DPKO field missions on child rights is also underway. An analysis of existing training material for the peacekeeping context for the new UN DPKO tools has shown that justice for children or juvenile justice is only rarely mentioned in this context: of 90 training documents analysed only 12 even mentioned juvenile justice at all.<sup>240</sup>

### The importance of partnerships

When talking about access to children in detention or in conflict areas, several interlocutors stressed the importance of long-running and tested partnerships. When an emergency strikes, aid providers can quickly access most regions of the world to deliver assistance; however, when it comes to creating longer-term interventions, basic humanitarian knowledge is insufficient. "History, culture, politics, physical environment, and even personalities play major roles in what will work and what won't for children, and these vary country to country, region to region, and village to village. Taking the time to understand the local context and to work with the community can make the difference between a response that is clumsy or deft; short-term or sustainable; divisive or inclusive; promotes child participation or shuts them out."<sup>241</sup> In many instances, local partners provide crucial access to quality information, networks, a certain area, and groups of children and their

#### **Working with partners – a promising practice**

"When choosing partners for working on the difficult Syrian crisis, it has proven a key asset that Save the Children International in Jordan has a dedicated staff member that is responsible for assessing partners properly and analysing their political agenda. "

*Key informant interview*

communities. If partners have to be chosen quickly and staff recruited at short notice, building confidence can be a challenge. Understanding the political agenda of local staff is crucial and can in some cases affect justice for children negatively if that agenda is politically motivated.

Relying on existing national NGOs can make a positive difference,

where they have been in place for decades and are credible. They know the field better than international NGOs and the fact that they are indigenous gives them the advantage of having a trustworthy relationship with the judicial authorities, as well as gangs or armed actors. The fact that they speak the local language, and have lived the circumstances themselves gives them additional advantages.<sup>242</sup> In Central African Republic, some local

<sup>237</sup> Respondent #3.

<sup>238</sup> Respondent #14.

<sup>239</sup> United Nations Department of Policy, Evaluation and Training. Specialized Training Materials on Child Protection for UN Peacekeepers: Trainer's Guide. (2014.) Available at: <http://peacekeepingresourcehub.unlb.org/PBPS/Pages/Public/Home.aspx> [Accessed 3 March 2015].

<sup>240</sup> UN Department of Peacekeeping Operations, Child Protection Training for UN Peacekeepers Phase I, 2012, internal document.

<sup>241</sup> Sheahan, F. Catalysts For Change: A Thematic Review Of Save The Children Sweden's Collaboration With Civil Society In Emergencies. Save The Children Sweden. Nairobi. (2009), p. 56.

<sup>242</sup> Respondent #16.



NGOs knew the *Seleka* and *Antibalaka* rebel leaders well, and had formed a trusting relationship. They were thus able to identify a number of children involved in the conflict and to negotiate their release, as well as find a solution for children accused of emergency-related witchcraft. Local NGOs also work with the transitional government on children in prison. The biggest problem at the time is that the justice system is not effective nationwide, with the exception of Bangui.<sup>243</sup>

Hiring or working with local lawyers to secure the release and fair representation of refugee children has also been an effective approach.<sup>244</sup> In Egypt, Terre des hommes has been working with local lawyers for years -- relationships which proved essential during the political crisis.<sup>245</sup>

## Coordination

Tackling issues related to justice for children requires coordination among a range of actors and sectors. IRC for example, is trying to integrate an economic recovery component into the SaWC project in Lebanon for 2015. In order to provide an alternative to children working on the street, families and adolescents need to have access to livelihood opportunities. However, few examples that are tackling root causes seem to also make the connection with justice for children.

50% of respondents thought that weak inter-sector and inter-cluster coordination is an extremely or very significant obstacle to effective programming and 45% believe that it is at least a moderately significant barrier.

Most of the interlocutors for this review came from the child protection sector, some of them from a general protection background. Justice sector reform and Rule of Law programmes are also addressing the issue but could not be reached during this review.

Cooperation with the SGBV cluster seems stronger. In Liberia, the construction of detention facilities has been financed with funds from the joint SGBV programme, which has allowed for designated space for juvenile offenders.<sup>246</sup>

Large-scale national or multinational programmes funded by institutions such as the World Bank (where governance or rule of law components may touch on key aspects of juvenile justice) may provide models of coordination.<sup>247</sup> However, such programmes could not be analysed in the scope of this report.

## Working with the informal justice system

The question of working with the informal or traditional justice systems has been mentioned repeatedly throughout the review both as a challenge and as a possible solution. In the key actions of standard 14, it is mentioned both in the context of mapping and analysing existing justice systems and mapping programmes and actors; it is also alluded to in encouraging “community-based solutions when the formal system has collapsed.”<sup>248</sup> Access to formal justice in an emergency is often more difficult than access to IJS; the traditional system may have the advantages of being closer to the local population than the formal system and “less intimidating and closer to children both physically and in terms of their concerns”.<sup>249</sup> In addition, informal justice mechanisms may often concentrate on rehabilitation and reintegration, putting less emphasis on detention.<sup>250</sup>

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<sup>243</sup> Ibidem.

<sup>244</sup> Respondent #22.

<sup>245</sup> Key informant interview # 2.

<sup>246</sup> Respondent #8.

<sup>247</sup> Respondent #3.

<sup>248</sup> Child Protection Minimum Standards, p. 129.

<sup>249</sup> UN Secretary General. Guidance Note Of The Secretary-General: UN Approach To Justice For Children. (2008), p.4.

<sup>250</sup> UNDP, UNICEF, UN Women. Informal Justice Systems: Charting a Course for Human Rights- Based Engagement.(2012) p. 122-136.

On a global scale, an ongoing debate surrounds the question of whether or not IJS should be recognised as a legitimate form through which ‘justice’ can be achieved. Similarly, IJS have been criticised for not adhering to international human rights standards, whether in terms of safeguarding equality when dealing with women, children and disadvantaged groups or ensuring that decision makers are accountable for their roles.<sup>251</sup> It has been pointed out that IJS may be detrimental to the protection of children's rights in some cases, especially where the child's right to being heard is violated, the different perceptions of childhood that traditional and customary laws have, the types of violent punishments these systems may engage in, and the fact that the rights of children may be violated, as they are often vulnerable parties before IJS.<sup>252</sup>

An important question for humanitarian actors is the degree to which the IJS is recognised by the formal one. In Chad, for example it is, and has therefore been included in IBCR's capacity mapping of the justice system. Although not humanitarian contexts *per se*, Cameroon, or Djibouti are other examples, where the formal and informal systems coexist and are to some degree integrated.<sup>253</sup> As has shown above, refugee and IDP camps are also settings where the two systems coexist.

Whatever the advantages and challenges, many practitioners insist that more research and more engagement by humanitarian actors with informal and traditional systems is necessary. The main challenge is that these systems are not well documented, can be difficult to access and work with, and are not necessarily child-friendly.<sup>254</sup> Many practitioners see the necessity however, to work with these systems nonetheless, because for so many children they are the only source of justice. They see a need to influence these traditional mechanisms to be more child-friendly and more in line with international standards.<sup>255</sup> It would be interesting and maybe beneficial for example to see to what extent the Islamic concepts of *Maslahah* or *Istislah* could be aligned with the concept of the best interest of the child.<sup>256</sup>

Given the limitations of a functioning, formal juvenile justice system, in Gaza, Terre des hommes is trying to engage arbitrators, tribal judges and *islah men* towards more positive outcomes for children.<sup>257</sup>

In far-flung communities in post-conflict countries like Afghanistan most people prefer the informal or traditional justice system because of the notion that justice will be served much more quickly than the formal justice system. Recognizing this and being aware of the influence of the religious and community leaders in their communities, War Child UK has engaged with community and *shura* leaders in Western Afghanistan to facilitate community dialogue, address cases of violence against children and to settle conflict within the community rather than prosecute children in the formal justice system.<sup>258</sup>

### Gaps between development and humanitarian work

As demonstrated several times already in this report, there is normally little overlap between development programming and funding for emergency contexts. Development programmes and projects might address justice for children and even include several of the activities listed in Standard 14 both under emergency preparedness and emergency response.

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<sup>251</sup> For a general debate about IJS cf. Wojkowska, E. Doing Justice: How Informal Justice Systems Can Contribute. United Nations Development Programme – Oslo Governance Centre. Oslo. (2006), p. 13-20.

<sup>252</sup> UNDP, UNICEF, UN Women. Informal Justice Systems: Charting a Course for Human Rights- Based Engagement.(2012) p. 122-136.

<sup>253</sup> Key informant interview #21.

<sup>254</sup> Key informant interviews #2, 13, and 21.

<sup>255</sup> Key informant interview #7.

<sup>256</sup> Key informant interview #9.

<sup>257</sup> Key informant interview #12.

<sup>258</sup> Respondent #23.

However, none of the development projects analysed for this review had built in these elements explicitly for the eventuality of an emergency.

In general and by virtue of mandated responsibilities, short and medium term humanitarian interventions do not incorporate many elements of Rule of Law and the judiciary system. However, justice for children is widely viewed to be only effective in the long term. 62% of respondents believe it to be either an extremely or very significant obstacle that justice for children programming is too complex and long term to be tackled in the midst of an emergency.

Also, depending on the complex nature of the emergency situation, the total absence, breakdown or failure of the system prevents effective interaction with humanitarian actors on justice for children issues. This becomes even more challenging when law enforcement institutions are themselves parties to the conflict.<sup>259</sup>

Even in places where there are well-designed juvenile justice programmes in place, there is often a lack of communication between the ongoing programme and the emergency response. This is often due to the fact that activities are implemented in areas not affected by the emergency, and donors do not allow a quick shift in programming.<sup>260</sup>

When conflict has broken out in a setting with an existing development programme, it is standard procedure for UNICEF to convert existing programmes to support emergency programming. In some humanitarian contexts, UNICEF works on justice for children as part of its response; in others, it is a part of the long-term programme of cooperation undertaken with the national government. The exact 'placement' and operation of justice for children programming is context-specific and subject to adaptation and change as the situation in the country evolves.<sup>261</sup>

However, this can also have negative consequences. After a delegation from the Central African Republic attended a regional workshop, the IBCR was making progress towards an agreement with UNICEF CAR to begin a project aimed at integrating permanent, mandatory child protection training in the national training institutions for security forces and justice personnel. However a month later, violence erupted and the country slid into armed conflict. UNICEF decided to reallocate its protection funds to emergency work -- previously intended for the promotion of a greater access to justice. In recent years, UNICEF Cameroon also regularly faces emergencies in the North; sudden shortage of staff and resources directly delays programmes aimed at strengthening the justice system in the South. These examples show that investment in the justice system is often among the first areas to be cut when shifting from development into humanitarian mode.<sup>262</sup>

In the post-emergency phase when humanitarian actors are phasing out as funding dries up and development actors are supposed to come in, there are often big gaps in justice for children programming.<sup>263</sup>

It is clear from this review that any response to justice for children in an emergency must be integrated into existing child protection, justice and rule of law and humanitarian programmes. More emphasis should also be placed on justice in programmes and projects that tackle specific aspects of child protection such as children associated with armed forces and groups, refugee and IDP children, and street and working children. In addition, it needs to be mainstreamed through the programmes and activities of multiple sectors, most notably education, livelihoods, social protection and health.

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<sup>259</sup> Respondent #3.

<sup>260</sup> Respondent #4.

<sup>261</sup> Respondent #12.

<sup>262</sup> IBCR source.

<sup>263</sup> Respondent #5.

## Conclusions

Despite the complexity and fragmentation of the issue and the challenges in implementing justice for children, a number of observations have emerged during this review. Wherever possible, the report distils promising practices.

Practitioners identified that funding and programming models for justice for children are a significant challenge. Programmes often address issues like children associated with armed forces and groups, SGBV, or street children; indeed many of them take justice aspects into account. However, they concentrate their advocacy and capacity building around those groups of children. Other programmes address juvenile justice issues in several country situations but focus mainly on development settings and only minimally on emergency preparedness and response. Other organisations again focus on rule of law or security sector reform in post-emergency settings but do not have a dedicated focus on children and child-friendly systems. The fact that the issue is thematically split over several sectors, and the disconnect between development and emergency programming, also make it hard to evaluate the impact of programmes and projects on children and give clear recommendations and guidance.

Even from this limited review process, it became clear however that important gaps exist between development programmes addressing justice for children and activities or projects undertaken in humanitarian contexts. Anecdotal evidence suggests that the chances are higher for justice for children to be addressed in emergency contexts where programmes have already addressed the issue before the disaster struck and/or if national and international actors make it a priority in the early stages of emergency response. However, there are also notable exceptions for example in Aceh after the 2004 tsunami. More often than not however, justice for children is not a priority in the first phase. System-building activities usually only really pick up again in the post-conflict or reconstruction phase, when actors switch back from humanitarian into development programming. Yet the overwhelming majority of respondents were of the opinion that justice for children should be addressed in all phases of an emergency.

Often the pre-existing systems and capacity building activities were shown to lack resilience. Indeed, the review offered no examples illustrating where systems were indeed fit for a crisis. It is clear that it would need a very strong child-friendly justice system, where international provisions were integrated and actors were well trained, to meet the challenge. Several examples suggest that as soon as there is civil unrest, conflict or even a natural disaster, the competencies acquired through training often no longer apply. Corruption can also be a significant challenge to improving the juvenile justice system or maintaining effective and child-friendly justice.

The only exceptions noted during this review that still proved effective during crises were cases of long-lasting and tested partnerships, both with government officials, lawyers and grass roots organisations, as well as with local communities and traditional leaders. It is clear that such relationships have to be built up carefully over a long period of time and mutual trust has to exist, in order for them to become useful tools in emergency situations for the benefit of children in contact with the law.<sup>264</sup>

Access to children in detention seems to be a difficult subject in general. It obviously depends on the context and it is more difficult to have access to children in politically loaded and conflict environments than after natural disasters. Collection and sharing of

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<sup>264</sup> Cf. for example Squire, J & Hope, K. Journeys of a secular organization in South Lebanon, in: Forced Migration Review online <http://www.fmreview.org/faith/squire-hope> (2014).

intelligence and statistics seem to be difficult for several reasons, either because no (common) database exists, or because interviewing techniques are insufficient, or because organisations that do have access to information cannot share them due to reasons of confidentiality. The clear lack of reliable data makes addressing several of the issues referred to in Standard 14 Justice for Children even more difficult than they already are due to limited access to some of those children. In addition, children who have been detained before the emergency are often forgotten.

Throughout all regions, deprivation of liberty seems to be often used as a first resort, rather than a last, and appears to increase in emergency settings. Children continue to be criminalised for survival behaviours, homelessness and status offences. There is a lack of community-based programmes, which aim to reintegrate and rehabilitate the child. Many children who get involved with the justice system have backgrounds that include abuse, exploitation, unstable family environments and poverty,<sup>265</sup> all of which are exacerbated in times of crisis. However, criminal justice systems tend to ignore the reasons for children's contact with the system, leading to re-victimisation and further violence. A paradigm shift seems far off. While diversion, alternative measures to detention, and restorative justice approaches are difficult to enact in any setting, they are rare in emergencies and have hardly been recorded during this review. The only exceptions noted were cases of community-based and traditional justice mechanisms.

Informal and traditional justice systems play a major role for children in emergency situations if formal security and the judicial infrastructure have collapsed and the judicial staff, lawyers, prosecutors, and social workers are displaced or have disappeared. Informal, non-judicial, and traditional systems of justice are also likely to be disrupted depending on the emergency or can be manipulated by "fake" traditional actors. Nevertheless they are more likely to still function; indeed, for entire groups of children like in refugee communities, IJS might be the only possibility of justice that is accessible. However, there is an ongoing debate about the child-friendliness of many informal and traditional measures. Also, in many cases, IJS are inaccessible to outsiders including humanitarian organisations and very little is known about how they work, who the actors are and how to influence them in the best interest of the child. This is exacerbated by the fact that informal and traditional mechanisms change significantly from setting to setting and from community to community. Therefore, general outside knowledge about one context might not be transferrable to another and lessons learned and promising practices may not apply outside a specific IJS.

## Recommendations for further research and analysis

- An in-depth study on programming and funding for justice for children would help to better understand the way that organisations, programmes and projects currently address the issue. It would be worth taking a closer look at who the main actors are, how programmes and projects are funded in development cooperation, how justice for children is funded in humanitarian crises, and whether or not dedicated justice-related emergency preparedness is built into projects even in a development context.
- A better evaluation of the preparedness aspects in justice-related projects for children is needed, analysing in detail which preparedness measures have impact and what makes a child-friendly justice system resilient even when disaster strikes.
- Further research on IJS and traditional measures, which are applied in relation with children in emergency settings. Even if not transferrable from one context to another,

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<sup>265</sup> Cf. Wernham, M. (2004). *An Outside Chance: Street Children And Juvenile Justice - An International Perspective*. London, Consortium For Street Children, p. 45-50.

lessons learned from working with IJS in emergencies should be collected and promising practices documented.

- In order to explore how to build emergency-resilient justice for children systems it would be important to draw parallels to best practices on how rule of law and security sector reform best works for adults in emergency situations. In addition it seems important to analyse further how corruption negatively affects building and maintaining justice for children in humanitarian settings.
- The Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment,<sup>266</sup> support the recommendation made by the Committee on the Rights of the Child, for a global study to be undertaken on the issue of children deprived of their liberty, including in criminal, immigration and administrative detention or held in private institutions. Such a study could, amongst other things, address the lack of quantitative and qualitative data, research and verified information on the situation of children deprived of liberty worldwide. It would be important for justice for children in humanitarian settings to be adequately addressed through such a study as well.

## Recommendations relating to CPMS No. 14

Recommendations on how the standard can be improved from respondents to the survey

- 69% think guidance and practical tools should be designed around the standard
  - 67% think capacity needs to be built up around the standard, including through distance learning.
- Increasing awareness of the standard has been one of the issues most mentioned by practitioners. As justice for children is a field that is so interlinked between the development and the humanitarian context, it would be indispensable to also draw the attention of non-humanitarian practitioners towards Standard 14. In order to build in emergency preparedness activities relating to justice into development programmes, the challenges and opportunities in humanitarian settings need to be better communicated to actors in other fields/contexts.
  - Guidance and tools on victims and witnesses of crime and on juvenile justice exist but they do not normally take into account the specific challenges of complex emergencies. It is therefore of utmost importance both to adapt existing guidance and tools and to develop new, specific guidance and tools for humanitarian settings; both exercises need to take the specific lessons learned and promising/good practices into account. Guidance and tools should also be developed for those actors who work across sectors; and the issue of justice for children needs to be better addressed in the materials used by other, relevant clusters.
  - The standard addresses both victims and witnesses of crime as well as children in conflict with the law. While most participants agreed with that view, it was also felt that Standard 14 was focussing too much on juvenile justice. It was recommended that indicators and activities listed in the standard should be more balanced in that regard.

<sup>266</sup> Cf. report presented to the Human Rights Council on 5 March 2015 UN Doc. A/HRC/28/68, available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx> (last accessed 2 April 2015).

- Likewise, many practitioners felt that it was unclear how far the Standard was trying to address the complex issue of access to justice. Accountability and redress are two other fields that are not well defined in the Standard, even though they have not been covered in this review. It is recommended that the standard spell out more clearly the scope of its reach, which would also help practitioners to contextualise it in the different humanitarian settings.

Four priorities to be addressed by the CPWG and other actors, as identified by respondents to the survey include:

1. Develop tools and guidance around Standard 14 both as a stand-alone area of programming and one that is woven into other child protection interventions.
2. Increase capacity of child protection actors (including through distance learning) that relates specifically to justice for children in emergency settings.
3. Increase donor interest across sectors, in a way that the gap between development funding and humanitarian programmes can be bridged.
4. Advocate for the development and support of long-term projects to be able to adapt and scale up in emergency responses.

## Annex

### Legal, Normative and Policy Framework for Justice for Children<sup>267</sup>

Legal and normative frameworks refer to legislation pertaining to child protection. They typically include child protection laws, juvenile justice laws, as well as penal codes, among others. Various international legislations provide standards and principles in the field of children's rights and protection. Of particular interest is the Convention on the Rights of the Child, particularly article 37, 39 and 40 which define the principles related to the protection of children in justice system. In addition to the CRC, a set of policies have been developed to provide detailed guidelines on how to deal with children throughout the judicial process.

STANDARDS & NORMS OF REFERENCE	OVERVIEW
<b>Universal Declaration of Human Rights (1948)</b>	The Universal Declaration of Human Rights was proclaimed as a common standard of achievement for all peoples and all nations. It consists of 30 articles, affirming <i>inter alia</i> the right to life and liberty, equality before the law, freedom of movement, freedom of thought and religion, freedom of opinion, right to social security, right to work, right to rest and leisure, and the right to education.
<b>The Geneva Conventions (1949) and Additional Protocols to the Geneva Conventions (1977)</b>	The overarching goal of the four Geneva Conventions is the protection of victims in international armed conflicts. Particularly Conventions III (providing a framework for the treatment and protection of prisoners of war) and IV (addressing the treatment and protection of civilian persons in times of war, occupation and internment) make direct and indirect references to the protection of children. Additional Protocol I, Article 77 (applicable in international armed conflicts) and Additional Protocol II, Article 4 (applicable in non-international armed conflicts) also make specific reference to the protection of children and justice for children. <sup>268</sup>
<b>International Covenant on Civil and Political Rights (1966)</b>	The International Covenant on Civil and Political Rights was the first binding international instrument to establish standards relevant to children's rights in the administration of justice. That instrument prohibits the imposition of the death penalty on children. It also provides for children accused of offences to be separated from adults and brought speedily before a judge, ensures that child offenders are accorded the same rights as other accused individuals in criminal proceedings and requires the provision of criminal procedures that take into account the age and desirability of promoting the rehabilitation of children in conflict with the law.
<b>International Covenant on Economic, Social and Cultural Rights (1966)</b>	This International Covenant adopted on the same day as the one on civil and political rights grants economic, social, and cultural rights to individuals. In particular, it affirms the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as the right of everyone to education without discrimination
<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</b>	The Convention against Torture is designed to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world. Its articles commit parties to taking effective measures to prevent acts of torture in any territory under their

<sup>267</sup> Adapted from the Interagency Panel on Juvenile Justice Website. Available at: <http://www.ipjj.org/en/resources/international-standards/>

<sup>268</sup> For an overview of IHL cf. ICRC, *Summary table of provisions of international humanitarian law and other provisions of international law specifically applicable to children*, available online at [https://www.icrc.org/assets/files/other/ang03\\_04a\\_tableaudih\\_total\\_logo.pdf](https://www.icrc.org/assets/files/other/ang03_04a_tableaudih_total_logo.pdf) [accessed 13 May 2015].



<b>(1984) &amp; its Optional Protocol (2002)</b>	jurisdiction. The Convention has an Optional Protocol which establishes a system of regular visits to places where people are deprived of their liberty.
<b>Convention on the Rights of the Child (1989) &amp; its 3 Optional Protocols (2000, 2000, 2011)</b>	The Convention on the Rights of the Child is the most important legal instrument in relation to juvenile justice because it is legally binding on all members of the United Nations, except Somalia and the USA. Articles with specific reference to juvenile justice include: article 37 and article 40. The Convention has three Optional Protocols: on the involvement of children in armed conflict (OPAC - 2000); on the sale of children, child prostitution and child pornography (OPSC - 2000); and on a communications procedure (OPIC - 2011).
<b>Convention for the Protection of All Persons from Enforced Disappearance (2006)</b>	The Convention contains a clear definition as well as innovative provisions that provide for better prevention, protection, reparation and prosecution of enforced disappearances. It states that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity and stipulates that no one shall be held in secret detention.
<b>United Nations Security Council Resolution 1612 and Resolution 1882</b>	In 2005 Security Council Resolution 1612 established a new monitoring and reporting mechanism (MRM) for grave violations of children's rights in situations of armed conflict. The six categories are: the killing or maiming of children, the recruitment or use of child soldiers, attacks on schools or hospitals, rape or other grave sexual violence against children, the abduction of children and the denial of humanitarian access to children.
<b>ILO Convention No. 138 Minimum Age Convention 1973</b>	This convention determines the minimum age for employment should not be below the age for finishing compulsory schooling, which is generally 15 years old.  There are possible exceptions. For developing countries, this is temporary and in developed countries allowing for apprenticeships or vocational training, the minimum age of 14 years old may be allowable. <sup>269</sup>
<b>ILO Convention No. 182 Worst Forms of Child Labour Convention 1999</b>	Concerns the prohibition and immediate action to eliminate the worst forms of child labour; it determines these worst forms. ILO convention 182 is applicable to all children under the age of 18 years old, unless under strict supervision at the age of 16 years old. <sup>270</sup>
<b>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (2004)</b>	Otherwise known as the Palermo Protocol, the Convention requires States to criminalise trafficking, attempting to traffic or acting as an accomplice in trafficking.
<b>TREATY BODIES' GENERAL COMMENTS</b>	
<b>UN Committee on the Rights of the Child General Comment No. 10 on children's rights in juvenile justice (2007)</b>	The UN Committee on the Rights of the Child General Comment No. 10 (2007) on "Children's rights in juvenile justice" aims to encourage States to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on, and in compliance with, the CRC, providing guidance and recommendations for the framework of this comprehensive juvenile justice policy.

<sup>269</sup>Eynon, A. (2014). Responding to the Worst Forms of Child Labour in Emergencies. Global Protection Cluster: Child Protection Working Group. p. 58.

<sup>270</sup>Idem. p 58.

<b>UN Committee on the Rights of the Child General Comment No 12 on the right of the child to be heard (2009)</b>	This General Comment provides an interpretation of the legal obligations under article 12 of the Convention on the Rights of the Child relating to child's right to be heard in all matters of concern to her or him and for her or his views to be given due consideration.
<b>UN Committee on the Rights of the Child General Comment No 13 on the right of the child to freedom from all forms of violence (2011)</b>	This General Comment seeks to guide States Parties in understanding their obligations under Article 19 of the Convention to prohibit, prevent and respond to all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation of children, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child, including State actors.
<b>UN Committee on the Rights of the Child General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (2013)</b>	This General Comment provides an authoritative interpretation of the relevant articles of the Convention relating to the best interests of the child, as well as guidance to States on how to comply with their obligations under the Convention. It suggests that when assessing and determining the best interests of the child in order to make a decision on a specific measure specific steps should be follow in order to respect the principle of the CRC.
<b>Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices (2014)</b>	The objective of this General Recommendation/General Comment is to clarify the obligations of States parties to CEDAW and CRC by providing authoritative guidance on legislative, policy and other appropriate measures that must be taken to ensure full compliance with their obligations under the two Conventions. The objective is to eliminate harmful practices that are based on sex, gender, age and other grounds and have often been justified by invoking misconceptions related to some disadvantaged groups of women and children.
<b>JUVENILE JUSTICE</b>	
<b>UN Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules' (1985)</b>	The Beijing Rules provide guidance to states on protecting children's rights and respecting their needs when developing separate and specialised systems of juvenile justice. These rules formed the first international legal instrument which comprehensively regulated the administration of juvenile justice within a child rights and child development approach.
<b>UN Guidelines for the Prevention of Juvenile Delinquency: the 'Riyadh Guidelines' (1990)</b>	The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve society at large. Prevention is seen not merely seen as tackling negative situations, but rather as a means to positively promote general social welfare.
<b>UN Rules for the Protection of Juveniles Deprived of their Liberty: the 'Havana Rules' (1990)</b>	The Havana Rules (or "JDLS") set out standards applicable when a child is confined to any institution or facility, whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the child is deemed 'at risk'.
<b>UN Guidelines on the Administration of Juvenile Justice: the 'Vienna Guidelines' (1997)</b>	The Vienna Guidelines is considered the founding resolution of the IPJJ as it invites the Secretary-General to consider establishing a coordination panel on technical advice and assistance in juvenile justice. The document contains, as an annex, Guidelines for Action on Children in the Criminal Justice System that provide a comprehensive set of measures that need to be implemented in order to establish a well-functioning system of juvenile justice administration, which is consistent with international

	standards.
<b>Economic and Social Council Guidelines on Justice Matters Involving Child Victims and Witnesses of Crime adopted in (2005)</b>	This Model Law is intended to assist States in adapting their national legislation to the provisions contained in the Guidelines and in other relevant international instrument and it can be used as a tool for drafting legal provisions concerning assistance to and the protection of child victims and witnesses of crime, particularly within the justice process.
<b>Paris Commitments and Principles on children associated with armed forces or armed groups (2007)</b>	The Paris Commitments and Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups lay out a detailed framework and guidelines to protect children from recruitment and provide assistance to those already involved with armed groups or forces, guiding the work of the disarmament, demobilization and reintegration of all categories of children associated with armed groups. <sup>271</sup>
<b>UN Common Approach to Justice for Children (2008)</b>	This conceptual note outlines strategies for a common UN approach towards justice for children within existing rule of law frameworks. The approach aims to ensure that relevant provisions of the CRC and other international legal instruments related to child justice are reflected in broader policy reform and implementation efforts.
<b>Guidance Note of the Secretary-General – UN Approach to Justice for Children (2008)</b>	This guidance note outlines strategies for a common UN approach towards justice for children within existing rule of law principles and framework as outlined in the UN approach to rule of law assistance. A common approach will help UN entities to leverage support through partners working on broader agendas around rule of law, including governance, security, social welfare and justice sector reform in which justice for children can easily be integrated.
<b>Justice Matters involving Child Victims and Witnesses of crime: model law and related commentary (2009)</b>	The purpose of the Model Law is to assist Governments in drafting relevant national legislation in conformity with the principles contained in the Guidelines and other relevant international legal instruments such as the Convention on the Rights of the Child. the Model Law is intended to cover all persons under the age of 18 giving testimony in the justice process, who are victims or witnesses of crime.
<b>UN Guidelines for the Alternative Care of Children (2010)</b>	Where children are or must be deprived of parental care, these Guidelines assert that States are responsible for protecting their rights and well-being. The most suitable form of alternative care should be identified for each child, grounded in the child's best interests and with a view to ensuring safety and security. The Guidelines specify that children should be consulted and have their views taken into account at all stages.
<b>United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014)</b>	The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice have been prepared to help Member States to address the need for integrated strategies for violence prevention and child protection, thereby offering children the protection to which they have an unqualified right
<b>TREATMENT OF PRISONERS</b>	
<b>Standard Minimum Rules for the Treatment of Prisoners (1955) &amp; Procedures for the effective implementation</b>	The Standard Minimum Rules seek to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions. Specific dispositions relate to young prisoners.

<sup>271</sup>Idem. p 61.

<b>(1984)</b>	
<b>Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)</b>	These Principles were adopted in view of contributing to the protection of the human rights of persons deprived of liberty. They consist of 39 principles encompassing issues such as torture in detention, communication with the outside world, assistance of a legal counsel, medical and scientific experimentation, disciplinary offences, and confidentiality concerning complaints, death or disappearance in detention.
<b>Basic Principles for the Treatment of Prisoners (1990)</b>	By adopting these Principles, the UN General Assembly recognised the usefulness of drafting a declaration on the human rights of prisoners. They consist of 11 principles encompassing issues such as the respect of the prisoners' religious beliefs, the right to take part in cultural activities and education, the abolition of solitary confinement, access to health services, the principle of no discrimination, and the reintegration of the ex-prisoners
<b>UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders: the 'Bangkok Rules' (2010)</b>	The Bangkok Rules contain a set of 70 rules addressing the specific needs of women in the criminal justice system and in prisons. These are considered issues that did not receive sufficient attention in the Standard Minimum Rules for the Treatment of Prisoners adopted in 1955 and the Tokyo Rules, adopted in 1990.
<b>TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT</b>	
<b>Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)</b>	This Declaration was adopted as a guideline for all States and other entities exercising effective power, nine years prior to the adoption of the Convention against Torture. It emphasises that any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and that no State may permit or tolerate such acts.
<b>Principles of Medical Ethics relevant to the Role of Health Personnel in the Protection of Prisoners and Detainees against Torture (1982)</b>	These Principles of Medical Ethics state that it is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.
<b>Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2000)</b>	These six principles emphasise the importance of the clarification of the facts and establishment and acknowledgment of individual. It underlines the State's responsibility to victims and their families; the identification of measures needed to prevent recurrence; and the facilitation of prosecution for those indicated by the investigation.
<b>DEATH PENALTY &amp; EXTRAJUDICIAL EXECUTIONS</b>	
<b>Safeguards guaranteeing protection of the rights of those facing the death penalty (1984)</b>	These Safeguards revolve around nine principles to the attention of the countries which have not abolished the death penalty. They reaffirm that persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death and that capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
<b>Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and</b>	These 20 principles address three aspects of extra-legal, arbitrary and summary executions: prevention, investigation and legal proceedings. They emphasise that such executions shall not be carried out under any circumstances including situations of internal armed conflict and that this

<b>Summary Executions (1989)</b>	prohibition shall prevail over decrees issued by governmental authority. With regard to prevention, this text recommends that Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody.
<b>ALTERNATIVES TO IMPRISONMENT &amp; RESTORATIVE JUSTICE</b>	
<b>UN Minimum Rules for Non-Custodial Measures: the 'Tokyo Rules' (1990)</b>	The Tokyo Rules are intended to promote greater community involvement in the management of criminal justice, especially in the treatment of offenders, as well as to promote a sense of responsibility towards society among offenders. The criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post sentencing dispositions.
<b>Basic principles on the use of restorative justice programmes in criminal matters (2002)</b>	This resolution contains the preliminary draft elements of a declaration of basic principles applicable when utilising restorative justice programmes in criminal matters. It stipulates that restorative justice programmes should be generally available at all stages of the criminal justice process and gives details on the operation of restorative justice programmes.
<b>VICTIMS</b>	
<b>Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)</b>	This Declaration does not relate specifically to children; however fundamental principles of justice for all victims are addressed here, including access to justice and fair treatment, restitution, compensation and assistance.
<b>UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crimes (2005)</b>	These UN Guidelines provide a practical framework to assist in the reviewing and designing of laws, procedures and practices, ensuring full respect for the rights of child victims and witnesses of crime and in support of those professionals working with such children
<b>LEGAL AID</b>	
<b>Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012)</b>	These Principles and Guidelines were adopted to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based. In particular, they recommend that States should ensure special measures for children to promote their effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system.
<b>GOOD GOVERNANCE</b>	
<b>Code of Conduct for Law Enforcement Officials (1979) &amp; Guidelines for its effective implementation (1989)</b>	This Code of conduct consists of 8 articles, which set out several important principles and prerequisites for the humane performance of law enforcement functions. In particular, it emphasises that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.
<b>Basic Principles on the Independence of the Judiciary (1985) &amp; Procedures for their effective implementation (1989)</b>	The Basic Principles were formulated to assist Member States in their task of securing and promoting the independence of the judiciary. They emphasise that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. They include specific dispositions on freedom of expression and association of the members of the judiciary; qualifications, selection and training.
<b>Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)</b>	These Basic Principles emphasise that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights and invite Governments and law enforcement agencies to keep the ethical issues associated with the use of force and firearms constantly under review. They consist of 26 principles encompassing situations such as policing unlawful assemblies; policing persons in

	custody or detention; qualifications and training.
<b>Guidelines on the Role of Prosecutors (1990)</b>	The Guidelines on the Role of Prosecutors were formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings. Interestingly, they include two dispositions on alternatives to prosecution, in particular for juveniles (article 19).
<b>Basic Principles on the Role of Lawyers (1990)</b>	The Basic Principles on the Role of Lawyers were formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers. They emphasise that lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
<b>Rome Statute of the International Criminal Court (1998)</b>	Rome Statute of the ICC and the Rules of Procedure and Evidence include special provisions for the protection of children during the investigation and prosecution of cases.
<b>Guidelines for the prevention of Crime (2002)</b>	The Guidelines for the prevention of Crime were formulated to not only prevent crime and victimization, but also promote community safety and contribute to the sustainable development of countries. They outline the necessary elements for effective crime prevention, including the leadership role of the government, the integration of crime prevention considerations into all relevant social and economic policies and programmes, and the implementation of training and capacity-building programmes
<b>REGIONAL INSTRUMENTS</b>	
<b>Convention for the Protection of Human Rights and Fundamental Freedoms (1950)</b>	This European Convention grants human rights to individuals, including the right to life, the prohibition of torture, the right to liberty, the right to a fair trial, and the right to an effective remedy in the event of violation of these rights. The Convention has several protocols, which amend the convention framework: Protocols 6 (1983) and 13 (2002) stipulate that the death penalty shall be abolished and that no one shall be condemned to such penalty or executed.
<b>American Convention on Human Rights (1969)</b>	The Pact of San Jose grants human rights to individuals, including the right to life, the right to humane treatment, the right to a fair trial, the right to privacy and the right to compensation in case of a miscarriage of justice. It consists of 82 articles, stipulating inter alia that capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age. Article 19 stipulates that every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the stat
<b>African Charter on the Rights and Welfare of the Child (1990)</b>	The African Charter on the Rights and Welfare of the Child (ACRWC) can be considered as an adaptation of the Convention on the Rights of the Child (CRC) to the regional context of Africa. It was drafted by the Organisation of African Unity (now the African Union) and it guarantees children's basic rights within the context of African culture. As with the CRC, the ACRWC contains a broad range of socio-economic provisions that can be referred to holistically, as well as the specific juvenile justice provisions of Article 17.
<b>Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004)</b>	Guidance to adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice. Legal aid should be defined as broadly as possible
<b>Guidelines on the Committee of Ministers of</b>	The guidelines deal with the issue of the place and role, as well as the views, rights and needs of the child in judicial proceedings as well as in

<p><b>the Council of Europe on Child-Friendly Justice (2010)</b></p>	<p>alternatives to such proceedings. They are new rules that help Governments make sure that children are treated properly by and in the justice system. They are based on a number of important rules, such as participation; best interests of the child; care and respect; equal treatment; and rule of law.</p>
<p><b>Munyonyo Declaration on Justice for Children in Africa (2012)</b></p>	<p>A Declaration and Call for Action for all States and relevant Committees to further integrate and enable the Convention on the Rights of the Child in the African Justice System.</p>

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The material collected here is not necessarily for or from humanitarian contexts but touches on Justice for Children in one form or another. Some might be applicable to emergency situations whereas others would have to be significantly adapted to “fit in“ with Standard 14.

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## List of key informants

22 interviews with 27 key interlocutors were undertaken both on the phone and in person with a mix of child protection practitioners and juvenile justice experts. The in-person interviews were done mainly in the margins of the World Congress on Juvenile Justice that took place in Geneva, Switzerland from 26 to 30 January 2015 with additional interviews held in London, UK.

- **Miranda Armstrong**
- **Joseph Aguetant**
- **Faye Balanon**
- **Rodeliza Barrientos**
- **Innocent Bugandwa**
- **Islande Georges Cadet**
- **Nadège Chassaing**
- **Yann Coulliou**
- **Fabrice Crégut**
- **Alison Eynon**
- **Elena Giannini**
- **Eric Gnamien Koffi**
- **Anne Grandjean**
- **Kristen Hope**
- **Camilla Jones**
- **Sukaina Khalawi**
- **Dareen Khattab**
- **Mary Murphy**
- **Khaled Quzmar**
- **Ali Aula Ramly**
- **Becky Randel**
- **Janis Ridsdel**
- **Flore Rossi**
- **Nikhil Roy**
- **Monika Sandvik-Nylund**
- **Frances Sheahan**
- **Ann-Kristin Vervik**
- **Dariusz Zietek**

## About the International Bureau for Children's Rights



BUREAU  
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DES DROITS DES ENFANTS

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The International Bureau for Children's Rights (IBCR) has been involved in the protection of child victims and witnesses of crime for almost 15 years. Its work is being performed in response to an expressed need for assistance by governments and professionals in the field of child protection as well as by children themselves. In the late 1990s, the IBCR began its research on existing international norms and standards of child protection. These include, for example, the *Convention on the Rights of the Child (CRC)*, and the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. The IBCR also focuses its research on best practices in the protection of child victims and witnesses of crime that respect the diversity of legal systems and legal traditions.

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