

UNICEF Toolkit on Diversion and Alternatives to Detention 2009

Summary of why diversion and alternatives are important

Top 10 reasons to promote diversion and alternatives

1. **States have an obligation to ensure that children in conflict with the law benefit from diversion and alternatives to the greatest extent possible.** Furthermore, quality diversion and alternatives:
2. **Reduce the number of minor and less serious offences clogging up the formal justice system and detention** and allow resources to be focused on repeat or high-risk offenders.
3. **Prevent children suffering negative developmental impact** associated with detention and formal proceedings (in the case of diversion). This includes preventing stigmatisation and labelling of the child (and their family).
4. Allow justice sector officials to **deal with cases expeditiously** and to impose **immediate consequences** for offending behaviour.
5. **Contribute positively to children's development** by encouraging the child to take responsibility for the harm caused, but in ways that reintegrate them into society, particularly where a restorative justice approach is used, and without getting a criminal record in the case of diversion.
6. Seek to discover the reasons for offending behaviour to identify and address the needs of the child and to provide effective rehabilitation activities in order to **prevent re-offending**.
7. Contribute to **social development, conflict resolution and peace-building efforts** through the use of restorative justice approaches and place the **needs of victims/survivors more centrally** in the process.
8. Are **more cost effective** than detention.
9. Contribute positively to **improving national security** by promoting inclusion rather than exclusion of marginalised children in society.
10. **Raise the professionalism, job satisfaction and morale of personnel** working in the child justice sector.

In more detail...

A. Child rights & the international legal framework

- States have an obligation to ensure that children in conflict with the law benefit from diversion and alternatives to the greatest extent possible, in the context of international co-operation where necessary.
- At least 15 different international human rights instruments and related guidelines contain a total of 77 articles, rules, guidelines or provisions directly relevant to diversion and alternatives for children in conflict with the law of which 10 are legally binding on States which have ratified the relevant instruments (4 are from the CRC); 22 are paragraphs from the General Comments of the Committee on the Rights of the Child; and 45 are taken from the body of UN rules and guidelines relevant to this area.
- Furthermore, 4 regional human rights instruments contain a total of 14 articles relevant to diversion and alternatives, all of which are legally binding on States which have ratified them.

B. Child development & psychology

- Coming into conflict with the law in the first place and subsequently coming into contact with the formal criminal justice system is generally acknowledged to be detrimental to children's development.
- Efforts must therefore be made to prevent this through: programmes to prevent children coming into conflict with the law; setting of a relatively high age minimum age of criminal responsibility and ensuring treatment in line with international standards both above and below this age; decriminalisation of status offences and exploitation; and diversion away from judicial proceedings.
- Where contact with the formal justice system is unavoidable, there needs to be a specialised justice system for children in conflict with the law which is different to that for adults and which takes into account their special developmental status. Such measures include the recruitment and training of specialised personnel, the promotion of restorative rather than retributive justice approaches and alternatives to detention.
- In this way it can be seen that diversion and alternatives are essential elements of a child rights-based justice system which aims to minimise negative impacts and maximise opportunities for positive input into children's development. Research on adolescent brain development supports these reforms.
- A basic understanding of child development and psychology is essential for stakeholders to be able to understand and accept the importance of diversion and alternatives for children in conflict with the law and to then actively promote and effectively apply them in practice.

C. Society

C1. Public safety & recidivism

- The overall purpose of the criminal justice system - to prevent crime and create peaceful, law-abiding societies - is best served through restorative rather than retributive / punitive justice approaches.
- Diversion and alternatives which adopt a child rights-based approach and which capitalise on restorative justice approaches where possible and appropriate can lead to reduced recidivism and improved public safety.
- Evidence from a range of project reviews, evaluations and meta-analyses show that such programmes can reduce offending by up to 70%, depending on the quality of the programme.
- Some studies show that even poor quality programmes perform no worse than detention in terms of recidivism, and often better, although care must be taken to avoid 'net-widening'.
- However, the greatest gains are to be made with high quality, well-targeted, well-resourced and well-supported programmes which are child rights-based.
- From a random selection of 44 studies, evaluations or meta-analyses of diversion and alternatives programmes, 31.8% showed evidence of 'significant' reduced recidivism, 22.7% showed evidence of 'somewhat' reduced recidivism, 11.4% showed no evidence of reduced recidivism, 2.3% cited programmes in general which do not have an effect in this area, and 31.8% showed inconclusive or mixed findings.

C2. Conflict resolution & victim/survivor impact

- If they capitalise on all the potential benefits available through child rights-based approaches, and restorative justice approaches where possible and appropriate, diversion and alternatives programmes (and therefore the criminal justice system more broadly) can contribute positively to collective community and government efforts towards achieving societal harmony and peace-building.
- This is addition to the benefits which can be achieved specifically in relation to public safety and reduced recidivism.
- It can be achieved through participatory mediation-type programmes which seek to increase mutual understanding amongst the three stakeholder groups (offender, victim/survivor and society).
- Victims/survivors of crime are given a more central position in such processes compared to traditional retributive or rehabilitative justice systems.
- In this way, diversion and alternatives programmes which adopt a child rights-based, restorative justice approach can yield even greater benefits to society.
- This is especially true in comparison with detention of children in conflict with the law which serves only to further isolate offenders from society and increase fear, intolerance, misunderstanding and conflict.

D. Government

D1. Cost effectiveness

- Many states are already spending large amounts of money on justice systems for children in conflict with the law.
- However, they have a legal obligation under the CRC to be investing in systems which are child rights-based (and which by CRC definition include diversion and alternatives).
- Investment in prevention, diversion and alternatives is more cost-effective than investment in systems which have an over-reliance on detention.
- Even if diversion and alternatives programmes result in additional initial set-up costs, this money is recouped in the medium term and these costs are still far less than investment in new detention centres.
- Running costs for diversion and alternatives are often much less than for detention facilities.
- If reforms lead to a reduction in criminal justice costs but an increase in social welfare costs then this may still be balanced out overall.
- Furthermore, given the evidence in certain cases for reduced recidivism as a result of diversion and alternatives in comparison with judicial proceedings and detention, there may be extremely important long-term savings to be made.
- In Small Island Developing States or other small population countries where there is not currently a great focus on detention and formal systems, the economic arguments here are still important to ensure that during reform of traditional and non-formal justice systems to bring them in line with international standards, emphasis is placed on prevention, diversion and alternatives rather than bringing children into formal systems and constructing costly detention facilities.

D2. National security

- Respect for human rights must go hand in hand with the development of national security agendas. Human rights, human development and human security are inextricably intertwined.
- With almost half the global population under the age of 18, urgent efforts are required to ensure that marginalised children such as those in conflict with the law are reintegrated into society rather than further isolated through detention and repressive policies.
- Child rights-based justice systems that invest in prevention, diversion and alternatives are ideal mechanisms to contribute positively to national security agendas by working towards social inclusion rather than exclusion.
- Children in conflict with the law are members of the 'human family' too and 'recognition of [their] inherent dignity and [...] equal and inalienable rights' makes up an important part of 'the foundation of freedom, justice and peace in the world' (Universal Declaration of Human Rights (& CRC), preamble).

E. Professionals

E1. Professionalism, job satisfaction & morale

- Quality child rights-based diversion and alternatives programmes are an essential part of professional justice systems for children in conflict with the law.
- Their introduction can help to raise the professionalism, job satisfaction and morale of personnel working in this field.
- Professionals will feel satisfaction at complying with international legislation and standards.
- Improved results in relation to recidivism, public safety, victim/survivor impact, cost and outcomes for individual child offenders will increase job satisfaction and improve morale.
- Other outcomes include easier recruitment of professionals and less absenteeism.

F. Why does UNICEF promote diversion & alternatives?

F1. Mandate

- UNICEF has a mandate to support government and civil society implementation of the CRC (including provisions relating to children in conflict with the law) and it also has a mandate to take the UN lead in juvenile justice.
- Whilst promoting comprehensive reform of justice systems, given the over-use and mis-use of detention globally and the rights violations which this entails, when comprehensive reform is not possible, reduction of numbers of children in detention can nonetheless provide a strategic entry point. Diversion and alternatives, in addition to prevention earlier down the line, are the interventions best suited to achieving this goal.
- UNICEF should refrain as much as possible from improving physical conditions in establishments where children are deprived of their liberty, avoid contributing to the building of new institutions, and concentrate instead on supporting efforts to reduce use of this measure in the first place.
- This will reduce pressure on the resources available for detention and thereby improve conditions. Other measures that can be taken to improve conditions in detention include: promoting early release from detention; promoting preparation for release and support upon release; building the capacity of staff to reduce violence against children in detention; and documenting conditions in detention for advocacy purposes.

F2. Technical support

- The CRC, Vienna Guidelines and Tokyo Rules clearly state the need for international co-operation in the implementation of child rights in general, and justice for children in conflict with the law and non-custodial measures in particular.

- UNICEF has long recognised that it has a key role to play in this field and has been working with partners in the delivery of technical support for many years.
- This toolkit aims to systematise and therefore strengthen this support through the issuing of detailed guidance in relation to diversion and alternatives.