



Operational Guidelines for Security Forces Access to Justice for Children and Youth in Times of COVID-19 Diverting Children From Judicial Proceedings and Facilitating Reintegration

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Operational Guidelines for Security Forces

Access to Justice for Children and Youth in Times of COVID-19

Diverting children from judicial proceedings and facilitating reintegration

Summary and Index

These operational "how to do it" guidelines provide practical principles of action for security forces handling children and youth who:

- Enter into contact with the law and thereby with security forces (pre-trial); or
- Due to the COVID-19 emergency, have been released from detention and are in the process of reintegration (post-sentence).

The operational guidelines complement different technical notes compiled by interagency efforts and organisations focusing on children deprived of liberty during COVID-19, as well as child protection case management guidance (provided by Terre des hommes and through interagency effort), where children in detention are one of the specific vulnerable groups to take into considerations.

States, ministries and agencies are encouraged to reach out to technical partners for support in contextualising regulations and plans according to each State.

These operational guidelines are organised as follows:

- Part 1 – Role of security forces during COVID-19 health emergency
- Part 2 – Interdisciplinary approach with other professionals during COVID-19 health emergency
- Part 3 – Essential principles of action during COVID-19 health emergency

Part 1 – Role of security forces during COVID-19 health emergency

Security Forces

For the purposes of these guidelines, the term "security forces" will be used for law enforcement in any particular jurisdiction, as various terms may be applicable (e.g., police, gendarmeries, national guards and/or State security services). Security forces should be understood to mean personnel in public agencies whose principal functions are the prevention, detection and investigation of crime and the apprehension of alleged offenders.¹ Security forces are defined herein by i) basic responsibilities, which include: maintenance of public order and security; prevention and detection of crime; and provision of help and assistance to those in need of it; and ii)

¹ United Nations Department of Economic and Social Affairs Statistics Division, Series F No. 89, Manual for the Development of A System of Criminal Justice Statistics: https://unstats.un.org/unsd/publication/SeriesF/SeriesF_89E.pdf

basic powers, which include: arrest; detention; search and seizure; and use of force and firearms.² The definition of "security forces" does not include "defence forces," i.e., armed forces, militia and volunteer corps.³ Private agencies may have in some context similar roles to security forces and should therefore be inspired by these guidelines.

Children and young people come into regular contact with security forces whether they are victims of or witnesses to violence, or in conflict with the law. The role of security forces as the primary entry point of the juvenile justice system is fundamental to the respect, protection and implementation of the rights of the children who come in contact with the law.

During the COVID-19 health emergency, the experience of children in contact with the law in relation to their interaction with security forces has changed. Security forces must adapt their existing approaches and action to take into account this new reality. This will enable them to better protect children and protect themselves.

When **apprehending** or **arresting**⁴ a child, extra care must be applied to accommodate the expectations of physical distancing and risks of transmission. Security forces should remember to:

- **Limit direct contact** with children and use such contact only if the child presents a risk to his or her own security or to the security of others;
- **Handcuffs** should never be used with children, and the use of force is only a last resort, not a common tactic, when interacting with children;
- **Child-friendly language and communication techniques** are more important than ever (e.g., using simple phrases, providing information in an easy to read format, using a calm tone, using open questions, etc.), as they can increase the chances of peaceful resolution of situations and reduce the risks of physical contact; and
- Apply all rules applicable in this pandemic context, including **washing hands** regularly, **keeping a distance** of at least 2 arms' length with children and wearing a non-medical **mask** or face covering.
- Ideally, if supplies are available, children should be **tested for COVID-19 prior to detention** in order to prevent contact between infected children and others.

It is a fundamental principle of children's rights that **detention**⁵ should only be used as a last resort. In the context of COVID-19, it is even more critical to drastically review and change all detention practices when security forces

² Police and Security Forces - 30-09-1999 Article, International Review of the Red Cross, no. 835, by Cees De Rover; <https://www.icrc.org/en/doc/resources/documents/article/other/57jq3h.htm>

³ Article 1 of the Hague Regulations; https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule4

⁴ Arrest means the act of apprehending a person for the alleged commission of an offence or by the action of an authority. Arrest has also been defined as the act of depriving the liberty of someone in accordance with the law with charges against him/her. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988; <https://www.globaldetentionproject.org/wp-content/uploads/2016/06/The-Body-of-Principles-for-the-Protection-of-All-Persons-under-Any-Form-of-Detention-or-Imprisonment.pdf> and Human Rights Standards in Arrest and Detention, UN Peacekeeping PDT Standards, Specialized Training Material for Police 1st edition 2009; <http://repository.un.org/bitstream/handle/11176/387368/STM+Human+Rights+Standards+in+Arrest+and+Detention.pdf?sequence=6>

⁵ Detention is a period of temporary custody prior to a trial or hearing, following the lawful powers of arrest by security forces or following the decision of a judge or other legal authority. See Human Rights Standards in Arrest and Detention, UN Peacekeeping PDT Standards,

come into contact with a child. Confining children to prison cells or other forms of detention significantly increases the risk of transmission for children, security forces and others in contact with children. Police directives, procedures and practices must clearly suspend detention practices at the pre-trial level. Suspecting a child of having committed an offence or a crime is **NOT** sufficient basis for depriving a child of liberty. Particularly in these COVID-19 times, one must only use detention if there is a grave risk that society and/or the child him-/herself is in danger.

Diversion

For the purposes of these guidelines, diversion means the conditional channelling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable many - possibly most - to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record.⁶ Security forces dealing with juvenile cases should be empowered to dispose of such cases, at their discretion, without needing formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in United Nations Standard Minimum Rules for the Administration of Juvenile Justice.⁷

Security forces must use **alternative measures to detention**, which are the foundation for enacting an effective **diversion** strategy. These are measures that may be imposed that involve non-custodial measures or do not otherwise require the deprivation of liberty.⁸ Diversion does not mean to systematically pardon all children for all possible offences or crimes they may have committed; it is rather an occasion to take **proportionate action** to generate a learning opportunity for the child in order to avoid recidivism while reducing the burden of lengthy court procedures for minor, non-violent and first or simple offences. In the context of COVID-19, diversion is a critical strategy to maintain interaction with children in contact with the law, while adapting the response to reduce health risks and detention hazards. The alternatives should also be revised to the extent possible to be done virtually or with minimal physical contact with others so that the alternative can be accomplished timely and safely.

Examples of such alternatives include:

- **Warning** – requires notifying the child and his or her family about the alleged offence or minor crime, ensuring that they commit to prevent entering into conflict with the law again;
- **Apology** – requires a written or verbal apology to the victim/survivor;⁹

Specialized Training Material for Police 1st edition 2009;
<http://repository.un.org/bitstream/handle/11176/387368/STM+Human+Rights+Standards+in+Arrest+and+Detention.pdf?sequence=6>

⁶ UNICEF - Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56037.html

⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), UN General Assembly, A/RES/45/33, 29 November 1985; <http://www.un.org/documents/ga/res/40/a40r033.htm>

⁸ Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56038.html

⁹ Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56369.html

- **Community Service** – requires that the child dedicate a certain number of hours of work to benefit the community;¹⁰
- **Education/Training** – requires the child to participate in certain educational and training activities to develop a skillset that is productive to society;¹¹
- **Supervision** – requires placing the child under the supervision and guidance of a specified individual to monitor the child's behaviour and provide guidance, for instance a member of the social workforce;¹²
- **Residency Requirements or House Arrest** – requires the child to reside at a certain address or within a particular area;
- **Criminal Mediation** – requires a decision by a neutral third party, the public prosecutor and the child as to a mutually acceptable agreement as an alternative measure to criminal proceedings; and
- **Monetary Consequences or Bail** – requires formalising an agreement where a monetary penalty is agreed upon with the victim instead of depriving the suspect of liberty, so long as a balance is reached between disincentivising the behaviour and the amount being prohibitive of being an alternative. This should only be used in limited scenarios because most children do not have revenue and it is not productive to burden the household income, especially for low-income households.

Even in legal systems where security forces have limited power to make determinations in diverting cases involving children, it is possible to **change practices** in the current pandemic and support such special allocation of power to the security forces. Even when a prosecutor has the authority to divert cases, it is important to remember that security forces provide the information and context for the prosecutor to facilitate diversion. In some contexts, it is also possible for security forces to interview the child and proceed with his or her release under the care of his or her parent and in coordination with social services. Hence, security forces must be encouraged to increase their knowledge of alternative measures and act in a way that facilitates the diversion of cases, including in their reporting to prosecutors.

Diversion and alternative measures to detention are embedded in a **community-based policing strategy** that encourages the public to act as partners with security forces in preventing and managing crime, as well as other aspects of security and order, based on the needs of the community.¹³ In the context of COVID-19, such community-based policing strategies become even more relevant in order to ensure that interactions between children and security forces are safe and effective.

Reintegration

For the purposes of these guidelines, reintegration means providing children who were in conflict with the law or deprived of liberty the resources and tools, both **economic** and **social**, necessary for their gradual re-entry into society. It is a holistic process that begins at first contact with the justice system and involves coordination

¹⁰ Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56369.html

¹¹ Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56369.html

¹² Toolkit on Diversion and Alternatives to Detention; https://www.unicef.org/tdad/index_56369.html

¹³ United Nations Department of Peacekeeping Operations Department of Field Support Ref. 2018.04; <https://police.un.org/sites/default/files/manual-community-oriented-policing.pdf>

among other professionals, the child and family members to develop short- and long-term transition plans. Measures consist of revenue-generating activities, vocational and educational development, as well as social, psychosocial, mediation, cultural and recreational activities. It also includes encouraging and promoting contact with friends, family and the community to which released children return.¹⁴

For children who have been sentenced and deprived of liberty, release is currently considered the best option to protect them and others from the pandemic. It means that a certain number of girls and boys may be released and **reintegrated** in their communities.

Social Reintegration focuses on the aspects of returning to a community in a way that provides the young person a sense of belonging and the means to be a productive member of the community. This means the child is able to live a life free from abuse, violence, neglect and exploitation, and be free from the stigmatisation and discrimination that could compromise reintegration and could contribute to further conflict with the law. These goals can be accomplished with:

- Community policing programmes that promote **child participation** by including those who have been released, siblings, peers and youth who have been in contact with the law before. All can share their experience, discuss security issues, and participate in discussions and planning around mitigation strategies.¹⁵
- Community support that includes **sensitisation** and **awareness training** for security forces on mental health and related psychosocial issues, as well as COVID-19-specific health and prevention issues.¹⁶ In turn, these skills should allow security forces to contribute in efforts of raising community awareness and proactively preventing stigmatisation and discrimination against such children. Because the pandemic appears to increase specific types of violence against children, including domestic and sexual violence, it is important to pay particular attention to the vulnerabilities and risks that released children may face from their peers, families and communities based on status and marginalisation.
- Members of security forces may serve as role models and **mentors** for reintegrated youth. This means their own ethics, behaviour and approaches are critical to inspire trust and leadership.¹⁷
- Security forces can help keep track of reintegrated youth to monitor their progress and be proactive in **coordinating action** with other actors in the child protection system, such as the social workforce.¹⁸

¹⁴ Custodial and Non-Custodial Measures Social Reintegration; https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/4_Social_Reintegration.pdf; Integrated Disarmament, Demobilization and Reintegration Standards; <https://www.unddr.org/uploads/documents/IDDRS%204.30%20Reintegration%20WEB.pdf>

¹⁵ IDDRS Framework Modules 5.20 - Youth and DDR, Chapter 7 - Youth and security; <https://www.unddr.org/uploads/documents/IDDRS%205.20%20Youth%20and%20DDR.pdf>

¹⁶ It is important to note that six core competencies have been identified globally at central to child-friendly policing practices. These are 1) knowledge, promotion and implementation of children's rights; 2) knowledge and application of the rules of ethics and professional conduct; 3) knowledge of children; 4) interaction and communication with children, their families and communities; 5) collaboration with all formal and informal stakeholders towards a coordinated intervention, and 6) efficient use of working tools adapted to children. These core competencies should be at the centre of any capacity building and adaptation to the COVID-19 pandemic. See International Bureau for Children's Rights: <http://www.ibcr.org/wp-content/uploads/2016/06/Fifth-workshop-Africa-english-1.pdf>

¹⁷ IDDRS Framework Modules 5.30 - Children and DDR, Chapter 9.1 - Psychosocial support and special care; <https://www.unddr.org/uploads/documents/IDDRS%205.30%20Children%20and%20DDR.pdf>

¹⁸ IDDRS Framework Modules 4.50 - UN Police Roles and Responsibilities, Chapter 9 - Coordination; <https://www.unddr.org/uploads/documents/IDDRS%204.50%20UN%20Police%20Roles%20and%20Responsibilities.pdf>

- Security forces can also help build **public confidence** by providing opportunities to regularly share matters of concern.¹⁹

Economic Reintegration focuses on enhancing the ability of the child to support its immediate and long-term needs. This means the child is able to access education, vocational training and revenue-generating activities, possibly all at the same time.²⁰ Support provided to released children and related programmes should be safe and secure. This means that security forces should work with communities, family, and the children themselves towards:

- Supporting **community-policing strategies** that prevent and mitigate risks of physical, psychosocial and emotional violence committed by the child or against the child. These strategies can also prevent and mitigate any discriminatory approaches, discourse and practices that may generate tension and problems where security forces would need to intervene. This includes reaching out to children who have been released to establish contact and trust and supporting raising awareness with the child, his or her family and community and with those involved in economic reintegration to build connection, reduce stigma and support resilience and participation;
- Ensuring workplaces, training programmes and living arrangements are **safe and secure** for the child as well as the families, communities and other children involved;²¹ and
- Including children who have been released to help build and contribute to a **community support network** with family, training programme staff, employers, social workers, etc., to ensure a secure community.²²

Examples include:

- **Posting information** posters or online information to share awareness and concerns regarding health and security with the community; and
- Holding virtual or physically distant **meetings** with released youth and their families and other professionals to **discuss reintegration and transition plans**, including economic challenges imposed by COVID-19.

Part 2 – Interdisciplinary approach with other professionals during the COVID-19 health emergency

There are three primary areas of intersection between security forces and other professionals sharing responsibilities in the overall justice system for children, especially justice professionals, health personnel and social work force. During the pandemic, the mechanisms of interaction may be impacted or changed. Security forces should proactively maintain, activate or enhance these areas for collaboration and coordination, while

¹⁹ IDDRS Framework Modules 4.50 - UN Police Roles and Responsibilities, Chapter 11 – Building up public confidence; <https://www.unndr.org/uploads/documents/IDDRS%204.50%20UN%20Police%20Roles%20and%20Responsibilities.pdf>

²⁰ Integrated Disarmament, Demobilization and Reintegration Standards; https://www.unndr.org/uploads/documents/IDDRS_4.30%20Reintegration%20WEB.pdf

²¹ IDDRS Framework Modules 4.30 - Reintegration, Chapter 9. Economic Reintegration; https://www.unndr.org/uploads/documents/IDDRS_4.30%20Reintegration%20WEB.pdf

²² 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; IBCR November 2013; Fourth and Fifth Competencies.

having the best interests of the child in mind. Even as conditions improve, security forces should continue to consider improvements to interdisciplinary interactions, as the pandemic may re-emerge in the coming months.

The first interdisciplinary approach is **coordination**, whereby security forces need to understand, promote and respect the respective roles and responsibilities of each category of professionals involved with children in contact with the law and learn how to efficiently share information in order to best meet the rights and needs of each child.

- Professionals should consider and use various **alternative forms of communication** with youth and with each other to prevent spreading COVID-19 by direct contact (e.g., phone calls, text messages and emails).
- It is even more relevant in this pandemic context to **avoid duplicating efforts**, including conducting numerous interviews which may not only bring risks of revictimisation, but also risks of spreading the virus. Coordination of interviews with the social workforce, for instance, would help ensure the best interests of children.
- Ensure that the coordination is conducted **as early as possible** in the process, ideally at the planning level and using virtual types of meetings as often as possible, to anticipate situations and risks and best assign tasks in order to optimise collaboration between and among services providers, and to address the needs and rights of each child entering into contact with the law.

The second interdisciplinary approach is the creation or adaptation of existing **referral pathways**. These are systematic procedures allowing **all** children to receive equal access to the care and services they need. For example, if a child is in need of medical attention, such referral pathways would allow any member of the security forces to know how to properly transfer the case to medical services in a way that is timely, effective and protective.

- Referral pathways may need to be **altered** to add an initial step to check for COVID-19 symptoms and/or conduct testing. Distinct courses of actions should be anticipated and detailed according to the symptoms and levels of risk for each intervention so that the child, his or her family and the security forces are all reducing the risk of transmitting the virus.
- An alternate referral pathway should be **included in the event reintegration is not possible** due to infected residents at a facility or ill or vulnerable family members.

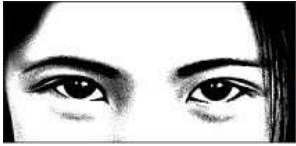
The third interdisciplinary approach is the creation or adaptation of existing **Standard Operating Procedures (SOPs)**. These include specific sequencing of actions and requirements that have been formalised between various sectors (for instance between security forces and the social workforce, justice personnel or medical staff), such that each knows their own and others' expected actions in a particular situation. SOPs are meant to professionalise and standardise the interaction and collaboration between two or more sectors around a particular situation. **New or revised SOPs** may be necessary for various alternatives in relation to COVID-19 (e.g., protecting youth and professionals from infection, using different diversion options to lessen contact between individuals, implementing options with smaller groups or taking into account public health advice and integrating it in the sequence of actions previously applicable).

Part 3 – Essential principles of action during the COVID-19 health emergency

- Security forces must maintain physical distancing and adhere to all other health advisories to the maximum extent possible, in all stages of intervention with all children, including victims and witnesses of crimes as well as children in conflict with the law.

- Security forces must promote hand washing measures and wearing masks at the entrance and hand disinfection when leaving the security services.
- Security forces must inform and educate all children they come into contact with about the seriousness of COVID-19 and the need to follow safety practices such as physical distancing.
- Security forces must apply public orders and policies that are silent as to their application to children in a way that protects the best interests of the child.
- Security forces must use detention and deprivation of liberty as only a rare "last resort." They must use and promote diversion and alternative measures to detention as often as feasible and revisit the feasibility of each alternative option and coordinate with other actors to make these options more generally used.
- In rare cases when deprivation of liberty is the only option to protect the security of the child or others, security forces must limit the detention time to the shortest time period possible. Following detention, security forces must ensure that youth have a safe place to return.
- Security forces must coordinate to have testing available so that detained children with symptoms can be tested. If anyone tests positive, proper healthcare procedures must be followed to ensure that timely medical attention is received and also that youth testing positive are quarantined.
- Security forces must ensure that practices and procedures are in place so that children are not placed in isolation or solitary confinement, regardless of the circumstances specific to any child. A child cannot be put in solitary confinement for quarantine purposes.
- Security forces must understand their role and responsibility when a child is reintegrated after being released from deprivation of liberty, which includes providing social and economic support.
- Security forces must expand their community policing approach to actively support both the social and economic reintegration of all children by taking into account the added stigma and concerns arising from the pandemic.
- Security forces must engage in preventive actions (e.g., community policing strategies) with children and their families, communities and members of the social workforce involved in the reintegration plan to avoid security risks to children or by children that would compromise their reintegration and lead them to potentially enter into conflicts with the law.
- Security forces must revisit their coordination mechanisms, referral pathways and standard operating procedures in order to ensure they are adapted to the challenges associated with the COVID-19 pandemic.
- Security forces must ensure they are in a position to build constructive relationships using appropriate communication strategies with children and support their meaningful participation in all actions they undertake in this health emergency.

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