

UNICEF Toolkit on Diversion and Alternatives to Detention 2009

Glossary of terms relevant to children in conflict with the law¹

[Please note: This glossary has been developed to help clarify the terms used in this toolkit. It does not reflect official UNICEF policy]

Acquitted: A child is acquitted when found not guilty of an offence by a competent authority.

Adequate records: Minimum record keeping should include each child's: name; sex; date of birth; details of parents and family members or guardians; ethnicity; district of origin; alleged offence or reason for contact with the criminal justice system (including for arrest and detention where relevant); dates of alleged offence, arrest and detention (where relevant); place[s] of detention (if relevant); the date and reason for transfer between institutions (where relevant); and court history (where relevant). Strict confidentiality must be observed with such records.

Adjudicate: To settle a case by judicial procedure.

Adjudication hearing: Stage in court proceedings in which arguments, testimony and evidence are presented to determine whether or not a child actually committed the alleged offence.

Administrative detention: Deprivation of liberty under the power or order of the executive branch of government rather than the criminal justice system. [See also 'administrative law' and 'administrative justice system']

Administrative law: Body of legislation governing the activities of public officials who, via the administrative agencies of government, implement social policies. [See also 'administrative justice system' and 'administrative detention']

Administrative justice system: Institutional framework that supports the upholding of administrative law. The institutional framework might include courts, tribunals, inquiries, complaints procedures and ombudsmen. In relation to children this might include, for example: reviewing the legitimacy and necessity of placing children in residential care, foster care, mental health or other facilities; inquiries into the conditions of care in such placements; appeals regarding immigration

¹ Many of the entries here have been adapted, updated and expanded from the UNICEF and Penal Reform International 2006 Juvenile Justice Training Manual and the 2006 UNODC/UNICEF Manual for the Measurement of Juvenile Justice Indicators.

status, child benefit or child support. [See also 'administrative detention' and 'administrative law']

Administrative offence: Lowest level of offence, such as vagrancy, truancy, breaking municipal by-laws (ordinances), use of alcoholic beverages and, in some cases, vandalism.²

Aftercare: Control, supervision and care exercised over children, generally after custodial sentences. Aftercare may include probation, parole, counselling, enrolment in a community programme or other forms of treatment. Aftercare services are designed to support children's return to their families and communities.

Age of criminal responsibility: [see 'minimum age of criminal responsibility']

Alternative sentence: Measure that does not involve deprivation of liberty that is imposed at the time of final disposition on a child who has been found guilty of committing an offence. This is also known as a 'non-custodial sentence'.

Alternatives (to deprivation of liberty or to detention): Measures that may be imposed on children who are being formally processed through the criminal justice system that do not involve deprivation of liberty. Alternatives can be applied from the time of apprehension until final disposition for children who have not been diverted away from the formal justice system., For the purposes of this toolkit, 'alternatives to detention' and 'alternatives to deprivation of liberty' are used as synonyms. The terms 'alternatives to imprisonment' (as opposed to 'alternatives to detention' or 'alternatives to deprivation of liberty') and 'non-custodial sentencing' (as opposed to 'non-custodial measures') apply specifically at the sentencing/final disposition stage. [see 'deprivation of liberty' and 'detention'].

Anti-social act/deed/behaviour: Label used to differentiate the behaviour that is damaging to the community from the crime that is defined by law. Definitions vary from country to country and over time.

Arrest: When someone is placed under the custody (they are not free to leave) of the police, military, intelligence or other security forces because of actual, perceived or alleged conflict with the law. ² Definitions vary from country to country³. In general, holding a person for purposes of investigation (or confirming identity or contacting a responsible adult), without a specific offense being cited as the reason, would not be considered to be formal arrest. The criminal justice process often begins with an investigation by a police officer, either because he or she observes

² Adapted from *Lost in the justice system: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF, May 2008, Appendix 1.

³ In some countries, the term "arrest" is actually used to refer to pre-trial detention and sometimes also to a specific form of custodial sentence.

a violation of the law being committed or because such an act is reported. The police officer will generally take one of three actions at arrest: 1) release the child to his or her parents / guardians or other family member with a warning or reprimand; 2) release the child to the parents / guardians or other family member under the condition that the child enrolls in a community diversion programme; or 3) keep the child in custody and refer the matter to the juvenile / children's court for further processing. In civil law systems the police officer – or a designated colleague at the police station - is obliged to contact the *procureur* (public prosecutor) for further direction as the police officer does not have the discretion to apply diversion measures him or herself.

Bail: A suspect who has been arrested or charged with an offence is released by the police or court on condition that they report back at a certain date and time. Sometimes the suspect has to keep to certain conditions such as living in a particular place, not going near witnesses and/or not interfering with evidence. Sometimes the suspect has to pay a sum of money which is refunded only if they return to appear in court as ordered. However, the payment of money should be discouraged as it disadvantages children from poor backgrounds even if they will comply with the conditions of bail. A well-developed bail plan that meets the needs of the community and the child and involves the extended family will ensure compliance. If there is serious concern that the suspect will not return then they may be 'remanded in custody' – i.e. detained – pending further court appearance. Such pre-trial detention is grossly over-used for children in many countries.

Caution / warning: Official warning given to children in conflict with the law who admit to their offense. Police cautioning is a form of 'first level' or diversion, and can prevent children who have committed minor offences from spending time in detention facilities. As a condition of the caution or warning, the child may have to apologise to the victim/survivor and/or do some community work or other reparation.

Charge: A child is charged with an offence where the police, a law enforcement authority, the public prosecutor or a competent authority formally accuses him or her of having committed a specific offence.

Child: For the purposes of this toolkit, the term 'child' refers to any person under the age of 18, in line with the UN Convention on the Rights of the Child (Article 1). Stressing the use of child-sensitive terminology, words and terms such as 'minor', 'juvenile' and 'juvenile delinquent' have been avoided in this toolkit, due to their negative and prejudicial connotations and the fact that they detract from the reality that the individuals involved are first and foremost children and adolescents. These terms are replaced with references to 'child' and 'child in conflict with the law'. However, the term 'juvenile' will still be used when it is specifically mentioned by an international instrument under review or when quoting references and identifying the titles of previous researches. [It is understood that in the Spanish language the term 'child' (*niño / niña*) refers only to younger children; under-18s are therefore referred to as 'children' (*niños / niñas*) and 'adolescents' (*adolescentes*). It is also

understood that some English-speaking countries such use the term 'young people' or 'youth' to refer to older children out of respect for their increasing autonomy and independence. Some people argue that this helps to promote their participation in justice processes. However, to avoid confusion, this toolkit still uses the term 'child' to refer to all under-18s in line with the CRC.].

Child in conflict with the law: Any child who comes into contact with law enforcement authorities because he or she is alleged as, accused of – or recognized as having infringed the criminal law. In this regard, it is important to bear in mind that an act suspected to be against the law does not necessarily mean that a person is guilty of an offence. To be guilty, a person must have acted with awareness of what he or she was doing, with intent, and without duress or undue influence. The term 'child in conflict with the law' also applies to children under the age of criminal responsibility, although – if a distinction needs to be made – they can be referred to as 'children too young to be prosecuted', 'children under the minimum age for prosecution' or 'children under the minimum age of criminal responsibility', or 'underage offenders' (although there is dispute as to the appropriateness of this last term: can a child be an 'offender' if they are too young to be criminally responsible?).⁴ Children may be arrested for activities that are officially criminalized in legislation but which the international human rights community calls to be decriminalized as a matter of urgency (e.g. status offences – see below). Furthermore, some children who have not engaged in criminal activity are arrested illegally. There is also a category of children who are directed to the criminal justice system because the care system is lacking. However, the present toolkit addresses the situation of children who are alleged as, accused of, or recognized as having infringed the criminal law.⁵

Child in contact with the law: Any child who comes into contact with the juvenile justice system or the criminal justice system as a victim/survivor, witness or in conflict with the law, and/or any child who comes into contact with the civil and/or administrative justice systems. This term is broader than 'child in *conflict* with the law'. Diversion and alternatives to detention apply specifically to children in *conflict* with the law, although it is recognised that many such children are also victims/survivors and/or witnesses as well.

Child justice: In some countries this term is synonymous with 'juvenile justice' (e.g. South Africa). In other countries this term has a much broader meaning, closer to 'children in contact with the law' and/or 'justice for children'. In order to avoid confusion, the term 'child justice' is not used in this toolkit. [See also 'juvenile justice', 'child in contact with the law' and 'justice for children']

⁴ The child under the age of criminal responsibility is in conflict with the law as the offence/crime must still be investigated and the child interviewed to establish that they are responsible. As they are below the age of criminal responsibility, criminal proceedings cannot be brought, but as a result of offending a welfare intervention may be required.

⁵ 'Alleged' is when the child is under investigation, before being charged; 'accused' is when the child has been charged but not yet tried; 'recognised' is when the child has been tried and found guilty.

Child-friendly justice: Sector-wide approach aiming to improve all policies and practices of the justice system towards children.⁶ This includes legislation, norms, standards, guidelines, policies, procedures, mechanisms, provisions, institutions and bodies specifically applicable to children who come into contact with the criminal, civil or administrative justice system in any way, including as victims/survivors, witnesses and as children in conflict with the law. These aspects may or may not be framed within a separate system for children. 'Juvenile justice' is a similar term. However, 'juvenile justice' is used to refer only to children in conflict with the law, not to children who are victims/survivors or witnesses or who have contact with civil and administrative justice systems.⁷

Child rights-based approach: UNICEF does not have a specific definition for a 'child rights-based approach'. It relies instead on the 'human rights-based approach to programming'⁸, the UNICEF Mission Statement (which indicates that the CRC is the organisation's guiding frame of reference), and the 'four principles' of the CRC (non-discrimination - Article 2, the best interests of the child - Article 3, the right to life, survival and development - Article 6, and respect for the views of the child - Article 12). Essentially this means: 'an approach which furthers the realisation of the rights of all children as set out in the CRC through programming which develops the capacity of duty-bearers to meet their obligations to respect, protect and fulfil rights and the capacity of rights-holders to claim their rights, and which is guided at all times by the principles of the right to life, survival and development, non-discrimination, the best interests of the child and respect for the views of the child.'

Child victim/survivor: These terms refer to children who have had offences committed against them. In child protection work, much progress is being made to improve access to justice and child rights-based/sensitive treatment of such children in the criminal justice system. The term 'child victim/survivor' is preferred in this toolkit to the term 'child victim'. This is because the term 'survivor' (now widely used in relation to gender-based violence) acknowledges and reinforces children's resilience,

⁶ *Critical Mass in Juvenile Justice: Guidance Note on Juvenile Justice Programming in the CEE-CIS Region*, UNICEF Regional Office for CEE/CIS, July 2009, Annex 1.

⁷ In some regions (e.g. the Caribbean) 'juvenile justice' and 'child justice' are used interchangeably to refer to children in conflict with the law but 'justice for children' is used to refer to all children in contact with the law, including victims/survivors and witnesses. Other countries and regions are against replacing 'juvenile justice' with 'child justice' on the grounds that this is too confusing with the broader 'justice for children' concept.

⁸ "In keeping with the outcome document of the UN consultation at Stamford (the UN Common Understanding), a human rights based approach to programming means for UNICEF that:

- The aim of all Country Programmes of Cooperation, including in humanitarian situations, is to further the realisation of the rights of all children and women;
- Human rights and child rights principles guide programming in all sectors at all phases of the programme process; and
- Programmes of Cooperation focus on developing the capacities of duty-bearers, at all levels, to meet their obligations to respect, protect and fulfil rights; as well as on developing the capacities of rights-holders to claim their rights." [UNICEF *Programme Policy And Procedure Manual*, Revised February 2007, pp. 5-6]

can assist in psychological recovery, and can reduce 'double-victimisation' by continued labelling with the term 'victim' which many see as disempowering and stigmatising. The word 'victim' is retained, however, because it has a specific legal meaning in many contexts, it is still widely used and recognised and, unfortunately, not all children do 'survive'. This toolkit on diversion and alternatives only applies to children in conflict with the law. It must be remembered, however, that many children in conflict with the law are often also victims/survivors (and possibly witnesses) and this may be at the root of their offending behaviour. This is yet another reason why criminal justice systems need to deal sensitively and appropriately with children in conflict with the law, for example through the application of appropriate care and protection measures and investigation / perusal of perpetrators of crime *against* such children - in addition to implementing diversion or alternative sentencing measures which acknowledge this double status. Child victims/survivors can also be considered a witness to the crime.

Child witness: These terms refer to children who are witnesses in relation to criminal cases. This toolkit on diversion and alternatives only applies to children in conflict with the law.

Civil law: 'Civil law' has two possible meanings: 1. 'Civil law' is a legal system whereby laws are written into a systematic collection and codified, rather than being determined by judges; 2. An area of either 'civil' or 'common' law systems which deals with private law (relationships between individuals) rather than public law (relationships between individuals and the state). In relation to children this can involve, for example, custody and inheritance disputes.

Civil justice system: Institutional framework (procedures, professionals, authorities and institutions) that supports the upholding of civil law.

Community order / community service order: A sentence or measure to be served/implemented in the community. As part of the community order the court may order the child in conflict with the law to fulfil a number of requirements. These may include drug or alcohol treatment and testing, electronic monitoring (tagging), curfew, living at a specified address, unpaid work, doing or refraining from doing certain things or entering certain places, or attending certain programmes.

Competent authority: The part of the justice system for children in conflict with the law that is responsible for making procedural or disposition decisions regarding a child's case.

Complaints mechanism: Any system that allows a child (in conflict with the law) to bring any aspect of the treatment that child has received, including violations of his or her rights, to the attention of the authority responsible for the place of detention, or any other official body established for such purpose. Such mechanisms could include ombudspersons and autonomous, statutory community-based prison monitoring groups.

Conference / restorative justice conference / dialogue: A facilitated meeting or encounter between stakeholders involved in an offence such as victims/survivors, children in conflict with the law and perhaps families, professionals and community members⁹. In some jurisdictions such as New Zealand, the court is required to refer the matter to a restorative justice conference and the conference reports back to the court with recommendations on how the matter should be dealt with.

Convicted: A child is convicted when found guilty of having committed an offence by the decision of a competent authority.

Correctional facility: Facility for the detention of individuals convicted of criminal activity, e.g. prison, borstal or certain 're-education centres' for children.

Criminal law (penal law): Body of law that defines criminal offences, regulates the apprehension, charging and trial of suspected persons and fixes penalties and modes of treatment applicable to convicted offenders.

Criminal justice system: Laws, procedures, professionals, authorities and institutions that apply to witnesses and victims/survivors, and to those alleged as, accused of, or recognized as having committed a criminal offence¹⁰, whether adults or children. The criminal justice system may include elements which are specific to children as victims/survivors, witnesses or in conflict with the law. Where a separate system exists for children in conflict with the law this is often referred to as a 'juvenile justice system' [see also 'juvenile justice system'; 'civil justice system' and 'administrative justice system'].

Criteria for pre-trial detention: Basic conditions which must be met in order to justify the detention of children before and during their trial and which must be set out in law. Such criteria might include; need to prevent further offending; need to prevent interference with witnesses and/or victims/survivors; risk of flight or risk of deciding not to reappear before the court. If detention is sought there must be evidence to support one or more of these grounds.

Custodial sentence: Disposition involving deprivation of liberty.

Deprivation of liberty: means "any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority."¹¹ This includes any form of residential placement including police lock-ups, remand homes, borstal

⁹ In the field of restorative justice, the terms 'conference' and 'dialogue' are increasingly preferred to the term 'mediation', which assumes that parties on all sides are on the same 'moral playing field' and share equal blame for a situation – an assumption which can be inappropriate from the standpoint of victims/survivors. Source: The Little Book of Restorative Justice, Howard Zehr and Ali Gohar, 2003, p.7.

¹⁰ Adapted from the definition of 'adult criminal justice system' in the UNODC/UNICEF Manual on the Measurement of Juvenile Justice Indicators, Appendix 1, pp.53-55.

¹¹ UN Rules on the Treatment of Juveniles Deprived of their Liberty (Havana Rules) Art. 11(b).

institutions, reform schools, education and re-education centres, training centres and schools, treatment centres and secure institutions, whether they are facilities specifically for children or for adults. The term applies regardless of the reason why children are deprived of liberty, whether the declared aim is protection, rehabilitation, punishment or something else.

Detention: The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) defines detention as follows:

- "Detained person" means any person deprived of personal liberty except as a result of conviction for an offense;
- "Detention" means the condition of detained persons as defined above.

The term therefore normally refers to pre-trial detention only. However, in some countries, this term is rather used as a synonym to deprivation of liberty. For simplicity purposes, this is how these terms are used in the present toolkit.

In the case of children, detention should always be a measure of last resort and for the shortest appropriate period of time as per article 37 b) CRC. [See last resort].

Disposition: The decision reached concerning a child's case. Examples include, but are not limited to, a juvenile / children's court judge deciding to dismiss the case or to order a child to participate in a drug treatment programme or perform community service. The term 'disposition' covers a broad range of options. It is not synonymous to 'sentence' as 'disposition' includes dismissal of a case whereas 'sentence' always involves the application of certain measures. [See also 'sentence'] Juvenile / children's court case dispositions usually fall into the following categories:

- **Dismissal:** An order of the court disposing of a case without conducting a trial of the issues. Dismissal may occur when there is a finding of insufficient evidence to bring the matter to trial, when no more decisions or actions are anticipated, or when the case is already being handled by another court.
- **Placement:** Removing a child found to have committed an offence from the home and placing him or her elsewhere for a specified period of time, such as in a children's care home, detention centre or other facility.
- **Probation:** Placing a child found to have committed an offence under the supervision of the court (usually through a probation service or equivalent). During probation, the child must maintain good behaviour, not commit another offence, and meet any other conditions the court may deem it appropriate to impose.
- **Probation before judgment:** Placing a child found to have committed an offence on probation before the judge makes a final decision. Successful completion of the probation period results in a complete dismissal of the charges without any finding of involvement by the child in the offence.
- **Other:** A child found to have committed an offence may be given a disposition other than placement or probation, such as requiring

participation in a drug abuse treatment system, payment of fines, or performance of community service.

Disposition hearing: Hearing held after the adjudication hearing in which the judge determines the disposition of a child's case.

Diversion: Diversion means channelling children in conflict with the law away from judicial proceedings through the development and implementation of procedures or programmes that enable many - possibly most - to avoid the potential negative effects of formal judicial proceedings, provided that human rights and legal safeguards are fully respected. Diversion can be instigated from the time of apprehension (before arrest) to any point up until the final disposition hearing (including after pre-trial detention). A decision not to pursue a case (e.g. through lack of evidence) may be made after a formal hearing but this is not 'diversion': the case is simply dropped altogether. The term should not be used with regard to children who are too young to be prosecuted: if they are young to be tried, they cannot be diverted from trial.

Due process (in full: 'due process of law'): Denotes a set of guarantees for a fair and impartial hearing in court, generally including - but by no means limited to - the defendant's right to understand the charges being brought, to challenge their arrest and detention (if applicable), to be considered innocent until proven guilty, to be informed of evidence held against him/her and to contest that evidence, to be represented, and to have access to judicial review of the decision.

Hearing: A court proceeding to decide on a course of action or to determine a child's involvement or non-involvement in an offence. In making the decision arguments, witnesses and evidence are considered by a judicial officer or administrative body. It should be noted that there is a wide variety of practice internationally in this area and that States often give different names to hearings at different stages of the process.

Immigration / migration offence: An offence relating to the legality of the entry and/or continued presence of the child and/or his or her family in the country in question, or to the legality of the current place of residence of the child and/or his or her family following internal displacement.

Imprisoned person: "means any person deprived of personal liberty as a result of conviction for an offence."¹² [See also 'detention']

Individual rehabilitation / reintegration plans: A document which outlines specific characteristics of a child's conflict with the law which is designed to tailor rehabilitation / reintegration to each individual child. The plan should address the risks in the child's life that led to the original conflict with the law. Should such services as substance abuse

¹² (UN) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

counselling, family counselling or educational support be needed, these steps would be outlined in an individual child's plan.

Informal justice system / non-formal justice system: Forms of justice enforcement and dispute resolution that are not an integrated part of the formal justice system and which have a degree of effectiveness, stability and legitimacy within a designated local constituency. Informal justice systems are most often based on a normative framework deriving from tradition/custom, and/or religion, on occasions with integrated elements from the national legal framework and/or international human rights standards. In many cases informal justice systems draw on a variety of legal sources.

Information systems: Procedures and structures that enable bodies or institutions that deal with children in conflict with the law to systematically record, update and retain information about those children.

Justice for children: This term refers to policies and programmes aiming at ensuring that children are better served and protected by justice systems, through full application of international norms and standards for all children who come into contact with justice systems as victims/survivors, witnesses and alleged perpetrators; or for other reasons where judicial intervention is needed, for example regarding their care, custody or protection. In short, justice for children goes beyond juvenile justice – i.e. work with children in conflict with the law – to include all children going through justice systems, for whichever reason.

Juvenile court: A court with authority over cases involving individuals under a specified age, usually 18 years.

Juvenile delinquency / juvenile delinquent (or 'child delinquency / delinquent'): 'Juvenile delinquency' is used to refer to behaviour of children which violates the law. However, it is also used to refer to general 'anti-social behaviour' which may or may not be criminalised within a particular jurisdiction. Behaviour which *has* been criminalised might include activities prohibited to children but not to adults – such as 'truancy', 'running away' or being 'beyond parental control' (also known as 'status offences' – see below). Sometimes, as in the case of sexually exploited children or children exploited by adults for criminal purposes, the system does not differentiate between the child as the perpetrator of a crime and the child as victim/survivor of a crime. 'Juvenile delinquency' and 'juvenile delinquent' carry strong negative connotations in English which can damage the reintegration process and therefore other terms are used in this toolkit such as 'child in conflict with the law'.

Juvenile justice / juvenile justice system: Legislation, norms, standards, guidelines, policies, procedures, mechanisms, provisions, institutions and bodies specifically applicable to children in conflict with the law who are over the age of criminal responsibility. These aspects may or may not be framed within a separate system for children. For example, in the criminal code, special provisions may exist for children in conflict with the law although they are dealt with in an adult rather than a

children's court. In some countries, a gradual shift away from the term 'juvenile justice' is taking place, in favour of 'child justice'. [See also 'child justice']

Last resort: means that "deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response" (Rule 17(c), UN Rules on the Administration of Juvenile Justice).

Legal representation / legal assistance / legal aid: 'Legal representation' is representation in court by a qualified lawyer (or a legally trained person who is authorised to appear in court). This is not the same as 'legal assistance' or advice which can be provided by a lawyer, NGOs or paralegals at any stage of the criminal justice process. 'Legal aid' generally refers to funding or funding schemes made available by the State or others to provide for 'legal representation' to all vulnerable groups in contact with a justice system, whether as offenders, victims/survivors or witnesses, to ensure their effective legal protection.

Life skills: Life skills are abilities which help us to adapt and to behave positively so that we can deal effectively with the challenges of everyday life. Life skills include things like: decision-making, goal-setting, problem-solving, coping with stress, coping with emotions, negotiating friendship, interpersonal relationships, empathy (concern for others), critical thinking, resisting peer pressure and assertiveness.

Mediation / victim-offender mediation: A process in which a neutral person assists two or more people to resolve a conflict and reach a solution acceptable to all sides. This is commonly used in restorative justice processes as a diversion measure or an alternative to court proceedings. Victim-offender mediation brings the victim/survivor of a crime together with the offender for mediation, provided that the offender has admitted guilt to the offence (without pressure) and that both sides agree to take part. Mediation does not have to be face-to-face: 'shuttle' mediation and letter-writing are some examples of indirect mediation. The terms 'conference', 'conferencing' or 'dialogue' are increasingly preferred to the term 'mediation' (which implies that parties on all sides are on the same 'moral playing field' and share equal blame for a situation – an assumption which can be inappropriate from the standpoint of victims/survivors).¹³ [See also 'conference']

Minimum age of criminal responsibility: This is the lowest age at which the juvenile justice system deems a child can be held responsible for his/her own behaviour and can therefore be found guilty in a court. Under this age children are not considered to have the capacity to infringe penal law.¹⁴ Penal codes often make exceptions to the minimum age in

¹³ *The Little Book of Restorative Justice*, Howard Zehr and Ali Gohar, 2003, p.7.

¹⁴ "If the child is too young to be prosecuted [...], criminal law principles do not apply. The extent to which procedures for younger children involved in criminal activity should comply with article 40 of the CRC is not entirely clear. It is clear, however, that some other provisions of the CRC must be respected, especially the principles that no child shall be

cases of very serious crimes, which is strongly opposed by the Committee on the Rights of the Child. There is debate internationally about what the minimum age of criminal responsibility should be. The Committee on the Rights of the Child General Comment No. 10 (2007) on 'Children's rights in juvenile justice' states that "a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level" (paragraph 32). In some regions, there is some interest in introducing the term and concept of 'minimum age of prosecution' rather than 'minimum age of criminal responsibility' (which is considered confusing "because in many countries juvenile justice systems are based on the principle that children do not have 'criminal responsibility'"¹⁵).

Non-formal justice system: [see 'informal justice system']

Non-residential programme: Programme that provides services to children who live at home or in the community and report to the programme on a daily basis or as scheduled (as opposed to a 'residential' programme – see below). Children in such a programme require more attention than that provided by probation and aftercare services. Often the programme operates its own education programme through the local school district.

Offence: An act punishable by the law by virtue of the legal system in question.

Penal law: [see 'criminal law']

Positive sentencing: Determining a constructive measure whose components are considered most likely to respond effectively to the individual child's specific needs and circumstances with a view to avoiding his/her future recourse to behaviour resulting in conflict with the law.

Pre-trial detention: The period when children are deprived of liberty between the moment of being charged and the moment of being sentenced. Such deprivation of liberty must be used only as a last resort, must be the least restrictive in the circumstances and must be ordered by a competent authority. Diversion away from formal proceedings is strongly encouraged, as it allows for release from pre-trial detention as early as possible. Pre-trial detention includes: detention in police cells

deprived of liberty arbitrarily or illegally, and that any deprivation of liberty must be the last resort and for the shortest appropriate period of time. (Art.37 (b)) This means that no underage child may be confined in a residential facility in order to prevent further involvement in criminal activity unless it is clear that other forms of assistance to the child and his or her family would not serve this purpose. In addition, any child who is deprived of liberty for this reason must be treated humanely, and has the right to challenge the legality of the deprivation of liberty in a court. (Art.37(d))." *Terminology used in Juvenile Justice System Reform Assessment*, Dan O'Donnell, consultant, UNICEF Regional Office for CEE/CIS, Child Protection, February 2008.

¹⁵ *Terminology used in Juvenile Justice System Reform Assessment*, Dan O'Donnell, consultant, UNICEF Regional Office for CEE/CIS, Child Protection, February 2008.

following arrest and before the first assessment of the case before a competent authority; and detention in remand facilities following the first hearing of the case before a competent authority but prior to the final disposition hearing. Over-use and abuse of pre-trial detention is a cause for great concern internationally. In many countries children can spend months and even years in pre-trial detention whilst awaiting final disposition of their cases. [See also 'criteria for pre-trial detention']

Probation / supervision: Non-custodial measure involving the monitoring and supervision of a child whilst he or she remains in the community as well as guidance and assistance. A competent authority, the public prosecutor, the social welfare service or a probation officer usually supervises probation. Probation may be employed as a measure on its own, or following a custodial sentence. During probation, the young person must maintain good behaviour, not commit another offence, and meet any other conditions the court may deem appropriate to impose. Precise definitions vary. Similar arrangements can be designated by other terms, such as parole or conditional sentence, depending on the country.

Probation officer: Government official responsible for supervising a period of probation. He or she is often in charge of conducting an assessment of the child and referring him or her to appropriate counselling, education and reintegration programmes. In some countries this role is performed by a social worker.

Protective Environment Framework (PEF): UNICEF conceptual framework for analysis and programming which defines eight broad elements that are critical to the creation of a protective environment for children. A 'protective environment' is where girls and boys are free from violence, exploitation, and unnecessary separation from family; and where laws, services, behaviours and practices minimize children's vulnerability, address known risk factors, and strengthen children's own resilience. The eight interconnected elements of the PEF work individually and collectively to strengthen protection and reduce vulnerability. They are: 1. Governmental commitment to fulfilling protection rights; 2. Legislation and enforcement; 3. Attitudes, traditions, customs, behaviour and practices; 4. Open discussion, including the engagement of media and civil society; 5. Children's life skills, knowledge and participation; 6. Capacity of those in contact with the child; 7. Basic and Targeted Services; 8. Monitoring and oversight.

Proportionate: Maintaining a just, proper, balanced or comparative relationship. In justice this is often used to refer to the relationship between an offence and the response to this offence – in other words ensuring that the response is 'reasonable' and not an over- or an under-reaction. According to the CRC (*Article 40.4*): "A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence." According to the Beijing Rules (Rule 17.1(a)): "The reaction taken shall always be in

proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society”.

Punishment: A penalty imposed for wrongdoing.

Recidivism: Re-offending within a certain period. Recidivism is a key indicator in evaluating the level of ‘success’ of diversion and alternatives in comparison to detention, as well as when evaluating the success or failure of rehabilitation programmes in prisons. Recidivism is often measured in relation to a time period, e.g. ‘10% of those who participated in the programme committed another crime within 12 months following completion of the programme’. However, for such findings to be valid, there needs to be rigorous methodology in place.

Rehabilitation: Restoring of a person to good health or a constructive place in society, often through therapy and education. The term ‘reintegration’ is generally preferred to ‘rehabilitation’ as the latter is thought to divert attention away from external factors and responsibilities bringing a child into conflict with the law. Art. 40 CRC specifies that every child in conflict with the law has the right to be treated in a way which takes into account the desirability of promoting his/her reintegration and assuming a constructive role in society [See also ‘reintegration’]

(Re)integration: (Re)-establishing of roots and a place in society for children who have been in conflict with the law so that they feel part of, and accepted by, the community. This involves a process of social, economic and political reintegration, for example: through the restoring of family, peer and community relationships; and through participation in educational or livelihood activities, cultural and leisure activities, and decision-making processes. ‘Re’-integration assumes that the child was once a part of, and accepted by, the community in the past. However, in some cases the process might be more accurately described as ‘integration’ where the child is experiencing these things for the first time. [See also ‘rehabilitation’]

Remand: When a competent authority sends someone who has been accused of committing an offence back into custody to await trial or continuation of their trial.

Residential programme: Programme in which children live on-site in programme housing. Residential programmes do not have the security fences and security hardware typically associated with correctional or detention facilities. A residential programme, for example, could be located in a converted apartment building or a single-family home. If a child is not free to leave at will, then this is considered to be deprivation of liberty.

Restorative justice: The UN Basic Principles on the use of restorative justice programmes in criminal matters define it as an approach in which the victim/survivor and offender, and in some cases other persons affected by a crime, “participate actively together in the resolution of

matters arising from the crime, generally with the help of a facilitator.” However, a broader definition can sometimes be more helpful, for example: restorative justice is a way of responding to criminal behaviour which emphasises repairing the harm caused by the crime and ‘restoring’ harmony as much as possible between offender, victim/survivor and society. It mainly involves some form of mediation and conflict resolution and often results in apologies, reparation, compensation and community service. In contrast to ‘retributive justice’, which focuses on punishing the offender via a two-way relationship (offender and state), ‘restorative justice’ addresses harm, needs, accountability and obligations via a three-way relationship (offender, victim/survivor and society). Restorative justice: makes the offender responsible for reparation of harm caused by the offence; gives the offender an opportunity to prove his/her positive capacity and qualities; tackles guilt feelings in a positive way; and involves others who have a role in conflict resolution including victims/survivors, parents, extended family members, schools and peers.

Retributive justice: A form of justice, which asserts that a legitimate moral response to crime is proportionate punishment, irrespective of whether this will achieve positive social consequences.

Sentence: Final decision, notwithstanding any right of appeal, by a competent authority about a child’s case ruling that the child shall be subject to certain measures. [See also ‘disposition’]

Social inquiry report: This is an assessment of an accused person’s current and past social circumstances and their need and motivation for treatment or other alternative forms of non-custodial care (e.g. community work order, probation). It also reviews the appropriateness of the various measures recognized by the legal system. A social enquiry report is often a pre-requisite to enable juvenile / children’s court judges to use their discretion in disposing of children’s cases in the most appropriate way. However, it is often overburdened and under-resourced social service departments or probation office staff who are responsible for compiling these reports and in many countries they are not completed in practice. [See also ‘individual rehabilitation plan’]

Status offence: An act or behaviour that is only considered criminal if the person committing it is, or is believed to be, under the age of eighteen (i.e. it is an ‘offence’ due to their ‘status’ as a child). Typical status offences include truancy, running away from home, being out after dark or being ‘beyond parental control’. Children living on the streets are particularly vulnerable to being apprehended by police on the grounds of status offences. International guidelines call for status offences to be decriminalised.¹⁶

¹⁶ Riyadh Guidelines, Guideline 56 (GA Res 45/112 of 14th December 1990): “In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.”

Torture: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”¹⁷

Youth/Young person: The United Nations, for statistical purposes, defines ‘youth’, as those persons between the ages of 15 and 24 years. This definition was made during preparations for the International Youth Year (1985), and endorsed by the General Assembly (see A/36/215 and resolution 36/28, 1981).

¹⁷ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.