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2021 WORLD CONGRESS ON JUSTICE WITH CHILDREN

"Ensuring access to justice for all children:
towards non-discriminatory and inclusive
child justice systems"



World Congress Preparatory Meetings

COMPENDIUM REPORT

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DISCLAIMER

This report was produced primarily as a synthesis of the discussions held at the preparatory meetings for the 2021 World Congress on Justice With Children. The views expressed in the report do not necessarily reflect the official positions of each of the organisers and supporters. Additional descriptions and explanations have been inserted by the author when necessary, but in a manner that is restricted to and aligned with the intended purpose of the report. In addition, some of the statements made by the meeting participants were revised based on fact checks that were conducted by the author, but there is no guarantee that all factual statements made in this report are completely accurate.

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The Global Initiative on Justice With Children is a joint programme developed by a consortium of international organisations to address the most current issues related to children in contact and/or conflict with the law. The Global Initiative organises the World Congresses as a Justice With Children Global Milestone and also engages and mobilises a global community of practitioners through the Justice With Children online platform. It aims to facilitate critical discussions and action-oriented problem-solving among professionals through an online and onsite space for reflection, exchange, and constant learning in the field of child justice.

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Foreword

Since assuming my role as the Special Representative of the UN Secretary-General on Violence Against Children in 2019, I have seen varying levels of progression, regression, and stagnation in the field of access to justice for children and the protections afforded to children in contact with the law. It's no secret that exclusion and marginalisation deny children of their rights and undermine their well-being, leading to their increased vulnerability within the society. Yet, marginalised children face immense barriers in access to justice, and they are further marginalised when they come into contact with the law.



As outlined in this report, these children are often forgotten in the design and implementation of frameworks and programmes that are meant to uphold and protect the rights of children.

The COVID-19 pandemic, in particular, has complicated these challenges. In my annual report to the UN Human Rights Council earlier this year, I highlighted that the pandemic and its mitigation responses have resulted in greater risks and instances of an array of violence against children, while exacerbating poverty and socio-economic inequalities and hindering access to essential services, thereby threatening to undermine the progress made for children as promised in the 2030 Agenda for Sustainable Development. Sadly, children around the world from particularly marginalised groups are bearing the brunt of the impact.

The pandemic has not only revealed the weaknesses and fragility in our child justice systems, but it has also been further straining the child and social protection systems that were already feeble, under-resourced, and disjointed. This added burden further restricts the timely, fair, and effective access to child-sensitive justice.

However, the pandemic has also provided us with an opportunity to rethink and better invest in enhanced ways for building peaceful, just, and inclusive societies with and for children, in line with Sustainable Development Goal 16 that includes the targets to end violence against children and ensure equal access to justice for all.

In this process, we must remember that children are part of the solution and must be engaged as partners in this endeavour. Last year, my office conducted a mapping exercise of how children are influencing action and improving the world as agents of change. A promising example of this is the Justice for Every Child campaign that was initiated by students and young activists in Africa and Europe, which has since expanded into a global movement with a vast range of partners on the front lines tackling the impact of the pandemic on children.

My mandate strives to prevent and eliminate all forms of violence against children, including the structural violence of deprivation of liberty imposed on children. To this end, my mandate not only chairs the UN Inter-Agency Working Group on Violence against Children, but it also leads the UN Task Force on children deprived of liberty, which ensures follow up to the recommendations of the UN Global Study on Children Deprived of Liberty, in close cooperation with States, UN agencies, CSOs, academia, and of course, children and youth themselves.

I stand ready in my mandate to support you in the process of actively engaging in child justice reforms, with an eye to innovation and resilience to bring about sustainable long-term change. We must meticulously learn from this pandemic in order to thoroughly prepare ourselves for whatever may be next.

In this regard, the recommendations provided throughout this report are an excellent starting point for these discussions, and the 2021 World Congress on Justice With Children will be a convenient platform to continue these important conversations and collectively devise action-oriented solutions.

It is a pivotal moment for advocating and mobilising all key stakeholders to ensure that all children have equal access to justice without discrimination and in an inclusive manner, and to guarantee that justice in all its forms, whether criminal, civil, or social, are able to fulfil the rights and needs of children, regardless of who or where they are, ensuring no child is left behind.



Dr. Najat Maalla M'jid

Special Representative of the UN Secretary-General
on Violence Against Children

Definitions

The list below provides definitions for the core terminology used throughout this report. These definitions are explanations adopted by the author in the context of this report to facilitate understanding, but they are not official or universal definitions, unless otherwise specified in the footnotes. Word choices were made intentionally in the report to narrow or expand the scope of applicability, so close attention should be paid to the terms that are used. Additional definitions are also provided in the relevant sections where necessary.

Terms related to individuals and mechanisms

Age groups:

- **Child:** Any person below the age of 18 years.
- **Youth / young person¹:** Any person between the ages of 15 and 24 years.
- **Adolescent:** Any person between the ages of 10 and 19 years.
- **Young adult:** Any person between the ages of 18 and 24 years.
- **Minor:** Any person below the legal age of majority or emancipation.

Child in conflict with the law²: A child at or above the minimum age of criminal responsibility who is suspected, accused, charged, or convicted of having infringed the criminal law. These children are also referred to as child offenders.

Child in contact with the law³: A child who has come into contact with the justice system in some form, primarily as a child in conflict with the law, child victim, or child witness. The term also includes children for which judicial, administrative, or non-state adjudicatory intervention is needed, such as for their care, custody, or protection.

Child justice system⁴: The legislation, norms and standards, procedures, mechanisms, and provisions that are specifically applicable to children in relation to justice matters, along with the institutions and bodies established to this end. Although the system is primarily applicable to children in conflict with the law, the broader discourse on child justice includes all children in contact with the law and beyond, as indicated in this report. Note that the term “child” justice is used in lieu of “juvenile” justice.

Justice system actors: Individuals in the justice system that directly influence and interact with children in the decision-making process of their cases and in the provision of relevant services. This includes judicial officers (e.g., judges and magistrates), prosecutors, law enforcement officers (e.g., police officers), legal practitioners (e.g., legal aid providers), and other related personnel (e.g., corrections officers, probation officers, social workers, and court officers). Note that the term justice system “stakeholders” is used to encompass a broader definition, including legislators and government officials (e.g., ministry officials). These particular definitions have been selected for this report for ease of reference.

1 This definition follows that of the UN Secretariat. A young person is also commonly defined as someone from 10 to 24 years old.

2 This definition is partially adapted from UNODC (2013), *Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary*.

3 This definition is mostly adapted from UN (2008), *Guidance Note of the Secretary-General: UN Approach to Justice for Children*.

4 This definition is partially adapted from General Comment No. 24 (2019) of the UN Committee on the Rights of the Child.

Terms related to concepts

Access to justice⁵: The ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, in matters including but not limited to civil, administrative, and criminal affairs, through formal judicial processes, customary or alternative dispute resolution mechanisms, and other relevant systems. It involves the legal empowerment of children in a manner that enables them to claim their rights, including the pursuit of effective remedies and accountability. Equal access to justice for all is a right that is recognised by the Member States of the UN.

Child-friendly justice⁶: Justice systems that respect and effectively implement children's rights to the highest extent possible, for children of all groups and backgrounds. It encompasses justice that is accessible, age-appropriate, speedy, diligent, adapted to, focused on, and respectful of the needs and rights of the child, including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life, and to integrity and dignity, among others.

Discrimination⁷: Any distinction, exclusion, restriction, preference, or disadvantageous treatment made on the basis of any particular ground (e.g., identities, status, or characteristics), which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise of rights and freedoms on an equal footing with other children. Discriminatory actions can be direct or indirect. However, non-discrimination does not mean identical treatment in every instance, and differentiation based on reasonable and objective criteria might not amount to the level of prohibited discrimination when the aim is to achieve a purpose that is legitimate under human rights principles.

Disproportionate representation: Overrepresentation or underrepresentation of children from a particular group in a particular situation, in relation to the group's representation in the general population and as compared to children from other groups. For example, children of racial minorities are generally overrepresented in the criminal justice system around the world.

Equality and equity: Equality is the equal enjoyment of opportunities, rights, power, responsibilities, benefits, and resources, regardless of the child's status. To achieve equality, there also needs to be equity, which focuses on fairness in treatment according to the child's respective needs, essentially providing what is needed for children to equally succeed on a level playing field. This recognises that certain groups of children have historically faced a myriad of social, educational, and structural disadvantages, and thus, identical treatment might not actually be fair. In simple terms, equity can be seen as placing children on the same starting line, while equality can be seen as enabling them to reach the same finish line. For example, affirmative action in employment and education for underrepresented minorities can be seen as a form of equity, while the prohibition of discrimination against minorities in recruitment criteria is a form of equality.

Implicit bias: Unconsciously holding certain stereotypes against or attitudes towards particular groups of children (e.g., based on age, race, gender, sexuality, disability, or religion), whether positive or negative. This can include having a certain preference for

5 This definition is partially adapted from UN (2008), *Common Approach to Justice for Children* and UN High Commissioner for Human Rights (2013), *Report to the Human Rights Council on access to justice for children*.

6 This definition is mostly adapted from Council of Europe (2010), *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*.

7 This definition is partially adapted from General Comment No. 18 (1989) of the UN Human Rights Committee.

one group over another without even thinking about it, and thus being unaware of this preference. It also includes automatically associating certain groups of children with certain types of behaviours or characteristics, or making unconscious assumptions without realising it. For example, if you arrive at a crime scene and see two unarmed children in the same situation, but immediately think that a certain child is the suspect after seeing the colour of their skin (e.g., because your mind has unconsciously associated that group with violence or criminal behaviour), this is a form of implicit bias.

Inclusion/inclusivity: Conditions like structures, procedures, and practices that enable children of all groups and backgrounds to fully and actively participate in decision-making, societal processes, and access to justice, especially for marginalised groups, in a manner that is accessible and adapted to individual needs.

Terms related to procedures

Child participation⁸: Implementation of the child's right to freely express their views in all matters affecting them and to have their views given due weight in accordance with their age and maturity, including the right to be heard in judicial and other legal proceedings that affect them. Meaningful and effective participation is enabled through processes that are transparent and informative, voluntary, respectful, relevant, child-friendly, inclusive, supported by training, safe and sensitive to risk, and accountable.

Diversion⁹: The channelling of children in conflict with the law away from judicial proceedings, through the development and implementation of procedures, structures, and programmes that enable non-judicial bodies to determine the responsibility and treatment of the child based on their specific background and circumstances (e.g., level of maturity and education), thereby avoiding the negative effects of formal judicial proceedings and a criminal record.

Restorative justice¹⁰: An approach to justice that seeks to achieve restorative outcomes and that repairs the harm caused by the wrongdoing, through the active, safe, and voluntary participation of all concerned parties (including the victim/survivor, families, and community members), in order to collectively resolve the matter and enable the child offender to take proper responsibility for their actions. The process is often facilitated by a fair and impartial restorative practitioner, and it promotes reconciliation and victim-healing, appropriate restitution, and prevention of recurrence of the action or behaviour.

8 This definition is mostly adapted from Article 12 of the UN Convention on the Rights of the Child and General Comment No. 12 (2009) of the UN Committee on the Rights of the Child.

9 This definition is partially adapted from UNICEF (2010), *Toolkit on Diversion and Alternatives to Detention*.

10 This definition is partially adapted from ECOSOC (2002), *Basic principles on the use of restorative justice programmes in criminal matters* and UNODC (2020), *Handbook on Restorative Justice Programmes Second Edition*.

Executive Summary

The UN Convention on the Rights of the Child identifies **equality and non-discrimination** as fundamental principles for respecting, fulfilling, and protecting the rights of children. This principle serves as a foundation for many legal instruments in both national and international law. Yet, many children across the globe, in diverse contexts and settings, face multiple and intersecting forms of discrimination due to a range of factors. **Structural discrimination, inequalities, and power dynamics** act to constrain or restrain equitable access to rights for all children.

This situation is exacerbated for children who come into contact with the law in whatever form, whether as a victim/survivor, alleged or convicted offender, witness, or any other status. **Children who have been subjected to discrimination are significantly more likely to be caught up in justice systems, but they are less likely to experience equal, fair, inclusive, and child-friendly access to justice.** The multi-faceted negative consequences that result from these experiences further aggravate the discrimination and vicious cycle of social exclusion faced by the children for the rest of their lives.

In many ways, children in contact with the law are being forced to bear the responsibility for the failures of the society and the state, which **disproportionately impacts marginalised children and those in particularly vulnerable situations**, whether due to specific circumstances that they are in (e.g., socio-economic status, migration status, disability, or family and community environment), or due to their identity or characteristics (e.g., ethnicity, gender, religion, or membership in a social group). Furthermore, the impact of the inequalities is ever more visible and intensified during the COVID-19 pandemic.

It is imperative that all children are provided with an **equal and equitable access to justice**, with child-friendly, gender-responsive, disability-inclusive, culturally-adapted, trauma-informed, and context-appropriate services, information, and support. Systems should determine the individual needs of children from various backgrounds and pursue multidisciplinary approaches to prevent and respond to the causes that lead children to come into contact with the law.

The rights of children in the justice system must be respected the same way as they are for children outside of the system. Governments and societies must realise that **preventing inequality and discrimination** in access to justice, as well as throughout the structure and procedures of the child justice system, **will ultimately benefit all children.**

Perhaps most importantly, justice systems that are designed to **genuinely integrate the voices of children are critical** to building an appropriate and effective child justice system that actually achieves its intended purpose. Meaningful participation of children at all levels of the system, regardless of who they are and what situation they are in, is a prerequisite to **ensuring access to justice for all children, including through non-discriminatory and inclusive child justice systems.**

This report consolidates the discussions held throughout the 13 regional and national preparatory meetings organised over two years for the 2021 World Congress on Justice With Children. It highlights the main challenges, promising practices, and core recommendations shared by the participants in relation to the overall theme and 11 sub-themes of the 2021 World Congress.

I. Background

The **2021 World Congress on Justice With Children** will take place online from **15 to 20 November 2021**, organised by the **Global Initiative on Justice With Children** and hosted by the federal **Mexican Supreme Court of Justice**, with technical support from **UNICEF**, **United Nations Office on Drugs and Crime (UNODC)**, **Office of the Special Representative of the UN Secretary-General on Violence Against Children (OSRSG-VAC)**, **Office of the UN High Commissioner for Human Rights (OHCHR)**, **Organisation for Economic Co-operation and Development (OECD)**, and **Pathfinders for Peaceful, Just and Inclusive Societies**, with pro bono support from **Baker McKenzie**, and under the auspices of the **Council of Europe**.

The World Congress is designed to address the most current issues related to children in contact and/or conflict with the law, and it provides a dedicated and active space for children and youth, policy makers and justice system stakeholders, academics, civil society and UN representatives, and other experts and practitioners to:

- Promote fair and appropriate justice systems for and with children worldwide.
- Provide space for professionals to exchange best practices, foster scientific cooperation, formulate policy recommendations, and raise awareness of justice for children.
- Support the operational implementation of international instruments and standards related to the rights of children and young people in contact with the law.

The Global Initiative on Justice With Children is led by a consortium of international organisations including **Terre des hommes (Tdh)**, **Penal Reform International (PRI)**, **International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM)**, and the **International Institute for the Rights of the Child (IIDE)**. It organises the World Congresses as a Justice With Children Global Milestone and also engages and mobilises a global community of practitioners through the Justice With Children online platform. The previous World Congresses took place in Paris, France (2018); Geneva, Switzerland (2015); and Lima, Peru (2009).

II. Preparatory Meetings

Between 2019 and 2021, a series of preparatory meetings have been conducted at the regional and national levels both in person and virtually, in order to define key challenges and advocacy priorities in justice for children, share promising practices, and identify the most relevant themes and action-oriented recommendations for the 2021 World Congress.

A total of **13 preparatory meetings** have been held, including 5 regional meetings and 8 national meetings. They were organised and/or supported by the consortium members of the Global Initiative in partnership with the co-organisers specified in the table below.

There were additional meetings that were originally planned (e.g., on the African continent), but they were cancelled due to practical reasons as a result of the COVID-19 pandemic. However, inputs from unrepresented or underrepresented regions are incorporated through the **Scientific Committee** and the **Child and Youth Advisory Group** of the World Congress, in addition to engagement with experts and stakeholders through various fora.

Summary reports for each of the preparatory meetings have been drafted and are available at www.justicewithchildren.org.

Meeting		Date & Time	Location	Co-organisers	Participants
Regional	North America	8-10 May 2019, 08:00-18:00 CDT	Mérida, Yucatán, Mexico	<ul style="list-style-type: none"> • Colectivo AVE • Juvenile Justice Initiative 	120 participants
	Latin America	6-7 June 2019, 09:00-19:00 ART	Buenos Aires, Argentina	<ul style="list-style-type: none"> • Defence for Children International 	Over 240 participants
	Europe	29 June 2020, 13:00-17:00 CEST (Belgium)	Virtual (Go To Meeting)	<ul style="list-style-type: none"> • Baker McKenzie 	49 participants
	Central America and the Caribbean	17 Sep. 2020, 13:00-17:00 CST (Costa Rica)	Virtual (Go To Meeting)	<ul style="list-style-type: none"> • United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders • DNI Costa Rica • Paniamor Foundation • Costa Rican Bar Association 	72 participants
	Middle East and North Africa (MENA)	28 March 2021, 14:00-16:00 EEST (Jordan)	Virtual (Zoom)	<ul style="list-style-type: none"> • UNICEF • OSRSG-VAC 	Around 150 participants
National	Lebanon	13 Nov. 2019, 09:30-11:30 EET	Beirut, Lebanon		17 participants
	Singapore	14 Nov. 2019, 09:30-12:00 SGT	Singapore	<ul style="list-style-type: none"> • School of Law, Singapore Management University 	13 participants
	United States of America (USA)	11 Dec. 2020, 12:00-14:00 ET	Virtual (Zoom)	<ul style="list-style-type: none"> • Juvenile Justice Initiative • Baker McKenzie 	34 participants
	Pakistan	14 Jan. 2021, 18:00-20:00 PKT	Virtual (Zoom and Facebook Live)	<ul style="list-style-type: none"> • Pakistan Federal Ministry of Law and Justice • Group Development Pakistan • OSRSG-VAC • Baker McKenzie 	87 participants on Zoom and 1,200 viewers on Facebook Live
	India	19 March 2021, 13:45-16:00 IST	Virtual (Zoom)	<ul style="list-style-type: none"> • HAQ Centre for Child Rights • UNICEF • Baker McKenzie 	78 participants
	Cambodia	22 April 2021, 16:15-17:15 ICT	Virtual (Zoom)	<ul style="list-style-type: none"> • Legal Aid of Cambodia 	41 participants
	Thailand	12 & 14 May 2021, 09:00-16:00 ICT	Virtual (Zoom)	<ul style="list-style-type: none"> • Department of Juvenile Observation and Protection, Ministry of Justice, Thailand 	333 participants at the closed meetings and 2,500 participants at open meetings
	China	20 May 2021, 16:00-18:00 CST	Virtual (Zoom)	<ul style="list-style-type: none"> • Child Law International Alliance • OSRSG-VAC • Beijing Children's Legal Aid and Research Centre • UNICEF 	50 participants

Participants of the preparatory meetings included state representatives (e.g., the judiciary, prosecution, law enforcement, public defender offices, ministries and commissions, and state/provincial governments), intergovernmental and supranational organisations (e.g., bodies of the European Union and the United Nations System), regional networks, civil society and legal aid organisations, development partners, academic and research institutions, law firms and legal practitioners, children and youth, and independent experts.

The participants demonstrated a particular interest in the implementation of Article 2 of the UN Convention on the Rights of the Child focusing on the child's right to **non-discrimination and equality**, in particular for children in contact with the law in the most vulnerable situations, who may experience various forms of discrimination in the administration of and access to justice. In response, the theme of the 2021 World Congress was set as **“Ensuring access to justice for all children: towards non-discriminatory and inclusive child justice systems”**.

In addition, the following **sub-themes** have been identified as topics to be mainly, but not exclusively, prioritised at the World Congress:

- Systemic racism and the disproportionate criminalisation of children from indigenous, ethnic, and other minority groups;
- Discrimination due to gender, sexual orientation, and gender identity: fostering a gender justice approach;
- Discrimination experienced by children and young people affected by migration, including refugees, unaccompanied foreign children, and children of foreign parents;
- Discrimination due to disability and health conditions;
- Discrimination due to substance use and abuse;
- Criminalisation of children's online behaviour;
- Age limits and status offences;
- Ensuring that the voice of the child is heard in child justice systems;
- Fulfilling children's rights in the contexts of legal pluralism;
- Building resilient child justice systems in times of crises and pandemics; and
- Tackling violence within child justice systems and ensuring child-friendly approaches for child victims, offenders, and witnesses.

During the World Congress, participants will engage in global and regional **plenary sessions and action-oriented workshops** consisting of **panel discussions, certified trainings, and policy-oriented working group meetings**, to explore these challenging issues and to enhance our knowledge of – and commitment to the creation of – fair and appropriate child justice systems globally.

The World Congress will focus on exchanging **practice-oriented strategies** to reduce discrimination that undermines access to – and the quality of – justice systems, and to ensure that all children are guaranteed equal treatment in the eyes of the law. It will share **promising practices** from diverse contexts and settings that tackle discrimination, prevent situations that lead children and youth to commit offences, and reduce child and youth contact with the justice system, along with **effective responses** to prevent recidivism through programmes focused on restorative justice, rehabilitation, and reintegration.

The collective discussions will culminate in a **Global Declaration on Justice With Children**.

III. Overall Theme

This report consolidates the discussions held throughout the 13 regional and national preparatory meetings to highlight the main challenges, promising practices, and core recommendations shared by the participants. It does not serve to be a comprehensive introduction to each topic. Many similarities have been observed across the various jurisdictions, in line with the overall theme of the 2021 World Congress: **“Ensuring access to justice for all children: towards non-discriminatory and inclusive child justice systems”**.

Challenges

Although the **principle of non-discrimination is enshrined in the laws of many legal systems, it is not widely respected in the implementation of those laws** in enabling equal, fair, inclusive, and child-friendly access to justice for children. For one, there is discrimination against children merely due to their age, with justice system actors (like the police and judicial officers) treating children aggressively and not taking their voices seriously.

However, even in countries that have robust child justice systems and child-friendly procedures in place, discrimination exists across the spectrum of children due to the **specific circumstances** that they are in (e.g., socio-economic status, migration status, disability, or family and community environment), or due to their **identity or characteristics** (e.g., ethnicity, gender, religion, or membership in a social group). These problems are exacerbated by **structural and situational complications** (e.g., existence of multiple legal systems, ongoing armed conflict and anarchy, activities of powerful drug cartels and gangs, or expansion of the digital space).

Implicit bias and the lack of capacity of justice system actors perpetuate this discrimination, in addition to the **inconsistency in the application of the law and mandated procedures** across different regions within the same country, resulting from institutional fragility. Children are not legally empowered to effectively access remedies and justice, especially in an individually tailored and inclusive manner.

Essentially, a **burden is being placed on children in contact with the law to take responsibility for the failures of the society and the state**, which disproportionately impacts marginalised children and those in particularly vulnerable situations.

General recommendations

In order to address the widespread challenges identified above, a number of important action-oriented recommendations were suggested during the preparatory meetings.

Reframing of the discussion

1. Reconceptualise justice for children in a manner that is **both equal and equitable** to more properly and sufficiently reach and address the needs of marginalised children.
2. Integrate the concepts of pervasive inequality and discrimination at the **core of the discussions** around child justice and its reform, and ensure that justice for children

holistically embraces **criminal, civil, administrative, traditional/customary, transitional, and social justice**, especially considering the amplification of social inequality brought about by factors such as COVID-19, which has been more pronounced for children in already vulnerable situations.

3. Define the scope of access to justice for children in a **holistic and expansive manner** that encompasses diverse accountability and dispute resolution mechanisms and that pays attention to children who are often excluded from the discussions on access to justice (e.g., children in need of care and protection, children born and/or living in prison with their caregivers, and children of incarcerated caregivers).
4. Empower **justice system actors** to be **agents of change**, and **shift their attitudes and perceptions** from those that emphasise the criminalisation and stigmatisation of children, to those that counteract the discourse favouring punitive measures for children in conflict with the law, that humanise children in contact with the law, and that protect and respect the rights and voices of these children, regardless of their identity, background, status, or any other characteristic.
5. Acknowledge access to justice for and with children as an **essential positive obligation** of states that requires functional institutions and child-friendly and inclusive systems, which operate in a manner that gives agency to children.

Pursuit of an evidence-based and holistic approach to reform, capacity-building, and accountability

6. Enhance **data collection** in an accurate and sustainable manner on the impact of structural inequality, implicit bias, and institutional incompetence on access to justice for children, to be used to inform policy formulation and enable proper oversight over the system.
7. Determine the **individual needs** of children from various backgrounds and identities, and pursue **multidisciplinary approaches** based on seamless coordination among sectors (e.g., the systems for justice, child protection and welfare, social protection, education, and healthcare), and among actors (e.g., the government, civil society, communities and families, schools, and other stakeholders).
8. Secure high level **political commitment** towards non-discriminatory and inclusive child justice systems, with appropriate, adequate, and equitable **investment of time and resources**; proper **capacity-building** of all relevant stakeholders that come into contact with children; and enforced **accountability** of the duty-bearers through policies and practical solutions.

Diversification of measures and services

9. Provide equal access to **child-friendly, gender-responsive, disability-inclusive, culturally-adapted, trauma-informed, and context-appropriate** legal and non-legal services, information, and other appropriate assistance for all children in contact with the law, in a manner that is **responsive** to the individual child's needs, identity and background, circumstances, and level of maturity.
10. Strengthen **alternative forms of justice and non-traditional mechanisms** of conflict resolution to enhance inclusivity and child-sensitivity in access to justice for children, but in a controlled manner with trained community facilitators, verified rights-based goals and procedures, and proper monitoring and evaluation.

IV. Recommendations by Sub-Theme

As a result of the discussions held during the preparatory meetings and the working sessions of the World Congress Consortium, 11 sub-themes have been selected as topics to be prioritised at the 2021 World Congress.

Each of these themes is discussed below, focusing on the most pertinent issues and recommendations raised by the meeting participants. A more comprehensive summary of the discussions are available in the individual reports for each meeting.

Theme 1: Systemic racism and the disproportionate criminalisation of children from indigenous, ethnic, and other minority groups

Racial and ethnic minority children and indigenous children are **overrepresented** in the criminal justice system around the world. A participant at the USA preparatory meeting indicated that black and brown children in America have a higher chance of **facing biased and unbalanced mechanisms of justice**, in which the justice system “**adultifies**” them, while at the same time infantilising white and privileged children.

This is supported by statistics around the country that show that justice systems overwhelmingly and disproportionately take in and handle cases of children from racial and ethnic minority groups **throughout all stages**, from arrests all the way into parole decisions. For example, black and brown children have the highest arrest rates among their peers and are more than five times as likely to be detained or committed to a corrections facility as compared to white children.

A similar situation was highlighted by a participant at the Central American preparatory meeting, indicating that Afro-descendant children are **disproportionately represented in detention centres** and face higher sanctions, according to research conducted by the Inter-American Commission on Human Rights. Participants at the European preparatory meeting indicated that ethnic minority children are often **invisible** in the system and face additional vulnerabilities in accessing remedies and justice. Furthermore, a participant at the Lebanese preparatory meeting stated that children of different ethnic backgrounds are **treated differently** by the judges, internal security forces, and even the social workers.

In addition, participants at the North American preparatory meeting discussed the overrepresentation of indigenous youth in both the justice system and the care and protection system in Canada. They highlighted the **tension that exists between different values** when state institutions deal with indigenous communities, along with the ill-equipped nature of the justice system to address the specific conditions that are faced by the indigenous communities, especially children.



Recommendations

1. Prevent the disproportionate representation of racial and ethnic minority children and indigenous children in the justice system by conducting assessments and trainings to **eliminate the underlying implicit biases** held by justice system actors, especially the police officers and prosecutors.
2. Invest in **community-based services** and non-custodial measures for children in conflict with the law, regardless of their race or ethnicity, and ensure that these services and measures are provided in a non-discriminatory manner.
3. Conduct a study to understand the **root causes of negative differential treatment** towards children of racial or ethnic minority groups, so that reform efforts can proceed in a properly informed, effective, and sustainable manner.
4. Develop procedures and measures in the judicial process that respect and address the **cultural and linguistic diversity** of ethnic minority and indigenous children.
5. Learn from the **indigenous approaches to justice**, both to provide appropriate services to indigenous communities, and also to improve the justice system as a whole based on positive practices.

Theme 2: Discrimination due to gender, sexual orientation, and gender identity: fostering a gender justice approach

Sexual and gender minority children face a number of heightened vulnerabilities in their access to justice. A participant at the European preparatory meeting highlighted the **double discrimination** that LGBTQIA+ children¹¹ often face: not only do they experience hate crimes, but they are also subjected to institutional violence when their voices are dismissed or disregarded after reporting that same crime. Both of these forms of discrimination occur as a result of their identity. In addition, a **lack of legal recognition** causes discrimination and hurdles for transgender and intersex children, and children from LGBTQIA+ families may face additional difficulties in the justice system as a result of the family structure.

A participant at the USA preparatory meeting similarly indicated that a significant proportion of **homeless youth** are sexual or gender minorities, often as a result of rejection by their families. This serves as a serious risk factor that can lead to crime as an entry point to the justice system, often exacerbated by a **lack of access to proper facilities and services** that could have prevented this from happening. A significant number of children and youth in corrections facilities in the USA identify as LGBTQIA+, but they commonly do not have access to essential specialised services.

A participant at the Thai preparatory meeting pointed out that although the absolute number of children in the justice system who openly identify as LGBTQIA+ may seem relatively small, they are generally still **disproportionately represented** in the system, and the actual number is expected to be much larger. There is **insufficient guidance** provided to the justice system actors on how to best accommodate the particular needs of these children, which leads to improper treatment and exacerbates violence like sexual harassment.

¹¹ This acronym refers to lesbian, gay, bisexual, transgender, queer, intersex, asexual, and other children of diverse sexual and gender identities.

Similarly, participants at multiple preparatory meetings indicated the **lack of gender-sensitive approaches** in the child justice system. A participant at the North American preparatory meeting indicated that in Mexico, 10% of youth in detention are female, so there is less focus on instituting specialised services for them, despite the fact that they are more likely to receive a sentence of incarceration and more likely to be detained pre-trial than their male counterparts.



In addition, a participant at the MENA preparatory meeting indicated that judges tend to be **more biased against girls than boys**, which results in discrimination, and that women in general face a myriad of restrictions in relation to the legal processes that men do not face. Justice system actors across the region have varying levels of knowledge, skills, and attitudes with regards to gender sensitivity, and there is a significant lack of gender-sensitive infrastructures and procedures in place for girls and women (e.g., bathrooms, hygiene, and reproductive health services).

Recommendations

1. Mainstream **gender-sensitivity training** and awareness-raising among all justice system actors, and enforce the **implementation** of relevant principles, policies, and procedures at all levels of the system, from the police station to corrections facilities.
2. Institute proper gender-responsive **questioning techniques** to be used by the justice system actors (e.g., the police and prosecution), especially for child victims, and provide **specialised support and facilities** for sexual and gender minority children who are deprived of liberty.
3. Appoint **personnel of the proper gender** to interact with the children, including for interviews and physical examinations, and institute appropriate measures to **recruit and train** female officers and those of diverse backgrounds (including SOGIESC¹²), especially police officers, corrections officers, and lawyers.
4. Conduct **assessments** to better understand how sexual and gender minority children come into contact with the law, and develop **nationwide confidential data systems** on these children in the system for the purposes of monitoring and evaluation, based on self-identification procedures that are strictly voluntary.
5. Develop programmes and procedures with the **participation** of sexual and gender minority children, and actively involve boys and men in the efforts to mainstream gender sensitivity in the justice system.
6. Review and modify any administrative **procedures that use detention or solitary confinement** to “protect” sexual and gender minority children from violence, and instead institute approaches that are in the best interests of children and that protect their rights and well-being.

¹² This acronym refers to sexual orientation, gender identity and expression, and sex characteristics.

Theme 3: Discrimination experienced by children and young people affected by migration, including refugees, unaccompanied foreign children, and children of foreign parents

Children affected by migration face **significant barriers in accessing justice** as a result of their legal status, language and cultural differences, family environment, and lack of information and support. Participants at the European preparatory meeting pointed out that relevant procedures are **rarely adapted to the specific needs** of these children, who generally do not know how to seek remedies. In particular, the participants explained the specific difficulties and discrimination faced by the Roma children.

A participant at the Indian preparatory meeting indicated that there is a rising number of Rohingya children from Myanmar who are reportedly being detained in the West Bengali observation homes, while a participant at the Pakistani preparatory meeting spoke about the vulnerabilities faced by third generation Afghan refugee children who are considered to be **stateless** even when born in Pakistani soil. Similarly, a participant at the Singaporean preparatory meeting highlighted the challenges faced by the over 200,000 undocumented stateless children in Malaysia. A participant at the MENA preparatory meeting indicated that of the 10 million people worldwide who are stateless, roughly a third are children.

In addition, participants at the Latin American preparatory meeting expressed concern for the complexities of processes involved for children **returning** to their home countries after experiencing cross-border abduction and enforced disappearance, both in the process of pursuing accountability and of reintegrating.

Participants at the North American preparatory meeting indicated that although policies and procedures may exist in the region on how to handle cases of **unaccompanied minors and asylum-seeking children**, the **lack of resources, competence, and interest** by stakeholders often lead to harsh deprivation of liberty and serious delays in immigration

processes. Children from Central America often flee to Mexico and the USA to protect themselves from life-threatening gangs, drug cartels, and other forms of grave violence, but they are **revictimised** multiple times in the migration process. For one, they experience kidnapping, extortion, robbery, and sexual violence en route, but once they arrive at their desired destination, families are often separated, interviews are conducted by poorly trained officials, children are not provided with appropriate information and support, and they are detained in morbid facilities with no proper due process.

In addition, a participant at the MENA preparatory meeting highlighted that while large numbers of detained children in the region were released as a result of COVID-19, migrant or refugee children **did not benefit from early release**. Another participant indicated that **children born to foreign wives of ISIL fighters are not legally recognised** in Iraq or their home countries, so they are simply detained with their mothers in Iraqi detention facilities. Furthermore, participants at the Singaporean preparatory meeting indicated that **multicultural and transnational families face strong discrimination**, which not only impacts the child's development and life opportunities, but also limits their access to services and justice.



Recommendations

1. Provide child-friendly and **migrant-friendly information** and **culturally sensitive interpretation and support** services that address the diversity of languages and cultures of children on the move when they come into contact with the law.
2. Build a **regional model and network for legal assistance** for migrant and displaced children that enables seamless localised legal support at each of the countries during the child's transit.
3. Invest resources to build **alternatives to immigration-based detention**, and enforce policies that **prevent family separation** and deprivation of liberty for children on the move.
4. Ensure **universal access to birth registration and legal status** for children born in the state's territory, regardless of the status of their birth parents, which serves as a precursor to the ability to gain access to justice.
5. Institute specific measures to **protect** and ensure **non-discriminatory access** to justice and services for stateless children and those of transnational families, including children born to parents affiliated with terrorist groups.
6. Conduct **national mappings** of the different groups of migrant and stateless children located in the country's territory, along with a study of how their access to justice is being impeded based on their nationality or status, in order to inform the development of effective interventions.



Theme 4: Discrimination due to disability and health conditions

Children with disabilities and various health conditions experience particular discrimination and vulnerabilities throughout the entire stages of a legal process, including while in detention. Participants at the European preparatory meeting indicated that these children are often invisible, in part because they are **not given the opportunity to voice their opinions**, and even when they do so, the voices are not taken seriously. This is especially true for child victims, whose testimonies may be given less weight due to the child's disability.

Furthermore, participants at the MENA preparatory meeting explained that children with disabilities (e.g., mental health disabilities, traumatic brain injuries, autism spectrum, learning disabilities, or intellectual disabilities) are often **missed or misdiagnosed** when undergoing a judicial process, and their behaviours are frequently **misinterpreted** by justice system actors, which leads to a higher likelihood of conviction and incarceration.

Participants at the North American preparatory meeting mentioned that children in conflict with the law tend to have a relatively **high prevalence of mental health disabilities**, which may have been congenital, or acquired due to traumatic and adverse childhood experiences. For example, frontal lesions caused by accidents in early life may be associated with repeated offending behaviour in children. Relatedly, a recent policy brief published by the Global Initiative on Justice With Children found that children with neuro-disabilities are not sufficiently supported at various stages of their lives, which can increase the child's chances of adopting behaviour that may result in conduct that comes into conflict with the law.¹³

But despite these scientific understandings, the children are **not normally provided with disability-inclusive and appropriate care and procedures** in the justice system, whether in the assessment of their case or in their rehabilitation.

Challenges are also faced by children with physical disabilities, as systems largely **lack disability-inclusive infrastructure and services** at police stations, courtrooms, and detention facilities, which by design hinders effective access to justice. In addition, children requiring specific medication or healthcare often lack access to them while being deprived of liberty.

Recommendations

1. Provide specialised and widely accessible **mental health services and psychosocial support** to at-risk children and formerly institutionalised children to prevent (re)offending behaviour and to ensure their effective (re)integration into the society.
2. Build the **capacity of justice system actors** to better understand the different forms of disabilities and how this impacts a child's behaviour and actions, so that an accurate and context-specific assessment can be made about each child's case, in order to properly inform all procedures and decision-making.
3. Design and implement **disability-inclusive procedures and trainings** based on neuro-, developmental, and behavioural science, in order to enable children with disabilities to receive proper services and access to justice throughout the entire legal process.
4. Institute concrete measures and support to enable and empower children with disabilities to **meaningfully participate** in the legal process.

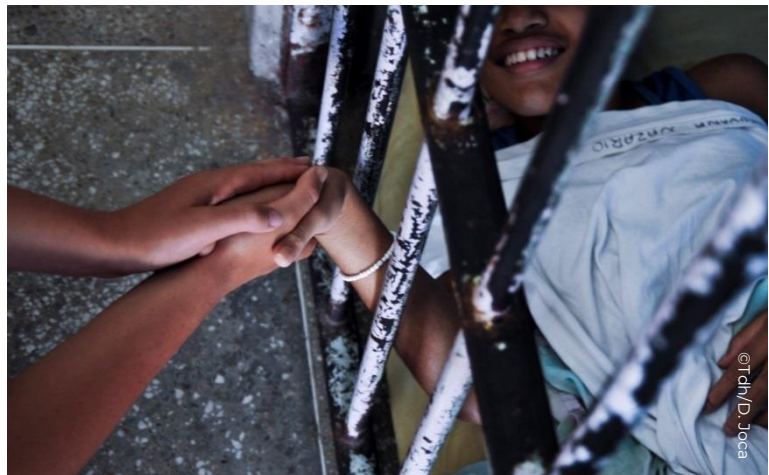
¹³ Global Initiative on Justice With Children (2021), *Policy Paper: Brain Science and How it Affects Children Accused of Crimes*.

Theme 5: Discrimination due to substance use and abuse

With easier access to drugs resulting from the proliferation of drug supply, trafficking, and distribution, more and more children are also being exposed to the substances, whether intentionally or unintentionally. Complications have also been expanding from the use of substances like alcohol.

Participants at the Indian preparatory meeting indicated that there has been a sharp rise in the number of children **suffering from substance abuse and dependency** in the country for the past 10 years, which is closely linked to structural inequality and social issues like hunger, poverty, and children in street situations.

Despite the gravity and prevalence of the issue, the participants indicated that this has not been taken as seriously because the families, communities, and schools have been in **denial** of the fact that children are abusing substances. This dismissal and complacency not only create **stigma** that prevents children from accessing the services they need, but also induce the government to **seriously underfund interventions** to address the problem. Ultimately, the **lack of capacity and adequate services in drug rehabilitation centres** in India results in minor offences committed by children being **treated as larger crimes**, which prevents the use of diversion.



Similarly, participants at the Cambodian preparatory meeting identified that a large proportion of children in the justice system are charged with petty and drug-related offences, and that children are being subjected to **arbitrary detention** in drug rehabilitation or social affairs centres. There has been a rise in criminal cases involving children in 2018 and 2019 due to the anti-drug campaign. A similar “**war on drugs**” has seen the proliferation of incarceration for children around the world, such as in the USA and the Philippines.

Overall, the focus is excessively being placed on **punishment**, where the children are actually in dire need of medical treatment and social protection.

Recommendations

1. Conduct **early intervention** to prevent substance abuse by children, including outreach, education, social services, accessible testing, and stricter law enforcement against suppliers.
2. Provide **access to specialised treatment, social support services, and reintegration** into the society for children who have abused substances, rather than resorting to the criminal justice system.
3. Institute common **professional and operational standards** in drug and substance rehabilitation centres across the country in a manner that ensures child-friendly procedures and services, and establish **post-discharge monitoring** procedures to prevent relapse.
4. Amend the laws to **decriminalise** and prevent arrests for substance use by children, especially for first-time and light users, or at least mandate **diversion** for related offences.

Theme 6: Criminalisation of children's online behaviour

The advancements in technology and the mass expansion of access to the digital environment have led to **increased risks** for children, both in the form of **criminalisation** of child behaviour and of **victimisation** from a slew of violent behaviour by others.

Participants at the European preparatory meeting pointed out the difficulty of providing access to justice for children affected by the digital environment, which might be **impossible** in certain circumstances, especially where the perpetrator cannot be located or where the identified location is outside of the child victim's country of residence.

On the other hand, participants at the Thai preparatory meeting indicated that although the rates of physical offences committed by children have decreased as a result of the government's COVID-19 containment measures, there has been an uptick in alleged **digital offences committed by children**, which has been giving rise to concern.

The organisers of the World Congress identified some troubling trends in this area. It is becoming increasingly easier for children to be **recruited into criminal activity via virtual means**, including the commission of cybercrimes. Tactics like cyber grooming not only directly lead to online child sexual exploitation and abuse, but also can lead children to themselves engage in human trafficking activities. But children **rarely have a safe and competent place to turn to for advice** when confronted with these situations.

In addition, children may **unknowingly infringe cybercrime, penal, or tort laws**, such as defamation resulting from comments posted online. On the other hand, they may also be specifically targeted by the authorities. For example, children may be subjected to undue **digital surveillance** in a discriminatory and biased manner based on their perceived "criminal propensities". They may also be **targeted** due to their activism as child human rights defenders, with messages posted on social networking platforms, for example, being used as a basis for prosecution meant to curb the freedom of expression.

Furthermore, **children can be prosecuted by laws specifically meant to protect them**. For example, the possession or distribution of child sexual abuse material is criminalised in many jurisdictions. But in the absence of exception clauses, this could also include children who self-generate these materials for their own private use or when they share it with their friends, which may be regarded as punishable sexting.

Another concern is the rise of **cyberbullying**, where states are struggling to find appropriate solutions, other than the criminal justice route, to address the issue of children committing violence against other children in the digital environment.

Recommendations

1. Provide **education** to children, peer groups, families, schools, and communities on how children can **identify and react to risky situations** online, in order to prevent both victimisation and involvement in potentially criminal activities.
2. Reform **laws and regulatory frameworks** to better prevent, address, and respond in a comprehensive manner to cybercrimes, cyber grooming, child sexual abuse materials, and other issues implicating child online protection.
3. Enhance **international and regional cooperation** and collaboration to respond to trans-boundary cybercrimes related to children.

4. Refer to the **General Comment No. 25** (2021) of the UN Committee on the Rights of the Child on children's rights in relation to the digital environment, along with the resources built to complement the General Comment, as a form of guidance when reforming relevant laws and developing action plans.

Theme 7: Age limits and status offences

A person's age plays a significant role in their interactions with the justice system, including (1) the **minimum age of criminal responsibility (MACR)** below which children cannot be held criminally liable for their actions, (2) the **maximum age** at which a person can be tried as a child in the judicial process with the relevant safeguards (such as the jurisdictional age of a children's court), and (3) **status offences**, which are conducts deemed unlawful only when committed by minors (such as truancy, running away from home, or underage drinking).

Though the international standard for the MACR is the age of 14, a participant at the USA preparatory meeting indicated that the age is **inconsistent** across the country. In the USA, over half of the states do not specify the MACR in their statutes, only four states stipulate the highest MACR of 12, and the lowest specified MACR is the age of 6. A participant at the Central American preparatory meeting indicated that the media often **blames children and youth for the insecurity and rise in crimes**, which has led to calls for lowering the MACR, and participants at the Chinese preparatory meeting explained that the MACR for serious crimes in the country was recently **lowered** from 14 to 12, though subject to strict criteria for this to be applicable.

On the other hand, a participant at the MENA preparatory meeting indicated that some parliamentarians have expressed apprehension about raising the MACR because they have seen a **higher risk** of children being "used" in crimes as a result. Another participant pointed out the problem with **tiered MACRs** that provide discretion to the justice system actors to make a decision on whether the child can be processed by the justice system, based on the maturity and capacity of the child. These decisions are often made arbitrarily and inconsistently, and are prone to discrimination and corruption (e.g., bribery).



In addition, troubling practices persist in terms of holding individuals accountable at an older age for alleged offences that were committed when they were under the MACR. This is based on the incorrect application of the MACR to the current age of the person, rather than their age at the time of the offence.

As for the upper age limit, a participant at the North American preparatory meeting indicated that there is very **little specialised programming for young adults** who are tried through the adult criminal justice system, despite the modern understandings in neuroscience that show that the human brain doesn't mature until the age of around 25. Another participant pointed out the problem of **prosecuting children in adult courts** in the USA, and a participant at the Indian preparatory meeting identified a similar problem with regards to discussions currently being held to amend the law to try 16 to 18 year-olds as adults even for non-serious offences, constituting a **backsliding** in protections for children.

In addition, a participant at the European preparatory meeting indicated that the existence of different minimum and maximum age requirements according to the type of proceedings means that if a child goes through different proceedings at the same time, they may have **access to different types of rights and safeguards in each of those proceedings based on their age**.

With regards to status offences, a participant at the Central American preparatory meeting introduced a study by the Inter-American Commission on Human Rights that identified concerns of **discrimination and stigmatisation** brought about by crimes that are only attributed to children.

Recommendations

1. Set the **MACR in line with international standards** that is consistent across the country and does not contain statutory exceptions, and combat proposals that attempt to lower the MACR.
2. Provide **early intervention** and appropriate assistance and services for **children below the MACR** in a manner that does not view them as children in conflict with the law, including holistic and comprehensive support for the families and communities and interventions meant to prevent and minimise risks that may lead to offending behaviour in the future.
3. Raise the **upper age jurisdiction of the child justice system** to at least 18 years old and preferably higher, in line with the progressive movement in many states, and build solutions that address the needs of youth involved in the justice system **during and after their transition to adulthood**, including youth in custody when they reach the age of majority.
4. Understand the specific characteristics of the different age groups (e.g., primary school age, adolescents, and youth) and design adequate programmes **tailored to these developmental stages** in both preventive and responsive interventions.
5. Review and revise legislation pertaining to status offences to **decriminalise** child behaviour that can more effectively be addressed by the child and social protection systems, among others.

Theme 8: Ensuring that the voice of the child is heard in child justice systems

Whether as a child in conflict with the law, child victim, child witness, or child in contact with the law in some other form, the voices of children are often **forgotten, ignored, or dismissed** in the justice system. A participant at the North American preparatory meeting indicated that children are often treated as if they are property rather than rights holders. Participants at the MENA and Lebanese preparatory meetings indicated that in certain countries, there is **no clear stipulation of the child's right to participate and have their voices heard in legal proceedings**, despite this right being clearly mandated in the UN Convention on the Rights of the Child that all countries in the MENA region are parties to.

A participant at the Indian preparatory meeting expressed that the right to be heard for children is understood in theory, but is often **tokenistic** in practice. Another participant pointed out that one reason for this is because children have a **limited understanding of the laws** that were made for them, with **limited efforts** being exerted by lawmakers and justice system actors **to make these laws understandable** to the children. Similarly, a participant at the Central American preparatory meeting introduced the findings of a study by the Inter-American Commission on Human Rights that children generally face difficulty in understanding and effectively participating in justice processes.

Participants at the European preparatory meeting discussed the **discrepancy in the access to safeguards and lawyers** available in law and in practice, and thus in the implementation of the rights to be heard, between children in conflict with the law and child victims. Participants expressed their concern that the voices of child victims are not efficiently heard in judicial proceedings, which exacerbates the problem of **underreporting of crimes** by child victims. Moreover, participants at the Latin American preparatory meeting underlined the problems caused by misunderstandings, such as the justice system actors misinterpreting the child's silence or refusal to talk, which results from both the lack of competence and of interest by the actors to properly and actively hear the voices of children.



Recommendations

1. Ensure the **active participation of children as partners in designing and implementing** research on child-friendly justice, trainings for justice system actors (e.g., ways to better communicate with and question children), and methods of reforming the justice system and relevant policies.

2. **Empower children** to participate in discussions pertaining to the justice system and in legal proceedings, through techniques like role playing and artistic activities (e.g., music, paintings, and video clips), and produce **national guidelines** to this end.
3. Develop **child-friendly resources** about the laws, their rights, and the legal procedures in a comprehensible and standardised manner, such as through interactive tools (e.g., virtual reality), and **pursue child-targeted communication** in a manner that is most effective for reaching children (e.g., games and mobile applications).
4. Utilise **tools, technologies, and methodologies** that enable children's voices to be heard in a meaningful and empowering way by justice system actors, as well as in a manner that avoids duplicated questioning on identical matters and avoids visits to the courtroom, unless desired by the child.
5. Implement **comprehensive, multi-disciplinary, and interagency programmes** and approaches with **specialised staff** that ensure that the voices of children, especially child victims, are heard throughout all stages of a legal process in a manner that prevents (re)traumatisation, including through child-friendly and **trauma-informed assessments**, provision of continuous **support persons** (e.g., guardian ad litem systems), and investment in child-friendly **infrastructure** (e.g., waiting areas in courthouses or interview rooms in police stations).
 - For example, the Barnahus model of the European Union-funded PROMISE project constitutes multidisciplinary and interagency interventions in a child-friendly setting that combines forensic interviews (in a manner that avoids repeated interviews and testimonies in court), medical evaluations, psychological support, and child protection assessments. It is embedded in the national systems as a partnership between police officers, prosecutors, judicial officers, lawyers, child protective services, and medical and mental health workers.

Theme 9: Fulfilling children's rights in the contexts of legal pluralism

Informal, customary, and religious legal fora¹⁴ that operate in parallel with the formal state-level system can have a significant impact on children's access to justice. Such fora can be found across most jurisdictions, but are particularly common in Africa, the Middle East, Southeast Asia, Oceania, and Latin America. Reliance on these systems varies according to context, and in times of civil conflict, natural disaster, or state collapse, these informal systems may be the only mechanism available for resolving disputes and maintaining peace.

Broadly speaking, a participant at the MENA preparatory meeting indicated the complications arising from the **multiplicity and conflicts of laws** in the absence of a clear stipulation as to when the specific law pertaining to child justice prevails, whether in the formal or informal systems. A conceptually similar challenge was raised at the North American preparatory meeting for countries with a legal system based on federalism, whereby **federal and state laws may clash** substantially in their approach to child justice.

¹⁴ It is noted that the binary distinction of formal and informal laws and systems is an oversimplification of the structures that exist under legal pluralism. Although religious or customary laws and courts may be considered as part of the formal system in certain jurisdictions, based on their stipulation in the Constitution and other statutes, for the sake of simplicity, formal laws and systems mentioned here refer to the common judicial and legal systems that apply to everyone in the country, as distinguished from the informal systems that apply to specific groups of people.

Although the more common notions of legal pluralism were not widely discussed during the preparatory meetings, the organisers of the World Congress identified the topic as an important theme. Informal systems can be speedy, cost-effective, linguistically accessible, culturally sensitive, and appropriately contextualised and individualised, with an emphasis placed on restorative approaches.

However, there are also concerns of a **lack of safeguards and accountability based on the core principles and standards of children's rights**, which can be further exacerbated by interpretations of these rights made by the informal justice actors in a manner that are skewed in a certain direction (e.g., in favour of a particular religion).

Harmful traditional and/or religious practices are often linked to the existence of plural legal systems (e.g., caning or stoning stipulated as a form of impossible punishment). Customary laws may or may not be codified, which often leads to the informal application of unwritten rules, and the inconsistencies in regulations and unclear jurisdictional boundaries may lead to **confusion in pursuing justice**. It is also not well known what impact forum shopping has on children's equal and fair access to justice and the protection of their rights in the context of legal pluralism.

Furthermore, discrimination may be embedded into plural legal systems. There are often **varying legal minimum ages for marriage and consent**, particularly based on gender. This leads to the authorisation of what would be considered as child early and forced marriage and sexual abuse in the formal legal system, especially for girls. Similarly, **legal sanctions tend to be heightened and/or solely applicable to girls and women** in certain religious or customary laws. In addition, children with disabilities or particular physical characteristics are often accused of and punished for witchcraft based on custom, without proper avenues to access justice. These discriminatory practices often operate unchecked.

However, the advantages of these systems are also **insufficiently studied** and considered by the formal system, despite the wide opportunities for positive learning and adaptation.

Recommendations

1. Identify positive community-based solutions underlined in **indigenous, traditional, and customary justice** approaches and norms that might inform the reform of formal child justice and welfare systems to benefit all children.
2. Conduct a **holistic review and reform of the informal systems** with a child justice lens, to better understand complementarity and identify gaps, ensure the integration of core children's rights principles and standards, enable equal access to child-friendly justice, prohibit harmful practices that normalise violence against children, and prevent discrimination across systems, especially based on gender.
3. Institute **independent oversight** for systems outside of the formal child justice system, along with proper procedures that enable children to **appeal** decisions from the informal systems to the formal courts for review, when appropriate.



Theme 10: Building resilient child justice systems in times of crises and pandemics

The COVID-19 pandemic has presented both grave challenges and opportunities in relation to justice for and with children, which also underlines the vulnerabilities of the child justice system in times of crises and pandemics.

Participants at the Indian preparatory meeting pointed out how **ill-equipped the justice system was to adapt to the pandemic**, with a lack of functioning computers, internet, technological competence, and other necessary infrastructure to hold virtual hearings, both on the side of the justice system actors and of the children in contact with the law. Even if the hearings were to be possible, the social investigation reports wouldn't be, which constitute an integral element of the child justice procedures in the country. The **digital divide** has been identified to be larger based on gender and location of residence.

A participant at the USA preparatory meeting indicated that for children deprived of liberty, the **suspended family visitations, solitary confinement** as a measure of quarantine, and **limited staffing and programming** have all impacted children emotionally, mentally, and physically. Participants at the Central American preparatory meeting similarly explained that the dissociation with family and the community has been intensified for children deprived of liberty, and that detention facilities are **ill-equipped to handle health complications**, where **social distancing is also impossible** due to overcrowding. A similar concern was expressed by a participant at the Thai preparatory meeting, indicating that the **inability to conduct** reintegration programmes, educational and skills development sessions, and joint meetings with the families has been negatively impacting detained children.

A participant at the USA preparatory meeting also pointed out that while thousands of detained children have tested positive for COVID-19, there is **inconsistency in data collection** and reporting. Furthermore, a participant at the Central American preparatory meeting indicated that the restrictions in on-site inspections of detention facilities have led to reduced transparency and accountability.

With regards to the early release of children, a participant at the MENA preparatory meeting indicated that there was **discrimination in who was eligible for release**. For example, children who were perceived to lack the social support of direct family members or whose families lived far away from the detention facilities were not readily released. A participant at the Central American preparatory meeting noted the hesitancy of the authorities to release children due to the negative **public perception** against children in conflict with the law, which

was also reflected in a statement made by a participant at the Indian preparatory meeting regarding the **higher observed rates of recidivism** among children during the pandemic for acts like property-related offences.



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At the same meeting, participants also questioned whether the processes of hurried release and post-release support are functioning well, given that the children were being **returned to situations of extreme vulnerability**, many of which were precisely the reason why the children ended up in the situation leading to their deprivation of liberty in the first place.

There has also been an **overall increase in the victimisation** of children. Participants at the Pakistani and Central American preparatory meetings highlighted the **rise in violence against children** as a result of the economic impact brought about by increased unemployment and reduced income, which places additional burdens on systems that are already overburdened. Participants at the Indian preparatory meeting expressed concern at children being forced into trafficking, illegal selling of babies, child early and forced marriage, and labour. A participant at the Central American preparatory meeting also indicated that children from poorer households have increasingly been “used” in the commission of crimes by adults during the pandemic.

In addition, a participant at the Thai preparatory meeting indicated that the justice system actors, practitioners, and children deprived of liberty are all facing heightened stress from the prolonged COVID-19 control measures, which has exacerbated violence perpetrated against children in the system, either by adults or among children themselves.

Recommendations

1. Integrate specialised **psychosocial support**, strengthen **child helplines**, and expand the coverage of **social protection schemes**, under the comprehensive service provision combining psychological, social, and legal services for children and their families.
2. Consider implementing **virtual courts**, hearings, interviews, case and information management, and procedures to enable sustainable access to justice for children during crises, in a manner that **guarantees procedural safeguards**, that complements in-person hearings and procedures, and that are developed based on **tested and effective practices**, while addressing the digital and geographical divide, accessibility and inclusivity, security and privacy, confidentiality, and the child's comfort level.
3. Institute and implement **clear protocols for interagency and multi-sectoral cooperation**, including specific procedures during times of crises, and ensure that key bodies in the child protection and justice systems are **considered to be essential services** that are allowed and prioritised to operate during the times of a pandemic or emergencies.
4. Build the **capacity** of justice system actors on an ongoing basis, so that they can **quickly and effectively adopt and utilise** the measures and tools developed and instituted to adapt to the volatile situations in times of crises.
5. Strengthen existing **non-custodial measures and diversion programmes** for children, while building new measures that respond to the ongoing crisis, and reinvent methods of pursuing **restorative justice** where in-person contact is not possible.
6. Accelerate the **release of children deprived of liberty**, and provide them with adequate oversight, measures, and support services and networks to ensure their **well-being following their release**, including the establishment of monitoring systems that incorporate periodic reporting from and accountability for designated responsible persons in the family or community.
7. Devise solutions to **continue monitoring child detention facilities** besides on-site inspections.

Theme 11: Tackling violence within child justice systems and ensuring child-friendly approaches for child victims, offenders, and witnesses

Children who come into contact with the law have been subjected to different forms of violence up to that point in their lives, and yet, they continue to face structural, physical, sexual, and emotional violence perpetrated by the justice system and its actors.

A participant at the North American preparatory meeting indicated that there is much **violence and toxicity being directed at children**, which includes the rampant **police brutality** against children that was highlighted by a participant at the Indian preparatory meeting. A participant at the Singaporean preparatory meeting explained that the country's law authorises officials to cuff children to their chairs or to the floor, and that there continues to be troubling practices of using **handcuffs and cable ties to restrain** children in prison.

Indeed, the UN Global Study on Children Deprived of Liberty emphasises that deprivation of liberty for children is a form of structural violence, and yet a participant at the North American preparatory meeting indicated that **pre-trial detention** is widely used in Mexico, similar to many other countries, and that there aren't uniform protective standards for child detention facilities across the country, with some that employ corrections officers from adult prisons who are not accustomed to child-friendly procedures. Similarly, a participant at the Singaporean preparatory meeting stated that the detention centres in Malaysia **lack a solid support structure for services meant for children**.

A participant at the Central American preparatory meeting observed that there has been a **general resistance** by justice system actors to adhere to child-friendly approaches. One reason for this has been the **non-existence of legal frameworks** that mandate, structure, and operationalise restorative justice approaches, along with a **lack of clear standards and guidance** to implement alternative measures for children, as highlighted by participants at the MENA and Lebanese preparatory meetings. Similarly, participants at the Cambodian preparatory meeting identified the challenge of having **insufficient child-friendly procedures throughout all stages** of the justice system, combined with a **lack of enforcement** of the procedures that do exist.

A participant at the Thai preparatory meeting stressed an inherent problem at the foundational level: many child justice systems have been built **based on the justice systems meant for adults**, which inevitably leads to improper procedures and outcomes for children.

Furthermore, the participants at the Pakistani and Indian preparatory meetings indicated that even where the law mandates diversion, legal aid, comprehensive social inquiry reports, and other child-friendly procedures, there is a significant **lack of financial and technical**



resources, personnel, and programmes to implement the laws in practice. A concern for the **lack of specialisation and capacity-building** of justice system actors has been identified across jurisdictions, including for the police, judges, lawyers, and social workers in their interactions with children in conflict with the law, child victims, and child witnesses. Similarly, participants in multiple meetings called attention to the **lack of proper coordination** among justice system actors and across agencies in different sectors, along with a lack of proper tools to assess this coordination.

Participants also highlighted insufficient child-friendly infrastructure and services. A participant at the Pakistani preparatory meeting indicated that there is a **lack of child-friendly spaces** at police stations, rehabilitation centres, courthouses, and detention facilities, while the participants at the MENA and Cambodian preparatory meetings stressed a wide **lack of sufficient access to and quality of child-specialised legal aid and various forms of non-legal support** for children in contact with the law.

Similarly, a participant at the Lebanese preparatory meeting indicated that the existence and composition of mechanisms and services **vary widely across the different regions** in the country. This is a challenge faced by many countries, which leads to discrimination based on the location of residence and primarily impacts children in rural areas. This problem is exacerbated by an issue highlighted at the Singaporean preparatory meeting, in that the work of civil society organisations is often **disjointed and uncoordinated** in their service provision, resulting in widespread gaps.

Furthermore, participants at the Indian preparatory meeting identified additional challenges from the perspectives of the child and the society. For example, children have been observed to be hesitant in taking part in restorative circles and dialogues because they **fear self-incrimination** in the absence of established safeguards and trust. There have also been barriers to diversion for children in street and other situations **who do not have family members to be involved** in the process. In addition, there is a widespread **inaccurate public perception** that diversion and other alternative measures simply let children off the hook and that these children are being allowed to “vacation” in shelters. These uninformed perceptions hinder the development and implementation of child-friendly approaches.

Recommendations

1. Acknowledge that violence against children is being perpetrated by the justice system, amend the laws to **restrict the use of force and restraint** against children, monitor the use of force by the police and in detention facilities, fully **investigate** any reports of maltreatment, and ensure **accountability**.
2. Place an emphasis on the **social rehabilitation and reintegration** of children through **comprehensive approaches** instead of isolated interventions, in order to ensure that justice systems **do not blindly and unnecessarily aggravate adverse childhood experiences**, especially for child victims and witnesses.
 - For example, the Halt diversion programme in the Netherlands receives referrals from the police for children to enter into “halt arrangements” that are based on a restorative justice approach, which promotes personal growth, candid conversations and apologies, family strengthening, and community service, among others.

3. Cultivate the **ability in children to cope with trauma** from an early age with programmes at schools, community and sports centres, and other appropriate places, in order to reduce the traumatic impact faced if they do subsequently come into contact with the law, and institute inclusive and effective **therapeutic measures** throughout the system and especially in detention facilities for children (e.g., enabling access to different kinds of support animals).



4. Seek effective methods of **promoting diversion and community-based non-custodial measures**, such as providing incentives to courts and agencies to pursue this course of action.
- For example, the RECLAIM Ohio Program provides funding to courts to develop, expand, or make purchases for community-based alternative measures that meet the individual needs of children in conflict with the law or children at risk of offending.
5. Design **restorative justice approaches that are tailored to each locality** in a manner that is shaped and **led by the respective communities** and that answers to the specific needs of the groups they are being applied to, operated by specialised restorative justice professionals.
- For example, the Restorative Justice Hubs in Chicago is a community-led collective that seeks to reduce violence and mass incarceration in a manner that promotes accountability for harm through conflict resolution and healing, rather than punishment and incarceration. Their work is informed by the latest science on childhood trauma.
6. Institute **child-friendly procedures** and provide **specialised training** (e.g., child-friendly and trauma-informed questioning techniques) on an ongoing basis for all justice system actors and relevant stakeholders, including judges, magistrates, prosecutors, police officers, corrections officers, probation officers, court officers, social workers, and lawyers, both separately and in a manner that is **integrated into the curriculums** of academic degrees and certified trainings for legal practitioners, law enforcement officers, prosecutors, and judicial officers.
- For example, the Child-Friendly Police Procedures in Cambodia aims to provide a positive environment for children in contact with the law in their interactions with the police, which has been integrated into the national curriculum of the Police Academy of Cambodia and disseminated through specialised trainings at the Regional Schools of the National Police, combined with monitoring and coaching provided to the police officers.

7. Consider the **pros and cons of pursuing a one-stop service centre approach** for child victims and witnesses, and establish these centres when there is confidence that they can operate in an effective and sustainable manner with sufficient capacity, expertise, sensitivity, and authority.
 - For example, the Panlong District One-Stop Center in China aims at protecting children from secondary harm during and after judicial proceedings by streamlining and combining procedures under one roof, such as questioning by the police officers and prosecutors, examination by a doctor, sessions with a psychological consultant, and meetings with a child protection social worker. This model has been having a positive impact on the children and the system in their locality, but it should also be noted that similar models have failed to operate effectively in certain other jurisdictions around the world.
8. Pursue **evidence-based** and properly informed **legal and policy reform** in collaboration with the civil society through proper data collection, performance assessments of courts and legal processes, and conversations with children and the communities.
 - For example, the Cambodian Center for Human Rights conducts criminal trial monitoring on a daily basis at the Phnom Penh Court of Appeal, including cases involving children in conflict with the law, and they utilise a checklist that was developed with the input from the courts and other criminal justice specialists. Using these data points, the organisation publishes reports and makes recommendations to change the practices and procedures in the courts, some of which have been adopted.

Other themes

A number of additional topics were raised during the preparatory meetings. A participant at the Indian preparatory meeting expressed concern about the expanding pipeline in which **children in need of care and protection eventually become children in conflict with the law**. This shares similarities with the school-to-prison pipeline¹⁵ in the USA, where ultimately the wrong system deals with the situation.

Relatedly, a participant at the Singaporean preparatory meeting indicated that there is a **lack of proper support for children in foster and institutional care**, which is coupled with insufficient overall family support. The participant indicated that there is a large disconnect between the core problems that cause family separation and the proposed solutions. Furthermore, caregivers often call the police when children engage in disruptive or self-harming behaviour because they are unaware of how to better handle the situation.

The importance of adept **parenting skills** cannot be overstated in preventing children from one day entering into contact with the law. However, a participant at the North American preparatory meeting noted that **families that most need the intervention are not likely to proactively and voluntarily present themselves to parenting and family support programmes**.

15 Simply put, the school-to-prison pipeline is a phenomenon whereby schools end up pushing children into the criminal justice system. For one, zero-tolerance policies in schools have led to greater expulsions, suspensions, and other disciplinary measures like detention, which can increase the likelihood for those children to come into contact with the justice system. But a greater problem has been the situation of child conduct in schools being dealt with by the police, rather than by the school administrators, especially through "school resource officers" dispatched by the police department to be stationed at the schools. This often leads to school-based arrests and subsequently drags the child through the criminal justice process. Racial minorities and children with disabilities are disproportionately impacted by this phenomenon.

This issue is further complicated by **socio-economic considerations**, and further conflicts may arise when the best interest determination for children yields diverging results among different actors, such as between the social worker, the judge, the family, and the children themselves.

Additional groups of children discussed at the meetings in relation to discrimination in access to justice were **children associated with armed forces and armed groups** (CAAFAG), terrorist organisations, organised crime, and gangs, which were partially covered in depth at the 2018 World Congress. A participant at the MENA preparatory meeting expressed concern at the lack of alternatives and pardons for children who are detained for **terrorist crimes**, where up to 70% of children in Iraq have been exposed to the threat of terrorism, and they are often used as “pawns” that are brainwashed and indoctrinated.



A participant at the Lebanese preparatory meeting indicated that not only are CAAFAG perceived as offenders rather than victims, but the existence of harsh penal laws, lack of specialised training for justice system actors, and lack of transparency of military tribunals all **exacerbate discrimination** against these children in the justice system. However, another concern was raised that treating these children as victims rather than as offenders can pose the risk of heightened recruitment by the groups, due to the lack of criminal accountability.

On a different note, a participant at the Central American preparatory meeting indicated that international instruments and standards do address children affected by armed conflict in relation to justice, including in the General Comment No. 24 (2019) of the UN Committee on the Rights of the Child, but not enough attention is being paid towards **children recruited into organised crime or gangs**.

A participant at the North American preparatory meeting stated that in Mexico, the government has little capacity to disengage young people who are recruited into organised crime, and this **fragility of the state in essence normalises offending behaviour**, allowing an alternate power structure to fill the vacuum. Participants at the Latin American preparatory meeting expressed similar concerns of children and youth getting involved in gangs and cartels as a result of the “absent” states.

Recommendations

1. Identify and implement effective methods for **family support and strengthening** by reinforcing **social protection schemes**, including assistance with bill payments, job training, and housing assistance for various family structures (e.g., children in foster care), in order to **disrupt pipelines** that lead children to come into contact with the law.
2. Institute measures that enable caregivers to **improve their parenting skills** and prevent violence against children, including collaboration with musicians and public figures to spread awareness.

3. Build the **capacity of educators** to better identify and respond to situations of risk for children, and educate them on the root causes that result in children encountering the justice system.
4. View CAAFAG and children involved in terrorist activities as **victims** of the circumstance and of exploitation, so that they can be disarmed, demobilised, rehabilitated, and reintegrated in their best interest.
5. Ensure that children currently in the justice system for their affiliation with armed or terrorist groups are **not discriminated against in the protective measures and procedures** available to other children in conflict with the law, including non-custodial measures.





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Luis Pedernera

President, Scientific Committee of the 2021 World Congress on Justice With Children and Former Chair, UN Committee on the Rights of the Child



The World Congress on Justice With Children gives an opportunity to exchange new global trends on child justice. There are two elements that will be of particular relevance for the World Congress: the implementation of General Comment No. 24 on children's rights in the child justice system and the challenges posed by the ongoing pandemic that has deepened children's rights issues, especially those concerning access to justice and deprivation of liberty. The Congress will certainly be an insightful platform which will provide food for thought in responding to the challenges arising from the current situation.

