



### Background

Across our world we are facing the growing impact of pervasive crises including the climate emergency, pandemics and economic and social inequality. This is resulting in more children and families becoming vulnerable to disasters, increasing violence and conflict, and ever-increasing levels of extreme poverty. Major responses are urgently needed to combat the negative effects of these global challenges on children and families.

As a result of the local playing out of these forces, huge numbers of children are coming into conflict with the law and being deprived of their liberty every year, children who continue to be overlooked by society. The growing trend towards detaining younger and younger children for longer periods of time, in spite of growing evidence of the harm it causes them and their families, requires urgent and sustained counter-action. Access to justice that protects the rights of all is fundamental, and is key to building the just and inclusive societies as called for in Sustainable Development Goal 16.

Children can also come into [contact with the justice system](#) for various reasons in addition to being accused of an offence, including for example in situations involving separation of parents, custody, protection, adoption, as victims of violence, as unaccompanied, refugee and displaced children. They may appear before various types of courts, be they civil, criminal or administrative – including, in some countries, traditional or religious courts. Whatever the setting, and whether they appear as a party or as a witness, their rights must be protected - although this is often not the case. Particular difficulties arise when children are deemed to have been in conflict with the law, and in cases of incarceration.

According to the [UN Global Study on Deprivation of Liberty \(2019\)](#), more than seven million children worldwide are deprived of liberty each year. They are detained in settings such as prisons, pre-trial detention centres, police custody, migration detention centres and institutions of all kinds, including institutions for children with disabilities. The vast majority of children are detained in violation of the United Nations Convention on the Rights of the Child (UN CRC), which defines the detention of children as a measure of last resort (Article 37(b) UN CRC). In almost all cases, noncustodial solutions are available.

The Global Study also reveals significant **gender disparities** in most detention situations. When it comes to children in justice systems, as well as in the context of armed conflicts and national security, 94% of all children deprived of liberty are boys. In immigration detention, two thirds of all children are boys. Children with disabilities are also overrepresented in detention, as are children from poor families, those with a minority or migration background and children belonging to the LGBTQI+ community.

The most important reason for the large number of children in these different types of detention settings is the **lack of adequate support for families and caregivers**. Support and effective cooperation between parents, child welfare and social protection services, education, health, law

enforcement and justice systems would prevent children from being placed in institutions and coming into conflict with the law.

Research for the Global Study shows that the deprivation of liberty of children as well as harsh conditions of detention have a major negative impact on the physical and mental health and development of children. Detention of children, therefore, constitutes a form of **structural violence** and deprives children of their childhood.

## International legal framework

In addition to the [UN CRC](#) and its rules governing justice in relation to children are set out in two internationally agreed standards, namely the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (known as the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (referred to as the Riyadh Guidelines). Together with the UNCRC, these rules and guidelines emphasise the need for a distinct approach to justice with children as compared to adults. Furthermore, the [United Nations Guidelines for the Alternative Care of Children, 2010](#) support the implementation of the UN CRC and other international instruments by seeking to ensure that children do not find themselves in out-of-home care unnecessarily and that the type and quality of this care is appropriate to the rights and specific needs of the child concerned.

The [Beijing Rules](#) provide guidance on the treatment of children in the criminal justice system, including on privacy, police training and due process. Importantly, they also present guidelines for the diversion of children from judicial proceedings and the need to take account of children's emotional and intellectual capacity to avoid setting the age of criminal responsibility too low. The [Riyadh Guidelines](#) confirm the significance of reducing juvenile delinquency in order to reduce crime, and call for greater integration and collaboration between the various actors involved in juvenile justice, including at international and country levels, and the importance of implementing the guidelines according to a child-centred approach. They emphasise the role of family support, education and community in the prevention of juvenile crime and in avoiding further involvement in the justice system.

A key provision in the UN CRC, which is legally binding on all ratifying States, defines the detention of children as a measure of last resort (Article 37(b)). Other key elements include:

- A range of due process rights for children in conflict with the law, such as the right to: be presumed innocent until proven guilty; be informed of their charges, have legal assistance; to a fair hearing without delay; appeal; have an interpreter; protection from self-incrimination (Article 40, 2(b));
- Recognising the rights of juvenile offenders to be treated in a manner consistent with the promotion of the child's sense of dignity and worth." (Article 40,1)
- The importance of taking 'all appropriate measures to ensure that the child is protected against all forms of discrimination.'" (Article 2 (2)). In General Comment No.10 (2007), the Committee on the Rights of the Child added the need to pay particular attention to the equal treatment of children before the law and the discrimination and disparities affecting vulnerable groups of children, such as children belonging to racial, ethnic, religious or linguistic minorities.

In its most recent [General Comment on children's rights in the child justice system \(No.24, 2019\)](#), the Committee on the Rights of the Child has emphasised the need for States to: holistically implement child justice systems that promote and protect children's rights; focus on prevention and early intervention, and to protect children's rights at all stages of the system; and, promote key strategies for reducing the especially harmful effects of contact with the criminal justice system, in particular by:

- Establishing an appropriate minimum age of criminal responsibility and ensuring the appropriate treatment of children on either side of that age;
- Scaling up the diversion of children away from formal justice processes and to effective programmes;
- Expanding the use of non-custodial measures to ensure that detention of children is a measure of last resort;
- Ending the use of corporal punishment, capital punishment and life sentences;
- Ensuring that, in the few situations where deprivation of liberty is justified as a last resort, making certain that its application is for older children only, is strictly time limited and is subject to regular review;
- Promoting the strengthening of systems through improved organization, capacity-building, data collection, evaluation and research;
- Providing guidance on new developments in the field, in particular the recruitment and use of children by non-State armed groups, including those designated as terrorist groups, and children coming into contact with customary, indigenous and non-State justice systems.

## Our recommendations

Family for Every Child is working to support local, national and global efforts to reduce the number of children held in places of detention, encourage non-custodial solutions, champion resource investment to reduce inequalities and support families, and address the pathways leading to the detention of children in a systemic and holistic way. We do this through research, advocacy and practice exchange, and by involving those with lived experience to the fullest extent possible.

In particular, Family for Every Child supports the findings of the [Global Declaration on Justice With Children \(November 2021\)](#) and seeks to:-

**Bring about genuine justice *with* children** by working in a manner that partners with children, particularly those with lived experience, as experts and central players in the pursuit of positive change to achieve equal, non-discriminatory and inclusive access to justice for all children.

**End discrimination in access to justice and in the dispensation of justice** by ensuring equitable access to all forms of justice for all children, especially those from marginalised groups. In particular, there is a need to: (1) contextualise justice procedures for all children in contact with the law to ensure that they are age-appropriate, disability-inclusive and gender-responsive; (2) establish community-based services and non-custodial measures implemented with communities themselves; (3) strengthen the evidence base at national and local levels to understand how minority and marginalised children come into contact with the law, how their access to justice is being impeded,

as well as the root causes of their negative differential treatment by justice systems to prevent their overrepresentation in the system and to develop properly informed, effective, and sustainable interventions;

**Ensure child-friendly justice for all children in contact with the law by:**

- (1) Pursuing strong coordination among sectors and actors in access to justice for children in a way that minimises children's unnecessary contact with justice systems;
- (2) Providing child-friendly, gender-responsive, disability-inclusive, trauma-informed, and context-appropriate justice and social services, along with information and other assistance for all children in contact with the law, that is responsive to children's needs, identity and background, situations, and level of maturity;
- (3) Ensuring accessible mental health and psychosocial support to help children in contact with the law and their families to cope, adapt, and transform in the face of their specific situations;
- (4) Identifying and implementing effective early intervention, holistic and comprehensive family support and strengthening, and community building to: disrupt pathways that lead children into contact with the law; prevent and minimise risks that may lead to offending or reoffending behaviour; enable children to live a childhood free of violence;
- (5) Prioritising restorative justice, diversion, rehabilitation, and reintegration for all children in contact with the law through comprehensive, coordinated, and tailored case management approaches;
- (6) Decriminalising child behaviour that should and can be more effectively addressed by systems involved in child protection, social protection, healthcare, and mental health and psychosocial support, among others, including multidisciplinary alternative responses for drug-related offences and the removal of status offences; and
- (7) Building a professional and competent workforce of child justice and child protection actors including legal practitioners, law enforcement officers, prosecutors, corrections officers, and social service workers.

Crucially, we also need to **develop resilience in justice for children in the face of crises and pandemics** to avoid reversing progress made on justice with children due to emergency measures, such as those caused by COVID-19. In particular we need to ensure a legal and policy basis for non-custodial approaches and other innovative and resilient justice procedures for children during emergency and non-emergency contexts to enable sustainable access to justice for all children.