



28th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Lanzarote (25-26 October 2007)

**“Emerging issues of access to justice for
vulnerable groups, in particular:
- migrants and asylum seekers;
- children, including children perpetrators of crime”**

Address by

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Mr. Chairman, Madam Deputy Secretary General, Honorable Ministers, Ladies and Gentlemen,

On behalf of UNICEF, I would like to congratulate the Government of Spain and the Council of Europe for organizing this milestone event that is addressing issues and concerns of essential importance for protection of children and their rights across Europe. The substantial preparatory process preceding this Conference has built a solid foundation: the drafting of the new Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse that opened for signature here today, as well as to the preparatory Conference on International Justice for Children that took place in Strasbourg during 17-18 September.

In UNICEF we are proud of our long-term partnership on a number of critical child protection issues with the Council of Europe. The Council of Europe programme “Building a Europe for and with Children” has inspired us to seal our commitment through signing of a Joint Agreement in January of this year.

With a field presence in 21 countries in Eastern Europe and Central Asia, UNICEF will strengthen this cooperation and remain a committed partner to governments in supporting the implementation of the Convention on the Rights of the Child and its Optional Protocols and in that context also support the ratification process and implementation of the provisions in the new Council of Europe Convention.

This Conference has set out to address a number of key issues of critical importance to improve the access to justice for vulnerable groups, among them children. Indeed, **protection for unaccompanied and separated migrant children is of primary importance** and needs improvement in Europe as in other parts of the world. All children regardless of their origin, nationality or status are entitled to the same standards of assistance and protection. We therefore particularly welcome the Council of Europe’s commitment to uphold these standards and offer our support in the process of examining the situation of unaccompanied and separated migrant and asylum seekers children in Europe.

We also welcome the discussion in this Conference on child friendly justice systems. We would like to share today some of the findings of a recent research carried out by UNICEF in collaboration with National Statistical Offices in all the countries of Eastern Europe and Central Asia. The report from this research, which will be made available to you, is called “Lost in the justice system”.

On the positive side, the report reveals that there has been some progress regarding the situation of children in conflict with the law. In contrast to what may be the common belief, juvenile offending rates seem not to be increasing.¹ It is also encouraging to note some child friendly features of current justice systems, such as an increasing use of alternative community-based sentencing and a suitably high minimum age of criminal responsibility (at 14-16 years). Perhaps the most important finding is that the decline in juvenile offending, against a backdrop of economic growth in the region, and shrinking child populations provide a **window of opportunity for reforming justice systems and making them more child friendly.**

Reform is necessary. Justice systems in many parts of Eastern Europe and Central Asia are not serving children or society well, and in many instances cannot fairly claim to be delivering justice. There is a need to articulate the basic aims of juvenile justice – namely, that before the age of adulthood, emphasis needs to be placed on assisting a young person to avoid behavior that will bring him or her into conflict with the law, as opposed to punishing him or her for an offence committed. Reforms also need to address some of the remaining challenges highlighted by the report:

¹ In all countries, the rates of juvenile offending between 2000 and 2005 have been either stable or decreasing.

- Despite the increasing use of “community based alternatives, “**deprivation of liberty**” is still the norm. It is, however, taking different forms than in the past. It is increasingly carried out in the name of “rehabilitation” or “education” rather than purely as a “punitive” measure. But in the end, these do not bring substantive, positive change in the situation of the minors held in detention.
- Gatekeeping systems are not functioning in line with international standards: The decentralized decision-making bodies that have authority to take decision on cases – so called **Local Commissions - are not truly diversionary** as they have powers to authorize custodial responses. In addition, many children are deprived of their liberty in the name of their own protection. This phenomenon is the result of law enforcement and wider justice system “stepping into the vacuum” created by the lack of effective social services for children and their families.
- The period between arrest and conviction is referred to as a **constitutional “twilight zone”** because there is a lack of a clearly defined point at which arrest ends and pre-trial detention begins. The lack of data on the number of children arrested and held in police custody or pre-trial detention, and the conditions and duration of stay, is a serious concern and has created a huge space for violations of children rights.
- Use of the so-called “**lenient approach**” - the common approach across the region of giving children the same type of sentences as adults but shorter - is a fundamental misunderstanding of the international standards for juvenile justice and is not in the best interests of the child.

In the end, international justice for children can only be as good as it is at the national level! Therefore we welcome the European guidelines for child-friendly justice, called for in the draft Resolution No 2 (article 20e) and we remain available to engage in dialogue with the Council of Europe for the articulation of these guidelines. We bring to the table, experience of working with Governments across the region on juvenile justice reforms, mainly in:

- Analyzing the functioning of juvenile justice systems and identifying gaps in the current system and priority areas for reform with all actors.
- Supporting law and policy reform.
- Development of diversion schemes and community based services for prevention and rehabilitation of young offenders; and
- Building the capacity of the many different professionals working in the justice system.

Lessons learned from our work, and from the report we have just released, reveal the urgent need for further clear guidance on the application of international Guidelines on Juvenile Justice and to challenge some of the current mis-applications of the international standards. The European guidelines for child-friendly justice could provide some of that urgently needed clarification. For example:

- There is a fundamental need to develop shared definitions and regional consensus on indicators and targets for reform. Indicators need to include not only those measuring juvenile offending rates, but also need to shed light on some of the “unknowns” of current justice systems, such as the number and proportion of children in pre-trial detention and the length of their stay.
- Further guidance is needed for enforcing effective diversionary schemes and, in the light of this, the mandates of Local Commissions that are so common in Eastern Europe need to be reassessed.

- Criteria for community based alternatives to deprivation of liberty are needed so as to challenge the new forms of “deprivation of liberty”.
- Guidance is also required on how to improve the intersectoral response by the justice and welfare sectors so as to serve preventative, gate-keeping and rehabilitative functions better.
- Finally, guidance for law reform is called for on how to tailor justice responses to the individual needs and circumstances of each child. In this context, we need to challenge the practice of giving children the same type of adult sentences but of a shorter duration.

UNICEF recognizes the importance of the work being carried out by the Council of Europe to further the access to justice for vulnerable groups, in particular children. Indeed, the Council of Europe is fulfilling its vital standard setting role. The gathering of data and knowledge on unaccompanied and separated children, and the development of tools for professionals that is being proposed will also contribute to the reform of social protection systems. With our field presence, UNICEF is committed to support governments in the implementation of these standards across the region, recognizing that this will entail long-term engagement in systems reform.

A child friendly justice system is part of a wider set of reforms of the justice system in the region. We are seeing a new wave of social sector reforms coming after a period of neglect. A child friendly justice system has the potential to accelerate and catalyze these changes.

Thank you!

