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Analysis of the System of Justice for Children in Conflict with the Law in Ukraine

METHODOLOGY

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(Image found on: <https://www.orlandoweekly.com/Blogs/archives/2020/07/29/covid-19-cases-increasing-inside-floridas-jvenile-justice-system>)

Report on Methodology

Analysis of the System of Justice for Children in Conflict with the Law in Ukraine

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LIST OF ACRONYMS

CC:	Criminal Code
CoE:	Council of Europe
CRC:	Convention on the Rights of the Child
IDI:	Key informant interview
FGD:	Focus Group Discussion
KRQ	Key Research Questions
MIA:	Ministry of Internal Affairs
MoJ:	Ministry of Justice
OBS:	Observation
SR:	Survey
ToR:	Terms of reference
UNEG:	United Nations Evaluation Group
UNODC	United Nations Organization of Drugs and Crime

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1. Introduction

1.1. Purpose of the Methodology report

In April 2021, a team of three experts was engaged by Council of Europe Ukraine, to develop a Methodology Report for Analysis of the System of Justice for Children in conflict with the law in Ukraine. The Methodology Report will concentrate specifically on one component regarding Justice for Children in Ukraine: Functioning of the system for Justice for Children in conflict with the law in Ukraine in 2021. The second component Justice for Children in contact with the law has already been analysed in a separate exercise implemented by Council of Europe (Barnahus model).

This report aims at setting out the conceptual framework, the key research questions, the methodology, including information on data sources, timeline and tools that will be used during the research endeavour implemented by an organisation/institution/research body who will be selected as a result of a competitive tendering procedure organised by the Council of Europe (hereinafter referred to as Research implementing institution).

1.2. Key activities undertaken to prepare the Methodology report

The report was prepared during the month of April 2021 by the team of consultants based on the following key activities:

- Introductory online conference between the consultants' team and Council of Europe staff. Mutual expectations for the assignment have been discussed and available documents presented. Further steps and deadlines have been acknowledged;
- Comprehensive analysis of literature, including:
 - Terms of reference (ToR),
 - Desk review of National legal and policy framework prepared by the national consultant ahead of the development of the Methodology Report,
 - International standards with respect to Juvenile Justice: United Nations Convention on the Rights of the Child and the CRC General Comments, 12, 10 and 14 and 24; Council of Europe Recommendation Rec (2005) 5 on the rights of children living in residential institutions; Recommendation Rec (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder; Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice; Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions or measures; Recommendation No. R (92) 16 on the European rules on community sanctions and measures; Recommendation No. R (87) 20 on social reactions to juvenile delinquency; Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice; the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules); UNICEF Guidelines on Child Friendly Justice.
- Internal discussions within the team of consultants tasked with the preparation of this report;
- Additional exchanges of emails and zoom interviews between Council of Europe and the team of consultants.
- Review of the Methodology report by the team of consultants.

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All sources consulted for the Methodology Report are presented in Appendix 4.

The structure of the Methodology report is based on the provided UNICEF's standards for inception reports in Europe and Central Asia region, UNICEF Procedure for Ethical Standards in Research, Evaluation, Data Collection and Analysis,¹ European Commissions Ethics for researchers² and on ample experience of the team of consultants in similar research assignments and the UNODCs manual on Criteria for the design and evaluation of juvenile justice reform programs.

1.3. General context

*"The most important thing is that whatever reform takes place, it is based on the rights of the child... We welcome that there has been great progress in recent times, but it is important that human rights standards are respected in this process. We want rules to be included in the law or other normative-legal acts so that they really have an impact."*³

(Serhiy Burov, Executive Director of the Educational Human Rights House in Chernihiv)

Policy framework relating to Justice for Children in Ukraine

In 2015, the Government signalled its commitment to improving the country's juvenile justice system with the President's approval of the National Human Rights Strategy.⁴ In 2017 the Inter-Agency Coordination Council on Juvenile Justice was formed.⁵ The main objective of this subsidiary body of the Cabinet of Ministers of Ukraine is to tackle the obstacles that prevent the establishment of child-friendly justice in Ukraine. On December 18, 2018, the Cabinet of Ministers of Ukraine approved the National Strategy for Reforming the System of Justice for Children for the period of 2018-2023 (hereinafter the Strategy). The main areas of the Strategy's implementation are:

- Preventing child delinquency;
- Protecting the rights of minors prosecuted for committing administrative offences;
- Protecting children's rights in criminal proceedings: pre-trial investigation; court proceedings; sentencing of minors and execution of sentences; re-socialization of minors.

To implement the Strategy, the Cabinet of Ministers of Ukraine approved on November 27, 2019 its Order No. 1335-r "On Approval of the Action Plan for Implementation of the National Strategy for Reforming the System of Justice for Children through 2023."

¹ UNICEF (2015), Procedure for ethical standards in research, evaluation, data collection and analysis. N° CF/PD/DRP/2015-001.

² EC, Ethics for researchers, found on: https://ec.europa.eu/research/participants/data/ref/fp7/89888/ethics-for-researchers_en.pdf

³ Serhiy Burov, Executive Director of the Educational Human Rights House in Chernihiv found on: [http://www.google.com/url?q=https://humanrightshouse.org/articles/ukraine-base-jvenile-justice-reforms-on-international-](http://www.google.com/url?q=https://humanrightshouse.org/articles/ukraine-base-jvenile-justice-reforms-on-international-standards/&sa=U&ved=2ahUKEwiyhpvc5f3vAhVH3aQKHwBLCb8QFjAAegQIABAB&usg=AOvVaw23Z_SsjiKUe2OjCuZsHJwU)

[standards/&sa=U&ved=2ahUKEwiyhpvc5f3vAhVH3aQKHwBLCb8QFjAAegQIABAB&usg=AOvVaw23Z_SsjiKUe2OjCuZsHJwU](http://www.google.com/url?q=https://humanrightshouse.org/articles/ukraine-base-jvenile-justice-reforms-on-international-standards/&sa=U&ved=2ahUKEwiyhpvc5f3vAhVH3aQKHwBLCb8QFjAAegQIABAB&usg=AOvVaw23Z_SsjiKUe2OjCuZsHJwU)

⁴ Strengthening Children's Rights Guarantees in Ukraine, found on: <https://chemonics.com/impact-story/strengthening-childrens-rights-guarantees-in-ukraine/>

⁵ Information found on: <http://en.dejure.foundation/news/what-dejure-foundation-do-to-establish-child-friendly-justice-system>

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On January 21, 2019, the Ministry of Justice of Ukraine and the Office of the Prosecutor General of Ukraine issued their Joint Order No. 172/510 "On the Implementation of the Pilot Project "Recovery Programme for Juveniles Suspected of Committing a Criminal Offence"" which approved the Procedure for the Implementation of the Pilot Project "Recovery Program for Juveniles Suspected of Committing a Criminal Offence". This Procedure establishes the mechanism for implementing a pilot project based on the system of free legal aid.

Legal framework relating to Justice for Children in Ukraine

Several reforms have indeed been initiated in the past ten years in Ukraine that introduced positive changes towards better compliance with international standards regarding the juvenile justice system. Specifically, the enactment of the new legal framework brought limitations to the pre-trial and post-trial detention of juveniles, provided for diversion measures, introduced a probation system, promoted mandatory legal aid provision for children in conflict with the law involved in judicial proceedings, and enhanced the rights of children in educational facilities.

Laws governing Justice for Children in Ukraine are: Law of Ukraine on Protection of Childhood, Law of Ukraine "On Children's Authorities and Services and Special Institutions for Children", Criminal Code of Ukraine, Criminal procedure Code, Code of Ukraine on Administrative offences, Penitentiary Code of Ukraine, Law of Ukraine on probation, Law of Ukraine on Preventing and Combating Domestic Violence, Law of Ukraine on Free Legal Aid and Law of Ukraine for social work with families, children and youth.

Minimum age of criminal responsibility

According to Article 22 of Criminal Code, the minimum age of criminal responsibility in Ukraine is sixteen years of age. However, children who have reached fourteen years of age shall be criminally liable if they commit an offence that is listed in Article 22 paragraph 2. This list of 21 offences includes, among others, intentional homicide, assault on a state person or public figure, law enforcement officer, member of a public order and state border protection group or a service person, judge, lay judge or juror in connection with their activities related to the administration of justice, defence counsel or legal representative of a person in connection with the provision of legal assistance, a representative of a foreign state, intentional grievous bodily harm, intentional moderate bodily harm, sabotage banditry, terrorist act, hostage-taking, rape, sexual abuse, theft, robbery, armed robbery, extortion etc.

However, even though not criminally liable, if children between 11 and 14 years of age, according to the Criminal Procedure Code Article 498, commit a socially dangerous act can be given coercive measures of education by a Court until they reach the age of criminal liability *i.e.* 14.

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1.4. Stakeholders analysis

The following section presents stakeholders that have are important for the implementation of the Justice for Children in Ukraine. This section reflects the list of **key institutions and organizations (key informants)** that will be encompassed with the research. These institutions and professionals working in them are important for obtaining valuable information on the functioning of the Justice for Children system in practice. The institutions and organizations are as follows:

- Ministry of Social Policy of Ukraine as the central executive body ensuring the formation and implementing of state family and children's policy and their structural subdivisions at the regional and local levels (structural units of district, district in the city of Kyiv State Administrations, executive bodies of city, district in cities (in the case of education) councils, rural, village councils) and the Centres of Social Services;
- Ministry of Justice - Centre of Probation and Department on Execution of Criminal Sentences;
- Ministry of Interior - Authorized units of National Police bodies: Juvenile Police Units/prevention police, investigative units police, receivers-distributors for children;
- Ombudspersons (Presidential Commissioner for Children's Rights and the Parliamentary Commissioner for Human Rights);
- State Judicial Administration (responsible for judicial statistical data collection);
- Courts (Criminal and Administrative);
- Public Prosecutions;
- Bar Association of Ukraine;(responsible for provision of legal aid and training of lawyers);
- Legal Aid Coordination centre (responsible for provision of legal aid and training of lawyers);
- National School of Judges (responsible for provision of training to judges);
- Training Centre for Prosecutors (responsible for provision of training to Prosecutors);
- Local authority-Tutorship and guardianship and Service for children;
- Social rehabilitation schools and vocational schools of education authorities;
- Special educational institutions of the Department on Execution of Criminal Sentences and juvenile prisons;
- Children's social and psychological rehabilitation centres;
- NGOs that provide community-based services for children in conflict with the law;
- Children in conflict with the law.

2. Research framework

In this section the purposes, objectives, the target audience and the scope of the Analysis of the System of Justice for Children in Conflict with the Law will be explored. The information presented here is based on: consultations with Council of Europe team, desk review, of relevant international and national documents and existing research on Justice for Children in Ukraine.

This Analysis shall be a comprehensive guide to enhance the knowledge of officials whose task is to ensure that the implementation of the Justice for Children in Ukraine is conducted in compliance with international standards.

2.1. Research purposes, objectives and scope

2.1.1. Research purposes

The purpose is to obtain data and information that will reflect the current trends and challenges in application of the Justice for Children in conflict with the law legislation line with the international standards.

In accordance with the ToR, the report aims to be used as a source of information by several **intended users**:

- The main developers and implementers of the Justice for Children programs at national and local levels-relevant ministries and local authorities;
- Judiciary and Bar Association;
- Educational institutions for justice professionals;
- Human Rights institutions: Ombudsperson;
- For further programming and scale up of the Justice for Children nation-wide: Council of Europe.

2.1.2. Research objectives

General objective:

To respond to the research purpose, this exercise seeks: *To assess the implementation of national legislation and to provide analytical presentation of all proceedings regarding children in conflict with the law with respect to prevention, judicial procedures for criminal and misdemeanour acts committed by children in conflict with the law and rehabilitation of children and to draw up conclusions, recommendations on key identified problematic issues (bottlenecks).*

Specific objectives:

- To access the availability and effectiveness of prevention programmes implemented on national and local level that target children, parents/guardians and community;
- To assess the practice, situation and rights of children deprived of their liberty by official body decisions;
- To assess the observance of rights of children during legal proceedings;
- Investigate the readiness of the justice system to implement child-friendly practices when working

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with children in conflict with the law;

- To access the level and effectiveness of rehabilitation programmes for children in conflict with the law;
- To assess the existence of specialized justice system for dealing with children in conflict with the law;
- To access the existence of an independent monitoring and complaints mechanism for children deprived of their liberty and
- To access the quality of data collection regarding Juvenile Justice at central level that can enable data and research informed policy creation;

To that end, this analysis will deploy various qualitative and quantitative methods. The research will also, specifically, take into consideration the cross-cutting issues of Equity, Gender Equality and Human rights-based approach.

Appropriate data collection methods and tools have been developed, as set in UNEG's Norms and Standards, and take into account UNICEF Procedure for ethical standards in research, evaluation, data collection and analysis, UNEG's Ethical Guidelines for Evaluation and UNODCs manual on Criteria for the design and evaluation of juvenile justice reform programs.

The following table details Key Research Questions (KRQs).

Table 1: Key Research Questions

1. Prevention of juvenile delinquency
<i>1. What prevention activities that target: children at risk, parents-guardians and community that facilitate the successful socialization and integration are developed and implemented?</i>
<i>2. Are children and their parents actively involved in development and implementation of such programmes?</i>
<i>3. Are children at risk placed in institutions as a prevention activity?</i>
<i>4. What is the effectiveness of the prevention measures?</i>
<i>5. What is the level of coordination between professionals working in prevention?</i>
Diversion from court proceedings
<i>1. What is the frequency of use of diversion measures by Courts on proposal of the Public Prosecutor? Which are the most used and less used diversion measures?</i>
<i>2. To what extent mediation is used by Courts?</i>
<i>3. How the effectiveness of diversion measures is assessed by relevant actors?</i>
<i>4. Has the use of diversion measures prevented children's reoffending?</i>
Sanctioning/sentencing of Children
<i>1. Which administrative sanctions are given to children?</i>
<i>2. What criteria judges take into account when giving administrative sanctions?</i>
<i>3. What is the level of criminal reoffending of children that served administrative sanctions?</i>
<i>4. What criminal sanctions are given to juveniles in conflict with the law?</i>
<i>5. What are the criteria that judges take into account when imposing criminal sanctions on children?</i>
➤ Alternative measures
<i>1. How often probation is given by Judges to children offenders? And how is it implemented?</i>
<i>2. How is the effectiveness of probation assessed by relevant professionals?</i>
<i>3. To what extent parents/guardians are involved in probation?</i>
<i>4. Has probation contributed to lower reoffending of children?</i>
<i>5. To what extent probation professionals monitor children after the completion of probation?</i>

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➤ Children deprived of their liberty (pre trial detention and custodial sentences)
<i>1. What are conditions and rights children placed in pre-trial detention?</i>
<i>2. What are the rights of children placed in reception centres and what are conditions in the centres?</i>
<i>3. What is the length of the pre-trial detention given to children?</i>
<i>4. Are parents and legal guardians/legal representatives informed immediately upon detention?</i>
<i>5. What are conditions and treatment of children given custodial sentences (separation from adults, gender segregation, and use of isolators)?</i>
<i>6. What educational, health and recreational services are available to children in juvenile prison?</i>
<i>7. Is there a formal complaint mechanism for children deprived of their liberty?</i>
Rights of children during legal proceedings
<i>1. To what extent do children exercise the right to be heard and to participate during judicial proceedings?</i>
<i>2. Is prompt and direct information of the charge and the rights of children available to children in conflict with the law?</i>
<i>3. Are children provided with legal and other assistance through all stages of the proceedings?</i>
<i>4. Are decisions concerning children in conflict with the law by legal institutions brought without delay and with involvement of parents and legal representatives?</i>
<i>5. Are children free from compulsory self-incrimination and have access to child friendly interview?</i>
<i>6. Do children have the possibility to exercise their right to appeal?</i>
<i>7. Is the right to privacy at all stages of the procedure with respect to children in conflict with the law respected by all actors?</i>
Reintegration of children in conflict with the law
<i>1. What reintegration services are available to children in conflict with the law and how they are organized?</i>
<i>2. How is the risk assessment of re-offending by children carried out and what programmes are implemented to prevent it?</i>
Specialization of the juvenile justice actors
<i>1. Is there a Juvenile Judges and Juvenile Prosecutors present at every court?</i>
<i>2. What is the level of training of the Juvenile Judges and Prosecutors working with children in conflict with the law?</i>
<i>3. Are there specialized and trained lawyers for representing children in conflict with the law?</i>
Data collection, Independent monitoring and addressing violation of children's rights
<i>1. Is there a data-collection system developed at central level regarding children in conflict with the law?</i>
<i>2. To what extent the Ombudsman conducts independent monitoring of rights of children placed in institutions/deprived of their liberty?</i>

All interviews will follow a research grid and tools that have been specifically designed. Tools are presented in Appendix 2.

2.1.3. Research scope

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The Analysis will concentrate on current practices regarding children in conflict with the law by responsible actors under the Ukrainian legislation. However, for assessing results of the current practice and its effectiveness, the statistical data that will be collected will also reflect statistical data changes during the period of 2018-2020.

Considering that the Analysis will encompass practices with respect to children in conflict with the law in whole of Ukraine, the geographical scope of the implementation of the research will be throughout the territory of the whole country, with the exception of those regions in eastern Ukraine and the Autonomous Republic of Crimea that are not under the control of the Government of Ukraine. In consultations with Council of Europe several representative regions were identified in order to achieve most favourable geographic coverage of the research. The identified regions are: Kharkiv, Lviv, Kyiv and Odesa.

The Research will take place in the period of between June and September 2021.

2.2. Ethical principles

The research implementing institutions should strictly follow UNEG's standards and the UNICEF Procedure for Ethical Standards in Research, Evaluation, Data Collection and Analysis. The guiding principles are as follows: principle of respect, of beneficence, of non-maleficence and justice.

All data collection methods will **take into account the respondents' age and personal capacities**. Questions are drafted so that all respondents understand the purpose of the research, the use of the collected data and the content of the questions that will be asked. In the context of children, this specifically means that the research implementing institution will use child-friendly methods, based on the principles of sympathetic listening: age-appropriate and open questions will be asked, to let the children express themselves with their own words or with drawings. Observation will also be used as a data collection tool. Interviews with children and their families remain short (45min. maximum).

The purpose of the research will be explained to all respondents. For children, the consent forms will be explained with words that they can easily understand. The research team will particularly highlight the fact that the research aims at programming new interventions in the field of juvenile justice, to increase protection to children in conflict with the law. Interviews will take place only if participants agreed to their terms and conditions. To this aim, **consent forms**⁶ will be signed by all respondents: consent forms include information on the scope of the research, the **voluntary nature** of the respondents' participation (no remuneration), their rights to refuse to participate, to withdraw from the study at any time and to refrain from answering to certain questions, without having to justify him/herself, without consequence.⁷ **Specific consent forms will be used for children, using a child-friendly language.** The consent forms will also be signed either by children's parents or guardians, or the relevant institution that is working/caring with/for the interviewed children. The research team will propose to provide a copy of the consent form to the respondent and will provide it if asked for.

⁶ See Consent forms, Appendix 3.

⁷ See Appendix 3: Consent forms

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Regarding **data storage and protection**, the consent forms, which is the only document that specifies the name of child and families that participate in the study, will be scanned on a daily basis and the hard copy will be immediately destroyed. The electronic document will be kept solely by the research implementing institution's team - on their personal computers and will be protected by a password that will be known only by the researchers. No one will access the electronic consent forms apart from the researchers. The electronic files of the consent forms will be destroyed when the Final Analysis Report is approved.

The **protection of participants' identities** is crucial and must be taken into account at all times. Therefore, the confidentiality process will be explained to all participants and discussed prior to any data collection: participants will be informed that their name, age or location will not appear in the report, except in the case that the respondent is a public official who is willing to provide his/her title and position and if it is considered important for the research.

In the context of children and their families, names will not be kept in the notes taken during the interview: **their identity will be coded**, using the following system: Year – Month-First 2 letters of their first name-Age (for instance: for a person aged 17 and named Elena in February 2018: 2018-02-EL-17). If quotations are included in the Analysis because they provide important information, the quotation will specifically outline that the names that are used are not those of the respondents. In addition, the researchers will ensure that the confidentiality is strictly kept during interviews and that no external stakeholder is present during interviews. Child will however be provided with the opportunity to ask that another person participates with him/her (relative, friend, trusted guardians, etc.) in the interviews if this makes him/her feel more comfortable. Moreover, interviews will not be recorded to make children feel relaxed during the process. Detailed notes will be taken for all the interviews and then transcribed into Ukrainian to facilitate data sorting and analysis.

Children and some families will be identified at random based on lists shared by community-based services, institutions for children, social services, probation officers, etc. The families will be contacted individually to keep anonymity. Children will be contacted through the institutions, community centres, centres for social work, probation officers etc. Specific request will be made to the entity to ensure that the children's participation in the study remains confidential. Moreover, the research implementing institution's team will explain to the entities the conditions of the research (voluntary participation, non-compulsory participation, etc.)

The team will ensure that the research "**does no harm**": the team that prepared the research methodology of the Analysis assessed this risk when designing the methodology and made sure that the research process **will not have negative impact** on children in terms of potential harms. Therefore the team that prepared the methodology assessed that **children in conflict with the law would be interviewed aged 14-17**. Younger children will not be interviewed for ethical reasons. All interviews with children and families will be **individual interviews**, to ensure anonymity (*i.e.* no focus groups).

If, during an interview, **a child reports any abuse** or reports that he/she feels under immediate threat, the research implementing institution's team will ask the child if he/she wants the team to report it to the authorities. If the child accepts, the research implementing institution's team will report the matter in a timely manner to the responsible person. If the child refuses, the research

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team will discuss with Council of Europe team regarding the situation and will decide whether the threat requires to overcome the child's consent, in his/her best interest. The child will be informed of the decision taken and will be informed of all steps of the process.

When interviews with children are conducted children will be offered to choose the sex of the interviewer that will be implementing the interview.

The research team will be selected based on a competitive bidding procedure according to the criteria laid down in the tender files organised by the Council of Europe. All researchers are expected to be experienced in research, with ample application of ethics standards in previous assignments. Moreover, they are expected to have a strong understanding and practice of Human Rights instruments and refer to Human Rights standards throughout the research. They will maintain integrity and strive to ensure that data is reported accurately, fairly and in ways that are not discriminating or misrepresentative of children's voice, experiences and circumstances.

Special attention will be paid to **equity dimensions** throughout the research, including gender equality and equity (gender, children with/without disabilities, socio economic status). Specific questions will be included in all tools.

Observations will be regularly shared with Council of Europe team throughout the research process. In addition, the results of the research will be shared with the International and National Consultants in charge of the developing of the present Methodology who will participate in developing of recommendations to the findings from the research activity.

2.3. Data collection methods and sampling

The research implementing institution's team will adopt mixed qualitative methods of data collection and analysis, in order to ensure reliability and validity of data through triangulation: review of literature, semi-structured interviews, survey and observation. All tools are presented in Appendix 2 of the report.⁸

The researchers will adopt a **participatory approach** to data collection. The research will adopt mixed **qualitative and quantitative data collection methods**.

2.3.1. Review of literature

Review of literature enables the team to gather contextual information. Documents are also important sources of information that reflect information regarding program component activities, strategies and action plans.

The analysis of documents will be an important aspect for the preparation of Analysis. The researchers will consult available legal and policy documents and literature relevant to the Justice for Children in Ukraine. The literature includes *inter alia*:

⁸ See tools, Appendix 2.

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- National legislation and policy documents;
- Reports, evaluations and analyses on the situation of Justice for Children in the country and at regional level;
- National statistics;
- General observations and general comment of the Committee on the Rights of the Child on Ukraine;
- Any other documents considered relevant for the research.

Indicators of the justice system's performance with respect to children in conflict with the law are essential to measure progress toward child protection goals. In accordance with the Committee on the Rights of the Child's General Comment n°10, the researchers will collect data on the use and the average duration of pre-trial detention, the number of children dealt with by diversion measures, the number of children convicted, the nature and the duration of the sanctions imposed on them and etc. Data disaggregated by gender, age, socio economic status will be collected, whenever possible, to ensure the study's gender-sensitivity. The data collected will reflect statistical data on national level and will be obtained through the relevant institutions.

Table 2: Indicators (statistical data)

Prevention of juvenile delinquency
<i>1. Number of children on prevention lists on JJ Police (2018, 2019, 2020)</i>
<i>2. Number of Children in social and psychological rehabilitation centres 2020;</i>
<i>4. Number of children that have been on JJ prevention lists 2018 and have committed an offence within a 24 month period.</i>
<i>5. Number of children that have committed criminal offences in 2020.</i>
Diversion measures
<i>1. Number of all criminally reported children (pre-trial report) in 2020..</i>
<i>2. Number of all children that have committed criminal offences in 2020 (cumulative number of children against whom the Prosecutor issued a motion for application of coercive measure of education and against whom a pre-trial criminal report was drawn).</i>
<i>3. Number of children that have committed criminal offences against whom the prosecutor has drawn up a motion for the application of coercive measures of an educational nature 2020.</i>
<i>4. Percentage of cases resolved with mediation in 2020 from all children that have committed a criminal offence in 2020.</i>
<i>5. Percentage of cases against children that were resolved with diversion measures from all children that committed a criminal offence in 2020.</i>
<i>6. Type and percentage of diversion measures given to children in 2020.</i>
<i>7. Number of children that have finished diversion measure and have reoffended (committed criminal offence within 12 months of completion of diversion measure).</i>
Sanctioning of Juveniles in Administrative Cases
<i>1. Number of children that were sanctioned for administrative offences in 2020.</i>
<i>2. Type and percentage of administrative sanctions given to juveniles in 2020.</i>
Sentencing in Criminal Cases
<i>1. Number of children that were sanctioned for criminal offences in 2020.</i>
<i>2. Type and percentage of criminal sanctions given to juveniles in 2020.</i>
<i>3. Percentage of children given probation from all children that committed criminal offences.</i>
<i>4. Number of children that have served probation sentence and reoffended within 24 month period.</i>

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Children deprived of their liberty (pre trial/during trial detention and prison sentences)
1. Number of children in pre-trial detention in 2020.
2. Duration of pre trial detention average in 2018, 2019, 2020.
3. Number of children in reception centres in 2019 and 2020.
4. Number of children given custodial sentence in 2018, 2019, 2020.
5. Average duration of custodial sentence given to children in 2018, 2019, 2020.
6. Number of children sent to solitary confinement in 2018, 2019, 2020.
7. Average of length of solitary confinement given to children in 2020.
8. Number of deaths of children in juvenile prison in 2018, 2019, 2020.
9. Number of complaints submitted by children serving a custodial sentence 2019, 2020.
Rights of children during proceedings
1. Average period between the commission of the offence and the completion of the police investigation.
2. Average duration between the decision of the prosecutor (or other competent body) to institute charges, and the final decision by the court.
3. Average duration of interview with the child by investigation entity in minutes/days.
Reintegration of children in conflict with the law
1. Number of children in reintegration programmes that have completed court imposed sanctions in 2020.
2. Number of children that received restorative justice measures by courts in 2020.
3. Type and percentage of restorative justice measures given to children in 2020.

Statistical data will be collected on a central level as well on regional level. The data will be presented in the study based on its availability.

2.3.2. Semi-structured interviews with key informants

Semi-structured interviews were preferred over other type of interviews because they are qualitative research methods that provide enough space to the interviewee to express himself/herself freely, while following a set of structured themes set out in a previously established interview guide. This type of method is used to guarantee that all the questions of interest to the person doing the analysis are covered, and to compare results between the different persons questioned. If during the interview a question is not understood, consultants may rephrase the question without altering the initial meaning.⁹

Semi-structured interviews will be carried out with key informants (list of key informants provided in section 1.4 Stakeholders analysis), who are important for implementation of the Justice for Children in Ukraine.

2.3.3. Survey with selected informants

Survey as a research method was also selected to collect data from vast number of respondents and then it will be statistically analysed to draw meaningful research conclusions.

⁹ See more information, Appendix 1.

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Maintaining gender equality and equity in preparation of sampling

The research team in charge of the research will take gender equality and equal representation principle when selecting the informants for the interviews and focus groups. Ideally, the team will strive for 50 per cent representation of female professionals among the total number of interviewed practitioners.

Regarding interviewed children, the same principle will apply whenever possible.

The team will strive to include children with disabilities in risk of offending or in contact with the law in the sample of interviewed children if possible.



Sampling method

Considering that the research covers the whole territory of Ukraine, several criteria were considered while preparing the sample.

1. The research team will spend time in **Kyiv (central level)** to guarantee that the researchers meet with national institutions and institutions **at central level** (at least -1 representative per institution).

Individual in-depth interviews will be conducted with professionals from these institutions on central level:

- Ministry of Justice – Centre of Probation and Department for the Execution of Criminal Sentences;
- Ministry of Social Policy;
- Ombudsperson (Presidential Commissioner for Children's Rights and Parliamentary Commissioner for Human Rights);
- National School of Judges;
- Training Centre for Prosecutors;
- Bar Association representatives;
- Legal Aid Coordination centre.

2. The research team will also be deployed **in the 4 regions** of Ukraine, in line with cost effectiveness and adequate geographical coverage we recommend that the research takes place in: Kyiv, Lviv, Odesa and Kharkiv regions.

To ensure cost-efficiency and to guarantee the credibility and the validity of data through triangulation, priority will be given to interviews conducted with a **variety of stakeholders** in each selected region. In the selected regions the following institutions/professionals will be interviewed by the research implementing Institution:

Individual in-depth interviews with professionals in each of the selected region:

- Juvenile Judge, Judge that considers cases of administrative offences against children (1 per region)
- Juvenile Prosecutors (1 per region)

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- Police officers (juvenile prevention officer, juvenile investigators, receiver-distributor) (1 per of each category per region)
- Probation Officers (1 per region)
- Legal representatives of children (1 per region)
- Children's institutions-Head master in each visited children's institution: (1 per each category per region)
- Social rehabilitation schools and vocational schools of education authorities;
- Children's social and psychological rehabilitation centres;
- Special educational institutions of the Department on Execution of Criminal Sanctions (juvenile prisons);
- Centres for social work professionals (1 per region)
- Children (Two children per category in every selected region in conflict with the law)
 - Children registered with juvenile prevention police units
 - Children involved in prevention programmes
 - Children in probation (six children in total)
 - Children that have served sentences in juvenile prison
 - Children who were in pre-trial detention centres
 - Children that have served/are serving a diversion measure

3. Children will be identified at random based on lists of beneficiaries that will be provided by the relevant institutions. The list of children will be disaggregated by age and gender. Only children who are more than 14 years of age will be selected. The research team will ensure that the sample represents the target group in terms of gender. Children will be contacted through the respective institutions.

- **Observation** will be conducted in the visited pre trial detention centres, Social rehabilitation schools and vocational schools of education authorities and juvenile prisons because the team deem important to directly assess whether the conditions of these facilities are adequate for children. This observation will be carried out in three regions selected by the implementing Institution.

Institutions in which the observation will take place:

- Juvenile detention facility in each region (Reception centre);
- Juvenile prison facility;
- Social rehabilitation schools and vocational schools of education institution in each region;
- Children's social and psychological rehabilitation centres.

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Table 3: Table of Sample

Level	Professionals	Cumulative Number	Type of method
Central Kyiv	Ministry of Justice – Centre of Probation /Department for the Execution of Criminal Sentences	2	IDI
	Ombudspersons	2	
	Training institutions for Judges	1	
	Training institution for Prosecutors	1	
	Bar Association representatives	1	
	Legal Aid Coordination centre	1	
Regional Kharkiv, Lviv, Kyiv, Odesa	Juvenile Judge	2	IDI
	Juvenile Prosecutors	4	
	Juvenile prevention officer	4	
	Probation Officers	2	
	Legal representatives of children (lawyer)	2	
	Child registered with juvenile prevention police units	2	
	Children in probation	2	
	Children that have served a sentences in juvenile prison	2	
	NGOs working with children in conflict with the law	4	IDI
Total number of informants:	32		

2.4. Data management and analysis

All data will be analysed according to each research criteria and KRQ. All data will thus be analysed following the triangulation principles. The following research matrix presents data sources, indicators and data collection methods for the study. (Note: evidence can refer to information as well)

Table 4: Research Matrix

Key Research Question	Indicators	Desk review	IDI	Survey	FGD	Observation
Prevention of juvenile delinquency						
<i>1. What prevention activities that target: children at risk, parents-guardians and community that facilitate the successful socialization and integration are developed and implemented?</i>	Evidence of programmes for prevention of juvenile delinquency; Evidence of individual approach towards children at risk; Evidence of special tailor made programmes for strengthening families of children at risk; Evidence of programmes for prevention that include the wider community; Number of children on Juvenile police prevention lists.	X	X		X	
<i>2. Are children and their parents actively involved in development and implementation of such programmes?</i>	Evidence of practice of involving parents and children in creation and implementation of prevention plans (individual plan, case management, referrals, case monitoring and evaluation).	X	X		X	
<i>3. Are children at risk placed in institutions as a prevention activity?</i>	Identification of institutions in which children are placed as prevention measure; Identification of practice of placing juveniles in such institutions; Number of children placed in social and psychological rehabilitation centres 2020;	X	X		X	X

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Key Research Question	Indicators	Desk review	IDI	Survey	FGD	Observation
4. What is the effectiveness of the prevention measures?	Number of children that have been on JJ prevention lists 2018 and have committed an offence within a 24 month period.	X	X		X	
5. What is the level of coordination between professionals working in prevention?	Evidence of existence of protocols or SoPs for multi-sectorial work of professionals with children at risk of offending	X	x		X	
Diversion from court proceedings						
1. What is the frequency of use of diversion measures by Courts on proposal of the Public Prosecutor? Which are the most used and less used diversion measures?	<p>Number of all criminally reported children (pre-trial report) in 2020.</p> <p>Number of all children that have committed criminal offences in 2020 (cumulative number of children against whom the Prosecutor issued a motion for application of coercive measure of education and against whom a pre-trial criminal report was drawn).</p> <p>Number of children that have committed criminal offences against whom the prosecutor has drawn up a motion for the application of coercive measures of an educational nature 2020.</p> <p>Percentage of cases against children that were resolved with diversion measures from all children that committed a criminal offence in 2020.</p> <p>Type and percentage of diversion measures given to children in 2020.</p> <p>Type and percentage of diversion measures given to children in 2020.</p>			X		
2. To what extent mediation is used by Courts?	<p>Percentage of cases resolved with mediation in 2020 from all children that have committed a criminal offence in 2020.</p> <p>Evidence of established practice on use of mediation by courts.</p>	X	X	X		
3. How the effectiveness of diversion measures is assessed by relevant actors?	<p>Evidence that legal professionals use diversion measures.</p> <p>Evidence of monitoring and reporting mechanisms</p>	X	X	X		

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Key Research Question	Indicators	Desk review	IDI	Survey	FGD	Observation
	on results achieved by children on diversion measures.					
4. Has the use of diversion measures prevented children reoffending?	Number of children that have finished diversion measure and have reoffended (committed criminal offence within 12 months of completion of diversion measure).	X	X	X		
Sanctioning/sentencing of Children						
1. Which administrative sanctions are given to children?	Number of children that were sanctioned for administrative offences in 2020. Type and percentage of administrative sanctions given to juveniles in 2020.		X			
2. What criteria judges take into account when giving administrative sanctions?	Evidence of use of specific criteria by judges when proscribing administrative sanctions to children. Evidence of cooperation of judges with social, health and educational professionals in obtaining information on children's characteristics/condition.		X			
3. What is the level of criminal reoffending of children that served administrative sanctions?	Number of children that have served administrative sanctions and criminally reoffended during 24 month period.		X			
4. Which criminal sanctions are given to juveniles in conflict with the law?	Number of children that were sanctioned for criminal offences in 2020. Type and percentage of criminal sanctions given to juveniles in 2020.	X	X	X		
5. What are the criteria that judges take into account when imposing criminal sanctions on children?	Evidence of use of specific criteria by judges when proscribing criminal sanctions to children. Evidence of cooperation of judges with social, health and educational professionals in obtaining information on children's characteristics/condition/situation.	X	X	X		
Alternative measures						
1. How often probation is given by Judges to children offenders? And how is it implemented?	Percentage of children given probation from all children that committed criminal offences.	X	X	X		

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Key Research Question	Indicators	Desk review	IDI	Survey	FGD	Observation
2. How is the effectiveness of probation assessed by relevant professionals?	Evidence of monitoring mechanisms and following the child during probation Evidence of cooperation of probation officers with social/health, psychologists, educational professionals in assessment of effectiveness of probation. Evidence of reporting mechanism between probation officers and court that has proscribed probation. Evidence of regular feedback received from child on his/hers views regarding the implementation of probation	X	X	X		
3. To what extent parents/guardians are involved in probation?	Evidence of parent/guardian involvement in implementation of probation	X	X	X		
4. Has probation contributed to lesser reoffending of children?	Number of children that have served probation sentence and reoffended within 24 month period	X	X	X		
5. To what extent probation professionals monitor children after the completion of probation?	Evidence of monitoring mechanism of probation officers for monitoring children after completion of probation	X	X	X		
Children deprived of their liberty (pre-trial detention and custodial sentences)						
1. What are conditions of pre-trial detention for children?	Evidence of procedures aimed at protection of children's rights in detention (separation from adult, gender segregation etc.). Evidence of monitoring mechanism for conditions for children in detention centres. Number of children in pre-trial detention in 2020.	X	X	X		
2. What are the rights of children placed in reception centres and what are conditions in the reception Centres?	Evidence of procedures aimed at protection of children's rights in reception centres. Evidence of monitoring mechanism for conditions for children in reception centres. Number of children in reception centres in 2020.	X	X	X		X
3. What is the length of the pre-trial detention given to children?	Duration of pre trial detention of children average	X	X			

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Key Research Question	Indicators	Desk review	IDI	Survey	FGD	Observation
	in 2018, 2019, 2020.			X		
4. Are parents and legal guardians/legal representatives informed immediately upon detention?	Evidence of mechanisms and practice of prompt information conveying to parents/guardians of children placed in pre trial detention. Evidence of information to relevant institutions in case parents guardians are not reachable/child is an orphan.	X	X	X		
5. What are conditions and treatment of children given custodial sentences (separation from adults, gender segregation, and use of isolators)?	Average duration of custodial sentence given to children in 2018, 2019, 2020 Evidence of separated accommodation of adults and children; Evidence of use of isolators and average duration of solitary confinement; Evidence of balanced nutrition programme Evidence of balanced visitation programme for children and parents/family; Number of children sent to solitary confinement in 2018, 2019, 2020 Average of length of solitary confinement given to children in 2020 Number of deaths of children in detention 2018, 2019, 2020.	X	X		X	X
6. What educational, health and recreational services are available to children in juvenile prison?	Evidence of educational programmes for children in juvenile prison; Success rates of children in educational programmes in prison; Evidence of psychological counselling; Evidence of recreational programmes for children; Evidence of quality health services for children; Level of children's satisfaction with programmes and services offered to them;		X		X	
7. Is there a formal complaint mechanism for children deprived of their liberty?	Existence of complaints mechanism for children in juvenile prison. Number of complaints submitted by children		X		X	

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Key Research Question	Indicators	Desk review	IDI	Survey	FGD	Observation
	serving a custodial sentence in 2019, 2020.					
Rights of children during legal proceedings						
1. To what extent do children exercise the right to be heard and to participate during judicial proceedings?	Evidence that children are enabled to actively participate during all stages of the procedure. Evidence of child friendly proceedings adapted to the child age and maturity. Evidence that children are enabled to express their opinion during all stages of the proceedings.		X	X		
2. Is prompt and direct information of the charge and the rights of children available to children in conflict with the law?	Evidence that children and parents are given all relevant and necessary information on all charges, promptly and directly Evidence that children are informed of their rights the rights in the proceedings.		X	X		
3. Are children provided with legal and other assistance through all stages of the proceedings?	Evidence of provision of legal aid to children at all stages at the proceedings. Evidence of presence of an attorney at all stages of proceedings.		X	X		
4. Are decisions concerning children in conflict with the law by legal institutions brought without delay and with involvement of parents and legal representatives?	Average period between the commission of the offence and the completion of the police investigation; Average duration between the decision of the prosecutor (or other competent body) to institute charges, and the final decision by the court;		X	X		
5. Are children free from compulsory self-incrimination and have access to child friendly interview?	Evidence on child friendly practices during interview with children in all stages of the proceedings. Evidence of presence of social worker/legal representative/parent/legal guardian at the interview. Average duration of interview with the child by investigation entity in minutes/days.		X			
6. Do children have the possibility to exercise their right to appeal?	Number of appeal of children to decision of judicial organs in first instance in 2000.		X			

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Key Research Question	Indicators	Desk review	IDI	Survey	FGD	Observation
7. Is the right to privacy at all stages of the procedure with respect to children in conflict with the law respected by all actors?	Evidence of exclusion of public from the court room Evidence of confidentiality during proceedings against a child Evidence of removal of child's information from police records Evidence of removal of child's criminal records		X			
Reintegration of children in conflict with the law						
1. What reintegration services are available to children in conflict with the law and how they are organized?	Evidence of reintegration programmes available to children. Number of children in reintegration programmes that have completed court-imposed sanctions in 2020. Number of children that received restorative justice measures by courts in 2020. Type and percentage of restorative justice measures given to children in 2020.		X		X	
2. How is the risk assessment of re-offending by children carried out and what programmes are implemented to prevent it?	Evidence of specific protocols for risk assessment and tailor made programs for children assessed that are at risk of reoffending		X		X	
Specialization of the juvenile justice actors						
1. Is there a Juvenile Judges and Juvenile Prosecutors present at every court?	Evidence of presence of Juvenile Judge and prosecutors at every court.		X			
2. What is the level of training of the Juvenile Judges and Prosecutors working with children in conflict with the law?	Evidence of curriculum and continuous education g programmes for specialization of Judges and Prosecutors working with juveniles.					
3. Are there specialized lawyers for representing children in conflict with the law?	Evidence of curriculum and continuous education g programmes for specialization of lawyers working with juveniles. Evidence of available lists of lawyers specialized to work with children in conflict with the law at Courts and prosecutions.		X			
Data collection, Independent monitoring and addressing						

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Key Research Question	Indicators	Desk review	IDI	Survey	FGD	Observation
violation of children's rights						
<i>1. Is there a data-collection system developed at central level regarding children in conflict with the law?</i>	<p>Evidence of central level integrated data collection system for juvenile justice</p> <p>Evidence of existence of Juvenile Justice indicators for monitoring of implementation of legislation in line with international standards.</p> <p>Evidence of the possibility of following the child through the legal proceedings and throughout the system.</p>		X			
<i>2. To what extent the Ombudsman conducts independent monitoring of rights of children placed in institutions/deprived of their liberty?</i>	<p>Evidence of existence of independent monitoring mechanism on central and local level on rights of children in conflict with the law placed in institutions.</p> <p>Evidence of regular reporting on findings on conditions and observance of rights of children placed in institutions.</p>		X			

2.5. Proposed outline of the Analysis of the System of Justice for Children in Conflict with the Law in Ukraine

The report will be written in Ukrainian language and will be translated to in English as well. The report will comprise a document of no more than 80 pages (without appendixes) that is structured to reflect the main research criteria.

The outline of the reports will be as follows:

Title page

Opening page

List of acronyms, tables and figures

Executive Summary

Introduction

- General context
- Stakeholder analysis

Research framework and methodology

- Research purpose, scope and objectives
- Research methodology
- Limits and weaknesses of the research

Findings

- Prevention of juvenile delinquency
- Diversion from court proceedings
- Sanctioning of Children
 - Alternative sanctions
 - Children deprived of their liberty
- Rights of children during legal proceedings
- Reintegration of children in conflict with the law
- Specialization of the juvenile justice actors
- Data collection and independent monitoring

Conclusion

Recommendations

Appendix

- List of institutions consulted
- Data collection tools
- Consent forms
- Bibliography

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2.6. Limitations of the research and mitigation measures

Several research limitations are projected during the preparation of the methodology. These are presented in the table below that includes possible solutions to address the identified limitations:

Table 5: Limitations and Mitigations measures

Limitation	Mitigation measures proposed by the research team
Not all quantitative will be available	The implementing Institution will adjust the Methodology in line with available data on national level.
Not all quantitative data can be disaggregated by gender, age, socio-economic status	The implementing Institution will use disaggregated data whenever possible.
Availability of key informants may be an issue during the needs assessment phase.	In order to ensure participation, the team will contact the selected respondents in advance to confirm their availability.
Due to Covid-19 restrictions the interviews and focus groups might not be possible to be organized in person.	The team will have this in mind from the beginning and will consider implementation of on-line interviews where possible.
Stakeholders may not be available during the field mission	In order to ensure participation of all stakeholders, the team will contact the selected respondents in advance to confirm their availability two weeks before the field mission. If necessary, Skype or phone interviews will be conducted to guarantee that the sample of respondents is reached.
The level of intellectual development, mental and physical condition of the child	Before conducting an interview with a child, the interviewers will consult professionals working with that particular child on child's intellectual development and mental health. Whenever possible the interviewers will ask professional working with the child for guidance regarding the interaction with the child and adapting the questions to the child's level of cognitive development.

Appendix 1: International standards

Prevention of juvenile delinquency
<p><i>The international standards encourage countries to develop comprehensive juvenile crime prevention policies that encompass: 1) primary prevention initiatives that facilitate the successful socialization and integration of all children; and 2) secondary prevention initiatives supporting at-risk children and families through community based social services and programs.¹⁰ Programmes should comprise of a range of measures to target risk factors in the child's family, school, peer group and community.¹¹ Interventions should be the least intrusive possible and must not blame, shame or stigmatize the child or family.¹² Children must not be labelled as "deviant", "delinquent" or "pre-delinquent", since this contributes to the development of a consistent pattern of undesirable behaviour by the child.¹³ Participation in delinquency prevention programmes should be voluntary.¹⁴</i></p> <p><i>The UN Committee on the Rights of the Child has also been critical of the practice in some countries of penalizing or punishing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of family or socio-economic problems. The Committee recommends that States Parties abolish provisions that impose punishments for these types of status offences. Instead, behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour, rather than social control or deprivation of liberty.¹⁵</i></p>
Diversion from court proceedings
<p><i>Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. The preliminary use of such alternatives should not be used as an obstacle to the child's access to justice.¹⁶</i></p> <p><i>The CRC states that measures should be established for dealing with children in conflict with the law without resorting to judicial proceedings, including mediation and restorative justice practices.¹⁷ Police, prosecutors and other agencies dealing with children's cases should be empowered to dispose of cases at their discretion without initiating formal proceedings, in accordance with the criteria in the law. There should also be community programmes, such as temporary supervision and guidance, mediation, restitution, and compensation of victims for children who have been diverted.¹⁸ However, diversion should be used only where the child freely</i></p>

¹⁰ UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Art. 35.

¹¹ Council of Europe Committee of Ministers, Recommendation (2000) 20 on the Role of early psychosocial intervention in the prevention of criminality, paras 1-2; Beijing Rules, Article 1.3; UN Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, CRC/C/GC/10, para 7.

¹² Council of Europe Committee of Ministers, Recommendation (2000) 20 on the Role of early psychosocial intervention in the prevention of criminality, para 13.

¹³ 79 Riyadh Guidelines, Art 5(f)

¹⁴ 80 Riyadh Guidelines, Art 50; Council of Europe Committee of Ministers, Recommendation (2000) 20 on the Role of early psychosocial intervention in the prevention of criminality, para 17.

¹⁵ UN Committee on the Rights of the Child, General Comment No. 10, para 4.

¹⁶ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice - Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies.

¹⁷ CRC, Article 40(3)(b); Guidelines for Action on Children in the Criminal Justice System Recommended by Economic and Social Council resolution 1997/30 para 15;

¹⁸ Beijing Rules, Art 11; Tokyo Rules, Art 5.

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*and voluntarily acknowledges responsibility for the offence and the child freely consents to the content and duration of the diversion measure, having had the opportunity to consult first with legal or other appropriate assistance.*¹⁹

Sanctioning of Children

The CRC requires that, in determining what sanction or penalty to impose on a child, the best interest of the child must be a primary consideration. All children in conflict with the law must be dealt with in a manner that is appropriate to their well-being and proportionate both to their circumstances and to the offence.²⁰ Deprivation of liberty should be used only as a measure of last resort and for the shortest appropriate period, and should be imposed only in cases where the child has committed a serious act involving violence against another person, or if the child persists in committing other serious crimes and there is no other appropriate response.²¹ Children must not be subject to capital punishment, life imprisonment without the possibility of release, or corporal punishment.²² A variety of non-custodial sanctions and measures should be available, including care, guidance and supervision orders; group counselling and similar activities; community service work; compensation and restitution; treatment orders; probation; foster care; education and vocational training programmes, and other alternatives to institutional care.²³ The competent authorities should be given broad flexibility and discretion in choosing the most appropriate penalty in each case. A social inquiry report should be prepared so that the authority has a full picture of the child's background, circumstances and the conditions under which the offence was committed.²⁴

Alternative measures

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.²⁵

Children deprived of their liberty (pre-trial/during trial detention and custodial sentences)

The CRC requires that custody and pre-trial detention be imposed on children only as a measure of last resort, and for the shortest appropriate period.²⁶ Also Council of Europe's Guidelines 19 and 20 clearly stipulate, remedies that involve detention, in whatever form, need to be avoided as much as possible and should only be a measure of last resort, used for the shortest time possible and restricted to serious cases.²⁷ All efforts should be made to impose alternative measures, such as close supervision, placement with a family, or in an educational or home setting.²⁸ Where pre-trial

¹⁹ UN Committee on the Rights of the Child, General Comment No. 10, paras 10-13; Beijing Rules, Art 11.3.

²⁰ Article 3 and 40.3 (b).

²¹ CRC, Article 37(b).

²² 173 Beijing Rules, Article 17.1(c).

²³ 174 CRC, Articles 37 and 40.

²⁴ 175 Beijing Rules, Art 17.3.

²⁵ CRC, Article 40.4; Beijing Rules, Art 18.1

²⁶ Beijing Rules Art 18.1, 16; UN Committee General Comment No. 10, para 25.

²⁷ "The Beijing Rules", Ar. 17 1.

Adopted by General Assembly resolution 40/33 of 29 November 1985

²⁸ Article 37 (b).

²⁹ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

³⁰ Beijing Rules Article 13.2; JDLs, Art 17.

detention is imposed, the child must have the right appeal to a judicial or other competent independent authority.²⁹ Children in police custody or detained awaiting trial must be separated from adults and from convicted juveniles, must have opportunities to continue their education or training, and must be provided with care, protection and all necessary assistance that they may need in view of their age, sex and personality.³⁰ When custody or pre-detention is used, courts and investigators must give the highest priority to expediting the process to ensure the shortest possible period of detention.³¹ A child who is detained should be formally charged and brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pre-trial detention takes effect, and a final decision should be made in the case within six months.³² Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.³³ Children have the right of access to independent complaints procedures, which should be prompt, simple and effective and must include a right of appeal.

Rights of children during legal proceedings

Right to be heard and to participate

Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard. Due weight should be given to the child's views and opinion in accordance with his or her age and maturity.³⁴ In paragraphs 57 to 64 of general comment No. 12 (2009) on the right of the child to be heard, the Committee explained the fundamental right of the child to be heard in the context of child justice. Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact. The child has the right to remain silent and no adverse inference should be drawn when children elect not to make statements.³⁵

Prompt and direct information

In every individual case, from the very first contact with the justice system and on each and every step of the way, all relevant and necessary information should be given to the child. Guideline 5 imposes the obligation to provide information on all charges against the child, promptly and directly, both to the child and to the parents, and the rights the child shall enjoy in such cases. The child also needs to be given information about prosecutorial decisions, relevant post-trial developments and on how the outcome of the case will be determined.³⁶ Children have the right of the right to be notified of the charges in prompted and direct manner.³⁷

Right to legal and other assistance

²⁹ Tokyo Rules, Article 6.3

³⁰ JDLs, Art 17, 18; Beijing Rules, Art 13.3-13.5.

³¹ Beijing Rules, Art 18.

³² UN Committee on the Rights of the Child, General Comment No. 10, para 28(b).

³³ Beijing Rules, Art.13.

³⁴ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

³⁵ CRC General Comment 12.

³⁶ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

³⁷ Beijing Rules, Art.7

Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country. The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.³⁸

Decisions concerning children in conflict with the law by legal institutions brought without delay and with involvement of parents and legal representatives

In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.³⁹

The CRC Committee reiterates that the time between the commission of the offence and the conclusion of proceedings should be as short as possible. The longer this period, the more likely it is that the response loses its desired outcome. The Committee recommends that States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to institute charges, and the final decision by the court or other judicial body. These time limits should be much shorter than those set for adults, but should still allow legal safeguards to be fully respected. Similar speedy time limits should apply to diversion measures. Parents or legal guardians should be present throughout the proceedings. However, the judge or competent authority may decide to limit, restrict or exclude their presence in the proceedings, at the request of the child or of his or her legal or other appropriate assistant or because it is not in the child's best interests.⁴⁰

The right to be free from compulsory self-incrimination

States parties must ensure that a child is not compelled to give testimony or to confess or acknowledge guilt. The commission of acts of torture or cruel, inhuman or degrading treatment in order to extract an admission or confession constitutes a grave violation of the child's rights (Convention on the Rights of the Child, art. 37 (a)). Any such admission or confession is inadmissible as evidence (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15).

Coercion leading a child to a confession or self-incriminatory testimony is impermissible. The term "compelled" should be interpreted broadly and not be limited to physical force. The risk of false confession is increased by the child's age and development, lack of understanding, and fear of unknown consequences, including a suggested possibility of imprisonment, as well as by the length and circumstances of the questioning.

The child must have access to legal or other appropriate assistance, and should be supported by a parent, legal guardian or other appropriate adult during questioning. The court or other judicial body, when considering the voluntariness and reliability of an admission or confession by a child, should take all factors into account, including the child's age and maturity, the length of questioning or custody and the presence of legal or other independent assistance and of the parent(s), guardian or appropriate adult. Police officers and other investigating authorities should be well trained to avoid questioning techniques and practices that result in coerced or unreliable confessions or testimonies, and audio-visual techniques should be used where possible.⁴¹

³⁸ Beijing Rules, Art.15.

³⁹ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. 50.

⁴⁰ CRC General Comment 24 and 10.

⁴¹ CRC General Comment 24 and 10.

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<p>Right to appeal</p> <p><i>The right to appeal, should be guaranteed for children as they are for adults and should not be minimized or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings.⁴²</i></p>
<p>Right to privacy at all stages of the procedure</p> <p><i>The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published.⁴³</i></p> <p><i>The European Court of Human Rights includes the possibility of having cases tried behind closed doors when the interests of the child or his or her privacy require it and Guideline 9 of the Council of Europe Guidelines reminds member states of this good practice.⁴⁴</i></p>
<p>Reintegration of children in conflict with the law</p> <p><i>Children subject to a non-custodial measure or sanction should have access to a range of support services aimed at reducing the likelihood of re-offending and facilitating the child's reintegration.⁴⁵</i></p> <p><i>Countries should have a well-trained probation service (social workers) to allow for the maximum and effective use of dispositions such as guidance and supervision orders, probation, and community monitoring.⁴⁶</i></p> <p><i>In addition, extended family members, community elders, civil society organizations, local institutions and volunteers should be called upon to contribute effectively to the re-education of child offenders in the community setting.⁴⁷</i></p>
<p>Specialization of the juvenile justice actors</p> <p><i>The international standards recommend that all professions dealing with juvenile cases should receive regular, specialized training.⁴⁸</i></p> <p><i>The UN Committee on the Rights of the Child recommends that governments establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, governments should ensure the appointment of specialized judges for dealing with children's cases.⁴⁹</i></p>
<p>Data collection, Monitoring and addressing violation of children's rights</p> <p><i>The Committee urges States parties to systematically collect disaggregated data, including on the number and nature of offences committed by children, the use and the average duration of pre-trial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children, the nature of the sanctions imposed on them and the number of children deprived of their liberty.</i></p> <p><i>The Committee recommends that States parties ensure regular evaluations of their child justice systems, in particular of the effectiveness of the measures taken, and in relation to matters such as discrimination, reintegration and patterns of offending, preferably carried out by independent academic institutions.⁵⁰</i></p>

⁴² Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. E.

⁴³ Beijing Rules, Art.8.

⁴⁴ Rules of the European Court of Human Rights, Article 63, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.9.

⁴⁵ Tokyo Rules, Art 12 and 13.

⁴⁶ UN Committee on the Rights of the Child, General Comment No. 10, para 14, 31.

⁴⁷ Beijing Rules, Article 25.1.

⁴⁸ Beijing Rules, Art 22.

⁴⁹ 74 UN Committee on the Rights of the Child, General Comment No. 10, para 31

⁵⁰ CRC General Comment 24.

Appendix 2: Data collection tools

Note on the tools:

*Each interview will start with the **presentation of the research team and the research objectives**. Respondents will be given a consent form (see Appendix 3) and the research team member will familiarize them with its content.*

*All interviews are **semi-structured interviews**: interview guides only aim at **guiding the interviews** and ensuring that the research team does not omit important elements during the discussions. Questions will not necessarily be asked in the order described in the following guides. Questions may vary depending on the reactions of participants. New points of interest may appear during discussions. The interviewer will ask the questions that have not been answered by the interviewee him/herself during the interview.*



Individual interviews:

Ministry of Justice

Data collection and monitoring

1. Is there a data-collection system developed at central level regarding children in conflict with the law based on Indicators developed in line with international standards that monitors the implementation of the justice for children legislation?
2. Are policies and legislation developed based on analysis of data collected on children in conflict with the law?
3. Is there an information system that allows tracking the child in conflict with the law throughout the system?

Specialized juvenile justice

4. Does every court and prosecution in the country have specialized Juvenile Judge and Juvenile Prosecutor? If not, what are the obstacles? How can this be resolved?
5. What is your opinion on having specialised children's courts? Is this a possibility in the future?

➤ Centre of Probation –Ministry of Justice

1. How is probation for juvenile offenders organized in the country?
2. Do probation officers receive training? how often? Is there a continuous training of probation officers?
3. Usually, what is the background of the probation officers? How are they selected? Do they report to the ministry regularly? Is there a data collection system for monitoring of implementation of probation?

○ Probation officers

1. How often is probation given by Judges to children offenders? And how do you implement it?
2. Do you cooperate with institutions/organizations in implementation of probation? How is this organized? Are there memoranda of cooperation? What are the challenges in cooperation?
3. How is the effectiveness of probation assessed by you?
4. To what extent are parents/guardians involved in probation?

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5. Has probation contributed to lesser reoffending of children? What specific activities you include in probation to improve behaviour of children?
6. To what extent you monitor children after the completion of probation? How probation contributes to socialization and re-integration?
7. What are the challenges that children face during serving probation?
8. What can be done to improve the implementation of probation?

➤ Department for the Execution of Criminal Sentences-Ministry of Justice

1. What are condition in pre-trial detention for children? How long children stay in these centres on average? Are children separated from adults always? Do they have exercise time? Is it every day? How long per day? Are children in pre-trial detention have access to a psychologist/or a professional to speak to?
2. Do children in pre-trial detention have a right to visitation of parents/guardians/legal representatives?
3. Are children in pre-detention that have violated the rules of detention punished? If so how? Are they put in isolation? If yes for how long? Is food denied?
4. What are conditions and treatment of children given custodial sentences in detention facilities (separation from adults-are children always separated from adults, gender segregation –are boys and girls separated, how often the isolators are used on children in juvenile prisons in 2019 and 2020)?
5. What educational, health and recreational services are available to children in juvenile prison?
6. How are these services organized?
7. Is there a formal complaint mechanism for children deprived of their liberty with respect to maltreatment when serving custodial sentence? How many cases of violence against children in detention has been reported in 2019 and 2020? How did you address these?
8. How visitation of children in juvenile prison is organized? Can parents/guardians visit often? Can children exit prison for holidays?
9. Do you monitor the detention institutions where minors are placed?

➤ Directors of juvenile prison (detention facilities)

1. What are conditions and treatment of children given custodial sentences in detention facilities (separation from adults-are children always separated from adults, gender segregation –are boys and girls separated, how often the isolators are used on children in juvenile prisons in 2019 and 2020)?
2. What educational, health and recreational services are available to children in juvenile prison? Do children work while detained? Are they compensated for their labour? Do children have access to psychological counselling? Is this regularly organised?
3. How these services are organized?
4. How is access to health services in general guaranteed for the children and adolescents in juvenile prison? How are mental health services and therapy guaranteed? Are there specialized programs for those using drugs? Are there specialized programs for minors who have committed sexual offenses?
5. Indicate whether there is access to specialized treatment for girls in detention centers (for instance, services for pregnant girls, among others).
6. Indicate whether there is access to specialized treatment for children with special skills who are living in juvenile prison.
7. What the system does to provide for visits for children and adolescents deprived of their freedom? Does the facility facilitate access by parents and other family members based on their economic situation? How visitation of children in juvenile prison is organized? Can parents/guardians

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visit often? Can children exit prison for holidays?

8. What disciplinary measures used in the juvenile prison for children, and the situations or conducts that trigger a disciplinary measure? How is this organized? Are children prevented from attending education classes when punished/reprimanded? Are they put in isolation?

9. Is there a formal complaint mechanism for children deprived of their liberty with respect to maltreatment when serving custodial sentence? Is there also an anonymous complaint mechanism (boxes for complaints)?

10. How many cases of violence against children in detention has been reported in 2019 and 2020? How many deaths? What was the cause of those deaths? How did you address these? How do you ensure safety of children who are serving sentence of imprisonment? Are there protocols developed for addressing cases of violence against children in juvenile prisons?

11. Is gender of detained children taken into consideration in terms of having same sex guards for example or when executing searches?

12. In your opinion what can be improved with respect to betterment of protection and treatment of children in juvenile prisons, if anything?

National School of Judges

1. What is the level of training of the Juvenile Judges working with children in conflict with the law?

2. Do you have special curriculum for Juvenile Judges including on mediation (restorative justice)? If yes who is implementing it?

3. Is there a continuous training for Juvenile Judges?

4. Is there a legal requirement for training and/or continuous training of Juvenile Judges?

5. What do you think should be improved in order to ensure all judges that work with juveniles are trained?

Training Centre for Prosecutors

1. What is the level of training of the Juvenile Prosecutors working with children in conflict with the law?

2. Do you have special curriculum for Juvenile Prosecutors?

3. Is there a continuous training for Juvenile Prosecutors?

4. Is there a legal requirement for training and/or continuous training of Juvenile Prosecutors?

5. What do you think should be improved in order to ensure all Prosecutors that work with juveniles are trained?

Bar Association representatives central and local level

➤ Bar Association central level

Rights of children during legal proceedings

1. Does the Bar Association have a special list of lawyers who are trained in working with children in conflict with the law? If yes, how the training is organized? How the list is used? Are police officers/investigators/judges using this list to provide children with a lawyer? Is the service offered pro-bono? Or is it compensated through the law on free legal aid? How this works?

2. What do you think it should be improved on central level to ensure all children have adequate and quality legal aid during proceedings?

3. What are the challenges?

➤ Layers local level providing children in conflict with the law with legal aid/representation

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1. In your opinion to what extent do children exercise the right to be heard and to participate during judicial proceedings? Do you help them to express themselves? Are judges keen of letting children express their opinion during trials? Do they have the opportunity to cross examine witnesses, experts during trials?
2. Is prompt and direct information of the charge and the rights of children available to children in conflict with the law? What is your experience?
3. Are children provided with legal and other assistance through all stages of the proceedings? What are the most common problems?
4. Are you always present when children are interviewed by investigator/judge? Do you think that these interviews are too long? Do you think they are child friendly? Are children pushed/coerced/scared into incriminating themselves? Are rooms where interviews take place child friendly, away from adult perpetrators/suspects? If not what are your suggestions to improve this?
5. Can children remain silent without being reprimanded by interviewers during interviews?
6. Are decisions concerning children in conflict with the law by legal institutions brought without delay and with involvement of parents and legal representatives/lawyers? What is your experience?
7. Do children have the possibility to exercise their right to appeal? What is your opinion on this? What are the problems/obstacles?
8. Is the right to privacy at all stages of the procedure with respect to children in conflict with the law respected by all actors? What is your opinion?
9. What shall change with regard to the justice system with respect to juveniles in conflict with the law?

Legal Aid Coordination centre

1. What is the role of the centre?
2. How legal aid is organized for children in conflict with the law?
3. What are the main obstacles? On local level?
4. Are lawyers working with children in conflict with the law trained? If yes how is this training organized? Is it mandatory?
5. Does Centre has a special list of lawyers who are trained in working with children in conflict with the law? How the list is used? Are police officers/investigators/judges using this list to provide children with a lawyer? Is the service offered pro-bono? Or is it compensated through the law on free legal aid? How this works?
6. Are you involved into restorative justice? Are mediators lawyers that have been specifically trained?
7. What do you think it should be improved on central level to ensure all children have adequate and quality legal aid during proceedings?
8. What are the challenges?

Ombudspersons - Presidential Commissioner for Children's Rights and the Parliamentary Commissioner for Human Rights

Independent monitoring and addressing violation of children's rights

1. Do you conduct regular monitoring of conditions and practices in institutions for children that have committed criminal offences?
2. Do you speak with the children placed in those institutions to receive their feedback?
3. Do you prepare reports on your findings?

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4. To whom do you submit your reports?
5. In your opinion are rights of children respected in these institutions? What can be done to improve the treatment of children?
6. What are the main problems of the juvenile justice system vis-à-vis rights of children?

Ministry of Interior - Authorized units of National Police bodies: Juvenile Police Units/prevention police, investigative units police, receivers-distributors for children

➤ Juvenile Police Units/prevention police

1. What is your role in prevention of juvenile delinquency? What activities do you implement with respect to prevention?
2. With which institutions you actively cooperate in the process of prevention? Schools/Centres of Social Work/Health institutions?
3. Do you assess the root factors that influence juvenile delinquency if yes how? How do you address those?
4. Do you involve children their parents/guardians in the process of prevention?
5. How do you monitor children placed on your lists? Is this monitoring child friendly? Do you respect child's privacy? How do you do that?
6. In your opinion are current activities that you conduct contributing to lesser offending by children?
7. What can be done to improve the prevention?
8. Do you recommend children's placement in institutions as a prevention measure? If yes which institutions? Do you think that placing children in institutions is a good method for prevention?
9. What are the biggest obstacles for children regarding accessing programmes for prevention?

➤ Investigative units police/receivers distributors

1. How do you conduct investigation activities regarding children suspected of committing an administrative/criminal offence?

Rights of children in proceedings

2. Do you talk to the child? If yes, is a parent/guardian, social worker or lawyer present at the interview? Which of these persons? How long is the interview with the child? Hours/days? Can child express its views, opinions present its arguments during the investigation? Do you give those opinions a due weight? How?
3. If the child does not understand the language do you provide for certified translator? Or special interpreter if child has disabilities?
4. Do you use child friendly language when talking to children suspected of committing an offence? Do you tend to scare a child into confession, perhaps tell them they will be punished harsher if they do not say what is expected from them to say/confess? Do you consult with a social worker/psychologist before you interview the child? Do you use force to make a child confess?
5. Do you inform child, parent guardian legal representative of the proceedings conducted against them and about any decisions concerning them? When do you do this? How fast?
6. Do you respect child's privacy during the investigation? How do you do that? (ex. wearing civil clothes when bringing child to police station, excluding public, not disclosing information about the child to media, community etc.).

Children deprived of liberty

7. Do you recommend children to be held in reception centres? Why do you think this is necessary?
8. At what age children are held at reception centre? How long they stay there? Who decides whether child is placed in a reception centre and how long?

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9. What are the conditions in the reception centres? Do children have access to a legal representative while there? Are they placed in a cell alone or with other children?
10. How do you ensure child's safety in the reception centres?
11. Do you have a monitoring mechanism in place regarding treatment of children in reception centres? If yes how does this work?

Judiciary

➤ Juvenile Judges

Diversion from court proceedings

1. What is the frequency of use of diversion measures by you on proposal of the Public Prosecutor? Which are the most used and less used diversion measures?
2. To what extent mediation is used by Courts? Who are the mediators are they lawyers specifically trained ? Do you think mediation is successful method to prevent reoffending?
3. Which other forms of restorative justice are applied to juvenile offenders apart from mediation?
3. How the effectiveness of diversion measures is assessed by you?
4. In your opinion has the use of diversion measures prevented children re-offending and facilitates reintegration of offenders in society?
5. What criminal sanctions do you give to juveniles in conflict with the law? Which do you think are most effective?
6. What are the criteria that you take into account when imposing criminal sanctions on children? Are all the facts regarding the child personal circumstance, personality, development etc.) written in the criminal report? Which one do you use more? Who prepares the criminal report/How do you obtain these information-Centres for Social Work/Police?

Alternative measures

7. How often do you give probation to children offenders? And how is it implemented? Do you think probation is more effective than sending children to institutions?
8. How do you monitor the effectiveness of probation?
9. Has probation contributed to lower reoffending of children?

Children deprived of their liberty (pre trial detention and custodial sentences)

10. Based on which criteria/factors you decide to place children in pre-trial detention? Do you think that instead of detaining children alternatives to detention are better? For example serving pre-trial detention at home under monitor of parents/guardians/police or pre-trial probation? Is this a better option?
11. What is the length of the pre-trial detention given to children?
12. Are parents and legal guardians/legal representatives informed immediately upon detention?

Rights of children during legal proceedings

13. To what extent do children exercise the right to be heard and to participate during judicial proceedings? Do you allow children to express them selves, to ask questions, present arguments, examine witnesses? Is this a common practice?
14. Is prompt and direct information of the charge and the rights of children available to children in conflict with the law? Do you inform children of their rights during the trial? Do you explain them the legal process?

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15. Are children provided with legal and other assistance through all stages of the proceedings? Does every child has a legal representative/lawyer during trial?
16. Are decisions concerning children in conflict with the law by brought without delay and with involvement of parents and legal representatives?
17. Are children free from compulsory self-incrimination and have access to child friendly interview? Do you apply inquisitive approach/incriminating approach when interviewing children? Do you use child friendly language? Is child removed from courtroom when you read facts concerning their circumstances/personal, health, developmental etc.? Are courtroom child friendly? Do you wear informal clothes during trial involving children? Do you tend to make the proceedings less formal? Is child provided with translator of they do not understand the language? Do you provide for a special interpreter if child has disabilities?
18. Do children have the possibility to exercise their right to appeal? Do you explain this right to them?
19. Is the right to privacy at all stages of the procedure with respect to children in conflict with the law respected by you? Are trials schedule at certain parts of the day when there are less adult offenders present at the courthouse? Do you take this into account? Are children restrained before and during trials?

➤ Juvenile Prosecutors

Diversion measures

1. How frequently you propose diversion measures to the Courts? Which are the most used and less used diversion measures?
2. To what extend mediation is used by Courts? How are the mediators? Do you think mediation is successful method to prevent reoffending?
3. How the effectiveness of diversion measures is assessed by you?
4. In your opinion has the use of diversion measures prevented children reoffending?
5. What are the criteria that you take into account when proposing criminal sanctions on children? Which one do you use more? How do you obtain these information-Centres for Social Work/Police?

Rights of children during proceedings

6. Do you interview children offenders? If yes, do you use a child-friendly language? Do you tend to be less formal when working with children offenders? Do you allow and encourage a child to express opinions/ arguments and ask questions during the procedure?
7. Is there a parent/social worker/legal guardian/lawyer present at the interview? Always?

➤ Judges who hear cases of bringing children to administrative responsibility

Sanctioning/sentencing of Children

1. Which administrative sanctions are given to children the most?
2. Are there are more children committing administrative offences or criminal offences?
3. What criteria you take into account when giving administrative sanctions? With which institutions do you cooperate to receive these information (information on child's circumstances/personality development etc.)
4. What is the level of criminal reoffending of children that served administrative sanctions?

Children's institutions-Head master in each visited children's institution

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1. What are conditions in the institutions where children are placed by order of a judge? Do you provide for individual approach programmes tailored to each individual child/ How is this organized?
2. How long children stay in your institutions on average? Do you think that the time of stay is too long/short?
3. Do you facilitate visitations by parents/guardians to the child? How often? Do you allow children to go home on weekends/holidays? How is this organized/
4. How many children are placed in a room?
5. Which programmes are available to children in your institution? How do you assess the quality of the programmes?
6. How many children have been injured while in your care in 2019, 2020? What was the reason for that?
7. Is there a protocol for action in case of cases of violence against a child placed in your institutions?
8. Is there a complaints mechanism in place (anonymous/ official) for children placed in your institution? How this works? What do you do when child complains?

Children in conflict with the law

➤ Child registered with juvenile prevention police units

1. Please tell me a little bit about your self, what do you like to do? (read/play games on internet/play with friends?)
2. What do you want to be when you become an adult, what do you dream about?
3. Do you think that the role of the police is and why people from the police want to help you? Are they friendly with you? Have they helped you solve any problems that you might have? If yes how?
4. Do you know why they want to help you? Do you trust them?
5. Do you feel secure/safe when talking to them?
6. Do you understand their questions?
7. Do they talk to you when you are alone or your parent/relative social worker/teacher is with you when they talk to you?
8. What do you think they should do to help other children like you? What would you suggest?

➤ Children in prevention programmes

1. Please tell me little bit about your self, what do you like to do? (read/play games on internet/play with friends?)
2. What do you want to be when you become an adult/what do you dream about?
3. Do you know why you are participating in XXX programme?
4. Do they explain to you the reason and necessity of passing this program?
5. Do you voluntarily take part in this program, have you been asked about your desire to take part in the program?
6. Is the programme helpful to you? Do you feel better since you are in this programme? If yes/no why?
7. What has improved since you are in this programme?
8. What would you suggest that the programme should involve in order to help more children like you?
9. Would you like to continue participating in this programme?
10. Do you think persons working with you understand you? Are they nice to you? Do you feel safe/secure? What do you like the most about this programme/ what do you dislike the most?

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➤ Children in probation

1. Please tell me a little bit about your self, what do you like to do? (read/play games on internet/play with friends?
2. What do you want to be when you become an adult?
3. Do you know why you are in probation?
4. Do you think that the judge was right to send you to probation? If not why?
5. Did you have the opportunity to tell the judge how you feel or think about what you did? Were the judge/police fair and were treating you nice? Did they scared you?
6. What would you suggest they do better in order to help children like you?
7. Is the probation helpful to you? Do you feel better since you are in this programme? If yes/no why? What exactly helped you in this program? What did you like and remember?
8. What would you suggest that the programme should involve in order to help more children like you?
9. Would you like to continue participating in this programme?
10. Do you think persons working with you understand you? Are they nice to you? Do you feel safe/secure? What do you like the most about this programme/ what do you dislike the most?

➤ Children that have served/ are serving a diversion measure

1. Please tell me a little bit about your self, what do you like to do? (read/play games on internet/play with friends?
2. What do you want to be when you become an adult?
3. Do you know why you are were given XXX measure? Do you think the prosecutor was right to give it to you?
4. Did you have the opportunity to tell the prosecutor how you feel or think about what you did? Were the judge/prosecutor/police fair and were treating you nice? Did they scared you? ? How did you feel when communicating with them?
5. What would you suggest they do better in order to help children like you?
6. Is the probation helpful to you? Do you feel better since you are in this programme? If yes/no why?
7. What has improved since you are in this programme?
8. What would you suggest that the programme should involve in order to help more children like you?

➤ Children who were in pre-trial detention centres

1. Please tell me a little bit about your self, what do you like to do? (read/play games on internet/play with friends?
2. What do you want to be when you become an adult?
3. Do you know why you are were given measure of detention? Do you think the professionals were right to give it to you?
4. How did you find the conditions in detention? Was it clean? Did you have good food/were you hungry? Did you have an opportunity to go out in the yard?
5. Were you alone in a room or with other persons? How old were they? Did you feel secure/safe when you were there? Did you feel scared? Why?

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6. Did people working there treated you decently (nice)? If not what did they do (physical punishment, coercion, threats, insults)? What do you think they should do to be better to help children like you?
7. Is there any event that you did not like when in detention? Please share it with us, so we can make sure this does not happen to other children.
8. Did the police/judge interviewed you about the things that you did? How would you describe the interview: was it too long and tiring for you? Did you have someone there with you (parent/lawyer) during the interview? Did you feel like police/judge were accusing you and scaring you to say things you do not want to say? Did you understand the case against you/were explained why you are there and what are your rights?
9. What would you recommend to the professionals in order to help children more? How they can improve?

➤ Children that have served a sentences in juvenile prison (young adults)

1. Do you know why you were given the sanction of juvenile prison? Did you agree with the judge on this measure?
2. Did you have the opportunity to explain to the judge about your actions that led to this situation? Did the judge ask your opinion, arguments before the decision?
3. Did you have a lawyer or parent during the trial?
4. Did you understand the procedure against you? Were you informed of your rights?
5. How would you describe your stay at the facility?
6. How did you find the conditions in the facility? Was it clean? Did you have good food/were you hungry? Did you have an opportunity to go out in the yard?
7. Did you have access to a doctor when you needed medical help?
8. Were you alone in a room or with other persons? How old were they? Did you feel secure/safe when you were there? Did you feel scared? Why?
9. Did people working there treated you decently (nice)? If not what did they do or not do (physical punishment, coercion, insulting verbal threats)? What do you think they should do to be better to help young adults like you?
10. Did you go to school there? Were you satisfied of the teachers?
11. Did you have any possibility to issue a complaint if you thought you were not treated properly by staff at the facility? Were there an anonymous complaints box or other means of anonymous complaints mechanism?
12. Is there any event that you did not like when in the facility? Please share it with us, so we can make sure this does not happen to other children/young adults.

Focus group discussions

Tutorship and guardianship and Service for children-local authority

Prevention of juvenile delinquency

1. What is your role regarding prevention of juvenile delinquency? Please explain!
2. What do you think are the biggest reasons for juvenile delinquency? How are those addressed by your institution?
3. With which institutions do you cooperate regarding children at risk of offending? How is this cooperation achieved?

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4. What do you think is missing regarding prevention activities in your region? What are the biggest obstacles for children and parents/guardians to access prevention programmes?

5. How can we make the juvenile justice system more receptive to children's needs? What do you think are the main problems of the system at the moment?

Children in proceedings

6. Do you cooperate with the Police, Prosecution and Courts during legal proceedings against children offenders? What is your role there? Do you think legal proceedings against children are child-friendly? Is there anything that could be improved?

Reintegration of children

7. How reintegration of children offenders is addressed by your institutions? Are there certain programmes for helping children offenders to integrate back in society?

8. What needs to be done differently in order to improve reintegration?

NGOs working with children in conflict with the law

Prevention of juvenile delinquency?

1. What services you offer for children and parents/guardians for children at risk to be in conflict with the law?

2. What services do you offer for children offenders?

3. Do you cooperate with state institutions responsible for working with children at risk/conflict with the law?

4. In your opinion is the juvenile system at this moment well designed and functioning to address needs of children at risk of offending and offenders?

Rights of children in proceedings

5. Do you think rights of children in at risk at conflict with the law are respected by the system? If not why? What is your experience?

6. What are the main problematic areas?

Reintegration of children offenders

7. Do you offer programmes for reintegration for children offenders?

8. What can be done to improve the juvenile justice system?

Social rehabilitation schools and vocational schools of education authorities/Children's social and psychological rehabilitation centres/ Special educational institutions of the State Penitentiary Service of Ukraine-juvenile prisons (social worker, educator, psychologist)

1. What services do you offer to children placed in your institutions?

2. How are the education services organized? How do you motivate children?

3. Do children have access to quality medical aid? How often? Is it regular?

4. Do children have access to psychological counselling? Is it regular? Is it individual or group? Can children independently seek psychological help? Is the voluntary participation of children in individual and group work?

5. Do children have freedom to choose activities or they are imposed on them?

6. Do children have the opportunity to be visited by parent/guardians/relatives?

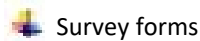
7. Do you know of incidents when children were disciplined by using physical force against them?

8. Do you use insults or other threatening forms of communication with children in your care?

9. How do you ensure children's safety in your institutions? Do children have a right to complain for violations against them? Is there such mechanism? How does it work?

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10. Do you think that services received by children in your institutions are helping them with reintegration in society? How?
11. In your opinion what needs to be done to improve the treatment of children in your institutions?



Juvenile Judges

Diversion from court proceedings

1. Do you impose diversion measures every time that the prosecutor proposes them?
a) every time b) some times c) not often d) very rarely
2. Do you think that the Prosecutors fail to propose diversion measures even when this can be considered?
a) often b) sometimes c) very rarely d) never
3. Is restorative justice (mediation etc.) used and implemented:
a) often b) sometimes c) not enough d) not at all
4. Do you think mediation is successful method to prevent reoffending?
a) yes always b) sometimes c) rarely d) not really
5. Do you monitor implementation of diversion measures?
a) always b) sometimes c) never
6. In your opinion has the use of diversion measures prevented children reoffending?
a) yes always b) sometimes c) rarely d) never
7. When bringing a decision in cases of juvenile offender you use and consider the facts delivered to you in the report regarding the juvenile:
a) always b) sometimes c) rarely d) never
8. When giving criminal sanctions to children you consider more:
a) punitive approach b) re-socialization approach c) equally both d) none of those
9. Do you think probation is more effective than sending children to institutions?
a) yes definitely b) sometimes c) never
10. Has probation contributed to lower reoffending of children?
a) yes definitely b) partially c) not really
11. Do you proscribe pre-trial detention for children in conflict with the law?
a) often b) only when necessary c) I try to avoid it d) very rarely
12. Do you think that instead of detaining children alternatives to detention are better? For example serving pre-trial detention at home under monitor of parents/guardians/police?
a) yes b) maybe c) no d) I don't know
13. Are parents and legal guardians/legal representatives informed immediately upon detention?
a) always b) sometimes c) rarely d) I don't know
14. Do you allow children to express them selves, to ask questions, present arguments, examine witnesses during trial?
a) always b) sometimes c) rarely d) never
15. Do you inform children of their rights during the trial and explain to them the legal process?
a) always b) when necessary c) rarely d) never
16. Does every child has a legal representative/lawyer during trial?

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a) always b) when necessary c) sometimes d) rarely

17. Are decisions concerning children in conflict with the law by brought without delay ?

a) always b) most of the times c) I don't know

18. Are children free from compulsory self-incrimination during court hearing?

a) always b) sometimes c) I don't know

19. Do you apply inquisitive approach/incriminating approach when interviewing children?

a) yes b) sometimes c) never

20. Do you use child friendly language when addressing children in the courtroom?

a) always b) when necessary c) rarely d) never

21. Is child removed from courtroom when you read facts concerning their circumstances/personal, health, developmental etc.?

a) always b) sometimes c) never

22. Do children have the possibility to exercise their right to appeal and do you explain this right to them?

a) always b) sometimes c) it is not my job to do that

23. Are trials schedule at certain parts of the day when there are less adult offenders present at the courthouse? Do you take this into account?

a) I do take this into account b) I do not take this into account

Probation officers

1. Do you think probation is given enough by Judges to children offenders?

a) not enough, it could be given in more cases b) enough c) I don't know

2. Do you cooperate with institutions/organizations in implementation of probation?

a) yes always b) sometimes c) rarely

3. Do you cooperate with private sector?

a) some times b) rarely c) never

4. Do you involve parents/guardians in probation?

a) always b) whenever possible c) rarely d) never

5. Do you consider child views when implementing probation?

a) always b) sometimes d) no it is not necessary

6. In your opinion has probation contributed to lesser reoffending of children?

a) yes b) to an extent c) no d) I don't know

7. Do you monitor children after the completion of probation?

a) always b) sometimes c) never

Appendix 3: Consent forms

Consent forms for adults

The consent form will be translated into local language

Mr. / Ms. Name:

Location:

Is invited to participate in the research of the Justice for Children that is implemented in partnership with COUNCIL OF EUROPE. This research aims at assessing the Juvenile Justice system's performance and impact on the protection of children in conflict with the law. The research team is composed of XXX.

The participant is invited to participate in interviews lasting up to 1h30min. There will be no financial compensation to participate in the study.

The participant certifies that he/she accepts to participate freely in this study. He/she could decide to withdraw from the study at any time, without having to justify him/herself. He/she has the right to refrain from answering to certain questions, without having to justify him/herself. This will not have any harmful consequence.

The participant allows the research team to take written notes during the interview.

The research team will ensure that the participant's name or function will not appear in the report, except in the case that the respondent is a public official who is willing to provide his/her title and position, and if it is considered important for the research.

Those data will not be used in another manner than the one described in the present document.

This form is signed by the participant. A copy is provided if the participant wishes.

Date:

Signature of participant:

Signature of research team:

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Consent forms for children

The consent form will be translated into local language

Name:

Location:

You are invited to participate in a research that aims at assessing Juvenile Justice system's performance and impact on the protection of children in conflict with the law. By participating you are helping to improve the way children are treated by institutions. The research team is composed of XXX.

You are invited to participate in an interview that will not take more than 30 minutes. There will be no remuneration to participate in the study.

By signing this document, you certify that you accept to participate freely in this study. You can decide to refuse to answer to any question, without giving any explanation. You can also decide not to answer some questions if you do not want to. This will have no consequence.

The research team will take some notes during the interview to ensure that the team does not forget what you said.

The team will ensure that your name will not appear in the report.

The notes we will take will not be used in another manner than the one described here.

Please sign the form. You can have a copy if you want to.

Date:

Signature of participant:

Signature of guardian or responsible person from institution:

Signature of research team:

Appendix 4: Bibliography

United Nations Convention on the Rights of the Child

CRC General Comments, 12, 10 and 14 and 24;

Council of Europe Recommendation Rec (2005) 5 on the rights of children living in residential institutions;

Recommendation Rec (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder;

Recommendation Rec (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;

Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions or measures;

Recommendation No. R (92) 16 on the European rules on community sanctions and measures;

Recommendation No. R (87) 20 on social reactions to juvenile delinquency;

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice;

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules);

UNICEF (2015), Procedure for ethical standards in research, evaluation, data collection and analysis. N° CF/PD/DRP/2015-001.

EC, Ethics for researchers, found on:

: https://ec.europa.eu/research/participants/data/ref/fp7/89888/ethics-for-researchers_en.pdf

¹SerhiyBurov, Executive Director of the Educational Human Rights House in Chernihiv found on: http://www.google.com/url?q=https://humanrightshouse.org/articles/ukraine-base-juvenile-justice-reforms-on-international-standards/&sa=U&ved=2ahUKEwiyhpvc5f3vAhVH3aQKHWBLCb8QFjAAegQIABAB&usg=AOvVaw23Z_SsjiKUe2OjCuZsHJwU

Strengthening Children's Rights Guarantees in Ukraine, found on: <https://chemonics.com/impact-story/strengthening-childrens-rights-guarantees-in-ukraine/>

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Report on desk review, Juvenile justice legislation and Policy, Council of Europe 2021.

