

Cross-Border Safeguards for Children in Conflict with the Law



Background

ASEAN's decision to facilitate freedom of movement

- What will be the **impacts**?
- How will **human rights be safeguarded**?
- Need to guarantee a **minimum level of human rights standards** for children in conflict with the law - the UN Convention on the Rights of the Child

» This is an **opportunity** to study the **case of children coming into conflict** with the law **in other countries**

What is needed?



Need for ASEAN member states to improve and increase **cooperation between juvenile justice systems**

- Foster **transnational judicial cooperation**
- **Collaboration** between **law enforcement bodies**



Development of **regional minimum safeguards guidelines** on **cross-border cooperation** for children in conflict with the law

- Ensure **equal treatment of all persons** across borders
- Addressing the **specific needs of children** → enhanced safeguards

Rights to be guaranteed



Ensuring effective **protection from abuse and exploitation**



Providing **interpretation and translation services**



Adapting **diversion services and alternative measures** to **include foreign children**

Reforming Legislation to Include Minimum Safeguards for Children in Cross-Border Instances

Law Enforcement and Judiciary Cooperation

- Integration of core principles into national legislation
- Mutual recognition of judicial decisions
- Mutual admissibility of evidence to simplify cross-border investigations and trials
- Establishing rules on data collection

Minimum safeguards

- UN Human Rights
- Common agreements transposed into national legislation
- training for the persons in contact with the child (police, prosecuting bodies and educational institutions)

Further safeguards

Minimum rights should be transposed into national legislation for the treatment of

Victims

People **suspected or accused of committing a crime**

People **deprived of their liberty**

Establishing Common Policies to Facilitate Law Enforcement

- Common systems of **information**
- Common **investigation techniques** for cross-border cases and mutual assistance
- Common system of **arrest warrants**
 - Common procedures for surrender of nationals
- Specialised **training of staff**
- Urgent need to **tailor investigations** in cases relating to children:
 - Considering the child's experiences throughout all stages of the justice system
 - Ensuring the proper development of the child

Guidelines for Treatment of Children in Contact with the Law Across Borders (1/2)

- Obligation to **provide translations and interpretation** to foreign nationals coming into conflict with the law in other countries
- Obligation to **provide the necessary information** to the related **consular authorities**
- **Right** of the arrested person to **inform a third person** of his or her situation
- For children, responsibility of authorities to **inform parents/guardians**

Guidelines for Treatment of Children in Contact with the Law Across Borders (2/2)

- **Individual assessments** should be carried out by **competent authorities**
 - Identify risks, vulnerabilities and needs of the child: 'triage'
 - Particularly, those at risk of reoffending
 - Those vulnerable and at risk of being manipulated
 - Tailor proceedings to results
 - Primary goal of the child's reintegration into their community/society
- Any **questioning** involving a child shall be **recorded**
- **Guaranteed the right of access to a lawyer**
 - **Confidentiality**

Recommendations to Ensure Minimum Safeguards in Cross-border Cases (1/5)

- 1 National legislation shall ensure that every child has the right to **equal and fair treatment at all stages of the proceedings**, regardless of their nationality
 - Easy access to judicial proceedings,
 - Fair trial safeguards,
 - The enjoyment of basic rights such as access to health, education, and economic and social rights.
- 2 The **best interest of the child** will be the main priority in all proceedings
 - In consultation with the appropriate experts such as medical professionals, social workers, educators, police officers, judicial officials and volunteers

Recommendations to Ensure Minimum Safeguards in Cross-border Cases (2/5)

- 3 Trans-national cooperation shall be enhanced to **strengthen investigation and law enforcement capacities to fight trafficking** of children and ensure the protection of migrant children
- 4 All persons detained are entitled to receive **information concerning the procedural safeguards**
 - § Child-friendly language
5. All persons detained shall have the right to be
 - 5 informed without undue delay, of the case against them

Recommendations to Ensure Minimum Safeguards in Cross-border Cases (3/5)

- 6 Provision of **interpretation** to foreign nationals
 - 7 Public authorities shall carry out **individual assessments**, which will be relevant to the determination of the appropriate procedure
 - 8 **Avoid administrative detention** of migrant children, whenever possible. If a child is detained in connection with his or her status as migrant, **the child shall not be separated from their family**, and public authorities shall **ensure his/her access** to health services and educational activities
- § Children detained separately from adults

Recommendations to Ensure Minimum Safeguards in Cross-border Cases (4/5)

- 9 All detained persons shall have the **right to communicate with third persons**. In cases involving children, the person(s) with parental responsibility shall also be informed of the child's detention without undue delay
- 10 Deprivation of liberty of a citizen of a different country shall be promptly communicated to the **competent consular authorities**
- 11 All detained persons have the right of **access to a lawyer**, to allow the exercise of the defence should be guaranteed. Exchanges are to remain **confidential**

Recommendations to Ensure Minimum Safeguards in Cross-border Cases (5/5)

- 12 Nationals of a different country who speak a different language shall have the right for **all essential documents to be translated** into his/her own language
- 13 **Legislation shall enshrine the right to privacy of children** and any information collected in the course of the proceeding is, in principle, not to become public, even after the child has reach 18 years of age
- 14 **Mutual recognition of judicial decisions**, to allow States to overcome the differences between national justice systems, without the need to harmonise them.

Thank you for your attention.