ASIA-PACIFIC COUNCIL FOR JUVENILE JUSTICE

SECOND MEETING OF THE APCJJ SUBCOMMITTEE FOR ASEAN

Toward Regional Guidelines on Juvenile Justice: Promoting Cross-Border Safeguards and Defining Strategies on Elimination of Violence against Children in Conflict with the Law

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Foremost, the International Juvenile Justice Observatory (IJJO) would like to express its sincere gratitude to all of the collaborators, especially the experts, for their dedication, motivation and enthusiasm. Many professionals have also contributed to this initiative through their research and experiences. Among them, APCJJ members who work on a daily basis with children and young people at risk of social exclusion, in order to protect their rights.

The IJJO would also like to express their deep appreciation to the Department of Juvenile Observation and Protection (DJOP) of the Thai Ministry of Justice, represented by Prof. Wisit Wisitsora-at, Director General, and by Dr. Kattiya Ratanadiok, Director of Research and Development Institute of the DJOP. This Second Meeting of the APCJJ Subcommittee for ASEAN was also supported by the Thailand Institute of Justice (TIJ), the ASEAN Commission on the Rights of Women and Children (ACWC), the United Nations Office on Drugs and Crime (UNODC), the United Nations Children’s Fund (UNICEF) and the Office of the Special Representative of the Secretary-General on Violence against Children (SRSG-VAC).

Finally, this meeting’s minutes couldn’t be published without the valuable notes of Ha Ryong Jung (UNICEF intern) and Chelsea Caldwell (UNICEF intern).

Please be aware that the content of this report is made of notes taken during the Second Meeting of the APCJJ Subcommittee for ASEAN. Those notes might not reflect accurately the entire speech of the different experts. As a consequence, we encourage readers to consult the official presentations on https://goo.gl/msY27Q
The establishment in 2015 of the ASEAN Community was a highly significant moment in this region. The vision of a Community that is “outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies” is inspiring and provides a strong framework for the commitment of ASEAN leaders to bring an end to all forms of violence against children.

Since the beginning of my mandate, it has been central to my work to encourage and support important regional efforts such as the ASEAN Regional Plan of Action to Eliminate Violence against Children. It was my great privilege in 2013 to join the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to launch the Declaration on the Elimination of Violence against Women and against Children in ASEAN. The Declaration was a landmark in the global effort to establish a regional agenda on violence against children. It was a powerful illustration of the potential that regional cooperation can have, and it built upon, as well as supported, national level action on ending violence against children in ASEAN member states.

The strong commitment of ASEAN leaders to ensure follow-up on the Declaration was fully demonstrated last November when the 27th ASEAN Summit in Kuala Lumpur adopted the Regional Plan of Action to Eliminate Violence against Children (RPA-EVAC) 2016-2025. The Plan is a remarkable document and reflects the consistent and determined efforts of a broad coalition of actors within this region to put violence against children high on the ASEAN agenda. Our challenge is now to ensure that the Plan’s 8 key actions are fully implemented.

The enhanced regional cooperation envisaged by the RPA provides opportunities to promote cross-fertilization of experiences between ASEAN member states, and boost advocacy and policy developments for violence prevention and response at a national level. The RPA will be an important spur for countries in ASEAN to undertake reforms to further strengthen national legislation and strategies addressing violence against children.

The RPA is firmly grounded in human rights and recognizes the many ways children endure violence. It proposes concrete action within a realistic timeframe. It also anticipates the need for action on emerging risks, such as online abuse. The RPA is notable for its emphasis on promoting research and the consolidation
of data so that actions are evidence-based; and the Plan’s monitoring and evaluation framework will help ensure accountability for implementation.

The RPA is highly ambitious but also realistic. I am very encouraged that the Plan prioritizes actions which follow upon the recommendations of the UN Study on Violence against Children, including in relation to justice systems which my mandate has been promoting.

Notable among the key actions of the Plan are: the establishment of child-sensitive justice systems in ASEAN member states that promote and protect the rights of children in contact with the law; the prevention of deprivation of liberty and greater use of alternatives to judicial proceedings involving children; and ensuring that in all actions, the justice system takes into account the best interests of the child. I hope that, in the course of our dialogue this afternoon, we can begin to identify the challenges and opportunities in taking forward these key actions of the RPA related to the justice system. I would like to begin by highlighting a number of important global opportunities that we can seize to give a greater momentum to the RPA at regional and national levels.

Opportunities for RPA Implementation include the Agenda 2030. Last September, the United Nations (UN) unanimously adopted the new sustainable development agenda. Agenda 2030, as it is commonly known, brings an ambitious and inspiring vision of a world free from fear and from violence. For the very first time it recognizes the dignity and right of children to grow up in a violence-free environment as a priority on the international agenda, to be achieved by 2030. Agenda 2030 is global and universal; it is to be implemented by all countries, in all regions, and has a unique potential for win-win cooperation and to bring gains to all parts of the world.

But more importantly, it concerns all children and has the ambition to reach those furthest behind first! This is why it calls on all nations to give priority attention to the most vulnerable groups in society and to assess success in the light of the progress achieved for the most invisible and forgotten children, those who are also the most at risk of violence, abuse and exploitation.

The compelling vision of Agenda 2030 is framed by 17 clear Sustainable Development Goals (SDG) with 169 measurable targets. Goal 16 aims to “Promote peaceful and inclusive societies..., provide access to justice for all and build effective, accountable and inclusive institutions...”. Goal 16 also has a specific target (16.2) to end all forms of violence against children, and there are several other targets on ending the abuse, neglect and exploitation of children.

Capitalizing on this unique momentum and with a strong resolve to galvanize political will and wide social support for children’s protection, governments, international organizations, national institutions, civil society actors, professional associations, religious leaders, individual citizens and children themselves, are joining hands to re-energize action and bring an end to violence against children.

Agenda 2030 provides a strategic opportunity and valuable framework to enhance regional cooperation and to keep violence against children at the heart of the regional and national policy agenda. It recognizes that sustainable development is anchored in and designed to safeguard human rights, including children’s rights; and envisaging both together we can build a world free from fear and from violence.
Indeed, violence goes hand in hand with vulnerability and deprivation; with high risks of poor health, poor school performance and at times long-term welfare dependency. Children exposed to violence – at home, in schools, in the community, at work, in care and justice institutions, online or across borders – are at greater risk of enduring cumulative acts of violence and engaging in aggressive and violent behavior later in life. Violence is equally associated with poor rule of law and weak enforcement, high levels of organized crime and homicide rates, and a culture of fear and impunity.

As a result, violence has a devastating and long-lasting impact on child victims and their families; but in addition, it is associated with far-reaching economic costs for society. It places a heavy strain on the budgets of health, criminal justice and social services, slowing economic development and eroding nations’ human and social capital. According to recent studies, the economic burden resulting from physical, psychological and sexual violence would amount to US $7 trillion per year, equivalent to 8% of global gross domestic product (GDP).

But this is not a fate. Indeed, through enhanced regional cooperation, and with serious investment, steady implementation and increased progress, violence can become a part of a distant past. Agenda 2030 can bring us there.

A second important opportunity for promoting action on the RPA is the commemoration this year of the 10th Anniversary of the UN Study on Violence against Children.

The principal recommendations of the Study that every country should have a comprehensive legislative framework banning all forms of violence against children in all settings, a well developed and costed national strategy, and systems of data and research for monitoring and evidence-based policy-making, remain as valid today as ten years ago.

To commemorate the 10th anniversary of the Study and to add momentum towards reaching SDG target 16.2, earlier this year we launched an important new initiative called ‘High Time to End Violence against Children’.

High Time will create manifold further opportunities to raise attention and promote the key actions of the RPA. It is indeed high time to close the gap between the commitments of the RPA to prevent and respond to violence and the actions needed to translate this goal into a reality for all children. It is high time to address root causes of this phenomenon and promote a culture of respect for children’s rights and zero tolerance of violence in ASEAN.

It is high time to ignite and mobilize all those who can actively engage in this important movement, to which so many allies are contributing, and which I hope you will also join. As we like to stress, in the countdown to 2030 everybody counts and everybody is needed -governments, international and regional organizations, professional associations, faith-based organizations and civil society partners, as well as children themselves.

Much progress has been made in ASEAN countries towards an end to violence against children. The RPA provides a clear roadmap for the next decisive steps on the journey towards completing the work and realizing its vision of eliminating violence against children in ASEAN.
At the IJJO we are aware of the efforts that countries comprising ASEAN are making in improving juvenile justice, promoting legislative reforms and policies that respond to challenges linked to the situation of children and vulnerable youth, in particular regarding young people in conflict with the law. In this space of convergence, we have new opportunities to make improvements for juvenile justice systems, which facilitate new policies and regional cooperation agreements for ASEAN member states.

The IJJO, through the Subcommittee of its Asia-Pacific Council, has the firm objective of being a facilitator for reflection, contribution of ideas and creation of initiatives and projects that promote the construction and implementation of common regional policies in juvenile justice. This is to be done in line with international standards and regional rules, accompanying and supporting the different actors involved in this process.

We must also be aware that these policies regarding Juvenile Justice and Rights of the Child will be a key factor in shaping the social future of the ASEAN. Children and young people are the ones who will build the ASEAN of the future, and some are currently immersed in cycles of exclusion and confinement, and require specific policies to address the problems affecting them, and to promote their appropriate personal and social development. In order to achieve this, those involved in juvenile justice must seek to establish a consensual roadmap, capable of shaping basic principles and priorities, while building a model that responds to the needs and challenges of the region and of each and every state it comprises. This must be an efficient model, capable of preventing crime, while intervening appropriately when it does occur, and reducing recidivism by promoting reintegration.

“The IJJO, through the Subcommittee of its Asia-Pacific Council, has the firm objective of being a facilitator for reflection, contribution of ideas and creation of initiatives and projects that promote the construction and implementation of common regional policies in juvenile justice.”

The Second Meeting of the APCJJ Subcommittee for ASEAN which begins today is articulated around three main themes: the development of regional guidelines to promote the implementation of cross-border safeguards, strategies for the elimination of violence against children in conflict with the law, and the United Nations Global Study on children deprived of liberty. These particularly relevant issues for the region are addressed by promoting the exchange of knowledge and the development of joint initiatives in the region.

The first issue on the agenda will be cross-border cooperation in ASEAN. Various
experiences are discussed on the development of regional guidelines on transnational judicial cooperation, in order to establish a common strategy on cross-border safeguards for children in conflict with the law. The goal is to ensure that these young people achieve a common minimum level of rights in all member states. The document ‘Cross-Border Safeguards for Children in Conflict with the Law’, produced by the APCJJ, will be used as a starting point in order to explore this issue, and each country will present their current situation and the challenges yet to overcome.

The strategies for the elimination of violence against children, and specifically those that take place in the field of justice systems, will be another key issue in this meeting. Two landmark documents will shape the debate. On the one hand, the ASEAN Regional Plan of Action on Elimination of Violence against Children will be analysed. This plan recognises that violence is a concern that goes beyond borders, while identifying and promoting the need for national, bilateral and regional mechanisms for cross-border cooperation. This meeting provides a forum for exchanging experiences and best practices of ASEAN member states, and will help support the implementation of the plan.

On the other hand, the meeting addresses the ‘United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice’, which offers key recommendations for the implementation of plans which integrate international standards on minimum guarantees in this area.

Likewise, the meeting will analyse the deprivation of liberty by presenting the United Nations Global Study on children deprived of liberty. Its aim is to investigate the global situation regarding the various forms of deprivation of liberty in which children find themselves in. It is therefore expected that the study will provide valuable data, which can be used as a basis for promoting alternatives and actions to reduce the number of children in detention, while improving the conditions in which they take place, and consolidating the guarantees it must offer. For this analysis, we count on the presence of the Special Representative of the United Nations, Ms. Marta Santos Pais, who will carry out a workshop in relation to the Global Study in order to share information, provide data and develop methodologies that help advance the work of this important study.

At this point, I would like to highlight the situation of young people who are deprived of liberty as a result of being sentenced for committing a crime, as well as those in pre-trial detention. This is a fact that we must analyse within the framework of ASEAN in order to guarantee that this deprivation of liberty is carried out with appropriate models, as well as monitoring and control structures that show respect for the rights of these young people.

From the Convention on the Rights of the Child, to the document aforementioned on Model Strategies on the Elimination of Violence against Children, it is a basic principle to consider that the deprivation of liberty of children should only be used “as a measure of last resort and for the shortest appropriate period of time.”

These documents also signal that systems have to ensure the best interests of the child and that the measures taken must respect the rights of minors, be adapted to the age and circumstances of children and young people, and promote the acquisition of skills that foster their personal development and social reintegration.

“WE MUST ANALYSE AND PUT TO VALUE THE GOOD PRACTICES OF THE MEMBER STATES OF THE REGION, AS WELL AS OTHER INTERNATIONAL INITIATIVES OF PROVEN EFFECTIVENESS THAT CAN BE ADAPTED TO THE NEEDS OF ASEAN.”

In this regard, we must address fundamental issues such as age groups regarding criminal
responsibility, the justice system and legal safeguards (law enforcement, judiciary, administration sectors), maximum duration of detention (both pre-trial and after a sentence), architectural models for detention facilities or spaces, models for educational intervention, the profile and specialisation of the professionals who intervene at each stage of the whole process (judges, public prosecutors, lawyers, psychologists, educators, etc.), and the strategies for reintegration. Equally important, will be the establishment of indicators and monitoring systems that facilitate monitoring and evaluation of the model and its improvement, both in the respect for fundamental rights as in the effectiveness of the intervention.

Similarly, I would like to emphasise that cross-border policies towards minors who have not committed a crime should not contemplate deprivation of liberty measures as an option. We need to move towards the proper placement of these young people instead of detention, which often results from a lack of resources or frameworks for care and protection.

As chairman of the Observatory, I cannot miss this opportunity to highlight these realities, since we are at a crucial time in which ASEAN can move towards a joint system of juvenile justice that can become an international benchmark and example. We must analyse and put to value the good practices of the member states of the region, as well as other international initiatives of proven effectiveness that can be adapted to the needs of ASEAN.

I would like to highlight the role of these meetings in the present and in the future of juvenile justice in the Asia-Pacific region, and specifically in the countries that integrate ASEAN. The Observatory has a firm commitment and will continue collaborating and fostering a space for meeting, dialogue and joint work that contributes to ensuring a fair juvenile justice in the region.

In these times of development and consolidation of ASEAN as a prosperous, peaceful, egalitarian and inclusive community, an example of unity in diversity, we are certain that by working together we can build and implement a juvenile justice model which can become an example of best practices to the world.

“IN THESE TIMES OF DEVELOPMENT AND CONSOLIDATION OF ASEAN AS A PROSPEROUS, PEACEFUL, Egalitarian AND INCLUSIVE COMMUNITY, AN EXAMPLE OF UNITY IN DIVERSITY, WE ARE CERTAIN THAT BY WORKING TOGETHER WE CAN BUILD AND IMPLEMENT A JUVENILE JUSTICE MODEL WHICH CAN BECOME AN EXAMPLE OF BEST PRACTICES TO THE WORLD.”
Meeting’s Welcoming Remarks by Professor Wisit Wisitsora-at, Director General, Department of Juvenile Observation and Protection (DJOP), Ministry of Justice, Thailand

Distinguished Delegates, Ladies and Gentlemen,

It is a great honor and pleasure for me on behalf of the Department of Juvenile Observation and Protection of Thailand to be here with you today. I would like, first of all, to convey my warmest regards and best wishes to all of you, distinguished delegates, who have come to Thailand to participate in this very meaningful event.

On behalf of the organizers of this meeting, I would like to give my sincere gratitude to Dr. Francisco Legaz, Chairman of the IJJO, and Mr. Kobkiat Kasivivat, Deputy Permanent Secretary of Justice, for your kindness in chairing this important event today.

This Second Meeting of the APCJJ Subcommittee for ASEAN will, on the one hand, focus on cross-border safeguards for children in contact with the law, and, on the other, the ASEAN Regional Plan of Action on Elimination of Violence against Children, along with the UN Global Study on Children Deprived of their Liberty.

“We HAVE BEEN WORKING VERY HARD TO OVERCOME THE CHALLENGES WE ARE EXPERIENCING TO BRING POSITIVE CHANGES TO THE LIVES OF OUR YOUTH.”

We have been working very hard to overcome the challenges we are experiencing to bring positive changes to the lives of our youth. By working together we can help improve the juvenile justice system in our countries to serve its purposes in providing protection and rehabilitation for the children and youths entering the justice system. The meeting will serve as a forum for discussion on sharing best practices by different ASEAN member states as well as by experts on the subject. It is our hope that this APCJJ Subcommittee for ASEAN meeting will help facilitate the implementation of the ASEAN Regional Plan of Action on Elimination of Violence Against Children which sets out the most important topics for juvenile justice in the ASEAN region. In addition, we will introduce the UN Model Strategies on Violence against Children in Crime Prevention and Criminal Justice. These model strategies have been implemented differently around the globe, and they can be very useful for the implementation of the ASEAN Regional Plan. Sharing best practices can prove to be beneficial for the juvenile justice system in our ASEAN member states.

May I conclude my remarks by wishing that we all share the success of this meeting, and by wishing that you all have the most pleasant time in Bangkok.
About the IJJO and the APCJJ

The International Juvenile Justice Observatory (IJJO), headquartered in Brussels, was founded in 2002 in order to create a space for development and collaboration, capable of improving systems, policies and practices in the field of juvenile justice, through the implementation of international standards; advocating for a fair, efficient and inclusive juvenile justice, one which guarantees the rights of children.

With the objective of staying close to the realities, needs and main agents of change in the regions, the Observatory has been establishing different Continental Councils for Juvenile Justice, which have produced reports impacting the different regional agendas. The Councils of Europe, Asia-Pacific, Latin America and North America are currently active, while the Councils of Africa and the Middle East are in the development phase. These Councils work within the framework of the IJJO’s mission to promote, around the world, a culture of peace, justice and institutional efforts in line with Goal 16 of the Sustainable Development Goals.

In particular, the Asia-Pacific Council for Juvenile Justice assumes the following functions:

- Promotion of a sustainable collaboration and coordination among all parties and stakeholders in the development of juvenile justice policies for social integration of young people and children in conflict with the law.
- Development of strategies to ensure the respect for the rights of children and adolescents in conflict with the law and to promote crime prevention policies toward regional institutions, based on existing initiatives and programs.

The Council first met in June 2012 in Bangkok, Thailand, to discuss child involvement in crime and crime prevention programs in the region and to officially formalize the establishment of the Asia-Pacific Council for Juvenile Justice. Following that meeting, the APCJJ published a report: ‘A Voice for the Future of Juvenile Justice in Asia-Pacific; Introduction to the Asia-Pacific Council for Juvenile Justice and Leading Juvenile Justice Reforms in the Region’ which addressed detention conditions in the Asia-Pacific region, while promoting a preventive approach and restorative policies. The second meeting of the Council, co-organized with the DJOP, with the support of UNODC, UNICEF and the Thai Institute of Justice, took place in May 2013.
2015 in Phuket, Thailand, where the topics of ending violence against children in the field of criminal justice, diversionary measures, as well as alternatives to detention and restorative justice, were thoroughly discussed. Following that meeting, the APCJJ published a report: ‘Addressing Juvenile Justice Priorities in the Asia-Pacific Region’.

The Asia-Pacific Council for Juvenile Justice’s Subcommittee for ASEAN was launched by the IJJO, following the proposal made by the DJOP, Ministry of Justice Thailand, as part of its strategic plan to become a centre for the juvenile justice development in this region. It was established in 2014 and approved to be a part of the APCJJ by the IJJO. The Subcommittee consists of the APCJJ members originating from member states in the Association of Southeast Asian Nations. As suggested by the DJOP, its primary objective is to play an advocacy role in the area of juvenile justice for countries in the ASEAN region. Furthermore, the Subcommittee wants to play an important role in the implementation of the ASEAN Regional Plan of Action on Elimination of Violence against Children, which was adopted by the ASEAN Summit of Heads of State and Government on the 27th of November 2015.

Second Meeting of the APCJJ Subcommittee for ASEAN

In June 2016, the IJJO organised this Second Meeting of the APCJJ Subcommittee for ASEAN in Bangkok in cooperation with the Department of Juvenile Observation and Protection of the Thai Ministry of Justice (DJOP) and the Thailand Institute of Justice (TIJ). This meeting was also supported by the ASEAN Commission on the Rights of Women and Children (ACWC), the United Nations Office on Drugs and Crime (UNODC), the United Nations Children’s Fund (UNICEF) and the Office of the Special Representative of the Secretary-General on Violence against Children (SRSG-VAC). The meeting focused on cross-border safeguards for children in conflict with the law on the one hand, and on the ASEAN Regional Plan of Action on Elimination of Violence Against Children, along with the UN Global Study on Children Deprived of their Liberty, on the other. The detailed programme of the meeting can be found in the annex. The basis for the Second Meeting of the Subcommittee for ASEAN was the APCJJ report ‘Addressing Juvenile Justice Priorities in the Asia-Pacific Region’, which compiled all the content produced as a result of the Second Meeting of the APCJJ. Participants at the Second Meeting of the APCJJ Subcommittee for ASEAN came together to share their experiences and best practices from their countries as well to discuss the main issues at stake for the well-being of children in conflict with the law and the ways forward.

The objectives of this meeting were to address the most pertinent issues in ensuring the safety of children in conflict with the law in the ASEAN region. The APCJJ encouraged the sharing of ideas and best practices relating to the development and strengthening of national, bilateral and regional mechanisms that could be devised and implemented to facilitate cross-border cooperation between ASEAN states. These main topics were:

- Cross-border cooperation in ASEAN concerning the treatment of children in conflict with the law: good practices and experiences for the drafting of regional guidelines;
- Children deprived of liberty: conditions, situations and challenges in the context of the preparation of the UN Global Study on Children Deprived of their Liberty (UN GSCDL);
- Strategies for eliminating violence against children (VAC) in conflict with the law: implementing the VAC regional plan of action in the ASEAN.

The first and foremost purpose of the meeting was to define common strategies in juvenile justice issues in both ASEAN and ACWC. Transnational judicial cooperation has become an important topic for the APCJJ Subcommittee for ASEAN, most notably with the need to address the issue of cross-border safeguards for children in conflict with the law as ASEAN opened its borders at the end of December 2015. It is in this context that a common strategy on cross-border safeguards for children had to be established. The paper ‘Cross-Border Safeguards for Children in Conflict with the Law’ (in the annex of this report) was
used as a starting point in this discussion. At the end of the meeting, we were able to establish guidelines that ASEAN members can implement to guarantee a minimum standard of human rights for those children in conflict with the law in cross-border situations.

The second topic of the meeting was to discuss the UN Global Study on Children Deprived of their Liberty. In 2015, a group of NGOs made a call for the global study as many children are still being detained today, sometimes even for minor offences. By putting this topic on the agenda of the second meeting of the APCJJ Subcommittee for ASEAN, we were able to make an important contribution to this study.

In addition, the meeting included a discussion on the implementation of the ASEAN Regional Plan of Action on Elimination of Violence against Children, which sets out the most important topics for juvenile justice in the ASEAN region. The meeting served as a forum for discussion on sharing best practices by different ASEAN member states as well as by experts on the subject.

Finally, a part of the meeting was contributed to the UN Model Strategies on Violence against Children in Crime Prevention and Criminal Justice. The variation in how these model strategies have been implemented around the world can be very useful in offering different perspectives when thinking about the implementation of the ASEAN Regional Plan. The constructive sharing of best practices in this way, aims to ultimately be very valuable for ASEAN member states.
I. CROSS-BORDER SAFEGUARDS FOR CHILDREN IN CONFLICT WITH THE LAW IN THE ASEAN REGION
I. CROSS-BORDER SAFEGUARDS FOR CHILDREN IN CONFLICT WITH THE LAW IN THE ASEAN REGION

1. Promoting cross-border safeguards and defining strategies for the elimination of violence against children in conflict with the law

These conclusions aim to provide an overview of the discussions held during the meeting, and highlight the main concerns, suggestions and best practices raised by participants. The recommendations agreed upon during the Second Meeting were grouped into three main areas:

- Legislation and policy
- Training
- Capacity-building

This concluding report will first highlight the key challenges ASEAN member states are facing within the areas of cross-border safeguards, violence against children and deprivation of liberty. Then, the key recommendations derived from this meeting will be presented.

Challenges

Acknowledging the unique situations of ASEAN member states, a number of common challenges and areas of concern were highlighted. As a general concern, ASEAN has seen a rise in the number of marginalised and displaced youth as well as an increase in ‘unsafe migration’, such as trafficking. In addition, there is a general
lack of awareness and knowledge on children’s rights, procedures and laws. This is particularly felt in areas ‘inaccessible by the government’ such as camps with internally displaced persons. The lack of focus on girls in conflict with the law is also a gap in the juvenile justice systems of ASEAN. Similarly, the lack of rights and assistance given to migrant and foreign children in different countries is also an area that needs urgent attention.

At the community-level there are also a number of key concerns. These being a lack of guardians for children upon release into the community which puts vulnerable children at risk of reoffending or victimisation and the unsustainable practices of putting large populations into detention due to the lack of legal recognition of refugees in many countries.

When it comes to the juvenile justice systems of ASEAN states, a number of key concerns came to the forefront. Firstly, proper implementation of child-friendly justice is hampered by limited budgets and a lack of financial support. There are also many delays in the criminal justice process for children in conflict with the law. The juvenile justice system is further hindered by lack of identification of children and destruction of documents. Inconsistent sentencing practices have also led to confusing processes for children and, in some cases, put into question the legitimacy of processes and practices within the juvenile justice systems.

In addition to addressing these challenges individually at the national level, ASEAN states should also seek to create ASEAN-wide regulations to harmonise juvenile justice practices and ensure the well-being of children across borders. Such common rules and regulations are to be supported and implemented by all 10 ASEAN states. However, the process of integrating and harmonising the legislation and juvenile justice systems of 10 countries is not straightforward. The following sections will highlight the key recommendations proposed by the various stakeholders, representatives of public administrations, universities, experts and civil society at the Second Meeting of the APCJJ Subcommittee for ASEAN.

Recommendations

A. Legislation and Policy

The overarching principles of all justice systems should be prevention and reintegration into society/community, all the more so for the juvenile justice system since the children who pass through it after coming into conflict with the law are at great risk of reoffending and secondary victimisation, if they do not receive the proper care and guidance necessary within that system. Therefore, combining prevention and reintegration measures will help to avoid additional offences.

Regional guidelines, conventions, memorandums and understandings are to be drafted in relation to ASEAN’s specific commitments on children in conflict with the law as outlined by the ASEAN Commission on the Rights of Women and Children. The rights of children should be included in all three pillars of the 2025 vision of the ASEAN Community (political and security, economic, and social and cultural).

At the national level, new action plans regarding minimum safeguards in cross-border situations should be implemented. Legislation should be created to foster and support the inclusion of social workers for children in conflict with the law. Including the community in the child’s reintegration is also encouraged. This can be achieved through the development of community-based sentencing options.

Last but not least, ASEAN states’ governments must create and enact provisions to ensure the well-being of foreign children in conflict with the law, particularly in light of increasing free movement of peoples and migration. Legislation in this area must take into consideration unaccompanied children and provide the necessary safeguards to ensure fair legal processes and safety while keeping detention as the last resort.

B. Training

The issue of training was also a key recommendation that came up in all three main topics discussed. In addition to supporting the role of social...
workers, psychologists and doctors, the police, lawyers and judges should also be given training on how to deal with children in the justice system in order to create child-friendly judicial processes, sensitive to the unique situations and vulnerabilities of children in conflict with the law. To this end, child rights training should be organised for all those who come in contact with or assist children in conflict with the law during the judicial process.

Regarding the issue of cross-border safeguards, the police, judiciary and social workers must take into consideration the unique circumstances of foreign children coming into conflict with the law in their states and offer the translations and interpretations necessary as well as the counsel and assistance necessary to ensure the well-being of these children who are far from home.

The same parties must also work actively to eliminate violence against children throughout all of the justice system. Deprivation of liberty must always be a last resort but it is important that children are kept in safe, secure and child-friendly environments throughout the proceedings. Children must always be detained separately from adults, and social workers and doctors must be allowed to have access to children in conflict with the law. Some ASEAN states must also end the practice of corporal punishment on children as outlined in the UN Convention on the Rights of the Child (specifically Articles 37 and 39) and the UN Global Study on Violence Against Children.

Additionally, vocational training should also be offered for children in conflict with the law. Offering children access to vocational training and/or educational programmes will encourage and facilitate their reintegration into society by helping them acquire the skills and/or qualifications to become productive members of society without having to resort to crime to survive or out of boredom.

C. Capacity-building

Currently, a number of ASEAN states lack the necessary resources and expertise to ensure the development and smooth running of their juvenile justice systems. In order for cross-border safeguards to be implemented and for violence against children to be eliminated, authorities must have the skills and tools to guarantee these outcomes. Therefore, capacity-building is one of the main recommendations concluded from the Second Meeting of the APCJJ Subcommittee for ASEAN.

In order to reach the harmonisation of justice systems and the implementation of common cross-border safeguards across ASEAN, the countries must seek out the common aspects between the various criminal justice systems within the ASEAN. ASEAN could take the European Union’s (EU) commonality in the procedural aspect of systems as a guide in formulating its own system.

Furthermore, authorities of the ASEAN states must improve their data collection on children in conflict with the law in order to be able to use this information and statistics to formulate better policies and legislation as well as to adapt the social aspects of the juvenile justice system to make them more sensitive to the trends seen by the ASEAN states (for example, a rise in unaccompanied migrant children coming into conflict with the law.) A lack of data is an obstacle to legislation and the promotion of prevention and reintegration as it obscures the number of children who come into conflict with the law and what happens to them after they leave the justice system, children who are out of school and not in any training, and children who have no guardians. The systems of restorative justice must also be enhanced and given priority in all the ASEAN states in order to prevent reoffending and victimisation of children.

Governments must also establish networks and enhance their cooperation with Non-Governmental Organisations (NGOs) as the latter offers valuable input and experience when it comes to formulating policies, creating legislation and the setting-up of adequate and well-

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1. [https://goo.gl/yZHi7t](https://goo.gl/yZHi7t)
2. [https://goo.gl/M39y68](https://goo.gl/M39y68)
equipped institutions. Authorities must ensure and facilitate cooperation among NGOs and also between government authorities themselves (e.g. Ministries). The private sector must also be included in the juvenile justice system particularly when they provide relevant services such as care homes for children in conflict with the law. Additionally, destination/departure countries must become partners in order to tackle the most pertinent and urgent issues common to the ASEAN states such as trafficking and migration. States must create strong links and partnerships in order to tackle these issues, prevent trafficking of children and create a common system of arrest warrants and summons that can be endorsed across ASEAN.

2. Cross-border cooperation between European Union member states and the use of regional mechanisms

Prof. Dr. Ton Liefaard, UNICEF Chair in Children’s Rights at Leiden University, Leiden Law School, Member of the IJJO European Council for Juvenile Justice

What is the problem of children in border instances? ASEAN is working towards integration and freedom of movement, just like the EU, to foster development and wealth. There are a number of issues: Crossing after having committed crimes, crossing while committing offences, crossing while having been sentenced, children that cross and commit crimes in the new country, crossing as a victim of crime (but it is important to consider that there is usually a strong connection between being a victim and being involved in the crime itself). Also, there are sub-issues of jurisdiction, discrimination, exclusion, denial of rights due to status, etc. for each of this larger category of issues. Dealing with this requires different approaches, decisions, and safeguards.

How big is the problem? Cross-border issues and crimes do not really increase with the increased freedom of movement or opening up of borders. This doesn’t create a new phenomenon, although the numbers of crossing individuals and complexity may increase. There is a big incentive to gather aggregated data to make children more visible in the process. In fact, many of these children are in fact invisible in the system. There are questions for states to consider: Do you know how many children are foreign? How many are from ASEAN? How many are victims of crime? How many are under the minimum age of criminal responsibility (MACR)? Are they with their families? Is there a relationship between the influx of individuals crossing the border and the number of crimes?

The two main perspectives are:

a) Law enforcement/judiciary:

How do we cooperate effectively and exchange information and data to combat crime? Sharing of information is essential. How do you enforce judical decisions and sentences across borders? The key is to have mutual trust and recognition of each other’s decisions and responsibility. This is the most important baseline. States need to enhance this recognition.

“THE EU DOES NOT LEGALLY HAVE JURISDICTION OVER CRIMINAL JUSTICE SYSTEMS AND SOVEREIGNTY IS RESPECTED. THE COOPERATION OF SYSTEMS WITHIN THE EU IS BASED ON PRINCIPLES OF MUTUAL TRUST AND RECOGNITION.”

b) Children who are:

- Accused or convicted of committing criminal offense: Children need to be treated in a fair and child-specific matter, as provided by the Convention on the Rights of the Child (CRC), with non-discrimination, right to life, right to be heard, etc. It shouldn’t be relevant that children are from abroad because these rights need to be protected for all children within the jurisdiction
of the State. All of this holds equally for cross-border instances.

• Victims or witnesses: States need child-sensitive procedures to prevent second victimisation of children, as provided by international instruments.

European perspective:

Furthering economic stability and progress is a big goal of the EU. There is no harmonized EU criminal justice system. In a formal sense, the EU does not legally have jurisdiction over criminal justice systems and sovereignty is respected. However, there is a joint interest to combat crime, both nationally and transnationally, with a great willingness to cooperate. The cooperation of systems within the EU is based on principles of mutual trust and recognition. This facilitates the regulation of cross-border crimes.

However, it is important to keep in mind that mutual trust is only apparent when other states are willing to proceed in the same manner as you. It is essential to find a common ground. Europe found their commonality in the procedural aspect of the criminal justice systems rather than the substantive law. ASEAN will need to go through the same process of finding this commonality. It needs to establish safeguards so that everyone in the system is treated fairly with a minimum level of protection, regardless of where a person is from. This is necessary to build trust among states.

Examples of cooperation within the EU include frameworks on issuing arrest warrants, mutual recognition of judgments, protection of data, and exchange of information in criminal records, and supervision measures as an alternative to provisional detention. With a greater need for minimum safeguards, the EU then agreed on a Stockholm Programme of 2010 that includes further provisions of interpretation/translation, right to information in criminal proceedings, minimum standards, strengthened presumption of innocence, etc. There is an EU Agenda for Rights of the Child (2016) in the works, and the EU recently adopted the EU Directive on Procedural Safeguards for Children in May 2016. The EU doesn’t want a full harmonization of the criminal justice system because they feel the need to stop at a certain point (it is not possible to expect all countries to have the same system because some may not have juvenile courts, etc.). However, they agree that this list from the Directive is very relevant for children and is the minimum that should be upheld for children.

There is currently an opportunity for the ASEAN to work towards building (1) a more efficient and effective system and (2) minimum standards for safeguards for children that can be imbedded at the very beginning into the practice. This can ultimately harmonize the laws and practices within ASEAN.

ASEAN will need to develop standards at an ASEAN-level and exchange practices. States need to be informed about each other’s practices to build the necessary trust. They will need to gather data and critically evaluate their systems. Analysing other systems can help states to reflect critically on how they are doing. ASEAN will also need to seriously consider educating and training professionals, which can be done in cooperation between countries.

States need to safeguard the rights of children that are involved. This ultimately serves the interest of the society as a whole in the long term.

“THERE IS CURRENTLY AN OPPORTUNITY FOR THE ASEAN TO WORK TOWARDS BUILDING (1) A MORE EFFICIENT AND EFFECTIVE SYSTEM AND (2) MINIMUM STANDARDS FOR SAFEGUARDS FOR CHILDREN THAT CAN BE IMBEDDED AT THE VERY BEGINNING INTO THE PRACTICE. THIS CAN ULTIMATELY HARMONIZE THE LAWS AND PRACTICES WITHIN ASEAN.”
QUESTION & COMMENTS:

Question/comment (1): ASEAN is not willing to follow every step of the EU, as it feels stronger about state sovereignty and their respective border systems. I am unsure how ASEAN can utilize systems like those implemented in Europe (including those on arrest warrants, sharing of information, etc.). Currently an effective system for mutual legal assistance and extradition doesn’t exist (with no mutual treaty on extradition and an existence of a treaty on mutual legal assistance void of much cooperation).

Response: Europe itself took a long time to develop their system, which dates back from the 1950s and 60s. The major beginning of the development in cooperation of the criminal system started in the 1990s. It will be the same for ASEAN. There are benefits in furthering cooperation in this manner, but most importantly, there is the need to seriously consider the specific situation of children, like child-friendly treatment in the procedures. There is hardly any focus on specific positions of children, though there are general treaties for extradition, mutual recognition, etc. It took long for Europe, and it hasn’t fully arrived at the end yet itself. We will need to wait to see how the new Directives actually play out because States have a few months to fully implement this.

Question/comment (2): Are refugee children included in the system, and do these standards apply equally to them? What are the problems?

Response: There are many children in Europe from the Middle East and North Africa (MENA) region. There has also been an increase of unaccompanied children. The initial cooperation of the States was regarding children from within the jurisdiction of the EU, but the bottom line of children’s rights is that it shouldn’t matter where they are from and in what status. As long as they are already in the State’s jurisdiction, rights should be protected. However, the reality is that children from other regions are still not regarded equally as children from within Europe. They are often stigmatized and not respected, which is a serious problem. In the case of children of Somalian pirates, if the country they have crossed into criminalizes piracy, there may be complications in the reintegration of children. In that case, States may decide to liaise with their country of origin to establish a system whereby the children are first reintegrated in their country, then extradited. States need to adhere to their obligations.

Question/comment (3): How do we expand this idea to incorporate other issues involving children, like migration, trafficking, undocumented children, etc.?

Response: There needs to be more cooperation between the different systems that currently don’t really communicate with each other. Usually, the children are invisible in that context. States need to put children at the centre of deliberation for instances of migration, criminal judicial decisions, etc. They need to find a method of facilitating communication between these different systems. There really isn’t an example of a good practice yet, but there is a big role for child protection agencies to play in this regard. The immigration system must be connected to the child protection system, and detention should be the last resort. States need to help children in a more supportive manner, though the reality is that many countries currently have a high reliance on criminal justice systems.
3. Cross-border safeguards for children in conflict with the law: the ASEAN Human Rights perspective

Dr. Seree Nonthasoot, Representative of Thailand to ASEAN Intergovernmental Commission on Human Rights (AICHR)

The international obligations of the CRC need to be read in tandem with the statements by the Committee on the Rights of the Child. Of particular interest to us is the General Comment 10. There is a basic understanding among ASEAN that the CRC is one of the commonalities of ASEAN (a convention that is ratified by all ASEAN states), along with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD). These three are the common human rights conventions in ASEAN among the nine core international human rights conventions. However, it is important to note that each state has its own reservations and declarations that limit the scope of the application of these treaties on their obligations. States are the primary duty-bearers to children, given that around 40% of the population in ASEAN is below the age of 19. ASEAN has a legal identity and capacity, but does the integration contribute to the greater opportunity for children or does it actually create more risk? It can be either.

The ASEAN Charter is the first document that enshrined human rights. Then in 2012, the ASEAN Human Rights Declaration was drafted, with Article 27 specifically mentioning that children should not be subjected to economic and social exploitation. There is a need to develop concrete guidelines, which is still a soft law instrument, but legally binding. ASEAN will continue to consider different the drafting of its own conventions (like issues on trafficking in persons, migrant workers, elimination of violence against children, juvenile justice, etc.).

The 2025 vision of the ASEAN Community was extended from the 2015 vision. This is based on three pillars of a political and security community (APSC), an economic community (AEC), and a social cultural community (ASCC). Each community has its own sub-sectors, which creates difficulty for cooperation. Issues of children belong to all of these three communities, not just one of these pillars, though many think that it only belongs to the third pillar. For example, the APSC handles matters of immigration, but it will also need to address children in immigration detention centres. Also, the AEC handles matters of freedom of movement in goods (including food), but this also leads to a range of issues in diabetes and obesity of children.

The current draft guidelines for this meeting are missing a few critical factors: (1) The need for a database and sufficient information to build a systematic policy, (2) the need for consideration of vulnerable groups, including children in indigenous, Lesbian Gay Bisexual and Transgender (LGBT), disabled, refugee, asylum, and migrant populations, as well as the vulnerability of girls, (3) the need for a holistic and integrated approach, with many organizations taking piecemeal study approaches that need to be brought together, (4) the need for concrete action lines in the guidelines, (5) the need for a designation of duty-bearers (law enforcement, judiciary, policy-makers, etc.), (6) the need for engagement of other stakeholders (CSO, HR defenders, etc.).

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3 The body of 18 Independent experts which comprises the Committee on the Rights of the Child is obligated to monitor the implementation of the Convention on the Rights of the Child by its State parties. It additionally monitors implementation of three Optional Protocols to the Convention. [https://poo.pl/NMgnby](https://poo.pl/NMgnby)
4. The Thai approach on cross-border issues for children in conflict with the law, presentation of the results of the National Workshop

Prof. Wisit Wisitsora-at, Director General, Department of Juvenile Observation and Protection (DJOP), MOJ Thailand

Mr. Charoen Nantara, Director of Regional Juvenile Vocational Training Center 9

Mr. Chainarin Janiam, Director of Juvenile Observation and Protection Centre of Chonburi Province

Text in Thai only, available upon request.

5. UN perspectives and recommendations concerning cross-border cooperation

Ms. Anna Giudice Saget, Crime Prevention and Criminal Justice Officer, UNODC

The UNODC has a mandate to assist member states on crimes and drugs, along with a number of conventions that ask for international cooperation on various levels, including law enforcement and judicial intervention. Negotiation of bilateral agreement is not necessary for certain issues if international conventions are ratified because those already include provisions of extradition, etc. It is important to note that the Protocol on Smuggling of Migrants contains human rights provisions. There is no data or evidence pointing to children involved in transnational crime. There may be individuals under 18 years old that are involved in large crimes, but on the global picture, children are not the key criminals for which these international conventions would apply to. They are focused on the key parties that are responsible for the crimes. Children are mostly viewed as victims rather than offenders.

Nationality should not be the issue, but rather the residence that the child is found to live in (whether that is legal or illegal is not an issue). In this regard, the principle of non-discrimination should clearly apply. The difficulty of unaccompanied children should be looked at from a prevention perspective, as with various other issues. Legal representation should be provided.

A specific regional project on child sexual exploitation was conducted with the four Mekong countries until 2014, which involved training of law professionals. There was also a legal research meeting last September in Bangkok. The ASEAN countries should all set a common standard before proceeding.

Ms. Victoria Juat, Chief Child Protection, UNICEF Thai Office

Thailand has the Child Protection Act 2003 and other general relevant legislation for juvenile justice, with the MACR set at 10. It has child courts and child protection officers, but limited child-specific procedures. There are various standard operating procedures (SOPs), coordination procedures and mechanisms, and

4 Please send an email to the Asia-Pacific Council for Juvenile Justice (APCJJ) at asiapacificcouncil@oijj.org
memoranda of understanding (MOUs) for juvenile justice. There are many attempts to protect juveniles, but in practice, it has been difficult. Detention is stipulated as being the last resort, but the practice is different. Standards exist for the deprivation of liberty, but practice is difficult. Birth registration is required, which has provided for a relief on the problem of nationality. Many children are enjoying this privilege even when they aren’t ethnically Thai. The Committee on the Rights of the Child’s Concluding Observations of 2012 for Thailand mentioned that the minimum age of criminal responsibility (MACR) should be raised and that social reintegration programs should be developed for children in conflict with the law. The Universal Periodic Review (UPR) of 2016 recommended that Thailand should reform the justice system to ensure equal treatment to all citizens and develop a system of alternative sentencing for children, among others.

The population of international migrants is estimated at 244 million and most of them tend to migrate within their own region. Approximately 15% are children, with 18% of them living in Asia. All children must be provided with child protection. The minimum safeguards for children include birth registration, alternatives to detention (ATD) and access to housing/shelter, access to services, etc.

UNICEF collaborates with the DJOP to seek alternatives and provide rehabilitation and reintegration services for children diverted from the formal justice system. However, there are limited technical capacities and human resources, and there is an existence of public pressure to take these children away from the communities due to social stigma. UNICEF also partners with the Attorney General’s Office and courts to develop capacity on child-sensitive procedures. It also works through advocacy and evidence building to increase the MACR, map the situation of social workers, and promote ATD. UNICEF recommends that States enshrine the rights of children according to the CRC and take into account the best interest of the child to protect them.

Mr. Alistair Boulton, Assistant Regional Representative, UNHCR

The United Nations High Commissioner for Refugees (UNHCR) also focuses on implementing international standards, but it is also the case that legal provisions are better settled on paper but not so well translated into reality.

The current number of forced displacements is the largest since World War II (65 million displaced worldwide, with around 20 million as refugees). It is relatively quiet in this region. There is a serious problem for the Rohingya population in Myanmar, with children victimized through child labour and exploitation. Refugees aren’t recognized in most countries in this region, which leads to these populations being thrown into detention. The largest number is in Indonesia, but the conditions of the shelters (built by the International Organization for Migration (IOM)) are nice to the extent that individuals turn themselves in to stay at these shelters. Another large number of detainees are in Malaysia, but UNHCR does not have access to children other than those that identify as Rohingya. The conditions in these immigration detention centres are not child-sensitive, subjecting children to a lot of abuse and risks. Many children die in detention centres of Malaysia and Thailand. These countries don’t tend to deport individuals, but in return, they face detention. Children should not be detained, and UNHCR supports that position. There are alternatives. Illegal crossing of borders is specifically contemplated by the Refugee Convention. UNCHR is cooperating with UNICEF, the International Committee of the Red Cross (ICRC), and IOM to end detention and looking at NGOs to litigate these cases.
Questions & comments

Question/comment (1): The involvement of social workers should be mandated by amending the law. India has an example of this. Children in conflict with the law go through emotional traumas, where magistrates may not have the necessary qualifications to judge them like social workers can. And involvement of NGOs is necessary. In terms of detention, courts should appoint social workers to visit centres to make sure children are not detained.

UNODC response (1): Refugees should not be dealt with by the criminal justice system, but countries may lack other institutions to deal with these issues. It is not possible to rely solely on the criminal justice system to solve all of the issues. Lebanon has a practice of placing social workers at police stations, so that children are in contact with them from the beginning.

Burden-sharing is occurring on an international scale rather than between two countries. The burden as a result of any large-scale movement of populations should be shared by various countries. Detention of children for migration or refugees is against good practice and international standards.

Question/comment (2): Are there any countries in ASEAN that have bilateral agreements to take back children, especially with regards to unaccompanied children? Are there any arrangements to take children back? There are instances of documents being destroyed, making it impossible to repatriate the children. What are the actions being taken by international organizations to solve this problem?

UNICEF response (2): Social workers exist in many ministries in Thailand. However, it has a low ratio of social workers vis-à-vis the population. So there needs to be thorough evidence that Thailand is seriously in need of social workers and what they are actually doing. UNICEF is currently conducting studies to gather evidence to prove this need. Thailand recently professionalized social workers. UNICEF has been working to determine the best interests of the child, especially for those that are unaccompanied and might return to their country of origin.

Question /comment (3): Thailand has accepted many people from neighbouring countries and used a lot of funds to provide assistance. We need to shoulder this burden. Due to this extensive burden to the Thai government, I am glad to hear about the burden-sharing with other governments. I would like to hear more about these initiatives. Additionally, many children don’t have official documents, but we don’t want them to be subject to any exploitation. What can be done to address this issue? The cost is rising for the Thai government.

UNHCR response (3): 10% of children in detention are unaccompanied. For refugee children, there is no possibility of returning to the country of origin, so there will not be bilateral agreements. There are individuals that destroy their documents to pretend to be children because they get priority. A sizable number of refugees in Thailand are in temporary shelters, and many of them will likely soon be returned to their countries, but Thailand certainly does not have a disproportionate burden of refugees as compared to other countries (one in four people in Lebanon is a refugee). No country in this region has a disproportionate burden. To reduce costs, States should opt to not detain the refugees and should allow them to work.

6. Roundtable with experts on cross-border cooperation

Ms. Vuthaya Charoenpol, Country Program Director, Friends International (Thailand)

Friends International (FI), established in Cambodia in 1947, works with marginal youth, and is focused on preventing these children from living on the street. Regarding the question of how these children can migrate safely, FI provides services that educate, provide safety and some stability and works with partner NGOs. Examples of work include: Providing life skill training, drug prevention, and vocational training and helping build a future for young people in detention.

There are an increasing number of marginalized children and youth in the ASEAN region. Migrants include beggars, increase of youth (males) looking for employment. There is an increasingly unsafe migration, and organized migration could potentially lead to trafficking. The current pattern of migration follows a vicious cycle: they migrate, they are sent back, and then they migrate again.

The key is prevention plus reintegration, which can ultimately prevent re-migration. This requires the involvement of the community, including citizen campaigns, specific training and child-safe agents. It also needs family support, in the form of emergency support, vocational training, access to employment and psychosocial support. This must be accompanied by more opportunities for youth, including vocational training, internship/apprenticeship opportunities and access to employment.
There are currently some partnerships with Cross-Border Organizations, including UNICEF, which provide technical assistance. Specifically, the partnership is useful for sharing results emanating from the programme and advocacy for the partnership approach with the Royal Government of Cambodia (RGC), advocacy and sharing of lessons learned at regional and international levels, co-chairing with Friends-International biannual and annual review meetings with the implementing partners, monitoring and evaluation of the programme and financial support to co-fund the programme. The partnership with Friends International facilitates network coordination, supports capacity building, fostering collaboration, exchange and sharing of lessons learned, the development of a data collection system, operational research, advocacy and awareness campaigns and monitoring evaluation.

The results of working together in partnerships have been positive.5

5 • Capacity-building of civil society organizations (CSOs) related to child protection services, raising awareness and advocating for child protection issues, including advocacy focused on Alternative Care, and a campaign for families, communities, local authorities and donors, with a total reach of 150,000 children / families. The capacity-building has also enabled the establishment and implementation of 120 trainings for 1,200 people, exchange visits (alcohol, foster care, family reintegration, vocational training, case management…) and at least 120 trainings provided with an average of 10 CSO staff per training, at least 72 Technical assistance (TA) and support visits conducted to partners, and 6 SOPs developed by 2014. All 9 CSOs will submit quarterly reports using the Partnership Program for the Protection of Children’s (3PC) database by 2014.

• Service provision and networking to prevent and respond to violence against children, including:
  
  -Prevention, with 941 (Formerly 212) becoming ChildSafe members, 346 trainings provided to communities, 589 meetings conducted in communities and 4,070 called through ChildSafe hotline

  -Protection, covering 20,570 (Formerly 7,135) Children , 4,839 (Formerly 1,677) youth and 9,145 families, with 5,521 (Formerly 1,976) accessed to drop in centre, 1,411 (Formerly 323) youth attended vocational training, 135 (Formerly 36) diverted from court and police, 1,819 (Formerly 531) accessed Transitional Home/residential care, 1,258 (Formerly 545) attended remedial class, 879 (Formerly 159) reintegrated into families, 47 (Formerly 9) placed in fosterer care, 130 (Formerly 33) reintegrated in group living/independent living,

  -Networking 3PC and Outside 3PC partners, with network mapping and strategic network development.

Malina Enlud, Asia Director, A21 Foundation

The A21 Foundation Thailand works with communities and provides the best possible solutions for each individual. We support the Government and partner NGOs and work together to achieve the best possible outcome for each child, being committed in the creation of sustainable long-term opportunities for communities and individuals. Another aim is building more partnerships and a bigger network in order to assist more children and more quickly. One must take into consideration that Lao People’s Democratic Republic (PDR) and Cambodia have no funds and Thailand has limited funds.

There are various issues regarding Cross-Border Assistance, including that victims are dropped off at the border and many do not make it back to their home, they find agents working in the border areas and come back to Thailand, and there are no available employment and vocational training options for minors going back home. This makes it easy to see the same faces every few months.

A21 works a lot in Pattaya. Most of the youths they see are lacking birth certificates or registration. Regarding specific actions of the SAFE Repatriation / SAFE project: The A21 SAFE PROJECT provides support for minors and adults, victims of exploitation or trafficking and wish to be repatriated back to their home country. The project also helps each individual according to their needs in order to give them the best support possible and reduce the risk of re-exploitation. The project provides long-term support for minors by supporting education and employment opportunities for individuals and their communities.

As for specific case studies of the project:

A) Cambodian Boys: 15-year-old boy who was brought to work from Cambodia to Thailand. He came by paying immigration officials at the border and got a job to work in a construction company in Thailand and worked there for a month before the company took his passport and called the police. A21 was able to repatriate him to Cambodia and bring him back to his family.

B) Cambodian Girls: 15-year-old girls from Cambodia who were brought to work in a construction company...
in Thailand. The girls come from very poor families and wanted to provide income for their families. They had no opportunity to study or learn a trade in their hometown. The girls were reunited with their parents in Cambodia. An A21 social worker accompanied the girls and visited the families to make sure the girls were safe. The A21 social worker discussed options for long-term employment for the families in order to make sure the girls don’t have to go back to Thailand to work. After the repatriation, there was micro-business support, and the girls received assistance to set up grocery stores.

C) Lao PDR: A21 Thailand coordinated with a partner NGO at the Laos - Thai border and supported a small business for a girl in her hometown.

D) Vietnam: Vietnamese boys were caught on a fishing boat, and did not speak Thai. An A21 partner visited the boys’ homes and spoke with their parents. As many fishing victims come from the area of Ca Mau, A21 is developing a program to help these communities to set up businesses and bring awareness about the fishing industry.

Questions & comments:

Question (1): What are certain prevention measures? What is your mission’s main goal?

Response (1): A21 stresses that we improve community building. Our prevention measures have a multi-layer focus. The key is to establish mechanisms so that when borders open, we don’t have a 10x increase of undocumented migrants but instead, more people who have legal documents and are skilled.

7. National context: presentations summary

7.1 Brunei

H.E. Datin Paduka Intan Md. Kassim,
Brunei
Representative on
the Rights of
Children to ACWC,
Member of IJJO Asia-Pacific Council for
Juvenile Justice

Brunei has child-specific laws, mainly the Child and Young Persons Act (CYPJA), as well as other legislations with provisions for juveniles (Penal Code, Criminal Procedure Code, Muslim Family Law Act, Sharia Penal Code Act, Marriage Act, and Labour Act).

The CYPJA takes into account the best interests of the child, but at the same time, the children are not exempt from accountability. The Act aims to maximize diversion. They have facilities for (1) juvenile offenders and for (2) children under protection, though there are some mixed facilities, due to insufficient economic resources. They realize that this is not the best approach, but it is inevitable as of the moment. Regardless of their nationality, children are all sent to these facilities.
There is a committee consisting of social workers in the juvenile courts and there are specialized police investigation units for women and children.

There are very few cases of cross-border children in contact with the law, so they don’t have much experience. However, they realise that the potential for the rise in numbers is existent because there is a big foreign workers community (from Indonesia, the Philippines, Bangladesh, East Malaysia, etc.).

There is only a small number of children entering illegally for work (from the same countries as previously mentioned). In 2014, there were 12, in 2015, 5, and in 2016, 1, non-national children (from the Philippines, Malaysia, and Cameroon) held under protection in the welfare section homes. There is a strict nationality law in Brunei – even after residing for 20 years, individuals may not receive nationality.

Some recommendations and reflections from Brunei: a) enacting provisions for non-national children in conflict with the law, b) expanding the nature of the cooperation with ASEAN countries like Brunei already has with Malaysia and Singapore in terms of endorsing warrants and summons, c) bringing cross-border children into the ASEAN agenda (like what Brunei is doing in introducing performance standards for child protection, etc.), d) enabling cooperation of all justice systems in the ASEAN regarding criminal justice, e) judges are difficult to convince with new laws because they have their own interpretation of the law.

Examples

**Case 1:** Children can only be helped when their families can be traced. Currently, Brunei is working to find the family of an African Filipino child in the Philippines, while the child is placed in the welfare facility in the meantime. However, Brunei is having a difficult time finding the family even with the cooperation of the Filipino Embassy. In 2014, there were 2, in 2015, 8, and in 2016, 1 non-national children held in rehabilitation (mostly illegal entry and suspected of trafficking).

**Case 2:** Only two Embassies in Brunei (including Indonesia) have facilities in their Embassies to house children before sending them back to their families. A Vietnamese boy was housed with a Brunei family until the Embassy was able to find a way of sending the boy back to his home country (because they didn’t have the facilities on hand). The boy had not been charged but arrested along with fishermen on a boat.

It is important to note that Brunei conducts bilateral cooperation with countries like Malaysia and Singapore for endorsement of warrants and summons (which are all common law countries, making it easier to cooperate in this manner). There is also a mutual legal assistance treaty of 2004 among ASEAN countries.

Some challenges Brunei faces include: economic consideration due to the small size of the country and population, lack of resources of professionals, including trained social workers and counsellors, prevalence of political and security issues across borders and the introduction of the Sharia Penal Code and the question of how to harmonize it with CYPAs and CRC.

7.2 Cambodia

**Ms. Sotheavy Chan,**
Secretary of State
MOJ, Cambodia,
Member of the IJJO Asia-Pacific Council for Juvenile Justice

**Mr. Chhay Vanna,**
Under Secretary of State
Ministry of Social Affairs

The general situation is that the Royal Government of Cambodia (RGC) has been progressing and made achievements in all sectors through strategies for growth employment, equity and efficiency. The Constitution of Cambodia enacted in 1993 recognises the Council for the Development of Cambodia (CDC).
The Ministry of Social Affairs Veterans and Youth Rehabilitation issued and adopted a policy on alternative care for children which aims to ensure that children grow up in a family and the community. Through this policy, the Ministry also encourages other relevant ministries, institutions and NGOs to be committed to the implementation of policy-related programs on alternative care. Child welfare issues have been carefully taken into account and cooperatively held as the second priority. The ministry, policies, principles and legal instrument related to child welfare have gradually been reviewed and improved to suit the current context of the development of the nation. The RGC has also taken significant steps to implement the Rights of children in contact with the law. In this regard, the Juvenile Justice Law has been passed and adopted by the National Assembly on 30 May 2016.

Regarding specific interventions, the Ministry of Social Affairs, Veterans and Youth Rehabilitation has a Youth Rehabilitation department that on duty implement the Juvenile Justice program. This department has a mandate to: a) provide child-appropriate proceedings including program and service for crime prevention, diversion, rehabilitation, and integration to the community and family; b) promote and protect the rights and interest of the child, c) provide treatment activities/programs to address issues that cause the child to commit an offense, d) follow up after-care of children in conflict with the law, and to ensure that the child has a good confidential living with social development; e) counseling, skill training education and other activities that are aimed to improve and enhance the child’s psychological, emotional and social well-being and integration with the family and; f) follow-up after care of children in conflict with the law, and ensuring that they are able to have a hopeful life and become a good person in the society.

Next steps include: 1) there should be specialized judges to be responsible for dealing with juvenile cases, 2) the law on ‘juvenile justice’ should be disseminated, as it has been adopted on paper but not in practice; 3) there should be strengthening of good cooperation with the community; 4) legal provisions concerning children and the new law should be prepared, and; 5) monitoring mechanisms in collecting data of cases of children in conflict with the law should be strengthened.

Joint recommendations in moving forward: In order to easily deal with the cases of children in conflict with the law, there shall be a joint guideline which is suitable to the situation in each country in ASEAN. There should be a specific plan among ASEAN countries (e.g., exchange of practices, cooperation between countries).

In order to strengthen the implementation of child protection and helping the children who come into conflict with the law, we have the following recommendation: to develop a training course for all sectors including social workers and law enforcement, that deal with young people in conflict with the law and juveniles at risk, to strengthen awareness campaigns and develop a national action plan for juveniles at risk and children in conflict with the law, to improve data collection on children in conflict with the law and network of juvenile justice systems and sharing this database, to establish after-care programs for juveniles released and partnership with non-governmental and community service, to promote the development of a community-based sentencing options, and to further strengthen in collaboration and cooperation work, on the programs of juvenile justice and sharing the solutions to the challenges among ASEAN, Asia-Pacific member countries and others.

The main challenges we face are the cultural differences among ASEAN countries, the difficulty in finding interpreters/translator with a skill in the terminology required, the difficulty in seeking evidence related to the real age of minors, the fact that the Law on “juvenile justice” is a new law, and that there is currently no agreement on transferring inmates between prisons situated in different countries. There are added difficulties, such as the reasons which lead to the separation of vulnerable children from their family, and which causes them to come into conflict with the law. The situations and difficult circumstances that cause children or young people to be at risk of family disintegration and in conflict with the law include the following: children whose parent or guardians are not living with them,
actual or threatened separation of children from families through abandonment, imprisonment, trafficking or migration, actual or threatened violence in the home, physical or sexual abuse, or exploitation; children whose parents or guardians do not have the capacity to fulfill their obligations because of a serious lack of basic necessities and services such as shelter, food, education and healthcare; children that are not able to receive appropriate care due to the chronic illness and disability of the parent or care giver; children that are not able to receive appropriate care due to a family struggling with alcoholism, gambling, drug addiction or other substance; lack of human resources and limited capacity building; and finally, budget limitations for the implementation of programs.

In order to fulfill the implementation of juvenile justice, we need: to create principles and legal instruments related to juvenile justice; to create sub decree, prakas and other relevant documents in order to establish the Centre for Juvenile Justice and collaboration; to strengthen relations with ministries, institutions, NGOs in order to protect and promote the rights of the child; to strengthen and expand community-based programs and mechanisms for the practices of prevention, diversion and restorative justice for children at risk and in conflict with the law; to strengthen the child protection network and the committee of women and children at the commune level; and to further collaborate with all countries, especially within the Asia-Pacific region and member states of ASEAN on the Juvenile Justice System.

7.3 Indonesia

Mr. Andi Taletting Langi, Deputy Director Doctoral Program of Human Resource Management, Indonesia

Indonesia would like to see the strengthening of the commitment of protecting children in ASEAN. The Law on Child Protection was revised in 2012, coming into force in 2014 (Law No. 35), and the law regarding children in conflict with the law was also amended in 2012 (Law No. 11). The juvenile justice system of Indonesia has shifted from one of retributive justice (that treated children as objects) to restitutive justice (that emphasized compensation for justice) to restorative justice (that focuses on reintegration and recovery). The restorative justice system is victim-oriented and involves the community, providing an opportunity for the juvenile to express his/her regret for the actions. Changes have included strengthening the capabilities of officers and implementing a more expansive diversion program, implementing the obligation of providing legal assistance, establishing temporary child placement units, limiting detention periods, etc. The challenge on how to deal with children with disabilities remains.

Indonesia has a National Action Strategy on Children in Conflict with the Law directed by various Presidential Regulations and Instructions, focusing on enhancing the quality of law enforcement and institutional officers which come in contact with children, increasing the development of facilities and social welfare institutions, establishing child treatment rooms throughout the justice system (at the levels of investigation and trial), improving special protection of children who are victims of drug and other substance abuse, preventing violence in schools, etc. Examples include the Presidential Regulation No. 75 of 2015 on National Action Plan on Human Rights and the Presidential Instruction No. 10 of 2015 on Human Rights Action.

Some challenges that have been identified include: a disaccord in the cooperation between the police, correctional centres, etc.; rushed investigations due to short-term detention; no common perspective on diversionary measures and no common understanding of the implementation of the juvenile justice system; no exact distinctions between professional social workers and social welfare workers; a lack of information given to children regarding their own rights to legal assistance; and a lack of attorneys interested in handling cases involving children in conflict with the law.

As for current best practices; there is an integrated model for law enforcement officers regarding the treatment of children in conflict with the law, integrated training in the juvenile justice system, and trials for integrated
modules for the system. There are also new regulations covering diversion and training for juvenile justice, enhanced facilities and correctional institutions, and partnerships with other organizations in conducting research on children in conflict with the law, along with study visits and international expert meetings.

Some recommendations include making a common ASEAN-wide perception of children in conflict with the law, which should apply equally to all ASEAN law enforcement officers; improving and encouraging public participation for treatment of children in conflict with the law (to encourage the use of a community-based approach); implementing an integrated training for law enforcement officers and finally, establishing an ASEAN Action Plan on Cross-border Safeguards.

There is a large problem of lack of birth certificates of children who enter Indonesia. Children need legal documents to receive services, so Indonesia has been working with UNHCR to develop guidelines on this matter.

Dr. Elfina Lebrine Sahetapy, Faculty of Law University of Surabaya, Member of the IJJO Asia-Pacific Council for Juvenile Justice

The new Act for juvenile justice had made significant progress recognizing the vulnerability of children. It specifies the definition of children in conflict with the law (children between 12 and 18 years old who have committed a crime and can be prosecuted in criminal court) as distinguished from children in contact with the law (children who can become an offender, a victim, or a witness), and also includes provisions on diversionary measures.

The main weaknesses of the Indonesian juvenile justice system are: 1) The law stipulates that the police, prosecutors, and judges should be specialized in juvenile affairs, but the problem is that they are not certified. 2) The government states that training is offered, but according to colleagues in the field, the training wasn’t given. This means that these individuals are not in fact trained in children’s rights, etc. A training program with a certification is in the works.

There are some other challenges. For one, there is currently no data regarding non-national children under measures and sanctions. However, the principle of non-discrimination should apply equally to them, as it is applied to national children. Also, the identity of the juvenile offenders is not confidential, so they are not sufficiently protected. With economic problems, it is more difficult to ensure protection of children’s rights in Indonesia. Not all cases of children in trials have social reports, which is very important for the welfare of children because it provides a background for judges to consider when making their decisions. Then there is the issue of a large number of children being deprived of their liberty, who are spread among child prisons, adult prisons, and other forms of detention facilities. The stigma of this form of penalty stays with the child and produces further negative externalities. There is a strong retribution theory in Indonesia that seems to base penalties on revenge against the crime committed by the offender. Penalizing juveniles needs to be educative and constructive. There is special alternative treatment based on the HALT Program from the Netherlands. As a positive example, in March 2011, a shelter named Rumah Hati was opened with the goal of serving as a diversionary program for young first offenders that committed certain minor crimes (including theft and sexual violence). There are various vocational programs to teach skills for children to be able to earn money during and after the period of their stay. They are not prosecuted, and it does not leave a criminal record. However, there are problems of lack of qualified teachers, books, etc.

Some recommendations include: a) Considering the penalty ethics when penalizing children in conflict with the law (placing justice at the forefront); b) Taking into account the perception of the juveniles rather than basing sentences solely on *mens rea* – if the juvenile is not able to accommodate a penalty sanction, it shouldn’t
be given; c) Noting the compromise between the legal approach and the case work approach in juvenile court.

While the legal approach has the goal of protecting the public from potential dangers that can be caused by delinquents, the case work approach has the goal of therapy through evaluation of the background, social condition, personal difficulties, etc. It attempts to eliminate conflicts that can cause disturbance.

7.4 Malaysia

Datuk Dr. Heng Keng Chiam, Commissioner/Former Professor of Social Psychology, Malaysia, Malaysian Representative of ACWC, Member of the IJJO Asia-Pacific Council for Juvenile Justice

The Child Act 2001 which was amended in 2016 is based on the CRC (with the principles of non-discrimination and best interests of the child). This is only applicable to children under 18 years of age, unless they are charged with offences punishable by death. Non-national children are provided with the same safeguards under this act. MACR (minimum age of criminal responsibility) is 10, but may extend to age 12 if they have insufficient maturity to understand and judge the nature and consequence of his/her conduct. Imprisonment can only be imposed on children over 14 years of age.

Special procedures are stipulated for all stages of the criminal justice procedure, including arrest, detention, trial, etc. If not provided by the Act, the Criminal Procedure Code is consulted. While the child is being questioned, the presence of a parent/guardian/relative and probation officer is not required. This can unfortunately lead to abuse, and studies have shown this to be true. However, it is required for them to be informed of the arrest, the whereabouts of the child, grounds of the arrest, and the right to a counsel of the child’s choice. Children need to be brought before a magistrate within 24 hours of arrest. Bail is not permitted for grave crimes or in instances that are in the best interest of the child. Pre-trial detention should not exceed 6 months, but the practice does not exactly follow this. Hearing is delayed in fact because of the safeguards that are in place for the children (required presence of the parent/guardian, probation report, and special sittings of the court for children). The amended Act requires that the probation report is prepared within a month.

Pro bono services are available as provided by the Legal Aid Bureau under the Prime Minister’s Office as well as the Bar Council Legal Aid Centre, but many children and families are not aware of this opportunity. Male children are kept separate from adult offenders (where those under 12 years old stay with their mothers and those at or above 12 years old stay with their fathers), but female children are kept in the same facilities as adults due to lack of resources. Most prisons with children have schooling facilities from preschool to secondary level. Vocational training is also provided. However, this is only available after sentencing and not during pre-trial detention.

Although there is no formal program of diversion, police and prosecutors have discretion to divert rather than to detain as provided by the Child Act. The police can release the children through warning or mediating, and the prosecutor can decide not to prosecute or provide advice for the child to be referred to the Department of Social Welfare. The child may perform community service. The number of cases increases with age, but the types of crimes are primarily minor. The cases of non-citizens are also very minimal (usually due to non-documentation, etc.). Children involved in trafficking are placed in special shelters of refuge, with one shelter for male children and another for female children. The government is also working on victim support, recovery, and assistance. Malaysia has a National Policy and Plan of Action of 2009 that outlines the priorities for reform of the juvenile justice system. It aims to create a child-friendly environment for all agencies and to provide for free legal aid services and counselling, in addition to the standards, and protection modules, for those working with children. It calls
for the development of special rehabilitative treatment programs for child offenders and the introduction of diversional programs (including restorative justice, family conferencing, and community service).

There are currently some challenges, including the fact that safeguards, which are stipulated in the law, are not actually carried out in practice for non-citizens. Parents and guardians are not likely to be informed about the arrest of the child. Children are unlikely to be released on bail, leading to detention while pending trial. The vast majority of them are unaware of their access to free legal assistance. Due to lack of specialized police forces for children, they don’t understand how to protect children’s rights and handle the cases. There are no guidelines or standards for sentencing, leading to inconsistent sentencing.

As for recommendations, at a national level: the need for making available safeguards for all children irrespective of nationality; ensuring the presence of a parent/guardian, embassy representatives, and/or probation officers to participate in proceedings from the point of arrest; explaining clearly the availability of pro bono legal assistance; ensuring that deprivation of liberty is used as a last resort and introducing alternative measures of restorative justice; setting up of a specialized police unit trained to handle child offenders and training all personnel that come into contact with children. At a regional level: the need for adhering to the declaration produced by the ACWC. There is currently much diversity in the legislative frameworks of the different ASEAN states with varying MACR, definition of a child, diversionary measures, etc. There is also a need to develop a new declaration on the rights of children in conflict with the law, as well as to conduct a baseline study on the status of juvenile justice and establish standards for methods of arrest and investigation, sentencing, and diversion.

In conclusion, the juvenile justice system should apply equally to all children irrespective of their nationalities, to be able to say that there are cross-border safeguards in place. The system should respect the rights of children, and this can be achieved through an ASEAN-wide declaration.

7.5  Myanmar

Ms. Marlar Maw, Deputy Director, International Relations and Research Department Office of the Supreme Court of the Union

In Myanmar, the main Legal Instruments relating to Juvenile Justice are: The Young Offenders Act (1930), the Children’s Act (1955), the Child Law (1993), and the Anti-trafficking in Person Law, promulgated in 2005.

The Child Rights Law reform process in Myanmar is underway, with a new Child Rights Law currently being drafted. In this new law, the age of child /the age of criminal responsibility will be increased, and a new chapter on witnesses and victims regarding the substance of their rights will be set out, and diversion will be considered as a principle.

Regarding the different levels of courts in Myanmar, as well as the jurisdiction of the Juvenile Court:

The Juvenile Court covers cases of children who had not yet attained the age of sixteen at the time of committing the offence. The Court is formed by the Yangon City metropolitan area (Lower Burma), which includes 20 townships, and the Mandalay City metropolitan area (Upper Burma) including 5 townships.

In ‘Applying Law in Juvenile Cases’, the law of evidence, criminal procedure code and penal code are mainly applied. Regarding access to parents, guardians for children under arrest, the parents or guardians of a child in custody must be notified by the arresting official within 24 hours from the start of the period of the arrest (Rule 67 of Child Law). Regarding the avoidance of delay between arrest and first court appearance, an arrested child must be sent up to a court as soon as possible (sec 37 (f) Child law), and Rule 65 of the Rules Related to the Child Law, allows a 24-
hour limit for the custody of a child under arrest before an arresting official. Regarding Criminal Responsibility, under 7 years of age, the child has to be acquitted by the juvenile court as he or she is not legally liable for any criminal offence. During the trial of Juvenile cases, the supporting evidence used to determine the age of the child include; a birth certificate, a copy of an extract of a school admission register, a citizenship scrutiny card (or) Foreign registration certificate, a doctor’s medical certificate, a copy of resident registration and other valid supporting evidence.

Regarding punishment, sentencing options include training schools, with the punishments imposed by the juvenile courts aimed at bringing about reformation and rehabilitation of the child offender. There is, therefore, no death sentence or physical punishment, and imprisonment cannot exceed 7 years. Some elements taken into account when determining the sanction include; the age and character of child, environmental circumstance of child, the cause for committing an offence, a report of the probation officer and other circumstances for the interest of the child. There is the right of appeal or right of revision in accordance with the provisions of the Code of Criminal Procedure.

Regarding Institutional Responsibilities for cross-border issues involving child victims and child witnesses of crime, there is the following distribution between the different institutions:

a) The Supreme Court of the Union, which confers the power to juvenile judges and township judges to try juvenile cases and to district judges to try cases against trafficking in persons. It also arranges security programs while the victims are giving testimony or contesting cases. Juvenile Courts in Yangon and in Mandalay have been equipped with special closed-circuit televisions (CCTV) by UNICEF.

b) The Ministry of Home Affairs, which has organized three “Child Protection Task Forces” with UNICEF’s support under the Department of Transnational Crime in Mandalay, Yangon and Nay Pyi Taw in 2013. The Mandalay task force is the only operational one. It carries out awareness programs related to education and publication of danger of trafficking, in cooperation with INGOs, and NGOs, to the people of rural areas and to the camps for internal displaced people in armed conflict areas.

c) The Ministry of Social Welfare, Relief and Resettlement: Department of Social Welfare. The National Committee on the Rights of the Child (NCRC) is the institution in charge of prevention for children at risk, while the Department of Social Welfare (DSW) has carried out the repatriation, rehabilitation and repatriation of victims of trafficking since 1992. From 1994 to April, 2016, the total number of 3,447 victims who were trafficked in Thailand, China, Indonesia, Japan, Bangladesh, Timor, Singapore, Taiwan, Macao and Malaysia were repatriated.

Current practices for cross-border child victims of crime or child witnesses of crime include the Myanmar-Thailand Cooperation on Combating Human Trafficking, which is a memorandum of understanding (MoU) between Myanmar and Thailand to cooperate and implement measures to combat human trafficking through April 2009. Myanmar case workers made 23 visits to shelters under the Department of Social development and Welfare, Thailand, from 2008 to 2014. The border cooperation anti trafficking in person (BCATIP) has also been implemented in the border area of Myanmar and Thailand. There is also cooperation with other countries. The government signed a MoU of Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) with countries in the Mekong region-Cambodia, China, Laos and Vietnam. In 2003, MoU on Anti-Trafficking Project in Asia was signed between Australia and Cambodia, Laos, Myanmar and Vietnam. A protocol on Myanmar-China bilateral cooperation in border areas was put into place in December 2001. Border liaisons Offices (BLO) were established in the border areas of Myanmar and China to carry out necessary coordination for repatriation of the trafficked victims. There is no specific national plan for cross-border safeguards for children in contact with the law. Since the enaction of the Anti-Trafficking in Persons Law, a 5-year national plan of action as well as annual work plans have been set in motion. At present, the 2012-2016 national plan of action has already been issued.
Some key challenges include: a lack of awareness on children’s rights, and that procedures and laws in the territory are not accessible to the Government, especially in Internal Displaced Persons (IDPs) camps across the country. Also, the training school for children in contact with the law could not provide an effective rehabilitation program for children in conflict with the law due to the lack of budget and the lack of training, along with the lack of post-training monitoring, therefore being one of the biggest challenges to the system. Finally, there are often difficulties for the courts in determining the age of many juveniles who come into conflict with the law, which can cause delays in the criminal justice process.

Some recommendations in finding solutions to these challenges include: 1) All children should have equal rights regardless of religion, race and nationality; 2) the national law should include minimum safeguards for cross-border children; 3) common policies consistent with national laws should be established, and 4) sharing and access to news, information and judgments regarding cross-border protection for children in contact with law though the ASEAN Judiciaries Portal should be encouraged. Because detention of migrant children is illegal according to international standards, special protection of migrant children should be ensured. Also, child victims and witnesses of non-nationals should have access to a justice process. It is also important to provide child rights training to judges, law officers, and the police, and ensure that infrastructures are child-friendly, especially when separating children from adults. Finally, the regular cooperation between local, regional, and national authorities of both departure and destination countries, but also local populations and private sector, to prevent child exploitation (smuggling) and trafficking, should be encouraged.

To conclude, it is clear that there are some challenges that have to be tackled by the juvenile justice system. In doing so, national laws should guarantee a minimum standard of human rights for both national children and non-national children. Also, law enforcement bodies should be provided with the necessary training to understand child-friendly procedures and every state should be encouraged to implement more and more transnational judicial cooperation. Finally, all necessary measures and procedures will come out as common strategies to ensure equal treatment of children across state borders.

7.6 Philippines

Ms. Monica Pagunsan, Director Planning and Management Service, Department of Justice, Philippines, Member of IJJO Asia-Pacific Council for Juvenile Justice

The policy of the Philippines is to protect the best interests of the child, ensure child participation, promote their sense of dignity and worth, implement measures without resorting to the criminal justice system, respect human rights, and establish legal safeguards. Children should be dealt with based on their well-being and should be provided with institutional support, and no discriminatory measures should be taken against them.

Various actions against children are currently prohibited (including labelling and shaming, employment through threats, use of abusive measures, use of cruel and inhumane punishment, imposition of involuntary servitude, etc.), and criminal sanctions are based on the Penal Code. Public officers can be disqualified from office if they commit prohibited acts against children, in addition to being imprisoned. Regarding age, children between ages of 16 and 18 that acted without discernment will undergo intervention including counseling, skills training, referral to appropriate agencies, support services to the family or other parent, and child activities, etc. Children between the ages of 16 and 18 that acted with discernment will go through diversion. The amendment to the juvenile justice law stressed that detention will be used as a last resort.
The principles of diversion are the use of positive measures and fully mobilizing resources, as well as promoting the well-being of the child and dealing with children in an effective, fair, and humane manner. There are community-based rehabilitation centres for children. There is no specific provision in the juvenile justice law for non-national children, but they should be treated with the same provisions of the law. Community officials or the police will need to exert effort to find the family of any apprehended children. They will be provided with cultural-sensitive treatment. Deportation is a measure taken for those in violation of residency.

Cross-border measures in the Philippines include extradition, mutual legal assistance, principles of reciprocity, etc. Extradition (with 13 countries) and mutual legal assistance (with 8 countries) treaties are signed with various countries, as well as transfer of sentenced persons agreements (with 5 countries). Extradition requires a full trial and is a complex process. For children, the long wait can hinder the best interests of the child.

Some recommendations include; ensuring the respect for the sovereignty of each state in all processes, creating and implementing regional guidelines for juvenile justice to ensure that children in conflict with the law are not abused or faced with violence, conducting child-sensitive ASEAN cross-border cooperation on children in conflict with the law and entering into bilateral or multilateral agreements specific to child protection, and finally, harmonizing laws across countries and establishing further mechanisms to protect the best interests of the child.

“The principles of diversion are the use of positive measures and fully mobilizing resources, as well as promoting the well-being of the child and dealing with children in an effective, fair, and humane manner.”

7.7 Singapore

Razwana Begum, Assistant Director, Ministry of Social and Family Development, Singapore, Member of IJJO Asia-Pacific Council for Juvenile Justice

Some laws in Singapore are still not aligned with the CRC, but there are developments in the cross-border safeguards. Ministries across the board try to differentiate children from adults, but there are issues regarding the MACR, safeguards against violence in law enforcement and sentencing, safeguards in institutions, etc. There are no specific domestic laws that cater to foreigners, but all children are treated in the same way. There are many foreigners in Singapore and these children do come into conflict with the law, but they receive equal treatment. There are youth courts, and additional courts were created to handle cases for individuals between the ages of 17 and 21 (it used to be that those above 17 were handled by the state court). The Ministry makes proper risk assessment for boys and girls in the homes. The rates of arrest for children are low in Singapore.

Regarding the way the government can work with communities and families in order to support young offenders, the system is becoming more restorative. They are trying to build more collaborative relationships and work with all partners in the community. They are also trying to build capabilities and give respect to the offenders. In this way, community-based sentencing was implemented in 2011 to provide greater flexibility and diversity in sentencing (that moves away from the traditional method of imprisonment), allow low-risk offenders to continue living in the community while serving their sentences, etc. Singapore is still trying to move towards a more positive direction for minimum ages, etc., even though they do have good systems in place for victims of sex trafficking, etc. They attempt to help children in various ways, such as placing them in hospitals before entering the justice system for certain cases, etc.
Singapore is proud of its diversionary programs. Pre-court diversion exists, including the Enhanced Streetwise Programme (13-19 years old), Guidance Programme (10-19 years old), and Youth Enhanced Supervision Scheme. They are run by partners in the community usually for minor offenses. There are other programs for those with mental disabilities. Supervision is conducted, and children do not have contact with the court.

There is also a Gang Intervention Programme that tries to prevent children (between the ages of 13 and 19) from entering the criminal justice system by having them leave criminal gangs.

There is also a Drug Intervention Programme. Drug abuse is not a big problem in Singapore, but the strategy is meant to place children (below 21 years old) in community-based programs rather than sending them to rehabilitation programs. They receive regular urine tests, etc.

Court interventions that are community-based include probation and community service, which may require daily reporting, mandatory treatments, short detention, etc. Court interventions that are institutional are also present in the form of Juvenile Rehabilitation Centers.

Singapore is following a new triage system of intervention, capacity building, and diversion, which is proving to be useful. It leads to early identification of risks and needs and matches intervention to rehabilitation needs. It diverts youth from the criminal justice system and utilizes various support services. Singapore adopts the risk-need-evidence with the good lives model as the modality of their practice. Evidence-based approaches begin with the assessment of risks and needs. If there is no one to look after children, probation will not likely be recommended because that will not be effective. In that case, short-term detention might be necessary (especially for non-nationals, who will be kept for a short-term before being deported to their own countries). Additionally, there are motivational and restorative approaches that encourage accountability and create the opportunity for juveniles to change their behaviours. Canadians have trained Singapore officials, which has led to a targeted intervention tool and model, including risk assessment tools. It helps identify risks and protective factors and how the government can lead to appropriate protective measures.

Supervision can work in the form of an electronic bracelet monitoring, placement in hostels, daily/weekly reporting, school conferences and home visits, updates from individuals working with children, curfews, case discussion with psychiatrists, etc. It follows a model of intensive probation, working with mental health professionals (both through psychologists in the Ministry and external professionals). The domestic law of Singapore may not currently cater to cross-border children, but social workers and practitioners are advocating for this. The people on the ground are the key. Therefore, building the capability is essential.

Some recommendations include following a whole government approach. Ministries (for immigration, education, etc.) should work together to decide whether the probation is a viable option, etc. There should also be an enhancement of restorative justice and viewing the system with a restorative perspective (for prosecution, rehabilitation, etc.), while also involving the family and community and building their capability. Law and legislation will not be practical if the community isn’t involved. There should also be a focus on targeted prevention and having a child-centric approach. An example of this is the exploitation of children in harassing clients of illegal money lending. Finally, an outcome-based approach should be constructed, and principles and provisions of the CRC should be widely applied in social welfare settings and in legal and administrative proceedings.

7.8 Vietnam

Ms. An Dao, Deputy Head of Division, Ministry of Justice (MOJ) Vietnam, Department of Criminal and Administrative Laws, Member of the IJJO Asia-Pacific Council for Juvenile Justice
Ms. Nguyen Minh Hang, Legal Specialist of International Cooperation Department of MOJ

As an overview of Vietnamese laws, minors are those under 18 years of age and children include those below 16 years of age. However, there is no separate law on juvenile justice and these cases are handled by the Administrative system and the Criminal system. There are many laws stipulated for juvenile justice: Child Law, Penal Code, Law on handling administrative violations; Criminal Procedure Code, Law 2010 on criminal judgments execution; ordinance on procedures to apply administrative measures at the court.

The current law on Vietnamese Nationality states that foreigners residing in Vietnam are either foreign nationals or stateless persons who permanently or temporarily reside in Vietnam. There is a law hereby that children born in the Vietnamese territory who do not have a nationality and stateless persons permanently residing in Vietnam, should acquire Vietnamese nationality under this Law. There was a legal reform in 2013, a law on handling administrative violations in 2012, an ordinance on procedures to apply administrative measures to the court in 2014, a law on the organization of the Courts, the Penal Code of 2015, the Criminal Procedure Code in 2015 and the Child Law in 2016.

The current legal framework includes the Constitution and a child law that recently came into effect on June 1, 2016, which main principle ensures that children fully exercise their rights and ensures no discrimination, for all children. It also recognizes the rights of the child in CRC for all children, except the right to social security, which for now just covers Vietnamese children because it depends on the socio-economic conditions of the location where the children are found to be living in and on the conditions of the parents and caregivers. Article 30 of this law establishes the right to protection during judicial and administrative handling proceedings. One section regulates the rights of the child during judicial proceedings and administrative handling proceedings, and its principles are compatible with the Guidance Note of the Secretary General of the United Nations regarding its approach to justice for children, establishing protection for offenders, victims and witnesses as well as a linkage between social welfare and criminal/administrative handling proceedings. In this regard, there is no discrimination between a national and non-national child; all rights of the child in CRC are recognized, and is compatible with the 9 Guiding principles in the Guidance Note of the Secretary General. This said, for these legal prerogatives to take effect, the juvenile must be under 16 years of age, as young people between 16-18 years of age are not considered children, and therefore are not offered protection measures (prevention, support and intervention) under the Child Law.

In relation to the Penal Code, it applies to all acts of criminal offenses committed in the territory of the Socialist Republic of Vietnam, with no distinction between citizens and foreigners, including stateless persons. Also, persons aged 16 or older shall have to bear penal liability for all crimes they commit. Persons aged 14 to 16 shall have to bear penal liability for intentionally committed very serious crimes or extremely serious crimes. There was a big reform in the Penal Code in 2015, with the main changes being the recognition of the principles of the CRC and Guidance Notes of the Secretary General of the UN, the widening of the exemption of penal liability for minors under 18 years of age, and a Criminal Procedure Code. This code established certain provisions including a chapter on international cooperation, and the non-distinction between a national and non-national person.

Regarding the law on organization of the Court, there is the Family and Juvenile Court in People’s Court system: at Supreme Court, and provincial Court. At a district level, it depends on the specific situation. The Family and Juvenile Court is multi-jurisdictional, covering children matters in the civil, administrative and criminal law.

Regarding the law on handling administrative violations, there is a sanction for every offense, regardless if it has been committed by a citizen, a foreigner or a stateless person. Administrative
measures include community-based measures; sending minors to reformatory schools, and diversions - but these do not apply to foreigners, including non-national children. Therefore, minors under 18 years old that are foreigners, including stateless children, are not subject to administrative measures.

In the National program on child protection, one part mentioned protection of children during justice proceedings, but nothing about cross-border issues. On April 4th, 2016 there was the launching of the first Family and Juvenile Court in Ho Chi Minh City, Vietnam. It is the first ever specialized court for children in the country, aiming to provide better support and protection for children in contact with the law. It is expected that the Family and Juvenile Court will be rolled out across all the provinces of Vietnam.

In 2006-2007, the Ministry of Public Security and UNICEF Vietnam proposed a Training Manual on Child Friendly Investigation. It established 10 Child Friendly Investigation Rooms, guidance on the development of further Child Friendly Investigation Rooms and a video for training child-friendly investigation proceeding (50 min) that will be made available to police.

As for some data from the police regarding children in conflict with law: in 2011 there were 13,600 (boys: 13,062; girls: 538), in 2012: 13,289 (boys: 12,789; girls: 508), in 2013: 10,603 (boys: 10,211; girls 392), in 2014: 9,156 (boys: 8,877; girls 270), and in 2015: 8,405 (boys: 8,148; girls: 257).

Regarding data from courts, on children on trial, in 2011 there were 3,243, in 2012: 6,289, in 2013: 5,334, in 2014: 4,513, and in 2015 there were 3,557.

In terms of stateless children, there is currently no information or data about them, nor any research on cross-border issues. Therefore, some challenges that should be addressed are: to have a legal framework that is compatible with the CRC and the Guidance Note, taking into account that enforcement is a big challenge; the lack of research on violence against children in conflict with law; and the fact that violence may be a sensitive issue. In doing so, some recommendations are based on an adequate research and data collection system, and advocacy and capacity building, with a focus on training.
8. Drafting together: Guidelines for cross-border issues

Dr. Wing-Cheong Chan, Associate Professor, Faculty of Law, National University of Singapore, Member of the IJJO Asia-Pacific Council for Juvenile Justice

If the EU can create cross-border guidelines, so can the ASEAN. Although the process may take a long time, the ASEAN can learn from it. In the ASEAN region there are issues relating to differences in languages for non-nationals, so interpretation and free lawyering, as well as the presence of parents and guardians, are important. These issues should be incorporated into the national legislation. Doing better for non-nationals also does better for the nationals. The declaration on guidelines should be an aspirational document. It cannot be too easy because it should be an upward-looking document. It should be something we all agree on. There is a momentum for developing and enhancing the juvenile justice system, either reforming the old laws or enacting new laws. States are continuing to review their own systems, so right now is an ideal moment to speak about ASEAN guidelines.

Prof. Dr. Ton Liefaard, UNICEF Chair in Children’s Rights at Leiden University, Leiden Law School, Member of the IJJO European Council for Juvenile Justice

States have done a wonderful job of presenting their own systems at this meeting. It was highly informed and greatly researched. There may be more complexity in this region than in Europe regarding cross-border situations. Standards for cross-border situations (for children) are not specified in countries and in the region as a whole, which is also true in Europe. There is indeed momentum about thinking of the non-national children within the jurisdiction of their own boundaries.

Some recommendations and aspects to take into account

Minimum age is very important in cross-border situations, so harmonizing the age by raising it to the international standard may help ASEAN with cross-border cooperation. The same holds true for the upper-age limit. States should discuss the justification for transferring children into the adult system. All individuals under the age of 18 should be protected and States shouldn’t divert from this. This prevents fruitful cooperation among States. Birth certificates are important for cross-border systems. Children need to be given the benefit of the doubt (if unsure about the age, handle the individual in a child protection manner). Children are diverse. There is no “heterogeneous children”. There are different age groups, children with disabilities, children in other vulnerable groups. So the draft document should specify different groups of children. Connection between immigration system, criminal justice system, and child protection system should be strengthened. All children in the States should be given access to protection systems. Criminal justice system should be used as a last resort. It is not an obligation, but an option. Think about the best response for the child. Involvement of communities is extremely important, which can be much more restorative than restitutive.
Questions & comments:

Question/comment (1) - India: Children irrespective of their nationality should be treated in the same manner. This is only possible if there is a joint declaration among the States. Personnel in shelters and other facilities, as well as those generally in contact with children, do not have the correct perspective to handle issues because they don’t have enough awareness. Sensitization is necessary. There was a great change in children who were conducting community service. There should be more deliberation on what alternative mechanisms can be established, amendments that need to be attached in discussions of the ASEAN Action Plan for the Elimination of Violence Against Children (EVAC). There can be examples from other parts of the world. There is an existing guideline that covers the many issues that have been discussed, which would be a helpful tool to consult. It is important to have discussions on the specific circumstances that children are facing among the different actors in the field, though it may be difficult to bring them together.

Response (Ton Liefaard): There can be a joint platform to exchange information and share initiatives. States can also establish a database, which can be maintained by the UN. There can be more capacity building for newer resources (use of closed-circuit televisions, etc.). International standards should be adhered to.

Question/comment (2) - UNODC: Most countries don’t have too many children in conflict with the law that have a transnational nature (that requires extradition, mutual legal assistance, etc.). Children are being kept in the same facilities as adults because criminal justice systems are handling tasks that should be dealt with by other branches. Lack of resources lead to problems. Legislative reform should be made to better protect children in these contexts. The document needs to decide whether to focus on children in conflict with the law or to include victims as well. They may be referred to as important issues, but if the document will be focusing on children in conflict of the law, then it should not be that of the child means are general rather than specific to children. Having interpreters is not specific to children. The document should focus specifically on children, whether it deals with unaccompanied children, etc. Recommendations can also be made to other regional bodies on how to mainstream children’s issues. Mutual legal assistance hasn’t really picked up in the region, and it can be a possibility. Informal networks can be helpful to build this capacity. The issue of girls has not been addressed sufficiently. Issues of girls being victims rather than offenders are quite prevalent. There might be a benefit to discussing how the Sharia Law will change the outcomes and protection for children.

Question/comment (3) – Australia: Although best outcomes do come from bottom-up approaches, we need executives to support these reforms. These discussions can be conducted for information sharing and deciding on steps we want to take, but executive-level action is required. Executives will require an evidence-based approach. Data shortage cannot be continued and should be addressed urgently. We should draw on other disciplines like neuropsychology in utilizing issues of trauma and its effect on children. There is a momentum that should be embraced. But there is a need for practical guidelines to ensure that motherhood statements don’t become tokenistic. We don’t really know what the best interest of the child means, so having this in the provisions is not enough. The phrase is being uttered, but there are terrible outcomes, so there is a need for practical protocols with specific definitions. There is a need for more discussion on cultural sensitivity. Australia has indigenous people. We need to make sure that the document will be focusing on children in conflict of the law, as well. They may be referred to as important issues, but if the document will be focusing on children in conflict with the law, then it should not be that of the child means are general rather than specific to children. There needs to be a focus on mainstreaming children’s issues handled by different sectors. Going through all three pillars will take a long time. There are platforms within ASEAN where children’s rights can be discussed. They will all be interested in the issues of children and cross-border situations. This will affect law enforcement, the political realm, sovereignty, security, etc. A regional document is complex, and it isn’t clear how this will be passed by the ASEAN Consensus is the basis, but that isn’t easy to do even with a simple document which takes years to be passed.

Response (IJJO): This document is an expression of the group that will be shared with the ASEAN regional institutions for their consideration. It would be great to have this document to become a declaration, yet this is a long process. Since it is not currently feasible, we are looking at this as a long-term aim.

Response (Thailand MOJ): We would like to have some effect on policies and guidelines. It may take a long time, but it is a good start. It is a document that parties can consult around the region, rather than each party having to conduct their own meetings of this regard. The ACWC viewed this document in a positive light. They will view this document as a result of the conference for consideration. This practical guideline can be attached in discussions of the ASEAN Action Plan for the Elimination of Violence Against Children (EVAC), etc. It is a form of advocacy and resource as a result of our brainstorming. It doesn’t need to be endorsed. Thailand’s Ministry has already mentioned that it will implement this document, so it can be a step-by-step process. This can be a bottom-up approach from the ASEAN to the UN. The UN does not fully understand the culture of the region and its reasons for the way certain processes are conducted (like a lower MACR, etc.).

Question/comment (9): There has been so much work conducted with a large use of funds, so I wanted to make sure that the result is fruitful. There needs to be a channel to push this towards the ASEAN for practical use.

Question/comment (10): Different countries have different standards with different liabilities. India has recently amended the law.

Question/comment (11) – Malaysia: The justice system is under the political security pillar of ASEAN, so maybe this document should be sent to them rather than the ACWC. For real change, this body would be more appropriate.
9. Conclusions and bringing cross-border issues to ACWC

Datuk Dr. Heng Keng Chiam, Commissioner/Former Professor of Social Psychology, Malaysia, Malaysian Representative of ACWC, Member of the IJJO Asia-Pacific Council for Juvenile Justice

The juvenile justice system is based on the CRC in countries where it exists. Nevertheless, there are also differences in that there are various legislative frameworks and structures. Therefore, the procedures and emphases are also different. There is no specific law addressed specifically on cross-border cases, although the juvenile system is applied to all anyway. In that sense, is it necessary to have another specific law? It likely isn’t necessary as long as the current law is applied equally to all children irrespective of their category. Cross-border cases (non-citizens) can’t be given more importance. As long as equality and non-discrimination are adhered to, there is no reason to have another specific legislation.

Cross-border cases do not end at sentencing and dropping the children at the border. It is important to follow up and ensure that the skills they learned are being utilized and that they are able to live independently, so that they don’t become repeat cases. This fact was not brought up in many of the presentations, but reintegration is a very important matter. Malaysia has also not given that emphasis. Rehabilitation during the detention is emphasised, but not the follow-up.

Diversion and alternative measures to detention are also important. These programs exist, but are too diverse. They need to be based on restorative principles and practically rehabilitate the child, enabling him/her to reintegrate into society. This variation is due to cultures, resources, etc. Maybe there should be a platform for practices and lessons learnt to be shared among the states. The definition of children in the juvenile system may need to be discussed as well, to make sure that the justice system is following the CRC without much variation among the states.
Regarding the contribution the ACWC can make: Rights of the children in conflict with the law should be highlighted so that each state can advocate and raise awareness about the importance of rehabilitation and reintegration. Children in conflict with the law are often viewed as perpetrators rather than victims, but this perspective should be changed. The ACWC can play an important role in this regard. ACWC has been drafting a declaration on the elimination of violence against children and women, which has taken a year. It is important to have a declaration on the rights of children in conflict with the law. With the variation of the definition of the child, a consensus needs to be made. With a declaration of this type, we can draft a plan of action, which can lead to minimum standards for the procedures. Malaysia, Myanmar, and the Philippines expressed interest in juvenile programs. ACWC has conducted baseline studies in the past, so it can conduct studies on juvenile justice within the ASEAN member states to be included in its 2016 and beyond work plan. ACWC and AICHR will be meeting in early July, where this topic can be discussed for collaboration.

“CROSS-BORDER CASES DO NOT END AT SENTENCING AND DROPPING THE CHILDREN AT THE BORDER. IT IS IMPORTANT TO FOLLOW UP AND ENSURE THAT THE SKILLS THEY LEARNED ARE BEING UTILIZED AND THAT THEY ARE ABLE TO LIVE INDEPENDENTLY, SO THAT THEY DON’T BECOME REPEAT CASES.”
II. CHILDREN DEPRIVED OF LIBERTY: CONDITIONS, SITUATIONS AND CHALLENGES IN THE CONTEXT OF THE PREPARATION OF THE UN GLOBAL STUDY
II. CHILDREN DEPRIVED OF LIBERTY: CONDITIONS, SITUATIONS AND CHALLENGES IN THE CONTEXT OF THE PREPARATION OF THE UN GLOBAL STUDY

1. UN Global Study of Children Deprived of Liberty

Ms. Marta Santos Pais, United Nations Special Representative of the Secretary-General on Violence against Children (SRSG-VAC)

An important principle is the recognition that everyone has the right to access to justice. It is also important that the UN set of standards are adopted, specifically the Model strategies and practical measures for elimination of violence against children in the criminal justice system. Children face difficulty in knowing what the law says, who supports them and speaks on their behalf. The Global Study of Children Deprived of Liberty should have a broad scope (most are in agreement with this) so the study won’t be limited to children within a criminal or juvenile justice system. The study needed to be developed in a participatory manner with offices like UNODC, UNICEF, civil society organizations, academics, and with children themselves.

Regarding what the Study is trying to achieve, it was supposed to be submitted in 2017 but it will only be submitted in 2018. The OHCHR will coordinate all administrative supports to the Study, with the appointment of an independent expert and the appointment of international advisory board.

The Study will look into children who are in welfare institutions because they are abandoned, in asylum seeking and refugees, migrants/displaced, those associated with drug use and abuse and those with mental health issues. The main focus of the study is violence,
abuse, torture and inhuman treatment. The Study would also like to focus on groups of children often forgotten, including those with disabilities and girls. The number of girls deprived of liberty is not large but they often find themselves placed with adult women and men, which creates many risks for abuse. There currently is some lack of information, such as the identification of children of different sexual orientation or identity, girls and specific numbers of children deprived of their liberty. The various groups assisting with the study are: the UN’s Task Force on Children Deprived of Liberty, which brings together different parts of the UN system (e.g., UNODC, UNICEF, Office of the High Commissioner for Human Rights (OHCHR), and the Committee on the Rights of the Child), and the NGO Panel on Children Deprived of Liberty, which brings together over 90 civil society organizations. There have been so far no contributions from any governments.

We ask ASEAN members to help with identifying who are the children at greater risk in the East Asia and the Pacific (EAP) region, who are the children left behind, what kind of oversight and monitoring mechanisms are in place to visit places of deprivation of liberty (with an independent mandate), what kinds of alternatives can we promote/implement in different countries in order to see that deprivation of liberty is only a measure of last resort, what are the best social reintegration programmes and finally how can we ensure that education works in the best way possible for children deprived of liberty.

Questions & comments:
Question (1) What is the budget?
Response (1): Ms. Marta Santos Pais estimates that about $4 million USD.

Question (2) UNICEF India has 3 concerns:
1) We should not just be happy that monitoring bodies are being set up but should rather focus on the type of work they will entail.
2) Concerns regarding slavery when it comes to children being deprived of liberty. Will the Study look into this?
3) Institutional care: there is overwhelming support for institutional care as being the only alternative to children being left alone or without guardians – this is not okay.

2. Bringing together regional and international expertise

Moderator: Ton Liefaard, UNICEF Chair in Children’s Rights at Leiden University

According to the UN, we only have a very low estimation of the number of children who are deprived of their liberty, with the estimate being at least 1 million children. This study is extremely important in order to get a bigger and better picture on this, as it is clear that we lack sufficient data, research and work on this topic in all regions, as well as to better help us learn how to implement Article 37.

Discussion of UNICEF Regional Office for East Asia and the Pacific’s (EAPRO) Study on Diversion and Other Alternative Measures for Children in Conflict with the Law in East Asian & Pacific Island Countries

Within the ASEAN countries, 2 countries still have reservations about Article 37 of the CRC. The Havana Rules set out standards applicable to a child and establish that deprivation of liberty should be a matter of last resort and for the shortest period of time.

The aim of the study is to analyse and identify good practices, enablers as well as barriers for
using alternative measures and diversion in line with international standards. It focuses on children who are in conflict with the law as well as those at or above the minimum age of criminal responsibility. The study was conducted because the Committee on the Rights of the Child emphasized the need to put in place mechanisms for diversion and/or alternatives to pre-trial and post-trial detention for children in conflict with the law. The outcome/final report was a regional guide to implementing and replicating good practices. The study is conducted by UNICEF Consultant, Ingrid Van Welzenis. There are 26 EAP countries assessed, of which 14 Pacific Island Countries: Cook Islands, Fiji, Kiribati, Marshall Islands, Micronesia, Niue, Nauru, Palau, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu & Vanuatu, 12 East Asian Countries: Cambodia, China, Indonesia, Lao PDR, Malaysia, Mongolia, Myanmar, Papua New Guinea, Philippines, Thailand, Timor-Leste & Vietnam, 6 EAP countries selected for further assessment: Thailand, Indonesia, Philippines, PNG, Fiji and Samoa, and 8 EAP Case Studies collected from country offices, in lieu of site visits of China, Lao PDR, Mongolia, PNG, Myanmar, Vietnam, Kiribati, Vanuatu.

The main tool used by UNICEF EAPRO to analyse the alternative measures for children in conflict with the law at country level and regional level is the Continuum of Alternative Measures. Regarding Cross-Border Safeguards for children in conflict with the law, it analyses if their domestic laws specify the nationality of children to be covered, taking into account that criminal laws apply to all persons in that jurisdiction. It also asks the question: if a child from your country becomes a victim of a crime in another jurisdiction, do you expect the government where the crime was committed to take action?

Findings from the study include minimum age of criminal responsibility, on diversion and alternatives, deprivation of liberty and protective detention, noting that in 19 countries in the EAP region, protective detention or custody is not practiced. On good practices, there is community justice, such as village courts in Papua New Guinea, diversion, with community service as a primary penal sanction in Indonesia, alternatives to pre-trial sanction, with conditional pre-trial release to parents in Thailand, and release to parents, family & community leaders in Fiji and finally restorative juvenile justice in the Philippines and pre-sentencing meetings in Samoa and Fiji.
Ms. Anna Giudice Saget, Crime Prevention and Criminal Justice Officer, UNODC

The goal of the Global Study is to overcome the acute lack of data and include good practices and recommendations for actions to effectively realize all relevant rights of the child. The UNODC’s proposed contribution to the Study are substantive inputs in preparatory phase, and the proposal to contribute by conducting the part of the Study related to its mandate: 1) Children deprived of liberty for being in contact with the criminal justice system, and 2) Children living in detention with incarcerated parents, upon availability of resources. This can be achieved via the identification of good practices and data collection. The data collection process, focusing only on solid data from clear sources, including: follow-up with case-study countries, scientific literature, review of data availability, review of data quality, validation: data shared back to countries for review and accountability: process clearly defined and shared.

The study consists of three phases:

Phase 1: Need for large coverage and the use of better sources of data in each country, questionnaires that are flexible, transparent, short and simple and have as a focal point/expert facilitation the data collection to provide insight on what is behind the data.

Phase 2: The collection of metadata for each country individually to try to understand what is behind the data, the necessity to understand potential biases in data, the potential use for other data.

Phase 3: Data analysis, looking at patterns and flaws, along with the identification of different analytical dimensions and geographical perspectives, including the country level, regional level and global level.

Current existing data includes the special module in CTS, 2012, with information related to: the total number of children held in prisons, penal institutions or correctional institutions, children in pre-sentence status held in prisons, penal institutions or correctional institutions, sentenced children held in prisons, penal institutions or correctional institutions, children in prisons, penal institutions or correctional institutions not wholly separated from adults, children deprived of liberty in institutions/centres outside of the prison administration and children in pre-sentence status held in institutions/centres outside of the prison administration.

Mr. Wanchai Rujanawong, ACWC Representative for Thailand

Articles 37 and 40 lay out the main principles to guarantee the rights of the child in conflict with the law, but we should do more than just attain the minimum standards.

However, some questions remain, such as how can we assure that these are followed not just in writing, but in practice, in order to protect children’s rights?

Thailand uses a lot of diversion, specifically restorative justice. Also, in 2004, the Thai Government went to New Zealand to study practices, and began implementing diversion soon thereafter in 2005. The Government also tried to amend the law in order to include family conferencing within the law, but since the 2010 Juvenile Procedure Act, there has not been any change yet. The issue regarding the assistance and protection we can provide to children from other countries remains.

“HOWEVER, SOME QUESTIONS REMAIN, SUCH AS HOW CAN WE ASSURE THAT THESE ARE FOLLOWED NOT JUST IN WRITING, BUT IN PRACTICE, IN ORDER TO PROTECT CHILDREN’S RIGHTS?”
SRSG-VAC comments on the Global Study

- We identify problems and share what we’re doing. We highlight good examples which may lead the way forward. However, the amount of information depends on how governments engage.

The participants were asked to think of answers to the following questions:
- In what way could the subcommittee contribute to the Study?
- What key gaps on children’s liberty are identified in law in this region?
- What type of methodologies do you suggest?
- Any thematic areas for ASEAN which could be highlighted?
- Any methodological gaps?
- How can we include the voice of the children in the study?
- How do you see that there are some areas in which the study could have a regional focus?

Comments from Participants:

1) (India)
- We need to figure out the real numbers (data) in India. In order to have a proper record to base the Study on, this is a challenge, as it is hard to connect information. One reason is that the police do not want to show that anything is wrong. Their records say there are zero cases of child abuse. To resolve this situation, there should be some mechanisms to counter-check data.

2) (Myanmar)
- If you look at detention centers or institutions then you have to look at deprivation of liberty in terms of exploitation of labour, refugee camps, IDP camps etc. which means the Study can get huge. I suggest setting up working meetings in the regions, or on a global level asking: What are the priority areas? What does deprivation of liberty mean to us?

3) (Brunei)
- What sort of criteria do you use in order to select certain countries as it is quite impossible to evaluate every single country?

3) SRSG-VAC Response:
- It is assumed that States will provide information as it is a Global Study and all States have expressed support for it.
- But, it is also important to stress that the reason we attend these events is that it provides a more regional focus that pin-points certain trends.
- We rely on those committing themselves to the process.

4) (Australia)
- It is very important that we take that broad scope.
- It would be great if the Study could capture the data and examples of various settings (e.g., out of home care, children in juvenile detention).

4) SRSG-VAC Response:
- Study is a good opportunity to take a look at connections and pathways, with children in different settings and various stakeholders of intervention.

5) (UNODC Austria office)
- It’s in the interest of countries to have a baseline of their own in order to report to Committees such as CRC.
- This Study is a global study because as it is not to shame other countries while only focusing on some other countries.
- You focus on similar countries and compare certain strengths.
- This should be seen as a tool to help everyone that could help everyone.
- There are many international discussions on data but UNODC helps develop data and it is available for use.

6) (Department of Justice, Philippines)
- Would like to see that indicators are more or less standardized for certain areas so that they are not viewed as ranking countries for their compliance.
- Should include or propose considerations at national level that involve children in conflict with the law.

7) (Malaysia)
- Some concerns can be raised regarding the methodology.
- How do you define deprivation of liberty?

8) SRSG-VAC Response:
- If a country feels as though it doesn’t have the information, we must look at former global studies (e.g., Children in Armed Conflict and Violence against Children study) as we anticipate this study will be similar.
- If a country feels as though it doesn’t have the information, we cannot punish a country but it benefits the contributors.
- We must understand the cultural and social affairs of each country in order to have a full picture of how best to help all countries.
- Mapping of all sources that exist would be required.
- ACWC colleagues here today will be used extensively.

9) UNICEF India:
- It is positive to have this study as it provides us direct ways of working with children.
- There is now a formal policy to adopt institutions in India.
- There really is no conversation on alternative care but it benefits the contributors.
- In India, the government thinks that a lot of this discussion is rhetoric not action oriented.
- Might be interesting to look at the Study with a life cycle approach and focus on health data.

10) SRSG-VAC final comments on the Global Study:
- Increasing engagement of private sector entities is very important.
- Promote regional discussions in ASEAN.
III. ASEAN REGIONAL PLAN OF ACTION ON THE ELIMINATION OF VIOLENCE AGAINST CHILDREN
1. Presentation of the ASEAN Regional Plan of Action on the Elimination of Violence against Children

Ms. Marta Santos Pais, United Nations Special Representative of the Secretary-General on Violence against Children (SRSG-VAC)

Other regions have been able to reflect on their own context and legal systems through a sharing of the ASEAN’s experience. This Plan was adopted by the heads of states in Kuala Lumpur. It was a very important step to enable a caring environment for children. It is an important achievement, but it isn’t the first on VAC. There was a declaration made in 2013 which was used in the UN as a good reference document when the new global development agenda was being drafted by all member states. It is a wonderful source for EVAC and a great contribution to the world.

The declaration set the principles and a vision for the member states of ASEAN. But it wasn’t planned to provide a roadmap, which led to the drafting of this Plan of Action. This now provides that guidance. The Plan is very ambitious, demanding, detailed, and comprehensive. It ranges from prevention to protection of victims, and it recognizes the value of data research to provide evidence necessary for new decisions. It also includes monitoring and evaluation to view the impact and how we can further improve our efforts, which is unique to see at a regional level. It is a great platform for member states and other parties to learn from each other and share the same goal of protecting children from violence. It mobilizes greater awareness in the public and stronger action by all departments in government, academia, civil society, religious leaders, etc. It doesn’t replace the CRC, but provides a roadmap to match that vision based on the CRC. It is a strategy to implement EVAC in the region. It includes a list of concrete actions that all states need to undertake, and it provides the most urgent actions for the next 5 years. This timeframe will enable states to monitor how they are doing in relation to the anticipation. It also addresses emerging concerns like online abuse, which is multiplying the impact of violence (a huge challenge for children). The plan addresses juvenile justice as well within the large realm of VAC.

There are three important messages:

1. Need for Member States to develop child-sensitive justice systems. Adults are nervous when they enter the courtroom, feeling which is amplified for children, who have a difficult time to understand the judge and the letters of the law. This system needs to be transformed for children, so that they can trust it and engage with it. This is even more important in cases of deprivation of liberty.

2. Call for States to reduce situations of deprivation of liberty and to encourage the use of alternatives (investing in diversion).

3. Need for all decisions to be guided by the best interests of the child. This certainly isn’t a new concept, but it is even more important in the context of justice for children. Deprivation of liberty is never in the best interest of the child.

This Plan is an opportunity for all of ASEAN and beyond. It was developed as the SDGs (Sustainable Development Goals) were being discussed and negotiated. The Plan anticipated what the big SDGs would become. The Plan recognizes that the indicators used by ASEAN should also help to monitor the progress in the implementation of the SDGs. We have tried to make development go hand-in-hand with human rights, but it hadn’t been very successful. But this new development agenda does that. Additionally, unlike the MDGs (Millenium Development Goals), it is a universally applicable agenda. No region is perfect, so everyone needs support. Finally, it concerns all children. The agenda
doesn’t address only the most vulnerable children, but all children. It does place more emphasis on children left behind and those that are ‘invisible’ (including children deprived of liberty).

The SDGs identified 16 goals with 169 targets with many indicators of progress, so it is very ambitious. For the first time, it includes a distinct target on EVAC. All dimensions are very closely connected. The impact of violence will last a whole lifetime and will replicate across generations. The cost to our society will be very high if we don’t eliminate VAC ($7 trillion). So the Plan needs to be practically implemented to make sure we achieve EVAC. The commitment of governments and other actors in society needs to be reignited so that we can bring about a turning point in EVAC. Last February, a new initiative named High Time to End VAC was begun by the SRSG and many allies (including ASEAN). The aim is to indicate that everyone can make a difference and that it is everyone’s responsibility to prevent VAC. It calls for everyone to join in making zero violence worldwide.

Datin Paduka Intan Md. Kassim, Brunei Representative on the Rights of Children to ACWC, Member of the IJJO Asia-Pacific Council for Juvenile Justice

The Declaration on Elimination of Violence against Women and Children of 2013 adopted in Brunei by ASEAN leaders was the first of its kind in this region. The ACWC decided to task itself with the responsibility of making the declaration a reality (both the implementation and review of its progress). They have been working with the ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD) to make this possible.

The RPA was drafted to implement the declaration, to gain the commitment of governments, and to incorporate into the 2016-2020 ACWC Work Plan. There was a working group created by a joint effort of governments (Thailand, Philippines, Malaysia, Vietnam), ACWC and SOMSWD, UNICEF, Save the Children, World Vision, Plan International, etc. This included a Thai Working Group and an ASEAN Working Group. They identified a myriad of documents on legislation, etc. There was the first regional consultative meeting in May 2015 in Bangkok. The draft document was circulated thereafter, and there was a national consultation within the respective countries. A second consultation meeting was held in July 2015, and then the draft was finalized in August 2015.

The guiding principles include a system of: a) Child rights-based and gender-sensitive approach based on the CRC including non-discrimination (viewing children as rights-bearing persons rather than only as entities we need to look after). b) Multi-sectoral and multidisciplinary approach that recognizes cross-cultural concerns and multidimensional issues of VAC (establishing a monitoring framework and promoting strong leadership and commitment of the government to collaborate with CSO). c) Participatory approach that ensures the rights of the child to be heard and raises awareness of vulnerable children (ensuring full and equal enjoyment of human rights and fundamental freedoms and providing necessary communication procedures). d) Due diligence to prevent prosecution of victims.

There are 8 actions in the RPA:

(1) Prevention: The priority areas in the first five years include developing a guideline on non-violence approach to nurture, care, etc., raising awareness among all sectors of society on harmful effects of violence, promoting deinstitutionalization of children, and developing preventive measures against violence in cyberspace.

(2) Protection, responses, and support services: The priority areas in the first five years include creating a child-sensitive complaint mechanism and improving protective and supportive services.

(3) Legal framework, prosecution, and justice system: The priority areas in the first five years include undertaking a legislative review to ensure that they protect children from violence in conformity with international standards and reducing the resource to judicial proceedings and deprivation of liberty.

(4) Capacity building: The priority areas in the first five years include developing advocacy materials for various audiences.

(5) Research and data collection: The priority areas in the first five years include developing a national system for disaggregated data collection, analysis, sharing, and dissemination on VAC.

(6) Management, coordination, monitoring, and evaluation: The priority areas in the first five years include developing national plans of actions to eliminate all forms of VAC and participation of different stakeholders.

(7) Partnership and collaboration: The priority areas in the first five years include cooperating to seek technical assistance from UN agencies.

(8) Review and communications.
2. Reviewing strategies for the implementation of the ASEAN Regional Plan of Action on the Elimination of Violence against Children

Ms. Grace C. Agcaoili, Regional advisor, Child Protection Specialist UNICEF Regional Office

There needs to be concrete evidence to show the government the costs of the initiatives. We need to answer questions such as: What is the prevalence of VAC? What drives VAC? Even with the legislative reforms, it may not be successful due to customs and traditions, for example. We need to understand the structures of the drivers to convince the governments. What are the costs and consequences? Focusing on benefits alone is not sufficient. There needs to be a focus on the negative aspects as well. What works for prevention and response? How well is the system performing? We need to understand how the system is actually performing (a comprehensive approach focusing on various sectors). What is the cost of intervention?

UNICEF has a publication named Hidden in Plain Sight that presents the latest statistics on violence against children (VAC) both internationally and regionally. VAC occurs not only in low-income families, but also in high-income families. Some key findings include: Violence is the leading cause of injury and death, so it is no longer infant mortality or other factors. Violence most commonly occurs at home.

Bullying and physical attacks are common occurrences, as well as cyber-attacks. Many girls are being subjected to forced intercourse and sexual acts. There are still countries that set a low age of consent for sexual acts. Young brides are at heightened risk of violence. Most victims do not disclose their experiences, so a low statistic does not mean violence isn’t occurring. Condoning attitudes and social norms place children at more risk.

More findings include: Physical abuse is more prevalent for boys and sexual abuse is more prevalent for girls (except in low-income countries). 12-32% of children witness parental violence, which leads children to think that it is okay to commit violence in the family. Experience of emotional abuse is highest among girls in high-income countries. Also, mental disorders, smoking, etc. have been found to be linked to child abuse in certain cases. The economic loss due to maltreatment of children has been found to be 2% of the annual GDP of the region.

There is a draft of National Child Protection Systems that is also utilized by ASEAN, which will be further developed. There have been a lot of progress in the development of legal frameworks, but it tends to still focus on the “issues” (a child in conflict with the law should not be viewed as a child in conflict with the law, but simply as a child, who has gone through a myriad of issues that led to their position in being in conflict with the law). There also is a lack of connection with local socio-cultural context, lack of human and financial resources, and disintegrated systems working in a non-holistic manner. The law may be enacted, but the practice is not fully compliant in many instances.

Some strategies for action:

There are three important messages:

1. Design parenting programs to promote supporting parents, caregivers, and families. Parenting has been linked to social protection programs in many countries. Parenting manuals have been developed for migrant workers. For example, in Thailand, partnerships with cell phone providers to spread good messages, and advertisements on parenting.

2. Help children and adolescents to manage risks and challenges, including the ones that come as a result of new technology.

3. Change attitudes and social norms, for example, by working with faith-based organizations (that can help to promote parenting skills, gather data, etc.).

4. Promote and provide support services for children, including cash grants, social protection (targeting vulnerable and marginalized children), etc.

5. Implement laws and policies that protect children, rather than only enacting them.

Ms. Anna Giudice Saget, Crime Prevention and Criminal Justice Officer, UNODC

UNODC was tasked with developing the model strategies as well as setting up expert meetings and assisting with the implementation of the model strategies. These now provide a new benchmark for action within the field. The study was carried out due to a resolution passing which asked for an open-ended intergovernmental expert group, and comes out of an initiative from Thailand (led by Princess Mahidol) and championed by Norway and Austria. Some questions were asked when setting up the model strategies; is the justice system doing everything it can to prevent violence against children? Is the justice system responding to incidents of violence against children in an effective and appropriate manner? Is the justice system dealing with children in contact with the law in a manner, which reduces the risk that they may be further, victimized or abused?

The aims of the UN Model Strategies are to improve the effectiveness of the criminal justice system in preventing and responding to VAC and to protect children from VAC which may result from their contact with criminal justice system. Model Strategies provide a practical framework, useful in order to; identify gaps in laws, policies and practices, review and design national laws and policies, set up institutions and mechanisms, and guide professionals in their day-to-day practice.

Model Strategy Components

Part 1 of Model Strategies
- Prohibition of all forms of VAC and criminalization of various forms of violence
- Development comprehensive prevention programmes
- Data collection, research,

Part 2 of Model Strategies
- Establishing detection and reporting mechanisms
- Effective protection to child victims of violence
- Effective investigation and prosecution of VAC
- Enhancing inter-sectoral cooperation
- Improving criminal proceedings involving child victims of violence
- Ensuring that sentencing reflects the serious nature of VAC
- Strengthening the capacity of criminal justice professionals

Part 3 of Model Strategies
- Reducing the number of children in contact with the justice system
- Preventing VAC associated with law enforcement and prosecution strategies
- Deprivation of liberty as a measure of last resort
- Prohibition of torture and other cruel, inhuman or degrading treatment or punishment
- Preventing and responding to VAC in places of detention
- Enhancing protection and assistance to child victims of VAC
Towards the Implementation of the Model Strategies

Development of a global program which has 1 objective: To ensure that children are better protected from violence. This programme mainly concerns part 3 of the strategies, as many things are already being done under parts 1 and 2. There have been 2 outcomes: firstly, increased global awareness and understanding of prevention and responses to VAC in contact with the justice system; secondly, children in contact with justice systems in 3 pilot countries are better protected by practical measures on prevention and responses to VAC.

Colombia initiated a pilot project in July 2016, with its own funding, which is working at country and departmental level.

The 6 objectives of the model strategies are: to contribute to the prevention of youth crime, to promote restorative justice, to strengthen the treatment of children in contact with the law and/or in detention facilities, to promote rehabilitation and social reintegration, to protect child victims and witnesses, and to promote peace-building activities for children at risk of committing crimes.

The baseline study conducted on children's participation in crime which will give place to a public study. Through capacity building they have already strengthened staff capacities of juvenile justice facilities and carried out training for over 60 professionals.
4. Intercontinental exchange on violence against children in crime prevention and criminal justice in light of the UN Model Strategies

**Moderator:** Jordi Mallarach Parés, Project manager, IJJO

**AUSTRALIA**

**Dr. Wendy O’Brien,** Lecturer at Deakin University

We are faced by various challenges: In Queensland, there are laws which expressly go against international standards they are to follow and many children are detained with adults. Indigenous children are 26 times more likely to be arrested and detained than non-indigenous children in Australia. Many of these indigenous children live in central Australia which is not good in terms of resources’ reachability. There is a MACR of 10, and an extremely high proportion of children held on remand (50%) and sometimes for a very lengthy period. In an adversarial legal system, like the one in Australia, children’s rights are not properly cared for. Also, social workers can leave school after 3 years (many with no children’s rights training).

In addressing structural deprivation and trauma, there is a need for a punitive model adopted in relation to juvenile justice, being a fundamental challenge—We must move away from the practice of blaming individual children for circumstances in which they’ve been raised, as in cases of extreme violence and extreme poverty.

There are some promising Initiatives, such as Parental & Community Capacity Building, with various grants for alcohol and drug counselling, parental supports for children eligible for bail (e.g., Tasmania), community capacity building to support children exhibiting sexualized behaviours (e.g., Brisbane) and therapeutic treatment orders and networked counselling services (e.g., Victoria).

Regarding legal safeguards, protocols and training, there needs to be training and mechanisms of oversight in order to see legislation operate in practice (E.g. Best Interests principle). There are some promising initiatives such as the effective investigation and prosecution of violence against children (s.6 UN Model Strategies), specialised police teams, with intensive trauma informed training in child friendly interviewing and a multidisciplinary policing centre.

**LATIN AMERICA**

**Dr. Nicolás Espejo Yaksic,** Advisor to SRSG-VAC

There are 18 Spanish-speaking countries in South America, Central America and the Caribbean. I am positive about the law but also skeptical, as it is not a problem regarding legal standards but a problem of practically implementing these legal standards.

Some challenges we face include the lack of data (police, judges, etc. have information but they are never in agreement about the data itself) E.g., recommendation of combating this: through UNICEF, we have integrated a better data system in Chile. We often use the justice system as a tool for all systems. Criminal justice system should be left for/used for heinous crimes—we should rely on other systems or resources (e.g., social workers) to assist with other crimes. Normally there are police proceedings taken without specialization, which entail the absence of specific protocols when dealing with children in conflict with the law. There are mass detentions of children. While it would be great to use diversion or alternative sentencing, it is not ideal when there is no plan in place. Also, legislation doesn’t have enough specific information on deprivation of liberty, in particular for pre-trial detentions.

Regarding the regional context; there is a pre-conventional system of protection (CRC) so called “protective measures” as opposed to “criminal sanctions”, as well as a wide process...
of legal reform, including Children Acts (Codes) and Juvenile Justice Legislation (two exceptions, Argentina and Brazil).

In conclusion, there should be stronger coordination between juvenile justice systems.

EUROPE
Professor Dr. Tom Liefaard, UNICEF Chair in Children’s Rights at Leiden Law School, Member of the IJJO European Council for Juvenile Justice

The Council of Europe was established in the 1950s to safeguard human rights protection in Europe and further the rule of law and democracy. Human rights are a sibling of the European Union, and the Council of Europe also includes countries like Switzerland and Russia, unlike the EU.

We have developed a Study on Violence against Children in Institutions for Juvenile Offenders. Main methods include desk research, in which there was the analysis of academic publications and non-academic reports and questionnaires, including respondents from 37 countries and children’s ombudspersons. The main focuses are institutions for juvenile offenders and primarily ones that lead to a deprivation of liberty. The limitations include that there are no institutions for adults, no welfare institutions (e.g., meant for children under the minimum age of criminal responsibility) and no transportation (a lot of violence can occur in transportation).

Some general observations from the study; Violence in institutions is prevalent and considered an issue of (serious) concern, violence among children is considered a serious problem, concerns about violence by staff, but less information, in Members States: violence by staff is not considered as the most serious problem, what people perceive as lawful or unlawful is unclear, and finally, children are at particular risk when in police custody and pre-trial detention (=vast majority of juveniles).

Also, there are different forms of violence, and there is a clear link between perpetrators and victims (many are one and the same, and they could become both, if not before, when they stay longer in the Centres). Firstly, there is violence by inmates (children and adults), which includes aggression and bullying, the victim—perpetrator continuum, a subculture with an informal pecking order, very underreported sexual violence, disciplinary measures/violence by staff, limitations of contact with the world outside the centre, and there is no clear definition of solitary confinement. In second place, there is self-inflicted violence.

Regarding the causes of violence, they are mainly due to substance abuse (addictions) and mental health, for which there is a need to find ways to connect the juvenile justice system with the mental health system, and is currently reported by member states as one of the main causes of violence. Another factor of violence is due to deprivation factors, including adjustment, institutional climate and justice mechanisms.

INDIA
Mr. Justice V.M. Kanade, Judge of the High Court of Mumbai

Children are the assets of the nation, with 19% of the world’s children based in India (which amounts to one third of the country’s population). Children are most vulnerable to violence, so it is the obligation of the states to eliminate the risk. Violence is not restricted to physical violence, but also includes emotional, mental, sexual, and atmospheric violence as well as violence by neglect. Emotional violence starts from the moment the child is arrested. With the enactment of a new act, each police station in India is required to have a unit with a social worker and a female constable to tackle this issue. Mental trauma is also evident to children who are apprehended (like the example of a 5-year-old child who was arrested for an alleged act of violence). Public interest litigation is a strong model in India, where state instrumentalities can receive guidance.
There are problems with parenting plans and the methods in which children are treated (parents need to be trained). Media reporting is also a problem. The media is very active in India, and it is difficult to control them.

In India, the Constitution guarantees the right to be free from discrimination and recognizes the vulnerability of children. Right to equality and personal liberty are enshrined in the articles. The state is also responsible for ensuring that all the needs of children are considered.

The Regional Plan of Action includes aspects dealing with prevention. This is of prime importance because prevention is always better than cure. India sensitizes special juvenile police units and utilizes different facilities like observation homes and special homes where there is supervision carried out by probation officers, proper and timely legal aid, and expeditious hearing before the Juvenile Justice Boards. Children end up staying in observation homes for a long time because there are many cases brought in front of the Juvenile Justice Boards. There also isn’t adequate time for sufficient training. Probation officers don’t do their jobs properly. Many complaints have been received, saying that the officers ask for bribes. Legal aid is now offered, but there are instances of legal aid lawyers demanding money in exchange for the services. Newer changes are in the works to prevent this from happening.

Regarding protection, response, and support services, there are Juvenile Justice Committees and strengthening of child protection mechanisms. There were pathetic conditions at observation homes, so new initiatives were started instating that companies that contribute a certain percent of their earnings will be exempted from certain taxes, etc. Also, there are best practice examples that have evolved from the judiciary rather than the legislative branch.

5. Ways to implement the UN Model Strategies in ASEAN: Sharing of best practices on the elimination of violence against children in conflict with the law

Moderator: Mr. Cédric Foussard, Director of International Affairs, International Juvenile Justice Observatory (IJJO)

Ms. Aisyah Yuliani, Raoul Wallenberg Institute, Indonesian Office

There was a baseline study on the status of VAC in the justice systems of ASEAN member states that was published last year. There are now many new reports of incidents of violence, including those involving suicide, castration, and other forms of violence. For children under the MACR, most of them are returned to their families without any further education or supervision. Many families send the children back to institutions where they usually don’t leave until they are 18 years old.

In this regard, Southeast Asian nations have good customary law in place for diversionary measures. A good example of this can be found in Indonesia. The government has informally cooperated with UNICEF to put them into writing with the participation of children. There is also a leadership council in the community whereby the diversionary measures are also supervised by the council.
A current issue is that Southeast Asian countries are lacking in police oversight. Legal provisions need to be strengthened to limit the use of force when in contact with children in conflict with the law. Death penalties for children don’t exist in the region, but children can face life imprisonment in certain countries (the average minimum age of imprisonment is satisfactory in the region, but in reality, the implementation is often lacking). Corporal punishment is also still used in certain countries. Due to the lack of birth certificates, among other problems, the actors throughout the process don’t tend to pay attention to the actual age of the children. Additionally, in many countries, children are not kept separate from the adults because many legal provisions stipulate that this should be carried out when the resources are available. This is especially troubling for girls. And it is problematic because adult prisons are generally overpopulated, meaning that those in the facilities do not get their basic needs fulfilled.

Upcoming needed developments in the region include: the ASEAN guidelines on Juvenile Justice, standardized indicators, a stronger database system, stronger regional forums, a regional monitoring mechanism and study visits and field studies.
This annex was presented as a separate, unique document at the beginning of the meeting on June 15th 2015, as an IJJO policy paper on safeguards for children in conflict with the law. During the meeting there were many comments regarding this text, and thus the hereunder text does not include relevant changes, advice and modifications arising from the discussion and debates of the meeting. This work is still in progress.
The APCJJ Subcommittee for ASEAN member states was launched and met for the first time in 2014, in order to respond to the specific needs of ASEAN member states, and to enhance stronger cooperation in the defense of children’s rights.

As the ASEAN member states are moving towards greater economic integration and freedom of movement, this is an opportunity to study the case of children coming into conflict with the law in other countries and foster the development of human rights safeguards.

In this context, the members of the APCJJ Subcommittee saw the importance of carrying out an in-depth analysis on how transnational judicial cooperation, as well as collaboration between law enforcement bodies, can develop, while at the same time ensuring a minimum level of human rights standards for children in conflict with the law, as enshrined in the UN Convention on the Rights of the Child. Minimum safeguards will ensure equal treatment of children in conflict with the law across state borders, especially in situations of vulnerability, such as being in conflict with a justice system in a different country than their own. In this particular situation, children and young people have specific needs, and therefore deserve enhanced safeguards in order to guarantee a fair experience with the justice system.

In particular, while extradition treaties between ASEAN members progress, APCJJ members noted with concern that the specific rights of children are not properly addressed, calling for increased attention regarding this issue. These specific rights should protect both children in conflict with the law as well as children in need of protection via the law. Providing children with an appropriate level of care and support while in such vulnerable situations is often challenging, so both governments and practitioners need adequate support to ensure equal treatment of all children whether offenders or victims, including those originating from another state. This includes ensuring effective protection from abuse and exploitation, providing interpretation and translation services to guarantee that criminal proceedings are properly understood by the child, and adapting diversion services and alternative measures to include foreign children.

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

A) Law Enforcement and Judiciary Cooperation: the integration of core principles into national legislation can effectively establish a minimum level of collaboration between different public authorities, in order to address shared security concerns. Nevertheless, reforming legislation involves consulting stakeholders in contact with

ANNEX: CROSS-BORDER SAFEGUARDS FOR CHILDREN IN CONFLICT WITH THE LAW

“AS THE ASEAN MEMBER STATES ARE MOVING TOWARDS GREATER ECONOMIC INTEGRATION AND FREEDOM OF MOVEMENT, THIS IS AN OPPORTUNITY TO STUDY THE CASE OF CHILDREN COMING INTO CONFLICT WITH THE LAW IN OTHER COUNTRIES AND FOSTER THE DEVELOPMENT OF HUMAN RIGHTS SAFEGUARDS.”
these children and understanding the different needs of various groups of children in contact with the law; including those in conflict, those accused and those being victimised. In addition, considering the young age and vulnerability of juvenile offenders and victims, the role of families, social services and communities must also be included and supported.

Mutual recognition of judicial decisions allows states to overcome the differences between national justice systems, without the need to harmonise them. At the same time, instituting mutual admissibility of evidence between the different countries will simplify cross-border investigations and trials, improving their effectiveness.

Finally, in order to ensure that law enforcement agencies have access to cross-border information, it is necessary to establish rules on data collection and on recordings of investigations and judgments.

B) Minimum safeguards: common agreements transposed into national legislation, which establish minimum safeguards so that any citizen will be treated with due respect according to fundamental rights, even when entering into conflict with the law across national borders. These minimum safeguards must be aligned with UN Human Rights. Without minimum safeguards, it would be impossible to establish the principle of mutual recognition. Ensuring minimum safeguards also requires training for those professionals that will be in contact with the child including the police, prosecuting bodies and educational institutions, among others, in order to ensure that minimum standards are respected at all stages. Such training needs to be holistic and incorporate child development, trauma-informed care, restorative practices including Restorative Justice and the risk-need responsiveness in preventing reoffending.

Minimum rights should be transposed into national legislation for the treatment of victims of crime, as well as for people who are suspected or accused of having committed a crime. Particular safeguards should be applied to people deprived of liberty from the moment of their arrest. Minimum standards should aim at defining and securing fair trial guarantees, establishing a level of treatment that respects
the person’s dignity, and guaranteeing that any disadvantages derived from the cross-border context and related aspects (distance from home, different language, etc.) is properly addressed. Particular rules should be put in place in cases involving children and young people, prioritising the principle of the child’s best interest.

Establishing Common Policies to Facilitate Law Enforcement

An effective system of transnational cooperation between law enforcement bodies requires, first and foremost, an alignment with UN Human Rights when establishing and working with common systems of information; common investigation techniques for cross-border cases (especially for organised crime) and mutual assistance. Specialised training of staff, as well as exchanges, can play a crucial role in the development of these assets. There is an urgent need to provide for a differentiated investigation and treatment model for children. In addition, effective policy-making entails taking into consideration the child’s experiences throughout all stages of the justice system while also seeking the expertise and assistance of educational institutions, medical professionals, communities and those involved in the rehabilitation of juvenile offenders.

Establishing a common system of arrest warrants that is common to the entire area of countries with shared borders can drastically improve the effectiveness of investigations and judicial decisions concerning cross-border cases. In particular, it allows states to overcome cumbersome and lengthy extradition processes. In order for a common system of arrest warrants to be put in place, states will have to agree on a series of crimes recognized by all the parties to the agreement. For these crimes, an arrest warrant issued in one state will be automatically recognized in another one, avoiding issues of double criminality. Furthermore, concerned parties will agree on common procedures to surrender nationals, as well as on recognized grounds to justify the refusal to execute a warrant (a possible example is when the requested person is below the age of criminal responsibility in the executing state).

**Guidelines for Treatment of Children in Contact with the Law across Borders**

When a public authority comes into contact with a national of a different country, in order to carry out investigations or arrests linked with criminal behaviour, they will have to ensure, throughout the judicial proceedings, that the person in question is able to understand oral and written communication, otherwise, authorities must provide interpretation in his/her own language for the entire duration of the judicial proceedings, including initial questioning. They must also ensure the provision of relevant information concerning the accusation.

From the moment of arrest of a national of a different country and in cases of deprivation of liberty, public authorities will have the obligation to provide the necessary information to the related consular authorities. They will also provide the person suspected or accused of a crime with the possibility of informing a third person of his or her situation. In cases of a child’s arrest, the authorities will have direct responsibility to contact and inform, without undue delay, the parents of the child or the persons responsible for his or her well-being.

From the arrest stage, there is a need to treat cases differently, depending on whether they are children with a high risk of reoffending or if they are vulnerable children who may be manipulated by others, so that interventions can be targeted.

When a child has been arrested, in order to guarantee a correct evaluation of the child’s needs and best interests, an individual assessment will be carried out by the competent authorities. Such a risk assessment is crucial from the initial arrest stage as it allows for distinctions to be made between children at high risk of reoffending and those who are vulnerable and may be manipulated by others. The ensuing proceedings will be tailored to the results of such assessment, and to the primary goal of the child
reintegration. Any questioning involving a child shall be recorded, to ensure compliance with minimum safeguards.

Finally, throughout the judicial proceedings involving a national of a different country, from the moment that he or she is informed of the situation by the competent authorities, until the conclusion of the possible trial, including an appeal, this child shall be guaranteed the right of access to a lawyer, to talk with the lawyer privately for the purpose of the case, and to the confidentiality of such communication. As well as being given access to legal aid, the child will also have the right to access all the relevant documentation (with related translation where necessary). Furthermore, the child should be able to receive additional support throughout the proceedings from institutions that offer assistance and support to these children.

Recommendations to Ensure Minimum Safeguards in Cross-border Cases:

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. This includes guaranteeing 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. Treatment and measures concerning children in contact with the law shall always prioritize the best interest of the child, keeping in consultation with the appropriate experts such as medical professionals, social workers, educators, police officers, judicial officials and volunteers and considering the stages at which the services of these professionals may overlap and reinforce one another.

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 shall have the right to promptly receive information concerning the procedural safeguards to which they are entitled. In the case of children, authorities shall ensure provision of this information in child-friendly language, both orally and in writing.

5. All persons detained shall have the right to be informed without undue delay, of the case against them.

6. 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, and the right to access such documents throughout the judicial proceedings.

7. Criminal proceedings involving children must be tailored to their needs and degree of personal development. Thus public authorities shall carry out individual assessments, which will be relevant to the determination of the appropriate procedure, while avoiding unnecessary reiteration of questioning. The information obtained cannot be used against the child in the course of the judicial proceedings.

8. It shall be recommended to 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.

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. The detained person should always have the right to communicate with the competent consular authorities.

11. All detained persons have the right of access to a lawyer, to allow the exercise of the defense should be guaranteed. Lawyers shall have the right to be present during questioning and throughout the judicial proceedings. Exchanges between a lawyer and his or her client will be private shall remain confidential.

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, and the right to access such documents throughout the judicial proceedings.

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. This includes mutual admissibility of evidence between the different countries, simplifying cross-border investigations and trials, improving their effectiveness.

Finally, children shall have the right to a specific treatment in case of detention, which will include education, vocational activities, sport, leisure activities and appropriate physical and mental care. Children shall be given access to complaint mechanisms and shall be detained separately from adults.
## GLOSSARY

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACWC</td>
<td>The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children</td>
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<td>3PC</td>
<td>Partnership Program for the Protection of Children</td>
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<td>AEC</td>
<td>ASEAN Economic Community</td>
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<td>AICHR</td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
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<td>APCJJ</td>
<td>Asia-Pacific Council for Juvenile Justice</td>
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<td>APSC</td>
<td>ASEAN Political—Security Community</td>
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<td>ASCC</td>
<td>ASEAN Socio—Cultural Community</td>
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<td>ATD</td>
<td>Alternatives to detention</td>
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<td>BCATIP</td>
<td>Border cooperation anti-trafficking in persons</td>
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<td>BLO</td>
<td>Border liaison offices</td>
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<td>CCTV</td>
<td>Closed-circuit televisions</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>COMMIT</td>
<td>Coordinated Mekong Ministerial Initiative Against Trafficking</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>CVPA</td>
<td>Child and Young Persons Act</td>
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<tr>
<td>DJOP</td>
<td>Department of Juvenile Observation and Protection of the Thai Ministry of Justice</td>
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<td>DSW</td>
<td>Department of Social Welfare</td>
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<td>EAP</td>
<td>East Asia and the Pacific</td>
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<td>EAPRO</td>
<td>UNICEF Regional Office for East Asia and the Pacific</td>
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<td>EU</td>
<td>European Union</td>
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<td>EVAC</td>
<td>Elimination of Violence Against Children</td>
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<td>GDP</td>
<td>Gross domestic product</td>
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<td>HR</td>
<td>Human Rights</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>IDPs</td>
<td>Internal Displaced Persons</td>
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<td>IJJO</td>
<td>International Juvenile Justice Observatory</td>
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<td>IOM</td>
<td>International Organisation for Migration</td>
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<td>Lao PDR</td>
<td>Lao People’s Democratic Republic</td>
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<tr>
<td>LGBT</td>
<td>Lesbian, Gay, Bisexual and Transsexual</td>
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<td>MACR</td>
<td>Minimum age of criminal responsibility</td>
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<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
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<td>MENA</td>
<td>Middle East and North Africa</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NCRC</td>
<td>National Committee on the Rights of the Child</td>
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<tr>
<td>NGOs</td>
<td>Non-Governmental Organisations</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
</tr>
<tr>
<td>RGC</td>
<td>Royal Government of Cambodia</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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</tr>
<tr>
<td>RPA</td>
<td>The ASEAN Regional Plan of Action to Eliminate Violence Against Children</td>
</tr>
<tr>
<td>SDGs</td>
<td>Sustainable Development Goals</td>
</tr>
<tr>
<td>SOMSWD</td>
<td>ASEAN Senior Officials Meeting on Social Welfare and Development</td>
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<tr>
<td>SoP</td>
<td>Standard operating procedure</td>
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<tr>
<td>SRSG-VAC</td>
<td>Special Representative of the UN Secretary General on Violence against Children</td>
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<tr>
<td>TIJ</td>
<td>Thailand Institute for Justice</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UN GSCDL</td>
<td>United Nations Global Study on Children Deprived of Liberty</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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<tr>
<td>VAC</td>
<td>Violence Against Children</td>
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DAY 1: WEDNESDAY 15TH JUNE 2016: CROSS-BORDER SAFEGUARDS FOR CHILDREN IN CONFLICT WITH THE LAW IN THE ASEAN REGION

08.00 – 09.00 Registration

09.00 – 09.25 Welcoming remarks
  • Dr. Francisco Legaz Cervantes, IJJO Chairman
  • Prof. Wisit Wisitsora-at, Director General, DJOP MOJ Thailand

09.25 – 09.35 Inauguration
  • Mr. Kobkiat Kasivivat, MOJ Deputy Permanent Secretary Thailand

09.35 – 09.45 Opening Ceremony

09.45 – 10.00 Introduction to the APCJJ Subcommittee for ASEAN meeting
  • Mr. Cédric Foussard, IJJO Director international affairs
  • Dr. Kattiya Ratanadilok, DJOP MOJ Thailand

10.00 – 10.30 Keynote Speech: Cross-border cooperation between European Union member states and the use of regional mechanisms
  • European Expert: Dr. Ton Liefaard, UNICEF Chair in Children’s Rights at Leiden University, Leiden Law School, member of the IJJO European Council for Juvenile Justice

10.30 – 10.45 Coffee break

10.45 – 11.00 Cross-border safeguards for children in conflict with the law: the ASEAN Human Rights perspective
  • Dr. Seree Nonthasoot, Representative of Thailand to ASEAN Intergovernmental Commission on Human Rights (AICHR)

11.00—12.30 Plenary session: The Thai approach on cross-border issues for children in conflict with the law; presentation of the results of the national workshops
  • Prof. Wisit Wisitsora-at, Director General, DJOP MOJ Thailand
  • Mr. Charoen Nantara, Director of Regional Juvenile Vocational Training Center 9
  • Mr. Chainarin Janiam, Director of Juvenile Observation and Protection Centre of Chonburi Province

12.30 – 13.30 Lunch break

13.30 – 14.20 United Nations perspectives and recommendations concerning cross-border cooperation
  • Ms. Anna Giudice Saget, Crime Prevention and Criminal Justice Officer, UNODC
  • Ms. Victoria Juat, Chief of Child Protection, UNICEF Thai office
  • Mr. Alistair Boulton, Assistant Regional Representative, UNHCR
  • Exchange with the room

14.20—15:00 Round table with experts on cross-border cooperation
  • Ms. Malina Enlund, Asia Director, A21 Foundation
  • Ms. Vuthaya Charoenpol, Country Program Director, Friends International (Thailand)
  • Exchange with the room

15:00—15:15 Coffee break
15.15 – 16.15
Cambodia on cross-border issues (intervention, plan, challenges, recommendations)
• Ms. Sotheavy Chan, Secretary of State MOJ, Cambodia
• Mr. Khemlin Ku, Deputy Director General Ministry of Justice
• Mr. Chhay Vanna, Under Secretary of State Ministry of Social Affairs

16.15 – 16.45
Myanmar on cross-border issues (intervention, plan, challenges, recommendations)
• Ms. Marlar Maw, Deputy Director, International Relation and research Department Office of the Supreme Court of the Union

16.45 – 17.15
Vietnam on cross-border issues (intervention, plan, challenges, and recommendations)
• Ms. An Dao, Deputy Head of Division, Ministry of Justice Vietnam, Department of Criminal and Administrative Laws
• Ms. Nguyen Minh Hang—Legal Specialist of International Cooperation Department of MOJ

17.15 – 17.30
Concluding remarks
• Dr. Kattiya Ratanadilok, DJOP MOJ, Thailand
• Mr. Cédric Foussard, Director international Affairs IJJO

19.00
Dinner

DAY 2: THURSDAY 16TH JUNE 2016: CROSS-BORDER SAFEGUARDS FOR CHILDREN IN CONFLICT WITH THE LAW IN THE ASEAN REGION

Morning session: Cross-border safeguards for children in conflict with the law in the ASEAN region

09.00 – 09.20
Brunei
• Ms. Datin Paduka Intan MD. Kassim, Permanent Secretary at the Ministry of Culture, Youth and Sports, Brunei, Brunei Representative for ACWC

09.20 – 09.50
Indonesia
• Mr. Andi Taletting Langi, Deputy Director Doctoral Program of Human Resource Management, Indonesia
• Dr. Elfina Sahetapy, Faculty of Law University of Surabaya

09.50-10.10
Malaysia
Moderator: Her Excellency Dato’ Nazirah Hussain, Ambassador of Malaysia to Thailand
• Dr. Heng Keng Chiam, Commissioner/former Professor of Social Psychology, Malaysia, Malaysian Representative of ACWC

10.10 – 10.30
Philippines
• Ms. Monica Pagunsan, Director Planning and Management Service, Department of Justice, Philippines

10.30 – 10.50
Singapore
• Dr. Razwana Begum, Assistant Director, Ministry of Social and Family Development, Singapore

10.50 – 11.00
Coffee break

11.00—12.45
Drafting together: guidelines for cross-border issues in the ASEAN

Moderators:
• Mr. Cédric Foussard, IJJO Director international Affairs
• Dr. Kattiya Ratanadilok, DJOP MOJ, Thailand

Discussants:
• Dr. Wing-Cheong Chan, Associate Professor, Faculty of Law, National University of Singapore
• Prof. Dr. Ton Liefaard, UNICEF Chair in Children’s Rights at Leiden University, Leiden Law School, member of the IJJO European Council for Juvenile Justice

12.45 – 13.00
Conclusions and bringing cross-border issue to ACWC
• Datuk Dr. Heng Keng Chiam, Commissioner/former Professor of Social Psychology, Malaysia, Malaysian Representative of ACWC
13.00 – 14.00
Lunch break

Afternoon session: the UN Global study on children deprived of their liberty

14.00 – 14.20
UN global study on children deprived of their liberty
  • Ms. Marta Santos Pais, SRSG-VAC

14.20 – 15.20
Round table: Bringing together regional and international expertise

Moderator and introductory remarks: Dr. Ton Liefaard, UNICEF Chair in Children’s Rights at Leiden University, Leiden Law School, member of the IJJO European Council for Juvenile Justice
  • Ms. Grace C. Agcaoili, Regional advisor, Child Protection Specialist UNICEF Regional Office
  • Ms. Anna Giudice Saget, Crime Prevention and Criminal Justice Officer, UNODC
  • Mr. Laurent Meillan, Officer in Charge, United Nations Human Rights Office for South East Asia—OHCHR
  • Mr. Wanchai Rujanawong, ACWC Representative for Thailand

15.20 – 15.30
Coffee break

15.30 – 17.00
Working group on the Global Study

Moderators: SRSG-VAC team
  • In what ways could the APCJJ Subcommittee for ASEAN contribute to the UN Global Study (advocacy, research, regional/ thematic consultations, etc.)?
  • What key gaps can be identified on Children’s deprivation of liberty in law, policy, and practice? (Gender and child sensitive approaches, data, RJ, etc.)
  • What kind of methodologies do you suggest to ensure an inclusive and participatory global process, including special attention to child participation?

17.00 – 17.15
Conclusions of the working groups
  • Ms. Marta Santos Pais, SRSG-VAC

19.00
Gala dinner

DAY 3: FRIDAY 17TH JUNE 2016: ELIMINATION OF VIOLENCE AGAINST CHILDREN IN CONFLICT WITH THE LAW

Morning session: ASEAN Regional Plan of Action on the Elimination of Violence against Children

09.00 – 10.00
Presentation ASEAN Regional Plan of Action on the Elimination of Violence against Children
  • Ms. Marta Santos Pais, SRSG-VAC
  • H.E. Datin Paduka Intan Md. Kassim, Permanent Secretary at the Ministry of Culture, Youth and Sports, Brunei, Brunei Representative for ACWC
  • Mr. Vongthep Arthakaivalvatee, Deputy Secretary – General of ASEAN for ASEAN Socio – Cultural Community

10.00 – 10.15
Coffee break

10.15 – 10.45
Best practices and strategies on the elimination of violence against children
  • Dr. Razwana Begum, Assistant Director, Ministry of Social and Family Development, Singapore

10.45 – 12.00
Reviewing strategies for the implementation of the ASEAN Regional Plan of Action on Elimination of Violence against Children

Moderators and introductory remarks:
  • Ms. Grace C. Agcaoili, Regional advisor, Child Protection Specialist UNICEF Regional Office
  • Dr. Razwana Begum, Assistant Director, Ministry of Social and Family Development, Singapore
Round Table for all Participants

12.00 – 13.00
Lunch break

Afternoon session: UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice

13.00 – 13.30
• Ms. Anna Giudice Saget, Crime Prevention and Criminal Justice Officer, UNODC

13.30—14.30
Intercontinental exchange on Violence against Children in Crime Prevention and Criminal Justice in light of UN Model Strategies
Moderator: Mr. Cédric Foussard, IJJO Director of International Affairs

• Latin America: Dr. Nicolás Espejo Yaksic, Advisor to the SRSG-VAC
• Europe: Dr. Ton Liefaard, UNICEF Chair in Children’s Rights at Leiden University, Leiden Law School, member of the IJJO European Council for Juvenile Justice
• Australia: Dr. Wendy O’ Brien, Lecturer at Deakin University
• India: Mr. Justice V. M. Kanade, Judge, High Court Mumbai

14:30—15.30
Ways to implement UN Model Strategies in ASEAN: Sharing of best practices on the elimination of violence against children in conflict with the law
Moderator: Jordi Mallarach Parés, Project Manager IJJO

• Ms. Aisyah Yuliani, Raoul Wallenberg Institute, Indonesian Office
• Dr. Sita Sumrit, Programme Leader for Women and Children Empowerment, Thailand Institute of Justice
• Debate with the audience

15.30 – 16.00
Closing ceremony
• Dr. Francisco Legaz Cervantes, IJJO Chairman
• Dr. Kittipong Kittayarak, the Executive Director of TIJ
• Prof. Wisit Wisitsora-at, Director General, DJOP MOJ Thailand

16.00
Refreshments
How can the sharing of best practices and the drafting of regional guidelines facilitate improved cross-border cooperation in ASEAN (Association of South East Asian Nations) regarding the treatment of children in conflict with the law? What are the conditions, situations and challenges which children in detention face around the world? How will the findings of the UN Global Study on Children Deprived of their Liberty help shape more effective policies and practices, in line with international standards? And, in the context of the millions of children suffering the violation of their basic human rights, what strategies aiming to eliminate violence against children (VAC) in conflict with the law can be established in ASEAN through cooperation, agreements and mechanisms to further implement the landmark ASEAN Regional Plan of Action?

These were the crucial questions at the heart of the Second Meeting of the APCJJ Subcommittee for ASEAN, which was envisioned to foster sustainable cooperation between juvenile justice stakeholders in the region, and to promote shared engagements to reinforce the improvement of child-friendly justice in line with international human rights standards.

The Asia-Pacific Council for Juvenile Justice (APCJJ) is a regional think-tank created by the International Juvenile Justice Observatory (IJJO) in 2012, which gathers and fosters cooperative work among experts from the academic, judiciary, public administration and civil society sectors. In 2014, the APCJJ established the Subcommittee for the ASEAN region.

Transnational judicial cooperation has become an important matter for ASEAN member states. Therefore, one of the main topics of the Second Meeting of the APCJJ Subcommittee for ASEAN was cross-border safeguards for children in conflict with the law, along with the implementation of the ASEAN Regional Plan of Action on the Elimination of Violence against Children, and the presentation of the UN Global Study on Children Deprived of their Liberty.

The IJJO organised this meeting in Bangkok in cooperation with the Department of Juvenile Observation and Protection (DJOP) of the Thai Ministry of Justice, and the Thailand Institute of Justice (TIJ). This meeting was also supported by the ASEAN Commission on the Rights of Women and Children (ACWC), the United Nations Office on Drugs and Crime (UNODC), the United Nations Children’s Fund (UNICEF), and the Office of the Special Representative of the Secretary-General on Violence against Children (SRSG-VAC).