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IMPACT JUSTICE PROTOCOL SERIES:

Working with Children in the Eastern
Caribbean Justice System



**No. 8: Protocols for NGO Representatives:
International Standards and Best
Practices
2018**

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PREFACE

The Convention on the Rights of the Child and related international instruments, standards and best practices recognise children as a distinct class of persons who, by reason of their physical and mental immaturity, are in need of specialized support and assistance, commensurate with their respective needs and interests. Importantly, the provision of support and assistance is not restricted to children in need of care and protection, but extends to children in conflict with the law.

The Convention, standards and best practices envisage a fair system of justice by all States, including the Eastern Caribbean States. This system of justice must respect, fulfil and protect the rights of all children who come into contact with the justice system, having regard to the best interests of the child principle. This principle prescribes that in all matters which touch and concern children who come into contact with the justice system, the following values should be observed:

- the adoption of early intervention strategies to prevent children who exhibit traits likely to lead to criminal behaviour from committing infractions against the law;
- the promotion of methodologies to allow children the fullest opportunity to participate in all proceedings in relation to which they are participants;
- the adoption of fair, independent and sufficiently flexible strategies in all matters which concern children;
- the provision of timely, comprehensive and individualised support and assistance to all children who come into contact with the justice system;
- the adoption of diversion measures at the earliest possible opportunity to direct children in conflict with the law away from the formal, penal justice system;
- the adoption of specialised measures to ensure that children are afforded a fair trial;

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- the adoption of measures aimed at reducing the institutionalization of children;
- the provision of timely and comprehensive rehabilitative services to all children who come into contact with the justice system; and
- the adoption of sufficiently robust measures aimed at ensuring the successful reintegration of children who formerly came into contact with the justice system into their families and wider communities.

IMPACT Justice recognises that although these values are foundational to any fair and efficient justice system, they have not always been observed by some practitioners who work with children within the context of the justice system in the Eastern Caribbean. To this end, and, having regard to the need for harmonisation of policies and practices with regard to the protection of the rights of children who come into contact with the justice system in the Eastern Caribbean, these protocols have been drafted in keeping with international standards and best practices, including:

- the *United Nations Convention on the Rights of the Child* (“the CRC”);
- the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“**the Beijing Rules**”);
- the *United Nations Standard Minimum Rules for Non-custodial Measures* (“**the Tokyo Rules**”);
- the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (“**the Havana Rules**”);
- the *United Nations Guidelines for the Prevention of Juvenile Delinquency* (“**the Riyadh Guidelines**”); and
- the *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*.

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International Standards and Best Practices**

The *Protocols for Practitioners Working with Children in the Eastern Caribbean Justice System* are a series of guidelines that constitute specific instructions, consistent with international best practices and standards, designed to guide and regulate the interactions between children who come into contact with the justice system in the Eastern Caribbean and the following stakeholders:

- Defence Counsel (Booklet No. 1)
- Education Officers (Booklet No. 2)
- Judicial Officers (Booklet No. 3)
- The Police (Booklet No. 4)
- Prosecutors (Booklet No. 5)
- Social Workers, Probation Officers and Childcare Board Officers (Booklet No. 6)
- Staff at detention centres/residential facilities (Booklet No. 7); and
- Staff employed at NGOs that work with children (Booklet No. 8).

The Protocols represent an ongoing commitment by IMPACT Justice to engender the principles of integrity, excellence, accountability and professionalism in dealing with children who come into contact with the justice system.

Although the Protocols do not have the force of law, to be effective, all stakeholders should endeavour to do their utmost to adhere to the guidelines and directions prescribed therein, as, after all, these guidelines and directions represent international standards and best practices. Such adherence will help to ensure that the delivery of justice to children in the Eastern Caribbean is efficient, objective and fair, in keeping with the rule of law. Finally, to remain relevant, the Protocols must remain current. In this regard, the Protocols should not be regarded as fixed in time, but should rather be treated as living documents; perpetual works in progress. To this end, the Protocols should be subject to continuous review and, in collaboration with relevant stakeholders, should be

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updated as necessary, as new issues and challenges invariably require new policies or revisions to existing ones. All practitioners working with children in the justice system should be conscious of this, and are encouraged to suggest changes where policies are unclear or out-dated.

IMPACT Justice is pleased to introduce *this series: Protocols for Practitioners Working with Children in the Eastern Caribbean Justice System*. Another series, for practitioners working with persons with disabilities, will also be published. IMPACT Justice trusts that the protocols in the two series will be an invaluable resource for all stakeholders.

As the Regional Director of IMPACT Justice, I thank the Government of Canada for funding the series, and Dr. Jason Haynes, attorney-at-law, for conducting the necessary desk research, interviews in the OECS and preparing the booklets.

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PROTOCOLS FOR NGO REPRESENTATIVES

BACKGROUND AND CONTEXT

Staff working at non-governmental organisations who encounter children in the context of the justice system are particularly important personnel, as they are often the first point of contact for children in conflict with the law or those in need of care and protection. These organisations also provide assessment services for children, support services, such as counselling and rehabilitation, as well as residential facilities. Notwithstanding positive strides made to enhance the delivery of services to children, the research, which involved interviews with some 107 stakeholders across the seven Eastern Caribbean States of Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines, found that NGOs working with children in the context of the justice system face a number of challenges:

- due to a lack of training and awareness of the peculiar vulnerabilities which confront children who come into contact with the justice system, a few children have been subject to misguided assessments by NGOs, thereby resulting in them being treated as mentally unsound;
- in the absence of adequate funding and in light of resource constraints, a number of NGOs in the field of child justice have not been able to successfully execute some of their planned programs aimed at enhancing the protection of children who come into contact with the justice system. In this context, the State and donor agencies must enhance the financial support

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afforded NGOs, and provide all necessary logistical support required to enable NGOs to provide consistent and high quality service to their child clients.

- NGOs offering residential facilities are often over-subscribed, thereby resulting in little supervision being specifically provided to children who come into contact with the justice system. Apart from the relative lack of supervision, there is, at times, ill-advised mixing of different categories of children in residential facilities, which has, in the past, exposed some children to the lifestyles of more hardened children. NGOs should, with the assistance of other stakeholders, enhance their service delivery by expanding their physical infrastructure and retrofitting requisite facilities to make them more child-friendly.
- NGOs offering residential facilities do not always benefit from full security systems aimed at protecting children and staff from intimidation or harassment. This is an area that undoubtedly needs to be addressed.



FORMAL POLICY AND **PROCEDURES**

THE RIGHT TO BE HEARD AND TO PARTICIPATE IN LEGAL PROCEEDINGS

Professionals working in the justice system are obliged to ensure that children who are capable of forming their own views are afforded the right to fully participate in matters affecting them within the context of the justice system. The right of children to participate in legal proceedings is not only an important element of their broader fair trial right, but also an important aspect of their autonomy (**Article 12 Convention on the Rights of the Child**).

The right to participate in legal proceedings is not restricted to children. Parents or guardians or other responsible adults must be afforded the opportunity to play an active role in legal proceedings whenever their children come into contact with the justice system.

This right should only be curtailed in the most exceptional circumstances, such as where the participation of the child’s parents or guardians is deemed to be antithetical to the best interests of the child (**Rule 15(2) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice - “the Beijing Rules”**).

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SPECIFIC GUIDELINES

NGO staff should seek to:

- afford the child the opportunity to consult with counsel at the earliest possible opportunity;
- explain to the child in an age-appropriate manner the nature of the legal proceedings in relation to which he or she is involved as a party if the child lacks clarity;
- afford the child reasonable periods of time away from the facility so as to enable him or her to fully participate in any legal proceedings, if the facility serves as a residential home;
- fully support the child’s participation in legal proceedings, through the provision of transportation and related assistance;
- accompany the child, where feasible, to court so that he or she could fully and comfortably participate in legal proceedings;
- give the parents or guardians of the child the opportunity to support the child if he or she is being accommodated at the facility by, for example, allowing reasonable visitations; and
- remind the child and his or her parents of the date and time of any hearings.

SCHEDULING PRACTICES AND THE REASONABLE EXPEDITION OF MATTERS

Although the Convention on the Rights of the Child does not specify a timeframe within which matters involving children who come into contact with the justice system must be dispensed with, it nonetheless recognises that professionals working in the justice system should be “prompt” in

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dealing with all issues which concern children (**Article 37(d) Convention on the Rights of the Child**).

The Committee on the Rights of the Child has repeatedly explained that because of the delicate age of children and attendant inherent vulnerabilities, decisions made by professionals which touch and concern children must be swiftly made, though, of course, without denying anyone their due process guarantees. In other words, the reasonable expedition of matters involving children is inherently part and parcel of the right to fair trial, a fact recognised by the Committee on the Rights of the Child, which has emphatically observed that, “(...) the time between the commission of the offence and the final response to this act should be as short as possible (...) the longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized.”¹

This view has also been countenanced by the Inter-American Court on Human Rights, which has held that, “an unjustified delay in deciding cases against children is contrary to the international norms that protect them.”²

SPECIFIC GUIDELINES

NGO staff should seek to:

- inform children and their parents or guardians of any scheduled court hearings;

¹ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 51.

² I/A Court H.R. Case of the Juvenile Re-education Institute v. Paraguay, Preliminary Objections, Merits, Reparations, Costs. Judgment of September 2, 2004, Series C No. 112, paras. 215 and 226.

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- prepare children for attendance at all court hearings;
- arrange for children to be safely transported from the facility to any hearings;
- regularly remind colleagues who work with children of the importance of making best efforts to expedite matters that concern children;
- implore the court to schedule matters involving children outside of the school term or after school hours;
- avoid engaging in any conduct that could result in the court adjourning matters involving children; and
- provide all relevant materials necessary to enable other stakeholders to proceed with any hearings at the earliest possible opportunity.

BAIL

The Convention on the Rights of the Child requires that children who are in conflict with the law be considered for the granting of bail at the earliest opportunity, provided that the Court considers that the circumstances so demand that bail be granted (**Article 37(b) of the Convention on the Rights of the Child**).

In the Eastern Caribbean sub-region, a child's entitlement to bail does not only arise under international law, but is a general common law, and in some cases, statutory principle.

SPECIFIC GUIDELINES

NGO staff should seek to:

- make contact, on the instruction of the child, with any person who could serve as a suitable surety;

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- create an accommodating environment that could assist the child in meeting with his or her attorney and his or her surety to discuss any likely bail application; and
- provide any information or relevant evidence which could assist the court in determining whether to grant bail to the child.

LEGAL REPRESENTATION

The Inter-American Commission on Human Rights has observed that the right of defence includes, among other things, the right to adequate legal representation, an element of which is the provision of a state appointed attorney (legal aid) if the child has not engaged private legal representation.³

SPECIFIC GUIDELINES

NGO staff should seek to:

- enquire, at the earliest possible opportunity, into whether a child who makes contact with the NGO is represented by counsel;
- indicate to other professionals in the justice system, including the police, the prosecutor and the court, at the earliest possible opportunity, whether a child is being represented by defence counsel;
- suggest a suitably competent counsel to represent the child; and
- create an environment that would facilitate regular meetings between counsel and the child.

³ IACHR, Report No. 41/99, Case 11.491 (Honduras), Admissibility and Merits, Minors in detention, March 10, 1999, para. 152.

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COURT ORIENTATION

Professionals working in the justice system are obliged to guarantee the effective participation of children in legal proceedings (**Article 40 (2) (b) (iv) of the Convention on the Rights of the Child**).

Effective participation, among other things, demands that children be afforded practical and child-sensitive court orientation session(s) so as to familiarise them, as inherently vulnerable participants in the justice system, with the Court’s distinctive and often intimidating language, procedures, environment and personnel.

The importance of this right was averred to by the Committee on the Rights of the Child, in the context of General Comment No. 10, which underscored the importance of court orientation as an element of a fair trial,⁴ affirming **Rule 14(2) of the Beijing Rules**, which calls on States to conduct legal proceedings “in an atmosphere of understanding.”

The UN Office on Drugs and Crime (UNODC) has noted that,

“the preparation [of children for court] is crucial to avoid [them] being destabilized or unnerved once they appear before the court and, especially, during the challenging experience of their cross-examination. The party calling the witness, be it the prosecution or the defence, has a clear interest in explaining what the [child] can expect during his or her appearance, double-checking the witness’ self-confidence and his or her memory of his or her

⁴ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, paras. 44 and 46.

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statements. It also serves to prepare him or her to face and answer cross-examination and attempts made by the other parties to undermine the value of the evidence. Such a step is even more crucial in the case of vulnerable witnesses.”⁵

SPECIFIC GUIDELINES

NGO staff should seek to:

- enquire, at the very outset, into whether a child who comes into contact with the justice system has received court orientation;
- provide court orientation to the child who indicates that he or she has not already received court orientation. This exercise should enable the child to have a firm appreciation of the court’s physical environment, personnel, language and procedures;
- remind the child of the court’s willingness to listen to his or her concerns, and that he or she should let the court know of any discomfort which is experienced during the formal proceedings; and
- remind the child that the court is willing to transform itself into a child sensitive environment so that the child could achieve his or her best evidence.

SPECIAL MEASURES

Children who come into contact with the justice system, because of their age and situational vulnerabilities, stand a high chance of being secondarily victimised by the very justice system that is meant to protect them. In

⁵ ‘Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime’ (United Nations Office on Drugs and Crime, 2009) 70-71

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order to militate against this possibility, Professionals in the justice system are obliged to treat every child in a manner that is “consistent with the promotion of the child's sense of dignity and worth” (**Article 40(1) of the Convention on the Rights of the Child**).

The Committee on the Rights of the Child has interpreted this provision to mean that the child must be free from a court environment that is “intimidating, hostile, insensitive or inappropriate for her or his age.”⁶ According to the Committee, this necessitates, among other things, the provision of appropriately designed court rooms, sight screens, and separate waiting rooms. These “special measures”, according to the Inter-American Court on Human Rights, are intended to “enable [children] to effectively enjoy those rights guaranteed by the Convention.”⁷

SPECIFIC GUIDELINES

NGO staff should seek to:

- closely monitor the child in order to determine whether he or she has experienced or is experiencing undue discomfort, harassment or intimidation, and indicate this to relevant stakeholders in the justice system at the earliest possible opportunity;
- suggest that the court utilise a range of special measures as the circumstances of the case demand, including live links; and
- provide a conducive environment which enables the court to use the premises of the NGO, in appropriate cases, to employ special

⁶ Committee on the Rights of the Child, General Comment No. No. 12, The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 34.

⁷ I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 98

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measures, such as live links and the recording of evidence to be used in court in subsequent proceedings.

DIVERSION

Professionals working in the justice system are obliged to consider appropriate measures for “dealing with children without resorting to judicial proceedings” (**Article 40(3) of the Convention on the Rights of the Child**). **Rule 11 of the Beijing Rules** also addresses the issue of diversion.

Although diversion does not attempt to deny the relative culpability of children who are in conflict with the law, it nonetheless seeks to give these children a second chance so that they are not stigmatised or victimised by formal, penal legal proceedings, whilst providing them with a suitable opportunity to be sufficiently rehabilitated.⁸

Notwithstanding the rapid growth of various diversion programs in recent years, the Committee on the Rights of the Child has warned that diversion,

“should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding.”⁹

⁸ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, paras. 24 and 25.

⁹ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 27.

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Additionally, the Committee has stated that,

“The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure.”¹⁰

Moreover, the Committee appears to be of the view that,

“The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular, to protect the child from discrimination. In addition, the child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities, and on the possibility of review of the measure. The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as ‘criminal records’ and a child who has been previously diverted must not be seen as having a previous conviction.”¹¹

Providing that the aforementioned safeguards are afforded children, a range of measures are contemplated by the Convention on the Rights of the Child to give effect to the principle of diversion. These include:

¹⁰ Ibid

¹¹ Ibid

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- care, guidance and supervision orders;
- counselling;
- probation;
- foster care;
- education and vocational training programmes; and
- other alternatives to institutional care.¹²

These diversion measures are not only envisaged to be used without resorting to judicial proceedings, but also in the context of judicial proceedings which have already commenced.

In short, diversion is intended to serve a dual purpose: to encourage the child to be accountable for the harm which he or she has caused, whilst simultaneously meeting his or her particular needs, which include rehabilitation and reintegration. Diversion provides an opportunity to those affected by the harm caused by the child to express their views on its impact on them; encourages the child to render to the victim some symbolic benefit or some object as compensation for harm caused; promotes reconciliation between the child and the person or community affected by the harm caused by the child; prevents the stigmatisation of the child; and, ultimately, prevents the child from having a criminal record.

In principle, the application of diversion measures is dependent upon:

- the age and developmental needs of the child;
- the background of the child;
- the educational level, cognitive ability and the general circumstances of the child;

¹² Article 40(4) Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 24

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- the proportionality of the measure in question to the circumstances of the child; and
- the nature of the offence and the interests of society.

SPECIFIC GUIDELINES

NGO staff should seek to:

- suggest to other stakeholders appropriate diversion measures to be taken in respect of children who come into contact with the NGO, such as the issuance of an apology, supervised community service and restitution;
- coordinate with other stakeholders in the delivery of diversion measures; and
- monitor, evaluate and follow up on the child's compliance with diversion measures.

REHABILITATION

Professionals working in the justice system are obliged to ensure that every child who is in conflict with the law is “treated in a manner consistent with the promotion of the child’s sense of dignity and worth”, having regard to “the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society” (**Article 40 of the Convention on the Rights of the Child**).

In short, the Convention on the Rights of the Child recognises the importance served by rehabilitation to reforming young offenders,¹³ a view shared by the Hon. Mr. Justice Aziz, High Court Judge in the jurisdiction of Grenada, when he recently emphasized in **R v Joshua**

¹³ IACHR, Report No. 62/02, Case 12.285, Merits, Michael Domingues (United States), October 22, 2002, para. 83.

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Mitchell¹⁴ the need for first time offenders to receive “the most appropriate rehabilitation and treatment which would enable them, upon reintegration into society, to become productive members of their communities.”¹⁵

SPECIFIC GUIDELINES

NGO staff should seek to:

- explore the range of rehabilitative programs available in the jurisdiction;
- suggest to the court and other stakeholders which rehabilitative programs are best suited to be applied to a child who comes into contact with the justice system, having regard to the nature of the offence for which the child has been found guilty; the age of the child and level of maturity; and the educational, social and developmental needs of the child. The following rehabilitative programs could be suggested:
 - *a substance abuse awareness and recidivism prevention programme, which aims to encourage child offenders with substance abuse problems to receive necessary intervention and to facilitate their reintegration into the community;*
 - *a violence prevention programme, whose aim it is to provide violent child offenders with comprehensive psychological treatment services to reduce violent reoffending, tailored according to an evidence-based, specialized risk needs assessment;*

¹⁴ GDA HCR 2015/0042

¹⁵ *Ibid* para [21]

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- *an offending behaviour programme for young offenders, which helps child offenders to develop positive attitudes and skills instrumental to their successful rehabilitation;*
 - *a relapse prevention course for inmates undergoing drug addiction treatment, which aims at improving child inmates' efficacy in dealing with problems of substance abuse and minimizing relapse through increasing their motivation to change their drug-taking behaviour, identifying high risk situations relating to drug-taking, and developing skills to deal with these high-risk situations;*
 - *a sex offender evaluation and treatment programme, which aims to provide comprehensive and systematic psychological evaluation and treatment services for sex offenders in a therapeutic environment with a view to enhancing their motivation for treatment;*
 - *an educational programme, the aim of which is to provide child offenders with opportunities to better themselves through education and to assist them in participating in examinations at various levels;*
 - *a vocational training programme the aim of which is to assist child offenders in acquiring vocational skills which may help them seek gainful employment after discharge and thus start a new healthy life; and*
 - *a mentorship programme.*
- monitor compliance with any rehabilitative program imposed in respect of a child who comes into contact with the justice system.

REASONABLE ACCOMMODATION

Professionals are obliged to ensure that no child is deprived of his or her liberty unlawfully or arbitrarily and that the arrest, detention or imprisonment of a child be in conformity with domestic law and used only as a measure of last resort (**Article 37(b) of the Convention on the Rights of the Child**).

The principle of last resort, which is also provided for under **Rule 19 of the Beijing Rules** and **Rule 2 of the Havana Rules**, effectively means that deprivation of liberty, whether in the context of pre-trial detention or as a sentence, must only be applied in the most exceptional circumstances, and be proportionate to the nature of the offence in question.

This principle recognises that there are adverse consequences associated with depriving a child of his or her liberty whilst he or she is still maturing, and seeks to mitigate these consequences by placing an obligation on professionals in the justice system to carefully assess the specific circumstances of each child against the backdrop of the best interests of the child.

SPECIFIC GUIDELINES

NGO staff should seek to:

- ensure that children who are accommodated on the premises of the NGO receive supervised visitation from parents, guardians, caretakers or legal representatives, since "isolation from the outside world causes moral suffering and emotional trauma,

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makes them particularly vulnerable and increases the risk that they will be mistreated and abused";¹⁶

- ensure that every child deprived of his or her liberty who is accommodated at the NGO's facility is accommodated separately from adults, since "it is absolutely impossible to achieve reform and social rehabilitation in penal institutions where children are forced to live alongside adult criminals";¹⁷
- ensure that, as far as is reasonably practicable, boys and girls are accommodated in separate facilities, if accommodated at on the NGO's premises;
- ensure that children deprived of their liberty who are accommodated on the NGO's premises live in conditions compatible with their personal dignity and physical integrity.¹⁸ This effectively means that they should ensure that the physical space that accommodates children is sufficient as to ensure respect for children's privacy, dignity and health, and allow the development of intervention proposals for assisting them;¹⁹
- take positive measures to ensure that children accommodated at the NGO's facility effectively enjoy all their rights, including the right to suitably prepared and presented food at normal meal

¹⁶ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

¹⁷ IACHR, Report N° 41/99, Case 11.491 (Honduras), Admissibility and Merits, Minors in Detention, 10 March 1999, paras. 125 and 126

¹⁸ I/A Court H.R., Case of Neira Alegría et al. v. Peru, Merits. Judgment of January 19, 1995, Series C No. 20, para. 60

¹⁹ Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 89

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times; the right to physical and mental health; the right to an education; and the right to suitable recreation;²⁰

- ensure that the facilities which accommodate children are appropriately configured to accommodate children with special physical needs; and
- take all security, evacuation and emergency measures necessary to safeguard the rights of children deprived of their liberty.²¹

REINTEGRATION

International standards and best practices require that professionals working in the justice system give due consideration to the reintegration of children who come into contact with the justice system (**Article 40 of the Convention on the Rights of the Child**). This position is countenanced not only by the Convention on the Rights of the Child, but also **Rule 79 of the Havana Rules**, which provides that all children should “benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.” Rule 80 of that instrument goes on to make it clear that stakeholders in the justice system should provide specialised services to assist children in

²⁰ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, document approved by the Commission at its 131st regular session, held March 3 to 14, 2008, Principle X; I/A Court H.R. Case of the Juvenile Re-education Institute v. Paraguay, Preliminary Objections, Merits, Reparations, Costs. Judgment of September 2, 2004, Series C No. 112, para. 161; I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 84

²¹ I/A Court H.R., Matter of Urso Branco Prison regarding Brazil, Provisional Measures. Order of the Inter-American Court of Human Rights of July 7, 2004, point number thirteen

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re-establishing themselves in society and to lessen prejudice against them. These services should ensure, to the greatest extent possible, that the child is provided with suitable residence, employment and clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration.

Reintegration programs must be tailored to the age and particular needs of each child, and must include the family and the community to which the child belongs. For children who have no family, or whose family is unable to support them, child protection services should be ready to step in to offer the support that will enable these children to provide for their social and economic needs. Children who are on the verge of attaining their adulthood, or who have already attained it, may require guidance to enrol in educational or vocational training programs, and support to obtain housing, a job and connect with other resources in the community. While these support programs should be available to all children who have been released, it is important to note that reintegration into the community ought not to begin when the child is released; instead, reintegration is a process that should begin as soon as the child is sentenced and continue to be implemented the entire time that the child is serving his or her sentence.

Any program or service whose purpose is to assist children deprived of their liberty with their re-assimilation into the community must make every effort to fight the discrimination and stigmatization that these children tend to suffer for having been offenders. It is therefore imperative that the confidentiality of the records of children either accused or convicted of violating criminal law be kept confidential.

SPECIFIC GUIDELINES

NGO staff should seek to:

- explore the range of reintegration programs available for children who come into contact with the justice system;
- implement reintegration programs which best align with the child’s needs, such as the issuance of reintegration permits, which allow children to leave the NGO’s facilities to participate in educational, rehabilitative or job activities in the community before being formally released; and
- monitor the implementation and effectiveness of various reintegration measures, including educational and vocational services and counselling.

MEDICAL CARE, COUNSELLING AND RELATED FORMS OF ASSISTANCE

Children who come into contact with the justice system suffer a variety of harms, some of a physical nature, others of a psychological nature. In recognition of these harms, and in an effort to enhance the protection of these especially vulnerable persons, international law requires that all appropriate measures be taken to promote the “physical and psychological recovery” of children in an environment that fosters their “health, self-respect and dignity” (**Article 40(I) of the Convention on the Rights of the Child**). These principles are further countenanced by the *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, which speak to the need for the provision of “health care, counselling, physical and psychological recovery services and other services necessary for the child’s reintegration.” The Guidelines further indicate that all such assistance should address the child’s needs and enable him or her to participate effectively at all stages of the justice

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process, and that any support afforded the child should be provided by “professionals”, commencing “at the initial report and continuing until such services are no longer required.”²² The rationale for these specialised measures, as pointed out by the UN Office on Drugs and Crime (UNODC), lies in the fact that children need to be protected from victimisation within the context of the justice system, as victimisation has “far-reaching effects on [children’s] psychological development, on relationships with caregivers, siblings and peers, on their ability to learn, and so forth.”²³

SPECIFIC GUIDELINES

NGO staff should seek to:

- formulate an assessment that could assist them in determining the physical and psychological needs of the child;
- consider the range of medical, counselling and other support services available in light of the child’s immediate and long term needs;
- refer the child to relevant agencies so that he or she could receive appropriate medical, counselling or other support services;
- regularly review the extent to which support services are provided to the child, as well as the quality of said services;
- suggest, where appropriate, the variation of any orders made with regard to the provision of medical, counselling or other

²² Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter III, Principles, paragraph 8, and chapter IX, The right to effective assistance, paragraphs 22-24

²³ Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime (United Nations Office on Drugs And Crime, 2009) 49

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support services to the child, where the circumstances so demand.

PRIVACY AND CONFIDENTIALITY

Although legal proceedings are generally of a public nature, international law requires that the privacy of a child who comes into contact with the justice system be fully respected at all stages of legal proceedings in relation to which he or she is a participant (**Article 40(2)(vii) of the Convention on the Rights of the Child**). This position is confirmed by **Rules 8(1) and 21(1) of the Beijing Rules** and **Rule 3(12) of the Tokyo Rules**.

According to the Inter-American Court on Human Rights, the protection of a child’s privacy within the context of the justice system “takes into account the best interests of the child, insofar as it protects him or her from opinions, judgments or stigmatization that may have a substantial bearing on his or her future life.”²⁴ As pointed out by the Committee on the Rights of the Child, this effectively means that in camera hearings should be held in all appropriate cases involving children,²⁵ and that no information should be published that may lead to the identification of a child because of its “effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe.”²⁶

²⁴ I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 134.

²⁵ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 66.

²⁶ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 64.

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SPECIFIC GUIDELINES

NGO staff should seek to:

- prevent the media or any person who does not have official clearance from gaining access to a child who is being accommodated at the facility;
- take all appropriate measures to keep any documents/records relating to a child who is being assisted by the facility confidential; and
- implement appropriate security measures to ensure that the activities of a child who is accommodated at the facility are not surreptitiously observed by unauthorised persons.

INTIMIDATION/HARASSMENT

International law requires that all appropriate measures be taken to promote the physical and psychological recovery and social reintegration of children who come into contact with the justice system (**Article 39 of the Convention on the Rights of the Child**). This obligation necessitates the implementation of measures that protect children from any form of intimidation, harassment or torture or any other form of cruel, inhuman or degrading treatment or punishment.

The *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* reaffirm this obligation by stipulating that “professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses” and that “where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child”. The rationale behind the adoption of protection mechanisms was fully enunciated by the UN Office on Drugs and Crime in its *Handbook for*

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Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime in the following terms:

“Involvement as a victim or witness, or both, in a criminal process may be a perilous experience, especially when organized crime is involved. In these cases, victims and witnesses may even fear a threat to their life. In such extreme circumstances, ensuring their safety is essential. Witnesses and victims can be at risk of intimidation because of their involvement in the justice process. The risk of intimidation of children should be given special attention, particularly in cases of sexual abuse, trafficking or in cases where the alleged perpetrator is someone close to the child. Ensuring the safety of child victims and witnesses can entail a range of actions such as protective and security measures to prevent them from being further harmed, intimidated or retaliated against. The right to safety also includes the right to confidentiality with regard to information and evidence and physical and emotional protection during the judicial process. In addition, their safety should be ensured before and after the trial by either keeping their whereabouts confidential or taking action against an offender to stop intimidation and retaliation. Protective measures are usually applied before the trial in order to ensure that the victim or witness will be available and fit to testify at trial. However, these measures should, in principle, continue to apply as long as they remain necessary to protect the victim or witness, including after his or her testimony, in order to avoid possible retaliation.”²⁷

²⁷ *Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime* (United Nations Office On Drugs And Crime, 2009) 90

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SPECIFIC GUIDELINES

NGO staff should seek to:

- suggest that the court make appropriate directions that aim to avoid direct contact between children and alleged perpetrators at all relevant points in the justice process;
- take appropriate security measures to protect children accommodated at the facility from intimidation or harassment;²⁸
- remind the police that the cause of action ‘perverting the course of justice’ could be utilised in appropriate cases to curtail the intimidation or harassment of children who are accommodated at the facility; and
- monitor compliance with any court imposed restraining orders, and report any suspected breaches.

CHILDREN’S PROPERTY

Children in conflict with the law have a right, according to the Convention on the Rights of the Child, to be treated “in a manner consistent with the promotion of [their] sense of dignity and worth” (**Article 40(1) of the Convention on the Rights of the Child**). According to **Rule 35 of the Havana Rules**, this right entails a recognition that the possession of personal effects is a basic element of the juvenile’s right to privacy and essential to the psychological well-being of the juvenile.”

²⁸ *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, chapter XII, The right to safety, para. 34

SPECIFIC GUIDELINES

NGO staff should seek to:

- place children’s personal effects in a safe place at the facility;
- keep an inventory accounting for these personal effects to be signed by the child;
- keep children’s personal effects in good condition;
- hand over children’s personal effects to the police and other relevant stakeholders, if requested to do so; and
- return all personal effects and money to the child at the conclusion of the matter, except where these articles need to be withheld for legal purposes.

REPORTING

The spirit and context of the CRC implicitly places an obligation on the State to ensure that sufficient mechanisms are in place so as to enable stakeholders to confidentially report suspicious activities that touch and concern children, such as abuse or neglect. According to the UN Office on Drugs and Crime’s *Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime*, once the harmful conduct has been reported to the authorities, there should be a proactive approach to investigating the case *as soon as possible thereafter* by said authorities, namely the police.²⁹ In the absence of such reporting and proactive approach to investigation, the *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* suggest that the safety of the child will be compromised, and the State will likely be in breach of its due

²⁹ Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime (UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, 2009) 74

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diligence obligation under international law, especially where those stakeholders who do not mandatorily report such matters are not subject to commensurate penalties.³⁰

SPECIFIC GUIDELINES

NGO staff should seek to:

- carefully receive and review reports of harmful conduct which touch and concern children who are make contact with the NGO;
- refer credible reports of harmful conduct against children who are accommodated at the facility to other stakeholders so that investigations could be commenced at the earliest possible opportunity; and
- take necessary measures to protect children from further harm or cases of retaliation in the form of harassment or intimidation.

TRAINING

The spirit and context of the Convention on the Rights of the Child³¹ and the Beijing Rules³² require that those who exercise authority at the various stages of the administration of child justice are to be specifically trained and qualified in the human rights of the child, in order to avoid any abuse of authority, and to ensure that the measures ordered in each case are suitable, necessary and proportional. The obligation to engage in adequate training applies to all stakeholders who work directly in the

³⁰ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter XII, The right to safety

³¹ Convention on the Rights of the Child, Article 40(4)

³² Beijing Rules, Rule 6.3.

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justice system as well as at its periphery.³³ Training, in this context, is intended to equip stakeholders with the necessary knowledgebase so as to enable them to properly exercise their discretionary authority with respect to children in a manner consistent with all relevant principles of human rights, including the best interests of the child. The importance of training has been enunciated by the *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*³⁴ and confirmed by the *UN Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime*.

SPECIFIC GUIDELINES

NGO staff should seek to:

- engage in regular and comprehensive training on the following issues:
 - relevant human rights norms, standards and principles, including the rights of the child;
 - principles and ethical duties of their office;
 - signs and symptoms that indicate crimes against children;
 - crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality;
 - impact, consequences, including negative physical and psychological effects, and trauma of crimes against children;
 - special measures and techniques to assist child victims and witnesses in the justice process;

³³ Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 34.

³⁴ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter XV, Implementation, para. 40

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- cross-cultural and age-related linguistic, religious, social and gender issues;
- appropriate adult-child communication skills;
- interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child;
- skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner;
- suitable conditions for accommodating children in accordance with international standards and best practice; and
- roles of, and methods used by, professionals working with child victims and witnesses.

STAKEHOLDER COLLABORATION

The proper administration of justice demands that all stakeholders who are actively engaged in the field of child justice not only individually contribute to the protection and support of children, but also collectively do so, in light of the fact that issues which touch and concern children often raise multi-disciplinary or multi-dimensional challenges. It should thus come as no surprise that the Convention on the Rights of the Child contemplates that, to achieve the full potential of its myriad provisions, stakeholder collaboration is not only desirable, but essential.³⁵

³⁵ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter XV, Implementation, para [43] (“Professionals should make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and

SPECIFIC GUIDELINES

NGO staff should seek to:

- collaborate with a wide cross-section of the professionals working in the justice system so as to enable the efficient delivery of justice to children who come into contact with the justice system, including:
 - judicial officers, who decide upon matters involving children, having regard to the rules of evidence;
 - prosecutors, who decide upon whether to proceed with indicting a child in conflict with the law;
 - police officers, who investigate matters involving children, transmit relevant findings, and present relevant evidence to the court;
 - defence counsel, who provide legal representation to children who are in conflict with the law, and whose contribution to the proper dispensation of justice is thus invaluable;
 - social workers, who provide counselling, support and related assistance to children, thereby enabling them to fully participate in legal proceedings;
 - education officers, who not only provide evidence in appropriate cases, but also appropriate support and assistance to children, including rehabilitative and reintegration services;

social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel working in the same location.”)

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- staff at detention centres/residential activities, who provide accommodation to children, and who deliver rehabilitative and reintegration services;
- representatives of other NGOs, who provide material, social, educational, vocational and related assistance to children, and who also facilitate the implementation of various court-directed diversion, rehabilitative and reintegration programs;
- ensure that fellow staff members are clear about their distinctive role in the diverse web of stakeholders; and
- ensure that conflicts of interest which arise between stakeholders are resolved at the earliest possible opportunity.

DATA/INFORMATION

The Committee on the Rights of the Child has repeatedly reiterated that it is vital that practitioners working in the justice system prepare information and indicators concerning the operation of the child justice system, with a view to improving its operation and management whilst allowing adequate supervision of said system. The methodical compilation of data on the child justice system is an essential tool for planning, formulating and evaluating public policy on the subject.³⁶ In this context,

³⁶ ‘Report of the Committee on the Rights of the Child General Assembly Official Records’ (Fifty-fifth Session Supplement No. 41 (A/55/41) United Nations, New York, 2000) paras. 116, 143, 165, 191 (“The Committee notes with concern the insufficient measures to collect disaggregated statistical data, including data related to the registration of complaints from children, and other information on the situation of children” and “The Committee recommends that the State party take measures to develop a system of data collection and to identify appropriate disaggregated indicators in order to address all areas of the Convention and to

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it has been suggested that practitioners make use of the documents developed by United Nations bodies, so that the criteria and indicators therein established can be used to properly examine the information compiled in connection with children who come into contact with the justice system.

SPECIFIC GUIDELINES

NGO staff should also seek to:

- collect, store and, when necessary, retrieve data/information on the following matters:
 - the number of persons with disabilities who are victims, witnesses or accused persons;
 - the number of persons with disabilities who have been sentenced and the nature of any sentence imposed, including the duration of said sentence;
 - the number of children with disabilities subject to diversion;
 - the use of alternative, non-custodial sentences in respect of persons with disabilities;
 - the number of persons with disabilities who benefit from rehabilitative services, and the nature of these services;
 - the extent to which caregivers or support persons of persons with disabilities participate in court proceedings;
 - the number, frequency and nature of any inspection of places of detention which accommodate persons with disabilities;

facilitate the identification of sectors where further action is needed and the assessment of progress achieved.”)

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- the existence of and utilisation of systems that enable persons with disabilities to file complaints; and
- any directions made by the court concerning persons with disabilities who come into contact with the justice system.
- make relevant data available to other stakeholders in the justice system.
 - the number of children who are encountered by the facility;
 - the number of males and females accommodated at the facility, and the nature of their concerns and needs;
 - the types of rehabilitative services provided at the facility and their relative effectiveness;
 - the number of staff at the facility and their relative levels of training;
 - the number of children subject to diversion, and the effectiveness of diversion measures;
 - the number, frequency and nature of any inspection of the facility;
 - the existence of and utilisation of systems that enable children to file complaints; and
 - any directions made by the court concerning a child who has come into contact with the justice system.
- make relevant data available to other stakeholders in the justice system, on a need to know basis, at the earliest possible opportunity.

WHAT IS IMPACT JUSTICE?

The IMPACT Justice Project is a collaboration between the Canadian Government and the University of the West Indies Cave Hill Campus for enhancing access to justice benefitting men, women, youth and businesses in CARICOM. Its components are: the drafting of gender and environmentally sensitive model legislation and training legislative drafters; provision of an enhanced gender-responsive legislative framework of lawyers which includes upgrading of their skills, the establishment and expansion of legal databases and increasing access to training and delivery of Alternative Dispute Resolution and community-based peace-building services in CARICOM Member States.

What are the “Protocols for Practitioners Working with Children in the Eastern Caribbean Justice System”?

The Protocols are a series of guidelines produced by the IMPACT Justice Project that constitute specific instructions, consistent with international best standards and practices, designed to guide and regulate the interactions between children who come into contact with the justice system in the Eastern Caribbean, and authorities such as judicial officers, prosecutors and defence counsel, police, social workers, and staff at detention centres/residential facilities.

Although the Protocols do not have the force of law, it is hoped that all stakeholders will do their utmost to adhere to the guidelines and principles described. This will help to ensure that the delivery of justice to persons with disabilities in the Eastern Caribbean is efficient, objective and fair.

**Improved Access to Justice in the Caribbean
(IMPACT Justice Project)**
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