

INTRODUCING THE UNITED NATIONS MODEL STRATEGIES AND PRACTICAL MEASURES ON THE ELIMINATION OF VIOLENCE AGAINST CHILDREN IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE

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Violence against children is a widespread phenomenon affecting millions of children all over the world. Although all children have the right to be protected from violence, abuse and exploitation as set out in Article 19 of the Convention on the Rights of the Child (hereafter “CRC”), adopted 25 years ago, many children all over the world still lack the opportunity to grow up in a peaceful and non-violent environment, in which their rights to survival, development, and well-being are fully respected.

Considerable progress has been achieved in the past decades by a number of Member States in preventing and responding to violence against children, but much work still needs to be done. The challenges in protecting children from violence when in contact with the justice system are broad and need to be addressed.

As the topic of the paper is “Preventing and Responding to Violence against Children in Contact with the Justice system,” this platform will be used to briefly introduce a new international normative instrument called the *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*. This international normative instrument, which I will hereafter refer to as the “Model Strategies,” is based on international human rights instruments, such as the CRC, and all United Nations standards and norms in the field of justice for children.

The paper will be presented in three sections: i) Process leading up to the adoption of the “Model Strategies”; ii) Objectives and scope of the “Model Strategies”, and iii) Content of the “Model Strategies.”

In 2006, the United Nations Study on Violence against Children (hereafter “VAC”) acknowledged that violence against children is a widespread phenomenon affecting millions of children all over the world. No country is immune to this problem. The study highlighted the particularly high risk of violence faced by many vulnerable groups of children, including children who are in contact with the justice system as victims, witnesses or alleged offenders. It was suggested that criminal justice institutions could play a more effective role in preventing and responding to such violence.

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In 2012, as a follow-up to the World Report on VAC, the Office of the High Commissioner for Human Rights, UNODC, and the Special Representative of the Secretary-General on Violence against Children, submitted a report to the Human Rights Council which focused specifically on violence against children within the juvenile justice system. The report elaborated the various risk and contributing factors to violence against children who are in contact with the justice system, and made a number of recommendations to prevent and respond to such phenomenon. This report caught the attention of the international community and served as the first step of a domino leading to the development of a new international normative instrument in this area.

In 2013, recognising the pressing need to address the issue of violence against children and, in particular, the role of the criminal justice system, in 2013, the General Assembly of the United Nations requested UNODC to develop a draft set of model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice. UNODC, in close partnership with UNICEF, OHCHR and the SRSG on VAC, along with representatives from a number of NGOs active in this field, prepared the first draft and submitted it to Member States in a meeting hosted by the Government of Thailand in Bangkok, in February 2014. The draft text was revised by Member States, and approved by three policy-making bodies of the United Nations: the CCPCJ, the ECOSOC, and the GA. Its final adoption was made in December 2014.

Approval by the international community of the “Model Strategies” symbolized a strong recognition of this problem and the Member States’ commitment to take stronger action towards this unfamiliar yet urgent aspect of violence against children.

Whether a judge, prosecutor, law enforcement officer, or child protection professional, one must have asked oneself the following questions at least once in his or her career:

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| <ul style="list-style-type: none">• <i>Is the justice system doing everything it can to prevent violence against children?</i>• <i>Is the justice system responding to incidents of violence against children in an effective and appropriate manner?</i>• <i>Is the justice system dealing with children in contact with the law in a manner which reduces the risk that they may be further victimised or abused?</i> |
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Of course, the justice system is not the only system that has responsibilities of protecting children. Its responsibilities, however, are enormous and its role in the protection of children is absolutely crucial. Thus, the “Model Strategies” were developed to support a comprehensive, system-wide, and strategic approach in the field of crime prevention and criminal justice.

They have been developed not only to help States address the need for integrated violence prevention and child protection strategies, but also to acknowledge the complementary roles of the justice system on the one hand, and the role of child protection, social welfare, health and education sectors on the other, to create a protective environment in preventing and responding to violence against children.

The aims of the “Model Strategies” are twofold:

- 1) To improve the effectiveness of the criminal justice system in preventing and responding to violence against children and;
- 2) To protect children from any violence that may result from their contact with that system.

The “Model Strategies” were developed with a view to provide a practical framework to:

- To identify gaps in existing laws, policies and practices;
- To review and design national laws and policies;
- To set up institutions and mechanisms aimed to prevent and respond to VAC;
- To guide professionals in their day-to-day practice to effectively prevent and respond to VAC who are in contact with the justice system;

The “Model Strategies” are grouped into three broad categories:

- 1) General prevention strategies to address violence against children as part of broader child protection and crime prevention initiatives;
- 2) Strategies and measures to improve the criminal justice system’s ability to respond to crimes of violence against children and effectively protect child victims;
- 3) Strategies and measures to prevent and respond to violence against children in contact with the justice system.

Under each strategy there are a number of related “practical measures” that are named and listed rather than fully explained. Some of these measures are formulated in fairly general terms and will need to be refined, customized, and adapted to national or local circumstances.

Not all strategies will have the same level of priority in the context in which one may apply them. The seriousness and prevalence of various risk factors will be necessary when setting such level of priority.

Part I consists of three strategies. The first strategy relates to the prohibition, by law, of all forms of violence against children and the need to specifically criminalize certain serious forms of violence. This is because of the obvious importance of the existence of a sound legal framework which prohibits violence against children and empowers authorities to respond appropriately to incidents of violence. It is important to note that the strategy does not necessarily require the criminalization of all forms of violence. Rather, some forms of violence should not necessarily be defined as crime, and instead be prohibited through other means.

The second strategy is related to the implementation of comprehensive prevention programmes. Prevention of violence against children must be identified as a crime prevention priority, as prevention offers the greatest return in the long term. Hence, criminal justice agencies, working together with child protection, social welfare, health and education agencies and civil

society organizations, all have significant roles to play in developing effective violence prevention programmes.

Elements under this strategy include:

- The need to strengthen the existing child protection system and to help create a protective environment for children;
- The need to adopt measures to address the cultural acceptance or tolerance of VAC;
- The need to foster cooperation between justice and child protection systems;
- The need to address specific vulnerabilities of certain groups of children, such as children working or living on the streets, children with disabilities, children with substance abuse problems, etc...

The third strategy is related to promoting data collection, research, analysis and dissemination. The “Model Strategies” should be implemented through knowledge-based measures, programmes and interventions.

The second group of strategies in Part II focuses on how to enhance the ability and capacity of the criminal justice system to respond to violence against children and protect child victims. It also accentuates the role of the justice system in bringing perpetrators of violence against children to justice, protecting child victims of violence, and working closely together with other systems (education, welfare, child protection, health). In particular, the crucial importance of establishing detection and reporting mechanisms is heavily emphasized.

The third group of strategies relates to the measures required to prevent children from being victimized during their contact with the justice system (including the juvenile justice system). This is because of the heightened risk of violence faced by children alleged as, accused of, or recognised as having infringed the penal law. Considering that one important objective of the criminal justice system is the protection of children’s rights, violence against children within the justice system is an obvious step backward, and is counterproductive to any efforts of rehabilitation and reintegration of the child back into the society.

To address the particular relevance for legislators, criminal justice professionals, civil society, and academics who work in the area of juvenile justice, Part III of the “Model Strategies” deals with the prevention of and responses to violence against children alleged as, accused of, or recognized as having infringed the penal law.

Countless studies have revealed that children within the justice system, in particular those deprived of their liberty, are especially vulnerable to violence. The consequences of violence perpetrated against children when in contact with the justice system cannot be underestimated and needs thorough investigation and scrutiny. Higher possibility for further and bigger criminal activities in the future is only one of the many consequences that are overlooked.

Thus, the first strategy under Part 3 aims to reducing the number of children in contact with the justice system. There are several ways to limit the number of children in the juvenile justice system. This may involve avoiding the criminalization and penalization of children. It is quite common that criminal codes contain provisions criminalizing conduct only when committed by

child but not when committed by an adult. Examples are begging, vagrancy, truancy, runaways and other acts. Also, it is important to note that children with mental health problems and children with substance abuse problems are often over-represented in the criminal justice system and should instead be provided with appropriate care and protection. Another effective way of reducing the number of children in the justice system is through the use of alternative measures to judicial proceedings (diversion), which include the application of restorative justice.

The second strategy under Part III relates to preventing VAC associated with law enforcement and prosecution strategies. Elements under this strategy include ensuring that all arrests are conducted in conformity with the law, to limit the detention of children to situations in which these measures are necessary as a last resort, and to promote and implement alternative measures to detention.

It is well known that children face a significant risk of violence when they are deprived of their liberty, and the possible sources of violence in institutional settings are numerous. For this reason, a very important strategy has been drafted, which reflects a provision contained in Article 37(b) of the CRC. This consists of taking various measures to ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time. This may involve revising sentencing laws, rules, guidelines, and policies. For this strategy to be effective, however, other non-custodial sentencing options must be available, such as care, guidance, supervision orders counselling, and probation.

The fourth strategy focuses on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, which reflects a provision contained in Art. 37 (a) of the CRC. In many justice systems, children who have reached puberty are subject to punishments of extreme violence, including flogging, stoning, and amputation.

The fifth strategy relates to the prevention and responses to VAC in places of detention. As mentioned before, there is always a higher risk of violence against children who find themselves in detention. This strategy includes measures aimed to improve the conditions of detention and the treatment of children deprived of their liberty, as well as the need to adopt clear and transparent disciplinary policies and procedures. A key element under this strategy is to ensure that all alleged incidents of violence, including sexual abuse of children in a place of detention, are immediately reported and independently, promptly, and effectively investigated by appropriate authorities and, when sufficient evidence is found, effectively prosecuted.

The sixth strategy elaborates on the protection of and assistance to child victims of violence who are in the justice system. A crucial element under this strategy is the establishment of complaint mechanisms that are safe, confidential, effective and easily accessible for child victims of violence. It is also very important to protect children who report abuse from the risks of retaliation. Inevitably, in reality, very few children in the criminal justice system are actually in a position to denounce abusers who are in a position of power and authority over them. This is why it is so important to create a legal obligation for criminal justice professionals to report incidents of violence against children.

Finally, but not least, is the strategy to strengthen accountability and oversight mechanisms, which is deemed as one of the most important actions in child protection. Numerous studies have shown that violence against children in the justice system frequently remains unpunished. Such violence will not be effectively prevented unless strict measures are taken to put an end to this type of impunity. Any tolerance of violence against children within the justice system must be challenged by societal measures, such as awareness-raising programmes, education, and effective prosecution of violent offences committed against children within the justice system.

The last two strategies of Part III deal with the firm responses that should be given to all incidents of violence against children. The penultimate strategy is based on the crucial importance of providing children who report abuses and incidents of violence within the justice system with immediate protection, support, and counselling. A number of measures are proposed to help detect such incidents, and to enhance the protection and assistance offered to children who are victims of violence as a result of their involvement with the justice system as alleged or sentenced offenders. A crucial starting point is the establishment of complaint mechanisms for child victims of violence within the justice system that are safe, confidential, effective and easily accessible. Such complaint mechanisms should be accompanied, when needed, by counselling and support services. Existing complaint mechanisms should be thoroughly reviewed and tested.

Once complaint mechanisms are established it is also very important to protect children who report abuse, specifically taking into account the risks of retaliation. This can be done by adopting and enforcing policies that ensure that those allegedly implicated in violence against or ill-treatment of children are removed from any position of control or power, whether direct or indirect, over complainants, witnesses, and their families, and those conducting the investigation. Other practical and procedural measures must be installed to protect children who provide information or act as witnesses in proceedings related to a case involving violence within the justice system.

The last strategy of Part III consists of strengthening accountability and oversight mechanisms within the criminal justice system as a whole. It calls for timely and effective investigation and prosecution of offences involving violence against children within the justice system and aims to ensure that all public officials who are found to be responsible for violence against children are held accountable. Measures are included to promote transparency and public accountability as well as measures to enhance integrity and prevent corruption within the justice system.

Preventing and responding to violence against children in contact with the justice system forms a key component of UNODC's work in the area of Justice for Children, and the UNODC has led the project to develop and draft the "Model Strategies" with great hope. With the adoption of the "Model Strategies" by the General Assembly in December 2014, Member States can be guided by a powerful instrument to develop and implement the necessary legal and policy frameworks for preventing and responding to violence against children in the field of crime prevention and criminal justice.

In order to assist Member States in their implementation, UNODC and UNICEF have jointly developed a Global Programme on Violence against Children in the Field of Crime Prevention

and Criminal Justice, with the aim to strengthen the justice systems of Member States in this area and to facilitate a coherent response to the challenges of violence against children. As part of the United Nations Congress on Crime Prevention and Criminal Justice, it is our common and utmost responsibility to implement this new international normative instrument, breathing life into the “Model Strategies” to provide stronger and more effective protection for children involved with the justice system.