

MODEL LAW ON JUVENILE JUSTICE

The UNODC has completed a first draft of a 'Model Law on Juvenile Justice'. The purpose of a 'model law' is to provides States that wish to reform their laws with an example of a law that adheres to international principles and minimum standards and which incorporates ideas arising from best practice. The document is not binding in any way, and states parties do not have to agree or accede to it. Nevertheless, in order for it to be useful it must be widely applicable and have a good chance of being operable in any part of the world. For this reason, the UNODC recently hosted an expert meeting in Vienna with 20 experts from different countries and differing legal systems, in order to debate and discuss the draft law.

The essential elements of the Draft Law

Child justice principles

General principles (best interests, non discrimination, no arbitrary/unlawful deprivation of liberty, delay is prejudicial, diversion shall be considered, proportionality, deprivation of liberty as a last resort, no cruel inhuman or degrading treatment, no death penalty or life without parole, all children have the right to be heard)

Status offences, age of criminal responsibility, children's courts.

Crime Prevention

A crime prevention strategy, a crime prevention plan.

Minimum guarantees and rights pre-trial

Presumption of innocence, informing child and parent of reason for apprehension/arrest, presence of parent during questioning, detention of child at police station, right to legal advice, to interpreter, questioning by police, search of child and taking of samples.

Alternatives to judicial proceedings

No intervention, warnings, pre-trial diversion, conditions for diversion.

Bail and pre-trial detention

Prompt attention of judicial officer, release pending trial, pre-trial detention, review of pre-trial detention

Right to a fair trial

No unreasonable delay, right to legal representation, presence of parents, right to privacy, right to interpreter at trial, active participation by child defendant, a right to hear evidence, not to be compelled to give testimony or confess guilt, discontinuance of proceedings for referral to welfare services, right to Appeal.

Sentencing

Purpose and principles of sentencing, social enquiry report, non-custodial sentences, custodial sentences, implementation of custodial sentences, prohibited sentences.

Standards of detention

Purpose, principles, separation from adults, physical environment, disciplinary measures, use of force or physical restraint, contact with family, contact with outside world, medical care, education, recreation, transfer of detainees who reach 18, staffing, provisions relating to girls.

Return to community

Preparation for release, early release, release on compassionate grounds, support and supervision.

Monitoring and complaints

Establishment of an independent monitoring body, child protection.

Issues that were raised at the Expert Meeting in Vienna

Terminology: There was a major debate about the term 'juvenile justice'. The UN instruments do use this terminology, so does the US. Many countries use 'youth justice'. SA has started a trend towards 'child justice'. All of these terminologies have their up/down side. There seems to be agreement to move away from juvenile, but these terms could end up being 'options' in the model law.

Whether the model law can go beyond the international instruments? Eg Can it promote the UN Committee on the Rights of the Child General Comment of 2009? Eg The general comment calls for life imprisonment to be done away with generally. Minimum of age of 12 years is seen as international standard (but not instruments). Also other influences, eg restorative justice. There was agreement that the model law can go beyond the international instruments, but there needs to be caution.

Issues relating to civil law/common law countries divide

It was surprising how much division there was on certain issues between the civil law/common law countries. On certain articles it was almost impossible to find agreement and there may have to be options. Eg. Privacy of proceedings – closed courts for children. The civil law country experts saw this as a breach of fundamental trial rights, common law country experts saw it as a bedrock principle of fair trial rights for children. It is a recognised exception to the open courts rules in the instruments, but is stronger in the ACRWC. Another eg of division was fear of abuse of welfare system – this particularly from South American countries.

Issues relating to developed/ developing countries divide

Obviously some rights have a price tag. This is often linked to the availability of personnel. Eg. Developed countries believed it was essential to have legal representative available to children even at the police station, most developing countries could not see how this could happen in their countries – even free legal representation at trial is not available in all countries. Also, the provision of diversion programmes, specialised courts, standards for detention could all pose challenges. However, the model law is there to take ideas from, it does not dictate. Nevertheless, it was felt by some that if it looks unachievable, developing countries may ignore it.

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