

Justice for children in humanitarian action

Scoping study to examine knowledge of CPMS 14 among child protection and juvenile justice practitioners

Justice for children remains poorly understood and underfunded

Children are always among the most vulnerable in an emergency. Emergencies both exacerbate pre-existing protection concerns and create new ones. In times of crisis, girls and boys face increased risk of all forms of violence and exploitation.

One potentially life-saving area of child protection that remains poorly understood and underfunded in humanitarian contexts is justice for children. Child Protection Minimum Standard 14 states:¹

STANDARD

All girls and boys who come into contact with the justice systems as victims, witnesses or alleged offenders are treated in line with international standards.

Boys and girls may come into contact with the law in various ways and contexts

Boys and girls may come into contact with justice systems in various ways and contexts: as victims, witnesses, (alleged) offenders or as part of the justice process. Often a child will come into contact with the law in a combination of these roles. Justice for children is an important child protection issue to be addressed at all stages of an emergency (preparedness, assessment, response and reconstruction).

During emergencies, child protection actors report that numbers of child victims, witnesses and (alleged) offenders rise dramatically. Within conflict settings in particular, when justice systems are weakened through under-investment and lack of regulation, normal rules of detention are often misapplied or unenforced. Standards to ensure the wellbeing of juveniles in the justice system may be unmet or disregarded. "Justice for children" aims to implement fair and child-friendly procedures for all children in contact with the law.

Fair and child-friendly procedures for all children in contact with the law, everywhere

The global Child Protection Working group commissioned a scoping study to examine the current level of awareness and knowledge of Standard 14; to identify lessons learned on how justice is implemented in humanitarian contexts and challenges to implementation at institutional, policy, operational and funding levels. The research focused primarily on juvenile justice, with a lesser emphasis on child victims and witnesses.



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1. Minimum Standards for Child Protection in Humanitarian Action, CPWG, 2012.



Literature review, survey and interviews with key informants

Literature reviewed included documents used in development programming because of the acknowledged importance of building effective systems before the emergency strikes, and because of the limited resources available in an exclusively humanitarian context. A survey asked about approaches to prevention, the effective provision of justice for children in emergencies, coordinated approaches to the implementation of Standard 14, barriers and challenges and recommendations. Key informant interviews were held with both child protection practitioners in humanitarian settings and juvenile justice experts.

Findings

Certain factors contribute significantly to a child coming into contact with the justice system in an emergency context:

- Loss or reduction of family income: 77%
- Living on the streets: 63%
- Loss of home, physical safety, displacement: 59%²

The Minimum Standards for Child Protection in Humanitarian Action are based on international law, including human rights, humanitarian and refugee law.

Detention of children during crises

The International Committee of the Red Cross (ICRC) considers deprivation of liberty in relation to non-international armed conflict as one area where existing International Humanitarian Law provisions need to be strengthened, including with regard to the most vulnerable groups such as children.³

Of all the stages in a juvenile justice system, it is at first contact -- arrest and immediately thereafter while in police custody -- that the accused is "most likely to be the victim of torture and other forms of cruel, inhuman and degrading treatment." Girls may be especially vulnerable to sexual harassment and abuse. It is at this stage that the juvenile is particularly likely to lack or be denied the presence of parents, social workers and legal representatives. Access may be more difficult in an emergency context because detaining authorities obstruct access to places of detention and interrogation, because the nature of the emergency makes access difficult or dangerous, or because there are too few actors on the ground. Certain organisations such as the ICRC, UNICEF, or peacekeepers may have access to detained children at this stage during emergencies, but institutional working practices and the concern to maintain confidentiality mean that little data or documentation can be shared.⁴

Refugee and internally displaced children face important protection risks

Children crossing international borders may come in contact with the law when they are registered as refugees and go through the asylum process.

2. Percentage of respondents who rated the following factors as contributing "most significantly" to children coming into contact with the law in emergency contexts.

3. ICRC, Strengthening International Humanitarian Law, ongoing consultation: <https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/index.jsp> [accessed 15 May 2015]

4. Key informant interviews



“In the Ivory Coast, the socio-political crisis after 2002 and the post-election violence in 2010 caused massive displacement. Several displaced children ended up committing petty theft and other offences which led them into contact with the justice system.”⁶

“In Dadaab refugee camp, Kenya a four-year-old girl was held for murder, as she had allegedly kicked another child while playing and that child died as a consequence.”⁸

“The [military] police bother us at night. They ask for money, and if we have none, they threaten us with arrest and beat us.”

Street boy in Goma, DRC¹²

During an emergency, UNHCR and its partners aim to ensure that the national legal system including law enforcement and courts of law cater to the needs of refugees and other persons of concern. Despite these efforts, the problem of refugee children in contact with the law is not fully addressed in practice.⁵ The legal and normative framework for internally displaced children, their families and communities is much weaker than for refugees, resulting in significant protection gaps, access to justice and other justice-related issues.

In several countries, children displaced by conflict face a high risk of arrest and detention for immigration or administrative offences, anti-social behaviour, breaking curfew, or survival-related activities such as begging, stealing, living and working in the streets. Like other groups of vulnerable children, refugee and IDP children are at risk of spending longer periods in detention because they have few relatives or community members advocating for their release or paying a fine, especially those that are unaccompanied or separated.

Unaccompanied and separated children are an especially vulnerable group

The United Nations General Assembly requested that unaccompanied children be given special assistance and care because they face particular risks, including neglect, violence, forced military recruitment, sexual assault, abuse, and infectious diseases.⁷ However, in large-scale displacement crises, local security forces and justice actors are typically overwhelmed with often only one police post in each camp and mobile courts intervening at irregular intervals. The caseload involving children is huge and routinely hampered by language barriers between the displaced community and the national authorities.

Communities often prefer informal or traditional justice mechanisms

The application of informal justice or traditional justice mechanisms is sometimes preferred by displaced communities and there may be a particular desire by such communities to avoid contact with the police or formal justice system, due to fear of arrest or refolement.⁹

As in other settings, there are no formal, written rules in the Palestinian refugee camps of Southern Lebanon, which are some of the oldest in the world. The Lebanese laws apply to all girls and boys regardless of their nationality.¹⁰ However, due to the de facto autonomy of the camps, Lebanese justice actors do not enforce national law, which is why these communities have long resorted to an informal justice system based on tradition. This means the process of determining what constitutes an offence or crime lies in the hands of the traditional authorities, whose priority is to ensure harmony in the wider community and not necessarily the best interests of the child.¹¹

Influencing the application of traditional justice systems in a way that makes them more child-friendly requires not only a good knowledge of the mechanisms applied but also the trust of the traditional actors.

5. Many aspects of protection are not applied, especially in countries that have not signed the 1951 Refugee Convention such as Jordan or Lebanon.

6. Respondent

7. UNGA Resolution 68/179 on the Protection of Migrants (2013).

8. Respondent

9. A central tenet of refugee law, refolement concerns the protection of refugees from being returned or expelled to places where their lives or wellbeing could be threatened.

10. See Terre des hommes. An Informal Juvenile Justice System Assessment: Palestinian refugee camps and gatherings, Tyre Area, South Lebanon. Lausanne. (2011).

11. As above.

12. What Future? Street children in the DRC. Human Rights Watch, 2006.



In Iraq, as of April 2008, 1,500 children were held in detention. The youngest was only 10 years old. Since the start of the conflict in 2003, hundreds of children have been detained on security and terrorism charges.¹³

Street and working children are at high risk of coming into contact with the justice system

Children who live on the street and/or who engage in economic activities in emergency settings are vulnerable and face a high risk of coming into contact with the law.

In humanitarian emergencies, girls and boys are often sent to work to supplement the family income. In addition to the violence they may experience from security forces while working or sleeping on the street, they may also experience physical violence from passers-by, sexual exploitation and abuse, or robbery of their income.¹⁴

Children may become associated with armed forces or armed groups and children perceived as a security threat

In post-conflict situations, courts and tribunals have repeatedly deliberated over the issue of prosecuting children for their involvement in armed conflict. When a State or an international court considers prosecuting a child, the two key questions are whether the court has jurisdiction to try a case against the child and whether the child has criminal responsibility.¹⁵

In recent years, children linked with jihadist or terrorist groups have become a more prominent phenomenon. International law and a rights-based approach have led global child protection circle to assert that these girls and boys are above all victims. Nonetheless, in many communities worldwide the belief remains that these children are criminals and should be treated accordingly.

A recent and under-researched phenomenon affecting children associated with armed forces and groups is their involvement in piracy activities. There is a demonstrable link with emergency situations as countries most affected by piracy are among the top 15 most fragile states.¹⁶

Incidences of sexual and gender-based violence rise during emergencies

Evidence suggests that rates of sexual and gender-based violence rise in all emergencies. This may be attributed to the destabilisation of social and family structures, as well as increased social and economic pressures.¹⁷ In post-earthquake Haiti, many agencies documented increasing rates of rape, other types of gender-based violence and child marriage. The underlying problem was impunity and absence of justice because girls and women's access to justice and proper protection was limited. Judges, policemen and prosecutors were not well-trained.¹⁸

¹³. Working Paper No. 12. Special Representative of the Secretary General, Children and Armed Conflict, Children and Justice, United Nations, p.33.

¹⁴. See CPMS Standard 12 on Child labour.

¹⁵. For the ongoing debate on the age of criminal responsibility, as well as the practices at international and national courts and tribunals cf. Office Office of the Special Representative Of the Secretary-General for Children in Armed Conflict. Children And Justice During And In The Aftermath Of Armed Conflict. United Nations. New York. (2011), p. 34-38.

¹⁶. Whitman, S., Williamson, H., Sloan M., & Fanning, L. (2012). Dalhousie Marine Piracy Project: Children and Youth in Marine Piracy - Causes, Consequences and the Way Forward. (Marine Affairs Program Technical Report #5), p.2

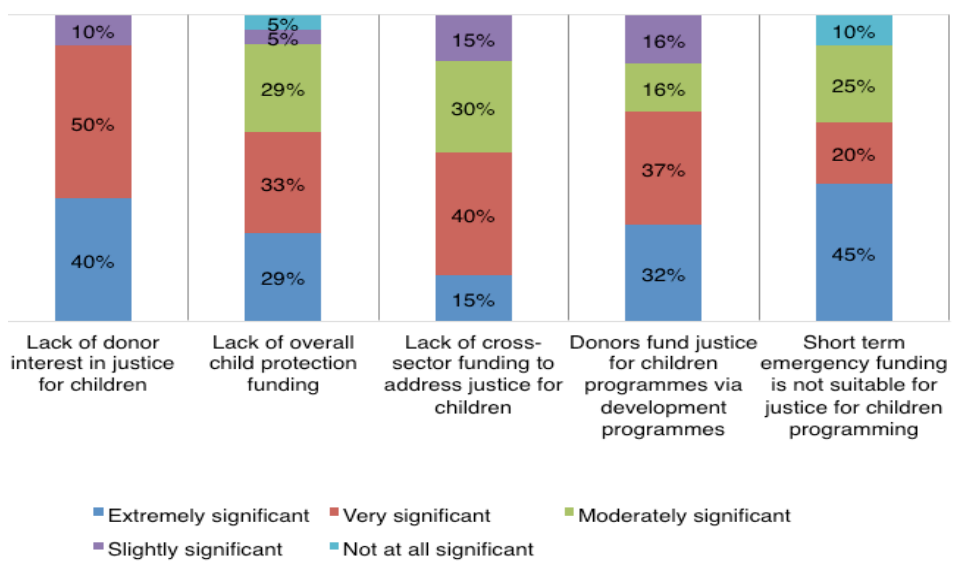
¹⁷. Plan: Because I am a Girl. The State of the World's Girl 2013: In Double Jeopardy: Adolescent Girls and Disasters, 2013, p. 72.

¹⁸. As above.



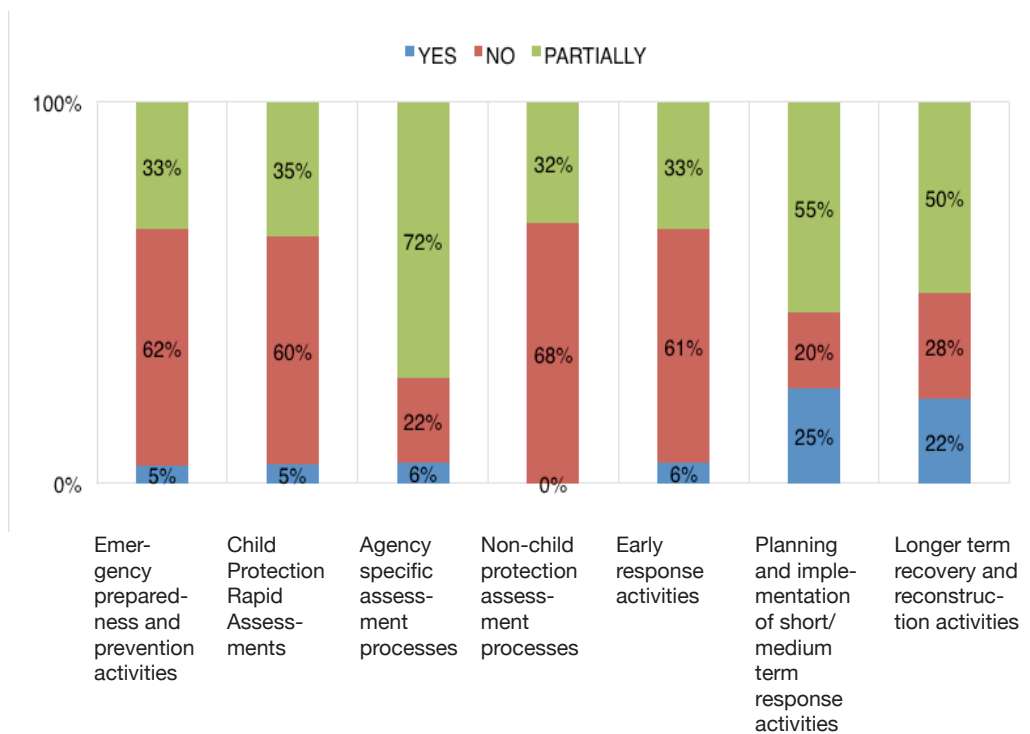
In humanitarian settings, justice for children activities are chronically underfunded

How significant are the following financial barriers to addressing justice for children in emergencies?



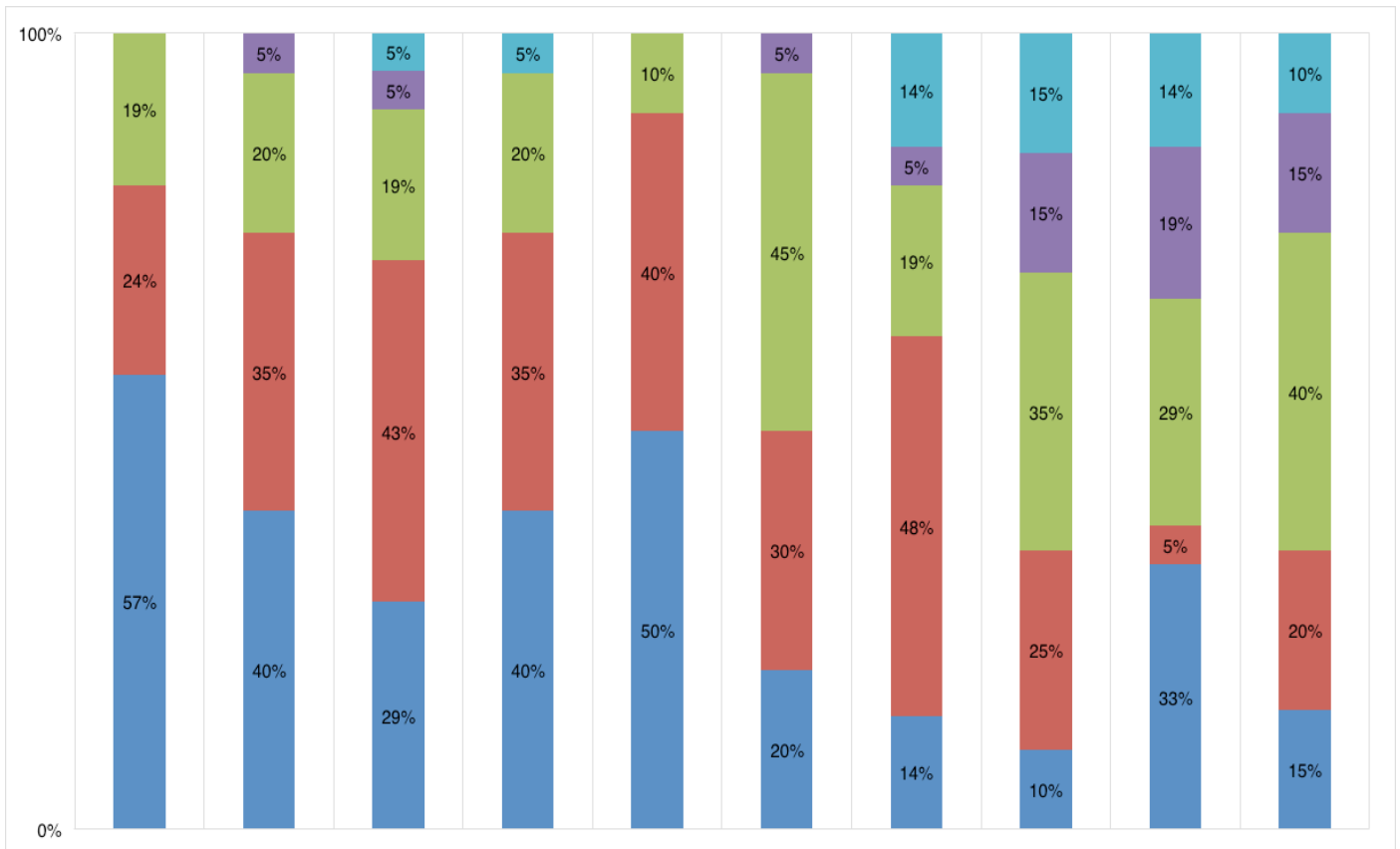
The needs of children in contact with the law are overlooked

Are the needs of children in contact with the law adequately analysed and addressed in...





How significant are the following non-financial barriers to effective emergency programming for justice for children?



Lack of awareness

Lack of tools and guidance

Lack of capacity building opportunities lead to lack of capable implementing organisations

Quality of assessment information is too poor for programme design

Lack of meaningful consultation with children

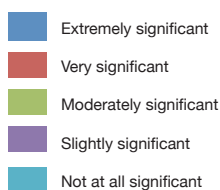
Weak inter-sector/inter-cluster coordination

Justice for children programming is too complex and long-term to tackle in the midst of an emergency

Access to affected children is difficult

Little support for programmes from headquarters as justice is not a priority for your organisation

Justice for children activities are mainstreamed into general response activities, diluting their effectiveness





Advocacy with authorities and community engagement are important ways of protecting children in contact with the law

In Côte d'Ivoire, the establishment of a tracking system for children in detention facilities has been effective, as has advocacy for the liberty of children in abusive detention.¹⁴

In Egypt, groups of social workers have been present during political protests – an unusual but effective approach to protect children from arrest.¹⁵

In Colombia, successful advocacy with officials has helped prevent the government renegeing on promises/ steps to harmonise local law with the international child rights commitments and standards.¹⁶

Recommendations

There is an ongoing need for further research into programming and funding for justice for children, including preparedness and resilience as well as informal and traditional justice mechanisms. Meanwhile, respondents identified four priorities to be addressed by the global CPWG and other actors:

1. Develop tools and guidance around Standard 14 both as a stand-alone area of programming and one that is woven into other child protection interventions. This should include a briefing and checklist for child protection practitioners responding in the first phase of an emergency.
2. Increase capacity of child protection actors (including through distance learning), relating specifically to justice for children in emergency settings.
3. Increase donor interest across sectors, in a way that the gap between development funding and humanitarian programmes can be bridged.
4. Advocate for the development and support of long term projects in emergency-prone countries that can be adapted in times of crisis.

19. Respondent

20. Respondent

21. Respondent