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Justice for Children
Justice for All

Policy Brief

This Policy Brief sets out policy guidance and best practice for child-friendly justice sector reform to achieve SDG16 for children in the 2030 Agenda.

4 Digital Justice for Children:
Digital Innovation, Risks & Advantages

UNODC United Nations Office on Drugs and Crime

OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON VIOLENCE AGAINST CHILDREN

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DEFENCE FOR CHILDREN INTERNATIONAL
THE WORLDWIDE MOVEMENT FOR CHILDREN'S RIGHTS

LEGAL EMPOWERMENT FUND

Digital justice innovations have become a reality all around the world. Digital tools for online communication and the use of technologies in legal proceedings burst onto the justice scene during COVID-19. Meanwhile, funding constraints continue to accelerate their use.

While the emergence of digital justice spaces has enabled swift adaptations - forming a strong learning platform for reflection, planning, and embedding reforms[2] - digital innovations can risk an uncritical embracing of technologies which exacerbate existing problems.

Instead, reforming digital justice spaces creates an opportunity to avoid simply replicating current justice system flaws,[3] by designing and implementing digital tools that **solve** key justice problems facing children.

This Policy Brief alerts policymakers and justice professionals to the potential impacts of uncritically applying technologies in digital justice spaces which include children, and outlines a set of prompting questions and recommendations for policymakers and supporting bodies engaged in policy processes related to justice with, and for, children.

In setting out the ambitious vision for Sustainable Development by 2030, the Sustainable Development Goals (SDGs) pledged not only to **leave no one behind**, but to also **address the furthest behind first.**

Children – those under age 18 – are 30% of the world's population. In many countries, over half of the population is under the age of eighteen. Still, children are among those most at risk of being left behind, especially those already facing the greatest adversity. At the half-way point to 2030 - and in the wake of the COVID-19 pandemic - progress has slowed. Moreover, evidence highlights that this slowed progress exacerbates existing inequalities and adversely impacts achieving justice for all.[1]

There is a **stark gap** when it comes to measuring, understanding, and fulfilling our global ambition for children. This is also particularly important in the context of future generations and securing intergenerational equity, as part of the global policy agenda to reinvigorate progress towards the SDGs and post-2030, **Our Common Agenda.**

Justice for Children, Justice for All places children at the heart of a growing global movement for justice.

With increased urgency and a clear vision for the future, the Justice for Children Agenda for Action shapes the agenda to implement change across four key strategic levers needed to accelerate change for children:

1. Building new types of **partnerships**, including **intergenerational** networks.
2. Developing strategies for **smarter financing**; building the case to shift investment to children's inclusion and well-being, and the political support for prevention.
3. Using **evidence and data** to steer child-centred reforms, including disaggregated data, child friendly methodologies and child-centred views to drive change.
4. Scaling up **justice innovations**, and applying **imagination** and safeguards for digital justice tools with children.

This Policy Brief builds upon the Global Initiative on Justice With Children's Global Campaign on Accelerating the Release of Children: Protecting Children from COVID-19. Thanks to an international research programme, in partnership Baker McKenzie and Google, the Global Initiative explored the use of digital hearings and the effect of their use on justice for children, and inspired the Justice for Children Agenda for Action's fourth strategic justice lever: scaling up justice innovations, and applying imagination and safeguards for digital justice tools with children. The results of this research will also be followed by two soon to be launched research papers on virtual courts for children and predictive child justice, respectively.

Against this backdrop, this Policy Brief also considers the Justice for All Report and the subsequent Justice for Children Agenda for Action's guidance on strategic lever four: **digital justice innovations**. This seeks to ensure when digital innovations are applied to justice for children, the implications are well understood and proper safeguards are in place, to achieve SDG16.2: 'end abuse, exploitation, trafficking and all forms of violence against and torture of children' and SDG 16.3: 'promote the rule of law at the national and international levels, and ensure equal access to justice for all.'

Advantages and Risks

This section presents the benefits and limitations of innovations in digital justice spaces.

Digital communications have been embraced for good reasons. During the pandemic, this made a lot of sense due to health concerns, and research shows particular ways this has been beneficial for some, for example:

- Video proceedings have shown to enable legal aid organizations to serve previously underserved geographical areas, and have also opened up greater opportunities for pro bono representation.[4]
- In certain cases, children may find that online proceedings can reduce anxiety normally associated with attending court in person.[5]
- There may also be positive effects of the use of video links associated to reducing the risk of re-victimization by avoiding direct contact with the offender for child victims and witnesses.

While these positive elements are certainly encouraging, **the concerns and risks of using digital justice for children are to be taken seriously.**

- Research suggests that video proceedings have exacerbated issues related to children's effective participation in the justice process: It can make lawyer-client relations more difficult,[6] undermining communication and the relationship of trust between the lawyer and the child as well as the lawyer's capacity to provide adequate support and assistance.[7]
- In addition, there are concerns about its impact on children's ability to understand legal processes[8] as well as the seriousness of the proceedings.[9]
- The digital divide causing inequality in access to services and rights during the use of videoconferencing[10] has also been highlighted as a challenge, further disadvantaging underserved communities and children.[11]
- Finally, children themselves have expressed their frustrations and anxiety in relation to a lack of understanding, privacy and access to lawyers and support persons associated with video proceedings.[12]

Prompting Questions for Policymakers

This section highlights prompting actions and questions for policymakers in assessing their actions related to digital justice for children.

Applying innovations in digital justice spaces which include children must improve their access to justice.

Policymakers must carefully weigh up all aspects of justice and of digital innovation when delivering justice for children, to ensure that access to justice for children is genuinely improved by technology, and new innovations do no harm.

- **Decisions should be made based on sound research, and only evidence-based technology and measures should be applied to children in justice proceedings.** What research is needed to better understand how videoconferencing and other technology have affected the outcomes of child justice proceedings? How can research identify the limits of useful technology, and its potential impact on child development? Credible research must take on board questions of how children themselves perceive and understand justice. Evidence about children's experiences should come from children themselves.[13]

- **A multi-disciplinary approach will strengthen decision-making. Learning abounds**. Courts in most countries have used – or have considered using - digital justice for children. When developing policies for remote proceedings adapted to child justice, which institutions and stakeholders are part of the broad range of actors to be consulted?

- **National legislation should ensure that child justice – including children's participation rights – are applied in line with international law as set forth by the Convention on the Rights of the Child.** How will children's human rights[14] and safeguards be upheld when using digital justice for children? How will you ensure their participation rights? This includes notably all due process guarantees, such as the right to a lawyer and to an interpreter, as well as children's right to be heard and to information and privacy.

- **The use of this technology is novel. Learning gaps exist for all professionals.** How are policymakers ensuring that all professionals understand the potential implications and consequences of using digital justice for children, as well as specific safeguards needed? What codes of conduct need to be adapted to new digital innovations?

- **Proceedings will change in fundamental ways through the use of digital innovation.** What specific mitigation measures need to be put in place when moving ahead with digital justice for children? How best can the private sector, communities, civil society organizations and children be engaged, to inform the way child justice proceedings are carried out?

- **All children need support, and some will need more support than others.** How are policymakers ensuring that all children benefit from all appropriate assistance and support they need, including during digital justice proceedings and without discrimination?

- **Digital justice should not be a default position.** What impact assessment procedures can be put in place to determine on a case-by-case basis - for each child - whether the use of this technology is in the best interests of the individual child? Policymakers should consider the full implications on the rights of the child – especially children who may be particularly at risk of violence, including children deprived of liberty – before supporting the use of digital justice proceedings, such as video conferencing.[15] What restrictions and safeguards might need to be imposed to ensure children's rights are upheld? For example, should in-person proceedings be encouraged as first point of contact, allowing for digital proceedings for follow-up mechanisms only? Are children provided with accessible and age-appropriate information, tools and support? Are they given a choice to whether justice proceedings are in-person or digital? Under what circumstances should the use of digital justice proceedings be excluded?

- **There is still far to go.** How can the international community, including policy makers, most effectively foster the development of specific standards and norms regulating the use of remote technology in justice proceedings involving children? How can these be applied in a multisectoral manner, with the necessary monitoring and safeguarding tools for procurement and practice to mitigate the potential risks for children in digital justice spaces.

Next Steps

This policy brief outlines the first steps in a global learning process.

Additional guidance, tools and resources are required to effectively apply this learning to co-develop national policies and practices with children, to achieve justice for children in the delivery of SDG 16.2 and 16.3.

Working in effective partnerships - including with the private sector and children themselves - is essential. Professional and political leadership, good judgement, and determination not to settle for an easy route at the cost of child justice will be key ingredients for success.

This work has just begun.

To address how policymakers, and those who work with policymakers, can take steps forward together, necessary next actions include:

- **Supporting countries to accelerate their learning** by multilaterally developing future-proofed procedural safeguards, standards, and norms – including a clear set of definitions - for procurement and regulation of digital justice spaces which involve children.

- Gathering evidence-based practice examples of **engaging children at the problem-identification and design phases** of digital justice service design.

- Conducting research to better understand **specific applications of technology to justice for children**.

- Collating **illustrative examples** of how specific technologies can be applied to achieve justice for children, including in the use of:

    - Virtual courts in child justice.

    - Artificial intelligence, including in facial recognition technology and predictive policing.

In the framework of the next World Congress on Justice With Children, international organisations, Member States, academia, NGOs and children and young people all have fundamental roles to play in collaborations, innovations, and solutions to ensure that digital justice spaces uphold children's rights, and support the effective realisation of SDG16.2 and SDG16.3, **to achieve justice for children, for all children.**

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[3] 64. Discussion with Richard Susskind, Visiting Professor, University of Strathclyde (March 2022) with Cedric Foussard and Jennifer Davidson

[4] Bannon, A., Adelstein, J., Impact of Video Proceedings on Case Outcomes, Brennan Center for Justice, NYU School of Law, 10 September 2020, p. 7.

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[10] Foussard, C. Perez, M. & Vigil, A. (2023). Impact on Child Justice in a World of Digital Courts: Perspectives from the Bench. Intersections, 9(2). Vol 10. No. 2 /2023 of Intersections. Intersections. East European Journal of Society and Politics. E-ISSN: 2416-089X

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[12] Juvenile Justice Initiative, Children's Experience with Virtual Court, Interviews with Children in State Juvenile Prisons, Nov 30 – Dec 1, 2021, 15 December 2021.

[13] Gordon, F. (2021). Online Harms Experienced by Children and Young People: 'Acceptable Use' and Regulation. Full Report. London: Catch22, p.114

[14] This policy brief's use of 'children's human rights' is in recognition of the breadth of international human rights law relevant to children, including and beyond the United Nations Convention on the Rights of the Child.

[15] The use of digital justice proceedings, such as video conferencing, in child justice systems has been supported in some countries where video conferencing has increased the efficiency of courts and expedited the backlog of cases, importantly enabling children to be released from detention swiftly, or remain at home. These also reduced the need for long travel journeys, protecting children from violence during court transports (A second chance: released from juvenile detention and back in school | UNICEF). However, serious concerns remain about the use of these digital justice proceedings, with findings indicating children's data and privacy has not been ensured, and children face difficulties in contributing to their own proceedings and communicating with counsel, thereby posing challenges to upholding children's rights and their access to justice (Foussard, C. Perez, M. & Vigil, A. (2023). Impact on Child Justice in a World of Digital Courts: Perspectives from the Bench. *Intersections*, 9(2))

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