



# Cross-Border Safeguards for Children in Conflict with the Law

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The APCJJ Subcommittee for ASEAN was launched and met for the first time in 2014, in order to respond to the specific needs of ASEAN member States, and to enhance stronger cooperation in the defence of children's rights. As the ASEAN member States rapidly proceed towards greater economic integration by opening borders in **December 2015**, the consequences of such progress on human rights safeguards are not always clear.

In this context, the members of the subcommittee wished to analyse more in depth how trans-national judicial cooperation, and collaboration between law enforcement bodies can develop, while at the same time ensuring **a minimum level of human rights standards for children in conflict with the law as enshrined in the UN Convention on the Rights of the Child.**

Minimum safeguards will ensure **equal treatment of citizens across state borders**, especially in situations of vulnerability, such as coming into conflict with the justice system in a different country. In these contexts, children and young people have specific needs, and therefore deserve enhanced safeguards to be guaranteed a fair experience with justice.

In particular, while extradition treaties between ASEAN members progress, APCJJ members have noticed with concern that the **specific rights of children are not properly addressed**, and have called for increased attention to this issue. Providing children with an appropriate level of care and support while in such a vulnerable situation is often a challenging, and both governments and practitioners need adequate support to ensure **equal treatment of all children including those originating from another state.** This includes **ensuring effective protection from abuse and exploitation; providing interpretation and translation services to guarantee that criminal proceedings are properly understood by the child, adapting diversion services and alternative measures to include foreign children.**

In this light, the APCJJ wishes that this experts' meeting will provide the opportunity for knowledge and good practices exchange, constituting the basis for **shared guidelines** on the effective implementation of minimum safeguards for children in conflict with the law in cross-border situations.



## - Reforming Legislation to Include Minimum Safeguards for Children in Cross-Border Instances

**Law Enforcement and Judiciary Cooperation:** the integration of core principles into national legislation can effectively establish a minimum level of collaboration between different public authorities, to address shared security concerns.

First of all, **mutual recognition of judicial decisions**, allows States to overcome the differences between national justice systems without the need to harmonise them. At the same time, instituting **mutual admissibility of evidence** between the different countries will simplify cross-border investigations and trial, improving their effectiveness.

Finally, in order to ensure that law enforcement agencies have access to cross-border information, it is necessary to establish rules on **data collection and on recording** of investigations and judgments.

**Minimum safeguards:** common agreements, transposed into national legislation, which establish minimum safeguards that will ensure people and governments that any citizen will be treated with due respect of his or her fundamental rights, even when entering into conflict with the law across national borders. Without minimum safeguards, it will be impossible to establish the principle of mutual recognition.

Minimum rights should be transposed into national legislation for the treatment of **victims of crime**, as well as of **persons who are suspected or accused** to have committed a crime. Particular safeguards should apply to people deprived of liberty, from the moment of their arrest. Minimum standards shall aim to define and secure fair trial guarantees, to establish a level of treatment that respects the person's dignity, and to guarantee that any disadvantage deriving from the cross-border context and related aspects (distance from home, different language, etc) is properly addressed. Particular rules will apply to cases involving children and young people, which take into account the principle of the **child's best interests** as a priority.

## - Establishing Common Policies to Facilitate Law Enforcement

An effective system of transnational cooperation between law enforcement bodies requires: common systems of **information**; common **investigation techniques** for cross-border cases (especially for organised crime), **mutual assistance**. Specialised **training of staff**, and exchanges, can play a crucial role in the development of these assets.

Establishing a **common system of arrest warrants** that is common to the entire area of countries that share their borders can drastically improve effectiveness of

investigations and judicial decisions concerning cross-border cases. In particular, it allows States to overcome cumbersome and lengthy extradition processes. In order for a common system of arrest warrants to be put in place, States will have to agree on a series of crimes recognized by all the parties to the agreement. For these crimes, an arrest warrant issued in one State will be automatically recognized in another one, avoiding issues of double criminality. Furthermore, concerned parties will agree on **common procedures for surrender of nationals**, as well as on **recognized grounds to justify the refusal to execute a warrant** (a possible example is when the requested person is below the age of criminal responsibility in the executing State).

### - Guidelines for Treatment of Children in Conflict with the Law Across Borders

When a public authority comes into contact with a national of a different country, in order to carry out investigations or arrests linked with criminal behaviour, they will have to make sure, throughout the judicial proceedings, that this person is able to understand oral and written communication, otherwise, authorities must **provide interpretation** in his/her own language for the entire duration of the proceeding, including initial questioning. They will also ensure the provision of relevant information concerning the accusation.

From the moment of arrest of a national of a different country and in cases of deprivation of liberty, public authorities will have the obligation to provide the necessary information to the related **consular authorities**. They will also provide the person suspect or accused of a crime with the possibility to inform a **third person** of his or her situation. In cases they of a child's arrest, they will have the direct responsibility to contact and inform, without undue delay, the **parents of the child** or the persons responsible for his or her well-being.

When a child has been arrested, in order to guarantee a correct evaluation of the child's needs and best interests, an **individual assessment** will be carried out by the competent authorities. The ensuing proceedings will be tailored to the results of such assessment, and to the primary goal of the child reintegration. Any questioning involving a child shall be **recorded**, to ensure compliance with minimum safeguards.

Finally, throughout the judicial proceedings involving a national of a different country, from the moment that he or she is informed of the situation by the competent authorities, until the conclusion of the possible trial, including an appeal, the child shall be guaranteed the **right of access to a lawyer**, to talk to the lawyer in private for the purpose of the case, and to confidentiality of such communications. As well as being given access to legal aid, the child will also have the right to **access all the relevant documentation** (with related translation where necessary).

**- Recommendations to Ensure Minimum Safeguards in Cross-border Cases:**

1. National legislation shall ensure that every child has the right to **equal and fair treatment at all stages of the proceedings**, regardless of their nationality. This includes guaranteeing easy access to judicial proceedings, fair trial safeguards, the enjoyment of basic rights such as access to health, education, and economic and social rights.
2. Treatment and measures concerning children in conflict with the law shall always prioritize **the best interests of the child**.
3. Trans-national cooperation shall be enhanced to **strengthen investigation and law enforcement capacities to fight trafficking** of children and ensure the protection of migrant children.
4. All person detained shall have the right to promptly receive **information concerning the procedural safeguards** to which they are entitled. In the case of children, authorities shall ensure provision of this information in **child-friendly language**, both orally and in writing.
5. All persons shall have the right to be informed without undue delay, of the **circumstances of their accusation**.
6. Nationals of a different country who speak a different language shall have the right to be provided with **interpretation** of all communication relating to their case. The costs of interpretation shall be borne by the State.
7. Criminal proceedings involving children must be tailored to their needs and degree of personal development. Thus public authorities shall carry out **individual assessments**, which will be relevant to the determination of the appropriate procedure, while avoiding unnecessary reiteration of questioning. The information obtained cannot be used against the child in the course of the judicial proceeding.
8. It shall be recommended to **avoid administrative detention** of migrant children, whenever possible. If a child is detained in connection with his or her status as migrant, the child shall not be separated from his or her family, and public authorities shall ensure his or her access to health services and educational activities.
9. All detained persons shall have the **right to communicate with third persons**. In cases involving children, the person(s) with parental responsibility will be also informed of the child's detention without undue delay.
10. Deprivation of liberty of a citizen of a different country shall be promptly communicated to the **competent consular authorities**. The detained person should always have the right to communicate with the competent consular authorities
11. All detained person have the right **of access to a lawyer**, to allow the exercise of the defence should be guaranteed. Lawyers shall have the right to be present during questioning and throughout the judicial proceedings.

Exchanges between a lawyer and his or her client will be **private** shall **remain confidential**.

12. Nationals of a different country who speak a different language shall have the right for all essential documents to be **translated** into his/her own language, and the right **to access such documents** throughout the proceedings.
13. **Legislation shall enshrine the right to privacy of children** and any information collected in the course of the proceeding, is in principle not to become public, even after the child has reach 18 years of age.
14. Finally, children shall have the right to a **specific treatment in case of detention**: which will include education, vocational activities, sport, leisure activities and appropriate physical and mental care. Children shall be given access to complaint mechanisms and shall be detained separately from adults.