

RTP CP UNPOL Module 3



How to Support Child-Friendly Apprehension, Arrest and Detention

Aim



UNPOL has the responsibility to monitor, mentor and advise the host-State Police on apprehension, arrest and detention

It is crucial that UNPOL officers know their specific mandate, be familiar with the national legislation of the host country, and understand and apply international guidelines concerning the apprehension, arrest and detention of children

Learning Objectives



At the end of the module, learners will be able to demonstrate how to:

- Support the host-State police in understanding and applying child-sensitive practices in apprehension and arrest
- Support the host-State police in understanding and applying child-sensitive practices regarding detention (with a focus on alternatives to detention)

Module Overview



Support the host-State police in understanding and applying child-sensitive practices concerning apprehension and arrest
Learning Activity 3.1 – Case studies

Support the host-State police in understanding and applying child-sensitive practices regarding detention
Learning Activity 3.2 – Case study and role-play

Definition of Apprehension



“Apprehension is the act through which an individual is placed under the effective control or custody of United Nations personnel. Even though an apprehension may look very much like an arrest, in practice, the United Nations uses the term to clarify that it will generally not act as a matter of criminal procedure, exercising the powers of a sovereign State, but rather in execution of its protection of civilians or other mandates or to defend itself.”

Definition of Arrest



“Arrest is the act of apprehending a person for having allegedly committed an offence or by the action of a competent authority.”



Learning Activity 3.1

Instructions

- Discuss the four case studies in groups (25 minutes)
- Each group will answer the three questions
- Each group will present the key elements of the case study and their answers to the plenary



Case study 1: Good practices

- Protect the child from the crowd and stop the aggression
- Take the child away quickly to ensure his safety
- Ensure the child gets medical attention first
- Contact the family
- Offer water and food while in custody
- Avoid placing the child in a cell with adults, children of the opposite sex, or convicted children

Case study 1: Practices to be changed



Officers should:

- Inform the child about the procedures
- Interrogate the child with parent(s)/guardian(s) present
- Transfer the case to another officer if their shift is over
- Call a social worker
- Call legal counsel
- Explore diversion measures
- Assume that the child is innocent

Case Study 1: Minimum age of criminal responsibility



- Host-State police are bound by national law
- Difference between “age of majority” and “age of criminal responsibility”
- Recommended minimum age of criminal responsibility is 14 years
- A child below the minimum age of criminal responsibility should not be arrested or prosecuted for any crime

Case study 1: Parents or guardians



- Children have the right to be informed and the right to express their views
- Parent(s)/guardian(s) must be notified of the child's arrest
- Parent(s)/guardian(s) should be allowed to attend the interview
- The police must exercise their judgment on a case-by-case basis regarding the parents' presence

Case study 2: Good practices



It is good practice to:

- Protect the child and remove him/her from a place where he/she may be harmed



Case study 2: Practices to be changed

Officers should:

- Attend to the child's medical needs first
- Consider alternative measures to detaining the child
- Inform the child of his/her right to legal assistance
- Interview the child with his/her consent or in the presence of his/her parent(s)/guardian(s), or legal counsel/social worker and NOT use coercive techniques
- Verify if parent(s) are living in the area so as to inform them



Case study 2: Practices to be changed (cont.)

Officers should:

- Contact the competent national child protection authorities in the area
- Refer cases to a DDR programme
- Transfer the case to social services
- Apply the do no harm principle
- Detain a child only as a last resort
- Contact the UNPOL Child Protection Focal Point and the Child Protection Adviser for advice

Case study 2: Treatment of the child during arrest



- Concept of proportionality
- The child must not be subjected to any brutality, violence or torture
- Use of firearms, electric shock devices and violent methods to apprehend and arrest children is prohibited
- Limits on the use of force and instruments of restraint

Case study 2: Treatment of the child during arrest (cont.)



- All interventions must respect the child's privacy and dignity
- The minimum amount of force necessary to ensure the safety of the child and the police officers may be used
- Humane treatment of the child
- The alleged incident should be independently investigated and reported in a timely manner



Case study 3: Good practices

It is good practice to:

- Complete a report for every incident

Case study 3: Practices to be changed



Officers should:

- Consider the concept of proportionality and not use disproportionate force to apprehend a child
- Inform the child of his/her rights
- Consider the concept of necessity and not use handcuffs or other restraints when apprehending a child

Case study 3: Practices to be changed (cont.)



Officers should:

- Consider an individual who looks like a youth to be a child, unless proven otherwise
- Contact social workers when dealing with children
- Seek interpretation assistance if deemed necessary
- Contact the UNPOL Child Protection Focal Point and the Child Protection Adviser for advice



Case study 3: Age assessment

- The age of the child should be verified as soon as possible
- This can be done based on the child's statement, testimony from the child's parents, the child's birth certificate or identification card, etc.
- A child's age can only be estimated; it is not possible to accurately assess a child's age based on his/her physical appearance
- When in doubt, treat the suspect as a child



Case study 3: Due process

- UNPOL should guide the host-State police's approach
- Child Protection Advisers are the most suitable actors to provide expert advice
- UNPOL officers should refrain from interacting directly with children



Case study 4: Good practices

- The children appear to have been arrested and brought to the police station
- No information is provided about the way in which the arrest was made nor the condition of transportation to the station
- It is assumed that arrest and transportation are carried out in accordance with international standards, until proven otherwise

Case study 4: Practices to be changed



Officers should:

- Consider children to be innocent, until proven otherwise by the justice system
- Never exercise physical or psychological violence against children

Case study 4: The child's dignity



- Children presumed to be associated with terrorist groups should be treated as victims
- Arrests should be carried out with respect for the child's dignity
- Actions that humiliate, arouse fear or a feeling of inferiority in the child, or that are aimed at breaking the child's physical or psychological resistance = torture

Case study 4: The child's dignity (cont.)



- Coercive interviewing methods and techniques are prohibited
- Use of force against children under arrest is only permitted if it is non-discriminatory and strictly necessary and proportionate to achieving a legitimate objective



Case study 4: Access to a lawyer

- Children should have access to a lawyer from the outset
- Legal access should be free of charge
- Conversations between the child and his/her lawyer are private and must not be monitored nor recorded
- Conversations between the child and his/her lawyer should be in person



Key messages for Learning Activity 3.1

- International standards guide UNPOL officers in mentoring the host-State police on apprehension or arrest of a child
- Any law enforcement authority who does not uphold the rights of the child to dignity, protection and proportionality regarding the use of force should be held accountable

Key messages for Learning Activity 3.1 (cont.)



- International standards provide guidance on:
 - The length of detention
 - Assessing the age of the child
 - The child's right to remain silent
 - The right to be presumed innocent until proven guilty
 - The obligation to consider the best interests of the child
 - The child's right to express his/her views on matters concerning him/her
 - The right to maintain regular contact with his/her family
 - Access to legal counsel

Definition of Detention



“The temporary deprivation of liberty of a person [...]. Detention commences from the moment of apprehension and continues for as long as a person is deprived of his/her liberty and remains under the effective control of [law enforcement authorities], regardless of the duration of the detention, and ends upon release or handover .”

Definition of Places of Detention



“Places of detention refer to all places where children, may be deprived of their liberty, such as prisons, police lock-ups, pre-trial detention centres, military camps, social care facilities, institutions for persons with disabilities or for persons addicted to drugs or alcohol, orphanages, children’s homes, institutions for the educational supervision of children, psychiatric hospitals, mental health centres or migration detention centres.”



Learning Activity 3.2

Instructions

- Work individually to identify as many key messages as possible that should be shared by the UNPOL officers to address the way in which the host-State police dealt with this case (10 minutes)
- Discuss your advocacy points in pairs (10 minutes)



Case study: Situation

On 16 February, the Central African Police received a call about a vehicle belonging to an NGO that was reported as stolen, was seen parked in a Seleka militia stronghold in Bangui.

The host-State police arrested three individuals who were dismantling the vehicle for parts. The three individuals were taken to the local police station, where they were put in a cell. One of the individuals told the police that his name was Aboubacar and that he was 16 years old.

On 21 February, two UNPOL officers deployed with MINUSCA visited the police station. They see that the three individuals are held in one cell. Aboubacar looks very sick, and he tells the two UNPOL officers that no one is taking care of him and that he wants to see his parents.

The UNPOL officers talk to the Commander of the police station about the situation. The Commander says that the police do not have enough funds for medication for all the detainees. He also says that he does not believe that Aboubacar is a minor; he is tall and he looks older than 16. He further states that he is sure that Aboubacar is a member of Seleka. The host-State police took statements from all three individuals and plan to refer the case to the prosecutor the next day.



Case study: Advocacy

- Relevant international norms and standards on justice for children are not implemented at the same level in every country
- Building strong relationships with local law enforcement authorities can facilitate UNPOL's advocacy work
- Breaches of international norms and standards must be reported to the UNPOL Child Protection Focal Point and to the Child Protection Adviser



Case study: Detention as a last resort

- Child protection measures should be applied if the child is considered a danger to himself/herself or others
- Child protection measures should be prioritized over detention
- The child should be charged within 24 hours from the time of arrest/apprehension (or less, as provided for by national law) or be released
- There should be regular opportunities for early release of children from police custody
- Access should be given at all times to UN child protection and human rights staff



Case study: Pretrial detention

- Arrest is usually the starting point of pretrial detention
- Pretrial detention should be a measure of last resort and for the shortest time possible
- Pretrial detention should not be used except in the most serious cases, and only after community placement has been carefully considered
- Pretrial detention shall last no longer than necessary to achieve its objectives



Case study: Pretrial detention (cont.)

- Children should not be detained in transport vehicles or in police cells, except as a measure of last resort and for the shortest period of time
- Children should not be detained for the purpose of intelligence gathering
- At all times access should be provided to UN child protection and human rights staff



Case study: Conditions of detention

- Children must be detained separately from:
 - Adults
 - Members of the other sex (e.g., girls separate from boys)
 - Others in different stages of the judicial process (e.g., accused children separate from convicted children)

- Children should receive protection, medical attention and care, including food and water

- Children should have prompt access to legal and other appropriate assistance



Learning Activity 3.2 (cont.)

Instructions

- Four volunteers will role-play the interaction between two UNPOL officers, one host-State police officer and one host-state Police Commissioner (15 minutes)

- The role-players shall:
 - 1) Present the alternative measures to detention applicable in South Sudan
 - 2) Discuss how alternative measures to detention can be included in the training for the host-State police



Role-play: Situation

Two experienced UNPOL officers deployed with UNMISS have been asked to prepare a training for the host-State police working in Juba.

The host-State Police Commissioner asked UNPOL to focus on alternative measures to detention of children that the police could take.

In preparation for the training, the two UNPOL officers will meet with the host-State Police Commissioner and a police officer. They will present the alternative measures that they plan to propose for the training and explain how these alternative measures are applicable in South Sudan.

The two host-State officers will ask questions to clarify the concepts and assess their applicability in their context.



Role-play: Advocacy

- Alternatives to detention *may* be more challenging to implement
- Most international norms and standards relating to justice for children are not open for adoption and are therefore not binding
- International norms and standards constitute important moral and practical guidelines for States
- The role of UNPOL officers is to advise the host-State police on the implementation of international norms and standards

Role-play: Alternatives to police custody



- Measures for dealing with children without resorting to judicial proceedings include:
 - Permitting the child to remain free, without bail, until a verdict is issued
 - Placing the child under house arrest or the supervision of parent(s)/guardian(s)
 - Placing the child in an open facility
 - Referring the child to social services for care, guidance and/or supervision
 - Counselling
- Payment of a bail bond (money) should never be a requirement for alternative measures



Role-play: Diversion

- Diversion at the pretrial stage avoids the use of detention

- Diversion can include:
 - Issuing a verbal warning to the child
 - Handing over the child to his/her parent(s) or guardian(s)
 - Requiring the child to perform community service
 - Imposing a fine on the child or his/her parents
 - Compensating the victims of the offence committed by the child

- Diversion enables the child to avoid a criminal record

Role-play: Alternatives to detention in sentencing measures



- Sentencing is not the duty of police officers, but they may be asked to follow-up on children placed outside detention facilities

- Alternatives to detention in sentencing measures:
 - House arrest
 - Placing the child in an open facility
 - Imposing a conditional suspended sentence
 - Suspended verdict
 - Community work
 - Supervision
 - Restorative justice measures
 - Education and vocational training measures



Key messages for Learning Activity 3.2

- Detention (including pretrial detention) should only be applied as a measure of last resort and for the shortest possible time
- Detention should not be used except in the most serious cases and even then, only after community placement has been carefully considered
- International standards exist to guide UNPOL's mentoring role to support the host-State police in the apprehension, arrest and detention of children

Key messages for Learning Activity 3.2



- Diversion measures include issuing a verbal warning to the child, imposing a fine on the child or his/her parents or compensating the victims of the offence
- Alternatives to detention include placing the child under house arrest, placing the child in an open detention facility or imposing a conditional suspended sentence (probation)