

# Inclusive Child Justice with a Gender & Diversity Approach: Turning Challenges into Progress

An Agenda for Action

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March, 2023

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Access to justice is both a fundamental human right and a means by which to implement other human rights. Working with a gender justice and diversity perspective on children implies advocating for and promoting full equality and equity between girls, boys, and adolescents in all spheres of life. Gender justice advocates for substantive equality but goes beyond the elimination of all forms of gender-based discrimination, as it incorporates an essential transformative axis: it focuses on children and adolescents, with diverse experiences and identities, rights and abilities, who participate in and shape the narratives, structures, and decisions that affect their lives. The justice sector stands as a fundamental pillar with the capacity to promote the full range of rights for children and adolescents in a diverse way, responding to their different needs and intersections, not only from legal work and jurisdictional practice but also from political-social discourse.

This 'Agenda for Action' proposes progress in 5 specific challenges in order to collectively ensure targeted contributions to the 2030 Sustainable Development Goals (SDGs), namely SDG 5, which promotes gender equality, and SDG 16, which seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all (thus including children and adolescents) and build efficient, accountable and inclusive institutions at all levels.

Although progress in terms of substantive equality and diversity is tangible, children and adolescents are still not sufficiently represented with the specificity they require. Similarly, the diversity demands that the concept of 'gender identity' entails and that are latent in the younger generations are not yet visible. In order for justice to be 'for all', a qualitative leap is still required so as to guarantee adapted access and thus promote the rights of children and adolescents as specific, inclusive, and diverse.

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<sup>3</sup> In this document, 'children and adolescents' refers mainly to persons under 18 years of age, although it affirms a differential treatment based on age, but also based on the different cognitive, emotional and social abilities of each child and adolescent, in accordance with the principle of progressive autonomy.



This document offers a 'new' starting point in order to:

01

Promote a transformative understanding of justice for children and adolescents (including juvenile justice), not only with the aim of overcoming the challenges faced by children and adolescents as regards access to justice in a safe and inclusive manner, but also as an enabler of opportunities and an ally in upholding their specific rights that incorporate diverse gender identities.

02

Address decision-makers, civil society organisations including academic institutions, social movements etc., bringing together a collective that can jointly focus efforts on specific actions and show results, ensure political and legal commitment, and obtain the necessary investment in financial, human, and material resources.

03

Build on the 'momentum': the growing momentum of global, regional, and national commitments to gender equality and children's rights to elevate the 'Inclusive Justice for Children and Adolescents' agenda, make a difference, and create coherent synergies with the SDGs.

Within justice for children and adolescents (including juvenile justice), girls (including adolescents under the age of 18) are in a situation of particular and multiple vulnerability: that which is derived from their age (also called essential), their gender, and their condition as a victim/survivor (of structural violence due to discriminatory practices that do not consider their specific needs within the administration of justice, of a crime or of the abuse of power). This is also the case for children and adolescents who belong to and identify with groups/collectives with diverse 'gender identities' or those that diverge from heteronormativity.



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# Challenges

In the quest to accelerate progress in terms of shaping and implementing a specific agenda on children, justice, gender and diversity, the following 5 challenges have been prioritised and, within them, specific proposals for action:

## **Challenge 1: The intersectionality as an analytical tool**

The urgency of incorporating intersectionality as an analytical tool into child justice research, methodologies, policies and laws (including juvenile justice): studying, understanding, and responding to the ways in which gender intersects with other identities to identify and address specific forms of discrimination and barriers in the child justice sector.

## **Challenge 2: The essentiality of inclusive language**

The essentiality of inclusive language: the specificity of rights and a look at the elements that perpetuate discrimination and stereotypical views of children and adolescents.

## **Challenge 3: The application of the principles of proportionality and rationality in the individualisation or determination of measures**

The application of the principles of proportionality and rationality in the individualisation or determination of measures (protection, precautionary and/or sanction measures) with a gender, diversity and best interest perspective; based on the differentiated impact that these measures have, in particular, on girls and adolescents.

## **Challenge 4: The specialisation of operators within the child justice system**

The specialisation of operators within the child justice system (including juvenile justice) must include awareness raising, education and continuous training on violence, gender justice and diversity as a methodological tool to eradicate institutional violence; in addition to the establishment of specialised units on gender and diversity issues within each of the bodies involved in order to ensure sustainability and real progress, as opposed to just formal progress in its implementation

## **Challenge 5: Regulatory outreach**

Regulatory outreach: when legal reform proposals within the justice system for children (including juvenile justice) are well grounded and supported by (intersectional) evidence, political and social mobilisation is stimulated, investment is generated, and changes in practice become sustainable





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# CHALLENGE 1

The urgency of incorporating intersectionality as an analytical tool into child justice research, methodologies, policies and laws (including juvenile justice): studying, understanding, and responding to the ways in which gender intersects with other identities to identify and address specific forms of discrimination and barriers in the child justice sector.

'Intersectional discrimination' refers to discrimination that takes place on the basis of several personal grounds or characteristics/identities, which operate and interact with each other at the same time in such a way that they are inseparable.

Identifying the different types of discrimination and disadvantage that occur as a result of combining the different identities of a child and young person is essential to understanding their position in the justice system, whether as an offender, victim/survivor, or witness.

In particular, the issue of youth crime with a gender and diversity-based approach cannot be understood without considering racism, patriarchy, class oppression, migratory status, and other systems of discrimination that create inequalities that structure the relative positions of children and adolescents, and influence their criminal behavior (including those behaviors that occur as a consequence of being victims of crime and violence in the first place).

The lack of disaggregated data (according to intersectional and, specifically, gender elements) poses significant challenges to the adoption of gender- and diversity-sensitive policies on access to justice for children and adolescents. The study of the characteristics of children and adolescents who are immersed in justice systems must incorporate an intersectional analysis that takes into account different contexts. For example, the female offender/victim population and minors, despite their lower representation in the overall figures, need to be examined without using male models, neither in contrast with these models nor with their own systematics, but rather from the inclusion of gender specificities that arise from the specific social constructs associated with being a girl/adolescent. The same logic applies to groups of children and adolescents discriminated against because of their different sexual and/or gender identity/orientation. It is essential to examine the role that gender and intersectional inequalities play in the risk factors for committing and/or experiencing crime, in addition to how such inequalities affect the nature of offending. As some authors (e.g., Daily) have proposed, this would involve applying a new view: 'Instead of analysing gender and other intersectional elements as a correlate of crime and/or victimisation, one could analyse crime and/or victimisation as a correlate of gender and other intersectional elements'. Applying the basic elements of this theory to the juvenile justice sector could be p relevant and effective within models of intersectional analysis.

Within this first challenge, it is worth noting that it is interesting to incorporate the study of the decision-making processes of legal operators and judicialisation strategies when faced with cases that incorporate a gender and/or diversity bias into juvenile criminological research; the positive and/or negative patterns that are observed. Here it is essential to incorporate an in-depth view of the 'institutional violence' that children and adolescents suffer as a result of intersectional discrimination in order to ensure that awareness-raising, training and education actions are as specific as possible, with examples of concrete judicial practice. The study of jurisprudence with a gender/intersectional and child/adolescent perspective is therefore of particular relevance, in addition to an exhaustive consultation with legal professionals who handle cases involving children and adolescents.

Finally, monitoring and evaluation of justice programmes for children (including juvenile justice) that have incorporated a gender and/or intersectional approach is still a major challenge and represents, among others, one of the reasons for the lack of empirical data and processes. This demonstrates the need to focus on encouraging evidence-based gender justice policies for children and adolescents. Any funding for inclusive gender/intersectional justice for children programming should include a set-aside for a full evaluation with specific methodologies and, where possible, in partnership with universities or academic researchers with expertise in the field. Clearly defining the evaluation objectives and methodological criteria, as well as including cross-indicators and identifying a control group or an external comparison group are key elements for a rigorous evaluation. Generalisation of conclusions and the ecological fallacy should be avoided, and the focus should be on the specifics, taking into consideration the context in question. Evaluation should include activities for communicating results, as a measure of transparency, and dissemination of learning.

## Proposals for action

### Action 1

Development of a tool for the intersectional criminological analysis of children and adolescents exposed to justice systems (from three lenses: offender, victim/survivor and witness), which incorporates a jurisprudential and decision-making analysis of legal operators as a base study, including discrimination produced as a consequence of 'institutional violence'.

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### Action 2

Mobilisation of investment for the evaluation of justice programmes and policies for children and adolescents (including juvenile justice) with a gender and/or intersectional approach and a plan for the dissemination of results and capitalisation in the form of recommendations/models to be built.





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## CHALLENGE 2

The essentiality of inclusive language: the specificity of rights and a look at the elements that perpetuate discrimination and stereotypical views of children and adolescents.

Inclusiveness in the language used to define children's rights of access to justice is essential to ensure that these rights are more clearly enforceable by legal practitioners, but also for them to be claimed in concrete terms by the children who are specifically concerned by them. Based on a gender/intersectional analysis it is possible to propose definitions, factors and thus specific rights applicable to particular groups of children and young people or when they are in specific situations (e.g. LGBTQIA+ groups, survivors/victims of sexual and gender-based violence or victimised violence, offenders of crimes produced and/or related to a previous situation/crime of violence, e.g. trafficking or sexual exploitation, crimes occurring online against and/or perpetrated by children and young people).

As part of this work, it is necessary to be intentionally aware of the danger of falling into considerations that perpetuate discrimination and stereotyping, in particular of the female child population, especially when these elements are not incorporated into work with boys/young men. For example, Bangkok Rule 65 under the heading 'Female juvenile offenders' states: *'Institutionalisation of children in conflict with the law shall be avoided as far as possible. The vulnerability of female juvenile offenders due to their gender shall be taken into account in making decisions'*. Even if the virtuality of such a rule is intended to consider specific aspects of female juvenile offenders as a result of discriminatory factors they have historically suffered from a culture and practice of justice anchored in patriarchal foundations, the language used, which understands girls/adolescent girls, as a mere matter of gender, to be vulnerable, is even more discriminatory and stigmatising. Inclusive language in normative frameworks, administrative and/or judicial resolutions and other public documents is of utmost importance to shape increasingly egalitarian and equitable policies, and to achieve inclusive justice with a gender and diversity approach. This means avoiding restricting gender and other intersectional factors to innate and immutable differences, but rather analysing them in a way that explores their social construction, challenges non-inclusive and/or discriminatory norms, and examines the existing privileges of certain groups and the reasons for them.



Social movements are a critical force in terms of creating vibrant participatory democracies and for promoting gender and diversity justice. Justice is, in fact, a fundamental pillar of democracy and must therefore create spaces for civil society in its multiple forms to meaningfully participate in it. Moving towards an inclusive justice for children and adolescents that is precise in its terminology and language, and with it the rights of the amalgam of diversities that children and adolescents present, requires that civil society in favour of the rights of children and adolescents in the administration of justice and in favour of gender equality and equity participate in the debate, and in the formulation of claims and propositions that shape key messages and priorities for public policy, legislation and legal practice.

## Proposals for action

### Action 1

Development of a guide for the application of inclusive language and terminology in the administration of justice for children and adolescents, with a focus on gender and diversity.

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### Action 2

Call for participation of social movements for children's rights in the administration of justice and for gender equality, equity and diversity to join the work on the guide.



## CHALLENGE 3

The application of the principles of proportionality and rationality in the individualisation or determination of measures (protection, precautionary and/or sanction measures) with a gender, diversity and best interest perspective; based on the differentiated impact that these measures have, in particular, on girls and adolescents.

According to the Common Standards for Ibero-America on the Determination and Judicial Review of Criminal Sanctions for Adolescents, the measures (protective, precautionary and/or punitive) seek to contribute to the protection of both individual and social interests affected by the crime and should promote the reintegration of children and adolescents so that they can assume a constructive role in society. In order to achieve this aim, it is essential to apply a gender perspective when individualising/determining measures (protective, precautionary and/or punitive). The Bangkok Rules (57 and 58) provide for the application of appropriate responses to crime committed by women; in this sense, they propose the use of optional mechanisms (alternative measures to pre-trial detention or sentencing) to the separation of women from their relatives or communities; analysing at all times their background and family ties. The disadvantages faced by women deprived of their liberty in relation to men are more acute the younger they are, which is why equitable treatment must be guaranteed (Beijing Rules, 26.4), which implies differential treatment according to specific needs that must be analysed from a gender and diversity perspective.

In this respect, according to international standards for the protection of the human rights of women (including girls and adolescents), States have a reinforced duty to protect, so that the individualisation/determination of measures (protective, precautionary and/or punitive) applied to girls and adolescents within the justice system for children (including the juvenile justice system), should at all times consider the last ratio, the gender perspective and the best interests in light of the disproportionate or differential impact they have, with respect to boys, in the absence of conditions of material equality that exist in society (and, therefore, also in the administration of the justice system).

In terms of individualising the measure, and in accordance with the principles of proportionality (sanction and severity of the offence considering the specific circumstances of the specific case) of the sanction and, where appropriate, of the precautionary and protective measures, the multiple conditions of vulnerability of girls and adolescents should be taken into account so as not to deepen the relations of domination and discrimination against them.

# Proposals for action

## Action 1

Specialised criminal laws must contain exonerating or attenuating circumstances that include a gender and diversity perspective that may affect the guilt of the adolescent girl, in addition to assigning the courts the power to reduce the amount, duration or intensity of the violation of rights by assessing objective personal circumstances that individualise each particular case and apply a gender and diversity perspective, reducing her criminal liability when she proves any type of prior violence, during the specialised procedure or in the execution of measures that show a disproportionate and differential impact with respect to boys.

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## Action 2

In order to individualise a measure (protective, precautionary and/or punitive) with respect to girls and adolescents, judicial personnel must undertake an evidentiary assessment based on the context (personal, social and gender circumstances), by way of interdisciplinary technical reports that meet high-level professional standards in accordance with the area of knowledge in relation to the practical application of the gender/intersectional perspective.

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## Action 3

Forge alliances between public institutions and civil society in order to develop programmes (with proven effectiveness and backed by scientific evidence) that include alternatives to restrictive or custodial measures (protective, precautionary and punitive) in order to keep them close to their social and family environment and avoid desocialisation.





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## CHALLENGE 4

The specialisation of operators within the child justice system (including juvenile justice) must include awareness raising, education and continuous training on violence, gender justice and diversity as a methodological tool to eradicate institutional violence; in addition to the establishment of specialised units on gender and diversity issues within each of the bodies involved in order to ensure sustainability and real progress, as opposed to just formal progress in its implementation.

In addition to the design of a public policy on justice for children and adolescents with a gender and diversity perspective, raising awareness, training and continuous and permanent training of the system's operational staff on violence, gender justice and diversity are essential for its correct application. Specifically, decision-makers must have specialised and interdisciplinary training in order to base decisions on a comprehensive diagnosis of the context with a gender and diversity perspective.

It is necessary to define minimum guidelines for training and guarantee the continuous and effective training of the operational personnel of the justice systems for children and adolescents in order to guarantee sustainability and real and informal progress in this area. Awareness-raising, education and training as a methodological tool for the cultural transformation of justice system operators will help to identify and analyse institutional decisions, treatment and practices that reproduce gender inequalities in order to eradicate them.

Thus, justice practitioners require tailor-made and accompanied capacity building and related tools. These must be very specific, and must be applicable within their own system and scope of action, so that they can focus on incorporating and/or modifying their justice practices. A competency-based analysis (existing and pending acquisition) and an assessment of the entry point of each (national) justice sector should be the baseline for designing the most appropriate content and methodology to follow.

In this sense, it is essential to create gender and diversity units within each of the bodies responsible for justice for children and adolescents that implement effective measures to disseminate the human rights of children and adolescents, the creation of mechanisms for denouncing operators in cases of discrimination and violation or infringement of rights, as well as guaranteeing the active participation of children and adolescents in justice procedures.

# Proposals for action

## Action 1

Immediate measures should be taken to provide mandatory training to all operators of specialised systems on issues related to violence, gender justice and diversity, providing pedagogical and operational tools to promote fairer and more egalitarian institutional practices within the system.

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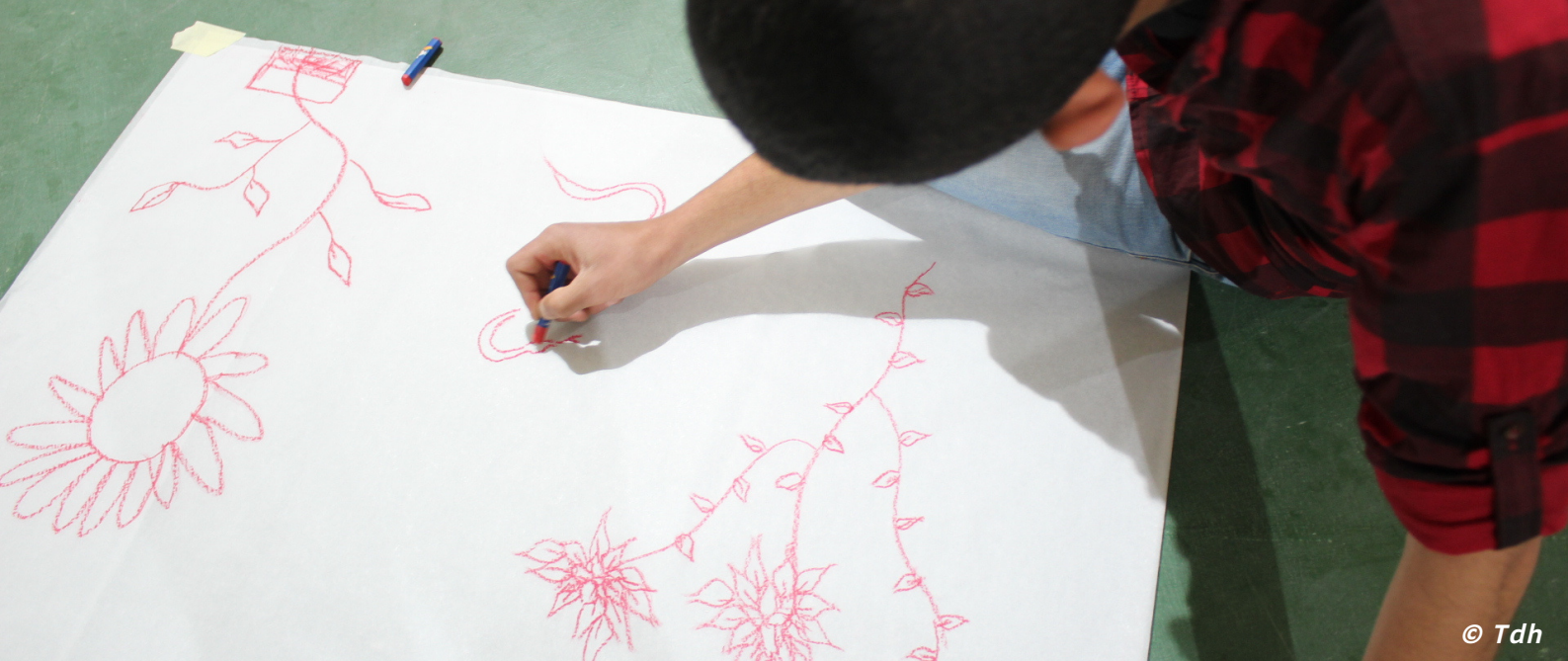
## Action 2

Definition of guidelines and minimum requirements for the development of a training proposal on gender justice and diversity within juvenile justice systems that will include: national and international standards for the protection of the rights of children and adolescents with a gender and diversity perspective, conceptual framework of the gender and diversity perspective, gender violence and diversity, mainstreaming of both perspectives in the justice sector in practice, etc.

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## Action 3

Creation of gender and diversity units at each of the bodies responsible for the operation of the justice system for children and adolescents that disseminate the specific human rights of children and adolescents in terms of gender and diversity, define mechanisms for denouncing operators who violate or restrict rights and guarantee the effective participation of children in justice procedures.



## CHALLENGE 5

**Regulatory outreach: when legal reform proposals within the justice system for children (including juvenile justice) are well grounded and supported by (intersectional) evidence, political and social mobilisation is stimulated, investment is generated, and changes in practice become sustainable.**

It should be noted that while regulatory work is not the only element of gender and diversity sensitive justice reform for children, an active and inclusive legislative agenda is a key element in mobilising the resources and political commitment of all actors involved in its consideration and implementation.

One of the fundamental objectives of 'reform' is to incorporate legal or public policy provisions in the child justice sector, including a specific mandate to implement specific interventions and programmes with a gender/intersectional approach. Not only does it place the issue as a priority in the political agendas of the States, but it also receives concrete budgetary allocation, and links the different institutions and main actors to its implementation and effective achievement. It also generates progressive changes in social awareness.

As regards regulations in this area, some issues should be considered in order to include and mainstream a gender and diversity perspective in legislation on justice for children and adolescents (including juvenile justice).



# Proposals for action

A collective task of political and legislative advocacy by institutions, civil society organisations and social movements could be considered at the state level, following the conception of a solid study, which including an intersectional analysis, could provide concrete quantitative data as well as comparisons with other regions/countries that have undertaken reforms, together with their results in the short/medium/long term.

## Action 1

Decriminalise offences in which children and adolescents are victims (offences related to the sexual exploitation of children, such as child prostitution or trafficking). Use screening tools to determine whether child and adolescent offenders are victims of trafficking/sexual exploitation of any kind.

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## Action 2

Divert cases of children and adolescents involved in domestic violence from the justice system to the protection system by way of specific interventions (crisis intervention, family engagement, temporary respite care, mental health screening when necessary). These responses should be previously evaluated with gender data analysis and cross-referenced with intersectionality factors, so that models of judicial diversion can be designed adapted to the specificities of children and adolescents in each particular context.

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## Action 3

De-judicialising minor offences (the most common among the child/young offender population) if there has been no recurrence, for example, along the same lines, the establishment of mediation or similar practices within restorative justice, in police stations or schools, could be regulated through agreements with the corresponding justice departments. This would require specific training for the agents responsible for such processes and the definition of appropriate coordination mechanisms.

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## Action 4

Connecting the child protection and justice systems to ensure that certain crimes (those more common among children/young people if a gender/intersectional approach is applied: such as non-violent theft, sexual exploitation, violent behaviour resulting from domestic violence events, etc.) can be dealt with from the perspective of the protection system (taking into account the particular elements of each case) and leave the judicial sphere. Similarly, integrating both models through a case management system would allow for a complete and individualised analysis, which would result in responses more in line with the needs of children and adolescents.

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## Action 5

Since 2019, there has been a considerable increase in crimes against LGBTQIA+ children and youth, also highlighting the escalation of hate speech and thus hate-related crimes. Regulatory developments concerning LGBTQIA+ should include specific aggravating factors (and/or specific offences within the juvenile justice system) in cases of crimes against LGBTQIA+ children and young people, including 'hate crimes'.

# Their words are the best conclusion

Gender and diversity justice for children is designed to accommodate the needs of girls and boys who experience discrimination and violence. Therefore, they need to be heard. Their voices are the basis for action and for continuing to seek better justice processes that are gender and diversity sensitive, fair, dignified and effective for them. These are some of the messages that the children we work with wish to be heard:

‘I lost 5 years of my life in prison without doing anything. I was never a criminal but a victim. I was never taken seriously. A life deprived of freedom is suffocating. You lose all your hopes. To lose your freedom is to lose your life’.

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‘When I was sexually assaulted, everyone blamed me instead of supporting me. I still don't know what I did to be treated like that’.

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‘What kind of justice are we talking about? I feel that justice only applies to a minority, but most of us are left behind. I wish I lived in a world where justice is real, for girls like me, too’.

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‘I would recommend finding a protective solution for us , where we feel safe, listened to and where they can help us find a safe life and equal opportunities. I want to live safely and with the freedom to be who I am. I should have that right, shouldn't I? I feel desperate and I am struggling with the stigma that has been put on me, as well as on my family for having a child like me’.

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‘Most of us live in fear. We don't know what will happen to us if we turn to someone in the justice system’.

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‘All I did was listen: if you're dealing with justice, don't act gay, don't sound gay’.

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‘Justice for all, including children. Don't forget us’.

This document is results from the World Congress Justice for Children 2021 '*Ensuring Access to Justice for Children: Towards Non-Discriminatory and Inclusive Justice Systems for Children*'.

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