



Terre des hommes

Helping children worldwide.

## ACCESS TO JUSTICE PROGRAMME THEORY OF CHANGE

### The challenges

Access to justice for children remains largely theoretical worldwide. On one side, **approximately one million children are deprived of liberty** (UNICEF, Progress for Children, A report card on child protection, No. 8, September 2009), many of them due to being in conflict with the law due to petty crimes, though detention should be used as last resort and hinders cognitive development and social integration. On the other side, the rights of children victims are not repaired maintaining impunity on child rights violations.

Tdh, therefore, is committed to promoting a **restorative and desistance approach** based on child-friendly justice, encouraging non-custodial measures for children in conflict with the law, as well as improving non-violent conflict resolution mechanisms and integration of children, especially in communities where customary justice systems are the most effective.

### Our target groups

Girls, boys and youth in contact with the law (as victims, witnesses or alleged offenders) in Latin America, West Africa, Eastern Europe, the Middle East and Central Asia. Tdh considers children and youth to be all girls and boys between 0 and 24 years old.

### Our 2020 goal and strategic vision

By 2020, Terre des hommes has contributed significantly and sustainably to improving access to formal and informal justice systems by children in West Africa, Latin America, Asia and the Middle East. Terre des hommes plans to contribute to developing and improving justice systems by enhancing the restorative approach and in particular by promoting alternatives to trials, detention and specialized custodial care for children.

Terre des hommes is a leading worldwide reference on restorative juvenile justice.

Our work in the Access to Justice Programme contributes directly to SDG 16, namely targets 16.2 reducing violence against children and 16.3 reinforcing access to justice. It also endeavours to protect the rights of children in conflict with the law (articles 37 and 40 of the Convention on the Rights of the Child) and of children victims (article 19), as well as the involvement of the family and the community in the development of children (article 5), and the protection of the rights to non-discrimination (article 2), to have their best interest taken into consideration (article 3), to life survival and development (article 2), right to participation in all matters affecting them (article 12).

## The critical changes needed to address the challenges and achieve our goal

Our Theory of Change illustrates the changes that we believe need to happen in order for children and youth in contact with the law to access justice and for their rights to be upheld throughout the process. Based on our analysis, we have identified four inter-related pathways of change, focused on four priority settings in which we envisage change in relationships and behaviours is most necessary. **All of our Programme interventions will be designed to contribute to one or more of the changes** illustrated in these pathways:

- 1. Children and youth in conflict with the law benefit from non-custodial measures** - We will work closely with professionals across the chain of justice, including police, prosecutors and judges, and ensure that the necessary legislation is in place, to enhance the use of diversion and alternatives to detention.
- 2. Girls, boys and youth in detention are treated with dignity and prepared for reintegration** – We will work with staff in detention facilities and professional training institutions for justice professionals more widely, in order to mitigate the harmful effects of deprivation of liberty on children and shift the culture of detention facilities to decrease violence, optimize rehabilitation, and reduce recidivism.
- 3. Prevention & reintegration services for children are improved** - We will work with families, community-based organisations and community leaders, to nurture a compassionate and supportive environment to ensure that violence against children and committed by children is reduced and that children are reintegrated into their communities.
- 4. Synergies in contexts of legal pluralism enrich children's experiences of restorative justice** - we will support coordination amongst formal justice actors, both secular and religious, and customary justice actors, including indigenous actors, to promote recognition of positive restorative practices and better decision-making that upholds the best interests of the child.

## **Key assumptions to enable change**

The change pathways in our Theory of Change are informed by more than two decades of Terre des hommes' experience of conducting operations, research and advocacy in the field of juvenile for children in Latin America, the Middle East and West Africa. This experience has yielded insights from many different contexts about how change happens and how to measure it. This has led us to identify **four key assumptions** that underpin our understanding of global trends in access to justice, and, consequently, our strategic choices for how to influence positive change.

Assumption	Potentials and limitations in each pillar			
	Non-custodial measures	Detention	Prevention & Reintegration	Legal Pluralism
<b>Access to effective legal systems promoting social cohesion, inclusivity, peace and the end of violence against children</b>	Art. 37 of the Convention commands and criminal sciences demonstrate that non-custodial measures are more efficient in reducing reoffending, more cost-effective, and more respectful of children's rights in general. These measures have to be put in place by trained legal and paralegal professionals.	A prominent and growing body of evidence illustrates the damaging effects of detention on children's physical and mental health, <sup>1</sup> and their ability to become healthy and happy members of society. Addressing violence in detention therefore reduces risks on child's development and recidivism.	Children's ability to insert positively in their societies depends on their environment and their ability to make their rights a reality, whether victims or offenders. Sharing techniques related to non-violent communication and positive discipline has the potential to transform the ways that dispute resolution takes place at the smallest social unit: the family. However, it is also known that parenting is influenced by a wide range of factors, most importantly income and education level. It is, therefore, very difficult to draw a linear, causal relationship between 'awareness', non-violent parenting, and reintegration	Discussions about the concepts of 'justice', 'violence' and 'peace' in contexts of legal pluralism highlight the highly normative nature of these concepts that stems from international human rights discourse. Dealing with the encounter between different norms, values, definitions and understandings is complex and challenging, but necessary in order to overcome binary positions and explore new, nuanced perspectives.
<b>Upholding the best interests of girls and boys in contact with the law requires specialised justice systems</b>	- International human rights law and international guidance on JJ stipulate that deprivation of liberty should only be used as a measure of last resort and for the shortest period of time. Non-custodial measures should be made available for children at any stage of the justice proceedings through	United Nations Rules for the Protection of Juveniles Deprived of their Liberty maintain that children deprived of liberty should have access to their fundamental rights and basic services such as clean water, nutritious food, adequate sanitation and education. However, in practice, many of these are not fulfilled, and places of deprivation of liberty are		Traditional and customary justice systems are often more concerned with upholding community harmony rather than the rights of individuals involved in a dispute. Moreover, these often deal with children in conflict with the law in the same way that they deal with adults. Therefore, international guidelines on specialisation of justice systems for children are often not seen to be relevant or feasible in traditional and customary

<sup>1</sup> Holman, B. and Zeidenberg, J. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, 2013; Aizer, A. and J. J. Doyle Jr, "[Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges](#)", NBER Working Paper, 19102, 2013.

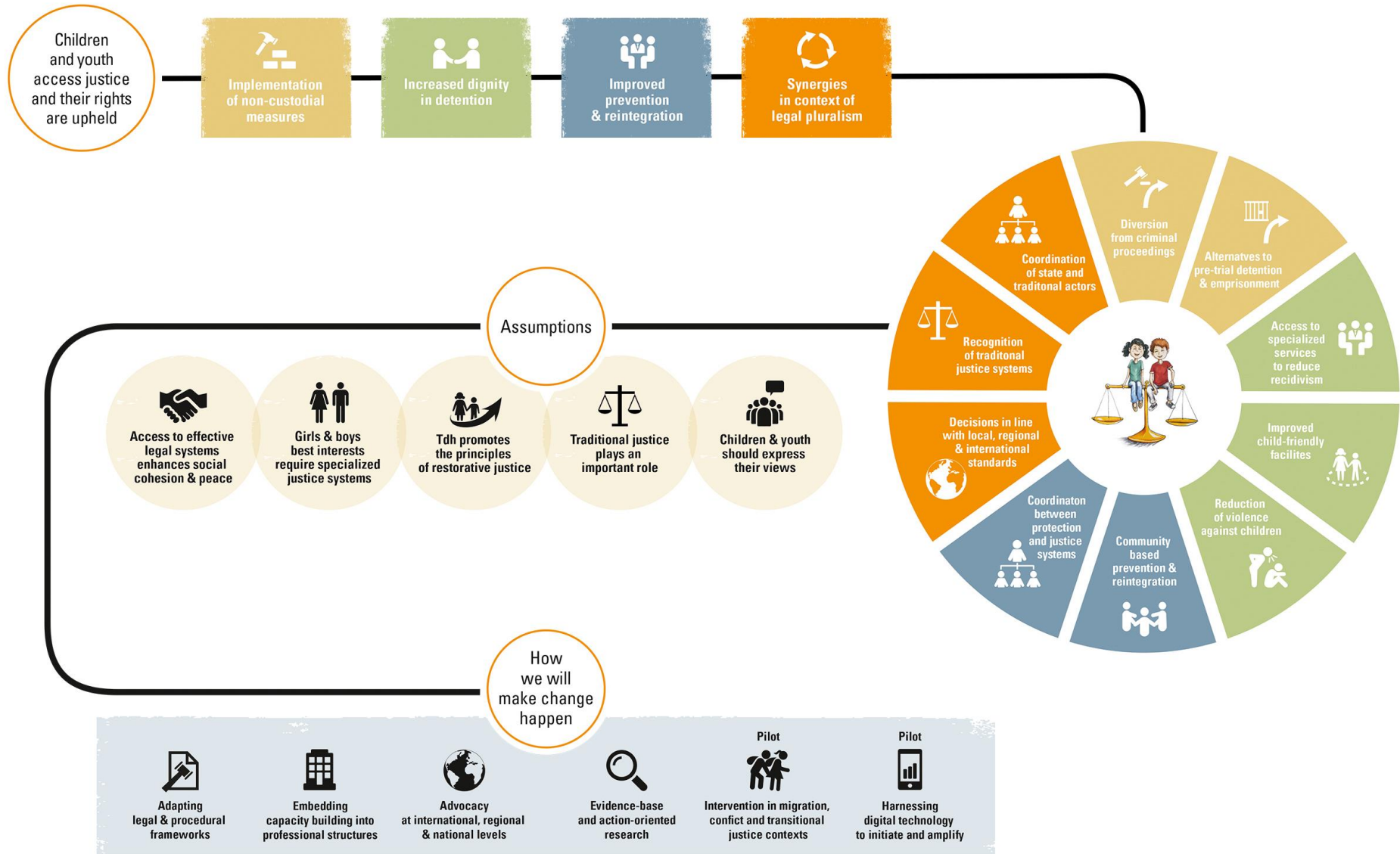
	diversion or alternatives to detention. Diversion, community measures and other solutions are proven to be a better solution to child crime than prison.	often not at the top of national government's child rights agendas, meaning that sub-standard conditions in detention are allowed to persist.		systems.
<b>Traditional and non-state justice systems play important roles in access to justice</b>	Non-custodial measures should be implemented by the State, who should provision enough resources (human and logistics) for their implementations. Civil society organizations and traditional dispute resolutions mechanisms can also play a role in implementing non-custodial measures, if they are recognized by the state and can guaranty the respect of children's fundamental rights.	Prison staff are key professionals to work with in order to ensure that children in detention are not victims of violence. Families, social workers and defense lawyers are also key players to ensure that children are not entirely isolated and issues related to detention are dealt with.	The state is the principal, but not the only, actor that should orient JJ sector reform. Prevention and reintegration policies that define roles and procedures at national, provincial and local levels, should exist to provide a framework of action. These policies to be efficient, should involve communities-based child protection mechanisms. Mobilization of community resources can help child rights violations to be identified and dealt with, if effective.	As understanding of plural legal systems grows, and the founding insights of restorative justice become more prominent, the limitations of state-centric approaches become more and more apparent. However, this can easily be misconstrued by states that are hostile to pluralism within an eradication perspective, and therefore it is important to ensure that the ways in which the limitations of state-centrism are articulated to not alienate necessary governmental partners.
<b>Empowering children and youth to express their views can influence decision-makers to adopt a child-friendly approach</b>	Determining the best interests of the child requires taking children's views into account. However, particularly in judicial proceedings, the practice varies significantly. Promoting children's voices in each phase of the judicial process is likely to reinforce the impetus to seek non-custodial measures.	Giving children who have experienced deprivation of liberty the opportunity to share their experiences will encourage practitioners to confront the experience of detention through a more subjective lens.	Breaking through stigmatisation of ex-offenders and victims entails unpacking concept of 'good' kids and 'bad' kids. Peer-to-peer approaches, both among children in contact with the law and between those who have experience of the criminal justice system and those who haven't, with a view to identifying common ground and bridge the perceived gaps.	Engaging with any type of power structure (state or non-state) bears the potential of reinforcing existing hierarchies. In such cases, creating opportunities for children and young people to express themselves is a powerful way of ensuring that working with multiple stakeholders from different sources of authority (secular state, religious, customary, indigenous etc) does not just reaffirm the status quo, but opens up the potential for bottom-up transformation.

## Terre des hommes' added value and contribution to change

Thanks to a unique presence at grass root level, continuous dialogue with justice actors at institutional level and in the communities, Tdh develops accurate understanding of the situation of girls and boys in contact with the justice systems. Thanks to this situational analysis and depending the policy and legislation in the countries of intervention, it adapts its intervention. This intervention can take the form of a subtle blend of:

- **Adapting legal and procedural frameworks** in line with international child-friendly justice standards.
  - Legal change: to adapt the policy, legal and procedural framework in line with international and regional standards and make it relevant and efficient to justice professionals.
  - Promoting links between the juvenile justice system and the child protection system, in order to identify and address the needs for development and protection of children in contact with the legal systems.
- **Embedding capacity building into professional structures:** The importance of building capacities is well established, however, the best practices for most effective methodologies to encourage behavioral change in the medium and long term are less obvious. It does seem apparent that, in order to maximize the scope for trainings to have a longer and deeper impact, they should not be conducted on a 'one-shot' basis but, preferably, integrated within the curricula of national training institutions for justice professionals (ex: schools of magistrates)
- **Advocacy at international, regional and national levels:** leveraging existing momentum generated by global development agenda (ex. SDG16) in order to keep justice for children at the forefront of development agendas at international, regional and national levels. To that end, we actively seek partnerships with like-minded organizations to reinforce our actions. Another key component of our advocacy work is participation: girls, boys and young people's voices should take part in the justice matters in which they are involved, and should be heard.
- **Developing evidence-based practice through action-oriented research:** collecting qualitative and quantitative data following scientifically recognized methods is the only way to report and advocate for the rights of children and evaluate the efficiency of the projects conducted. Tdh has built several academic partnerships with well recognized research academics in the field of criminology, legal anthropology, children rights, notably in order to incorporate the highest standards of expertise into its projects. We also seek partnerships with academics and universities both in the global north and the global south.
- **Addressing contemporary needs in access to justice in contexts of migration, conflict (including violent extremism) and transitional justice:** the notion of children rights remains largely secondary in many contexts. Tdh endeavours to reinforce the right to access child friendly legal systems and the right to redress not only for children in conflict with the criminal law, but also for migrant children in contact with the justice systems, migrant children in contact with the legal systems on-the-move and children involved in transitional justice processes.
- **Harnessing digital technology to initiate and amplify:** our projects maximize the use of digital technology when relevant to enhance the performance of our projects (data collection) or improve the communication with key stakeholders, for example, for communities of practice or advocacy purposes.

## Theory of Change Access to Justice Programme

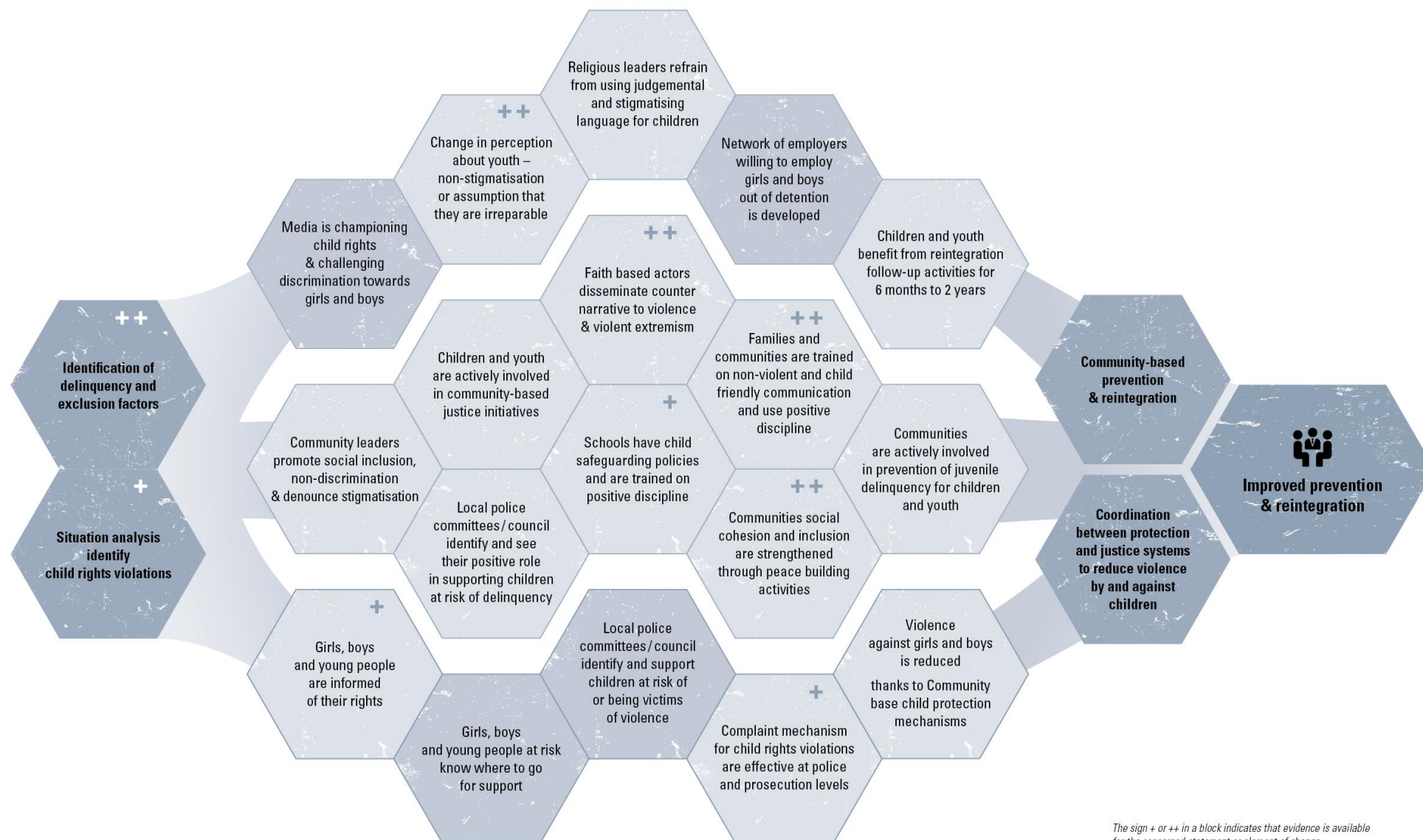




## Theory of Change Implementation of non-custodial measures



## Theory of Change Improved prevention & reintegration





## Theory of Change Synergies in context of legal pluralism



## How we will measure our contribution to change

The Access to Justice Programme currently has 16 programmatic indicators, currently **seven** of which refer to outcomes at field level, while the remainder are being compiled at global level. Currently, not all of the change pathways have programmatic indicators linked to them: two of the pathways (NCM and legal pluralism) have programmatic indicators, whereas the indicators for the remaining two (detention and reintegration) have not yet been developed.

### Outcome indicators linked to NCM:

- 1.1: Number of children in conflict with the law who benefitted from non-custodial measures: diversion
- 1.2: Number of children in conflict with the law who benefitted from non-custodial measures: alternative to pre-trial detention
- 1.3: Number of children in conflict with the law who benefitted from non-custodial measures: substitution for imprisonment

### Outcome indicators linked to legal pluralism:

- 1.4 Number and percentage of cases involving children in contact with the customary justice system, in which formal justice actors have been involved
- 1.5 Number and percentage of cases involving children in contact with the customary justice system, in which the child has been invited to give a narrative of events
- 2.1 Number of norms, policies and procedures that have been built up (enacted, modified or abrogated) [in line with JJR principles] with the direct technical support of Tdh and validated by competent authorities.

### Cross-cutting indicators

Additionally, the following cross-cutting output indicator 2.2 provides some visibility on the number of professionals trained.

- 2.2 Number of professionals trained or made aware annually by the A2J Programme

Indicator 1.6 is also a cross-cutting indicator measuring the satisfaction of the parties engaged in restorative justice process. It can be measured in different contexts: customary justice settings, non-custodial measures, prevention & reintegration, or even detention.

- 1.6: Level of satisfaction of parties engaged in quality restorative justice processes supported or accompanied by Tdh

### Other indicators

Specific outcome indicators for the pathways on detention as well as prevention & reintegration will be developed over 2018.

## How we will use the Theory of Change

We will use our Programme Theory of Change to guide the design of new Programme and project interventions and to support the monitoring and assessment of Terre des hommes' impact and added value in contributing to positive change in the lives of boys and girls and youth in contact with the law. The Programme team will review the ToC assumptions and change pathways on an annual basis (more frequently if needed in response to changing operating contexts). The review process will involve:

- Updating the contextual analysis for the global Programme.
- Analysis of monitoring and evaluation information gathered by Programme interventions against the Programme global indicators.
- Assessing the quality and extent of evidence supporting or challenging the Programme pathways of change, including whether the key assumptions are holding true.
- Identifying evidence gaps and prioritising areas for focussing research and learning during Programme implementation.
- Reflection, generation and dissemination of lessons learned, including information from focussed research, convergences and capitalisation meetings.
- Adaptation of the Theory of Change.

We will use our Theory of Change to communicate and share our understanding of change with our key stakeholders, including our donors and international and national partners, as well as peer organisations and actors also working on access to justice. We will use this as a basis for identifying potential areas for collaboration, complementarity and advocacy for achieving change for girls and boys and youth in contact with the law across the countries and contexts where we work.

## How this Theory of Change relates to other Programmes' ToC

Due to the complexity of the issues related to access to justice and the numerous determining factors, it is necessary to apply a holistic approach. Maternal and child health, WASH, migration and tackling child labour components can be integrated into a comprehensive response to improve access to justice for children and youth, and work with their communities.

More specifically, the Access to Justice Programme works closely with the Children and Youth in Migration and Tackling Child Labour Programmes as well as with the unit for Transversal Protection. Together we develop coherent approaches on a number of related topics such as:

- Institutional strengthening of child protection systems
- Community-based child protection mechanisms
- Participation-Empowerment-Resilience

Children can also be in contact with the law in emergency contexts. This is why it is essential to coordinate with the Humanitarian Aid division when addressing such issues.

Finally, advocacy is an unavoidable and cross-cutting element for all Programmes. Evidence-based advocacy is a crucial driver to advance access to justice agenda and thus an essential entry point to our Theory of Change. Campaigns and international advocacy are coordinated and implemented in conjunction with the members of the TDHIF (Terre des Hommes International Federation) working group.