

Children in conflict with the law back on the agenda

**The Eleventh UN Congress on Crime Prevention and Criminal Justice:
Report on Participation of Defence for Children International**



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1. Achievements

Children do not belong in prison. They do not belong behind bars. Children should go to school. They should be playing with their friends. They should be together with their families.

Due to DCI's lobby at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice (Bangkok, Thailand, 18-25 April 2005), and at the four Regional Preparatory Meetings for the Eleventh Congress held in 2004, the final Bangkok Declaration *Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice* includes a special paragraph on juvenile justice that, in addition, specifically refers to children deprived of their liberty:

“We affirm our determination to pay particular attention to juvenile justice. We will consider ways to ensure the provision of services to children who are victims of crime and children in conflict with the law, in particular those deprived of their liberty, and also to ensure that those services take into account their gender, social circumstances and developmental needs and the relevant United Nations standards and norms, as appropriate.”

Although stronger and more detailed language would have been preferred, the mere fact of getting attention for juvenile justice can be considered an achievement in itself in the current political climate. Moreover, it is the first time since the adoption of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty at the 8th UN Congress in 1990 that special reference is made to children deprived of their liberty.

2. Introduction

One of the main lobby activities of the *No Kids Behind Bars! Global Campaign* in 2004 and the beginning of 2005 was the preparation of DCI's participation at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice: 'Synergies and Responses: strategic alliances in crime prevention and criminal justice' (Bangkok, Thailand, 18-25 April 2005), and at the four Regional Preparatory Meetings for the Eleventh Congress that were held in 2004. This report gives an account of DCI's participation, lobby and experiences, and some background information.

3. Role of the Commission on Crime Prevention and Criminal Justice

The Eleventh Congress was prepared by the United Nations Commission on Crime Prevention and Criminal Justice, which was established in 1992 as a subsidiary body of the Economic and Social Council (ECOSOC). The Commission consists of 40 Member States. It formulates international policies and recommends activities in the field of crime control. The four priority areas of the Commission's mandate are:

- 1) International action to combat national and transnational crime, including organised crime, economic crime and money laundering;
- 2) Promoting the role of criminal law in protecting the environment;
- 3) Crime prevention in urban areas, including juvenile crime and violence; and
- 4) Improving the efficiency and fairness of criminal justice administration systems.

At the Commission's annual sessions, draft resolutions for action are formulated that subsequently need to be approved by ECOSOC. It is the task (of the Crime Programme) of the

United Nations Office on Drugs and Crime (UNODC) to implement the decisions of the Commission. The UNODC Headquarters is based in Vienna, Austria. It has 21 field offices.

Annemieke Wolthuis (DCI-Netherlands) and Danny Sandor (DCI-Australia) participated at the 13th session of the Commission (Vienna, Austria, 11-20 May 2004). The main objective of their participation was to gain the attention and support of the Member States for DCI's recommendations to be submitted at the Eleventh Congress the following year.

Carlos Pampín García (DCI-International Secretariat) participated at the Commission's 14th session (Vienna, Austria, 23-27 May 2005), in order to give follow-up to DCI's participation and recommendations at the Eleventh Congress. Further lobby activities are planned for the Commission's 15th session in 2006.

4. What are UN Congresses?

The origins of the United Nations congresses on crime prevention and criminal justice can be traced back to the International Penitentiary Commission (IPPC), already active since the 19th century. In 1950, the General Assembly authorised the transfer of the IPPC's functions to the United Nations, and approved the initiative whereby the UN would undertake to convene a world wide congress every five years, in order to provide a forum for discussion of priority concerns by policy makers, administrators, academics and other professionals in the field.

The very First United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in 1955 in Geneva, Switzerland, and was attended by 61 countries and territories. The Tenth Congress (Vienna, Austria, 10-17 April 2000) was attended by some 2.000 participants, including representatives of 139 Governments! The Eleventh Congress hosted 2.370 participants, representatives of 167 NGOs and 1.137 individual experts.

The UN Congresses always have a main theme, and they result in the adoption of a single UN declaration. The Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, for example, resulted in the adoption of the *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*. Juveniles are specifically referred to in paragraph 24 of this declaration, which focuses on the prevention of juvenile delinquency:

“We further recognise with great concern that juveniles in difficult circumstances are often at risk of becoming delinquent or easy candidates for recruitment by criminal groups, including groups involved in transnational organised crime, and we commit ourselves to undertaking countermeasures to prevent this growing phenomenon and to including, where necessary, provisions for juvenile justice in national development plans and international development strategies and to including the administration of juvenile justice in our funding policies for development co-operation.”

5. Regional Preparatory Meetings of the Eleventh Congress

The main theme of the Eleventh Congress was: ‘Synergies and Responses: strategic alliances in crime prevention and criminal justice’. The Regional Preparatory Meetings had the same theme, agenda items and workshop topics as the Eleventh Congress. The agenda items were as follows:

- 1) Effective measures to combat transnational organised crime;
- 2) International co-operation against terrorism and links between terrorism and other criminal activities in the context of the work of the United Nations Office on Drugs and Crime;
- 3) Corruption: threats and trends in the twenty-first century;

- 4) Economic and financial crimes: challenges to sustainable development; and
- 5) Making standards work: fifty years of standard-setting in crime prevention and criminal justice.

The workshop topics were:

- 1) Enhancing international law enforcement co-operation, including extradition measures;
- 2) Enhancing criminal justice reform, including restorative justice;
- 3) Strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk;
- 4) Measures to combat terrorism, with reference to the relevant international conventions and protocols;
- 5) Measures to combat economic crime, including money-laundering; and
- 6) Measures to combat computer-related crime.

One of the main objectives of the four Regional Preparatory Meetings for the Eleventh Congress was to provide action-oriented recommendations to serve as a basis for those to be included in the draft Bangkok Declaration. The actual text of the draft Bangkok Declaration was drawn up at inter-sessional meetings of the Commission on Crime Prevention and Criminal Justice, which took place in the beginning of 2005.

At the Regional Preparatory Meetings (and at the Eleventh Congress), DCI submitted its action-oriented recommendations under the agenda item ‘Making standards work: fifty years of standard-setting in crime prevention and criminal justice’, considering the important international instruments that have been adopted within the framework of the UN in the field of juvenile justice. Furthermore, DCI actively participated at the workshops on ‘Enhancing criminal justice reform, including restorative justice’, and ‘Strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk’.

The following four Regional Preparatory Meetings preceded the Eleventh Congress: African Regional Preparatory Meeting (Addis Ababa, Ethiopia, 1-3 March 2004); Asia and Pacific Regional Preparatory Meeting (Bangkok, Thailand, 29-31 March 2004); Latin American and Caribbean Regional Preparatory Meeting (San José, Costa Rica, 19-21 April 2004); and the Western Asian Regional Preparatory Meeting (Beirut, Lebanon, 28-30 April 2004). Mr. Innocent Garakumbe of DCI-Uganda represented DCI at the meeting in Africa. Mr. Danny Sandor, former president of DCI-Australia, represented DCI at the Asia and Pacific meeting, and Ms. Vicky Murillo Herrera of DCI-Costa Rica was the DCI representative at the Latin American and Caribbean meeting.

Defence for Children International consistently submitted exactly the same action-oriented recommendation at all of the Regional Preparatory Meetings. Encouragingly, it was adopted by the government representatives at each meeting, including at the Western Asian Regional Preparatory Meeting, which was held last and where DCI representatives were not present. The DCI recommendations were explicitly included in all of the Regional Reports as follows:

“63. The Meeting recommended that States pay particular attention to juvenile justice and to measures to ensure the treatment of children in conflict with the law, in particular those deprived of their liberty, in conformity with the applicable United Nations standards and norms and taking into account their gender, social circumstances and developmental needs. The Meeting also recommended that the Eleventh Congress explore:

- a) The possibility of developing an action plan for juvenile justice that would set targets for reducing the number of children arrested, detained or imprisoned;
- b) The feasibility of the action plan aimed at reducing the number of such children by 25 per cent within 5 years and by 50 per cent within 10 years;
- c) The possibility of the action plan focusing on the collection and analysis of national data on children deprived of their liberty, with a view to promoting the prevention of juvenile delinquency and the use of alternatives to imprisonment and improving the conditions of children deprived of their liberty.”

6. Eleventh Congress: DCI Statement and Recommendations

The DCI team participating at the Eleventh Congress consisted of Mr. Darío Gómez (DCI-Costa Rica), Mr. Carlos Pampín García (DCI-International Secretariat), Mr. Stan Meuwese and Ms. Beata Stappers-Karpińska (DCI-Netherlands), and Mr. Innocent Garakumbe (DCI-Uganda). In March 2004, DCI submitted a formal statement that included recommendations for consideration by States at the Eleventh Congress, which became one of the official congress documents (see *Annex I*).

The team’s main task was to find support for the inclusion of DCI’s recommendations in the Bangkok Declaration. Considering that they had been adopted at the Regional Preparatory Meetings, DCI was reasonably hopeful that they would be approved at the Eleventh Congress. It is not possible for NGOs to submit official proposals, so DCI had to find supportive governments who would table DCI’s recommendations together with and as their own.

Based on the recommendations of DCI that were adopted at the Regional Preparatory Meetings, DCI recommended in its statement that the following paragraph be included in the text of the Bangkok Declaration:

“In the Bangkok Declaration,

The Member States of the United Nations should declare as follows:

We commit ourselves to paying particular attention to juvenile justice, and to undertaking measures to ensure that the treatment of children in conflict with the law, particularly those deprived of their liberty, is in conformity with the applicable United Nations standards and norms, and taking into account their age, gender, social circumstances and developmental needs. We decide to develop, as appropriate, national, regional and international action plans for juvenile justice that are aimed at reducing the number of children deprived of their liberty, and, to this end, focus on measures to promote the collection and analysis of national data on children in conflict with the law, particularly those under arrest, in (pre-trial) detention or imprisonment, the prevention of juvenile delinquency and the use of alternatives to imprisonment, as well as at improving the conditions of children deprived of their liberty. We establish 2007 as a target date for States to review their relevant practices, in addition to developing and implementing national action plans.”

A week or two before the Eleventh Congress started, the draft Bangkok Declaration was posted on the UNODC website. Unfortunately, DCI’s recommendations had not been incorporated in full. One specific paragraph was included on juvenile justice, namely paragraph 25 reading as follows:

“25. We affirm our determination to pay particular attention to juvenile justice. We shall consider ways to ensure the provision of treatment to children who are victims of crime and children in conflict with the law, in particular those deprived of their liberty,

and also to ensure that that treatment takes into account their gender, social circumstances and developmental needs and the relevant United Nations standards and norms, as appropriate.”

The draft paragraph was based in part on DCI’s recommendations. However, it was also obvious that the paragraph as it stood was not sufficient. In general, the language used expressing the commitment of States was not strong enough, and the actions to be undertaken by States needed more specification. Furthermore, the paragraph dealt side-by-side with child victims of crime and children in conflict with the law. This approach excluded the possibility of dealing with the different rights of both groups of children, and the specific measures necessary to implement those rights. These distinct groups of children needed to be dealt with separately. Finally, the draft paragraph did not focus on the obligation of States to ensure that children in conflict with the law, including children deprived of their liberty, are treated in conformity with their rights as recognised in United Nations standards and norms. Rather, it deals with the provision of treatment to these children. This focus needed to be altered.

Therefore, the main objective of DCI’s lobby at the Eleventh Congress developed into both defending the inclusion of a specific paragraph on juvenile justice, and at the same time advocating for significant changes to the draft text of paragraph 25 to make it more in line with DCI’s recommendations. The new paragraph should focus only on children in conflict with the law, whilst a separate paragraph should be devoted to children victims and witnesses of crime. Various briefing documents were developed to assist the DCI team in their endeavours.

In addition, attempts were made to gain the support of some governments before the Eleventh Congress started, particularly the support of the Austrian, Dutch and German governments. This initial contact was positive. Ms. Beata Stappers of the Dutch section of DCI participated at the Meeting of the Intergovernmental Expert Group to develop guidelines on justice in matters involving child victims and witnesses of crime (Vienna, Austria, 15-16 March 2005), using this occasion to lobby for DCI’s recommendations and to disseminate information about the International Conference *Kids Behind Bars: A Child Rights Perspective* (30 June - 2 July 2005, Bethlehem, Palestine), organised by DCI Palestine. A number of governments sympathetic to the recommendations were identified and, upon their request, the full text of DCI’s Statement and recommendations were sent to different governmental agencies. Direct contact was made with the Dutch delegation.

7. Eleventh Congress in Progress

During the opening ceremony, Mr. Antonio Maria Costa, Secretary-General of the Eleventh Congress and Executive Director of the UNODC, stated that children are to be protected from violence and exploitation. And the Executive Secretary of the Eleventh Congress, Mr. Eduardo Vetere, called for the full implementation of existing international instruments on juvenile justice and explicitly referred to children in conflict with the law. Despite this encouraging start, already at the beginning of the Eleventh Congress it became very clear that for the majority of States the priority issues were organised crime, terrorism and corruption, and that, by contrast, the problems for children underlying DCI’s statement and recommendations on juvenile justice were considered ‘soft issues’ and not particularly important, or deserving of urgent and immediate attention and action.

The Eleventh Congress was officially opened by the Minister of Justice of Thailand, and attended by His Royal Highness Crown Prince Maha Vajiralongkorn on behalf of His Majesty King Bhumibol Adulyadej of Thailand. It was addressed by the UN Secretary-General, Mr. Kofi Annan, whose report on the state of crime and criminal justice world wide was presented by the Executive Director of the UNODC, Mr. Antonio Maria Costa.

The agenda items of the Eleventh Congress were discussed at the Meetings of Committee I and II, and at the Plenary, whilst the practical orientation on specific subjects was presented at the six technical workshops (see also *part 5* above).

The DCI team actively participated at the plenary sessions, and gave an oral presentation of its official Statement during the consideration of agenda item 7: ‘Making standards work: fifty years of standard-setting in crime prevention and criminal justice’ (see *Annex 2*). It was clear by this stage that there was no chance that the original paragraph recommended by DCI would find any support. In working on an alternative text, and upon suggestions made by some concerned delegations, among which Canada, DCI refrained from using any particularly strong language as regards the obligations to be assumed by States. The Chair of the UN Committee on the Rights of the Child, Mr. Jaap Doek, joined the DCI team at this point and made further suggestions about how to redraft paragraph 25 of the draft Bangkok Declaration. The resulting new paragraph was supported by the Austrian delegation and submitted by this State as an official amendment to draft paragraph 25 on juvenile justice, reading as follows:

“We commit ourselves to promote juvenile justice and the prevention of juvenile delinquency. We will undertake the actions to reduce the number of children deprived of their liberty, to use community based sanctions and to ensure that any child in detention is treated in conformity with the United Nations standards and norms, and taking into account his or her age, gender, social circumstances and developmental needs. “

The second formal statement by DCI concerned life imprisonment and death penalty for juveniles and was orally presented during Workshop 2: ‘Enhancing criminal justice reform, including restorative justice’ (see *Annex 3*). Defence for Children International welcomed the abolition of the death penalty for juveniles under the age of 18 by the Supreme Court of the United States and called for the abolition world wide of life imprisonment for juveniles, in accordance with article 37 of the Convention on the Rights of the Child.

The third statement by DCI was presented at Workshop 3: ‘Strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk’ (see *Annex 4*). This statement dealt with the prevention of youth delinquency and youth at risk in big cities of Latin America, Africa and Asia, recalling obligations of States as laid down in article 40, paragraph 3, of the Convention on the Rights of the Child and article 12 of the Beijing Rules, which promotes the idea of special police forces for minors in conflict with the law.

Defence for Children International also took the initiative to submit a joint statement by several NGOs especially concerned with issues relating to juvenile justice and ‘children in crime’ (see *Annex 5*). The Statement, undersigned by DCI, ECPAT International, International Bureau of Children’s Rights, Friends World Committee for Consultation Quakers, Penal Reform International and World Society of Victimology, emphasised that children can be involved with crime in various ways – as victims of crime, witnesses, children in conflict with the law, imprisoned with their mothers, or having parents in prison.

All the statements mentioned above will be published together with the official documents of the Eleventh Congress.

The DCI team actively participated at Ancillary Meetings of the Eleventh Congress, which were organised primarily by NGOs. The meetings focused on specific topics. The Ancillary Meeting on the issue of ‘Protecting the Rights of Children in Conflict with the Law’ was organised by Penal Reform International (PRI) and Save the Children-UK. DCI was a member of the panel and presented the successful system of the HALT alternative sanction

programme operating in the Netherlands. This presentation concerned one of DCI's contributions to the *Handbook on Best Practices in Advocacy for Juvenile Justice*, published by the Interagency Coordination Panel on Juvenile Justice and officially launched at this meeting. The other was a contribution by DCI-Uganda concerning local councils as courts of first instance for children in conflict with the law.

During the Eleventh Congress, the members of the DCI delegation were approached by the media, including Reuters, Thai Radio and Television, and the UN Radio, for interviews on DCI's statements and recommendations at the congress, as well as on the activities of the international movement in the field of the children's rights in general and the Convention on the Rights of the Child in particular.

In the morning of the last day of the Eleventh Congress, the *Bangkok Declaration: Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice* was unanimously adopted and presented to the public. The proposal for a renewed paragraph on children in conflict with the law had not been adopted in full in the final text. In the new paragraph 33 on juvenile justice only two words had been changed: the word "treatment to children" was replaced by "services to children" and the formulation "we shall consider" was changed into "we will consider". Altogether a meaningful reformulation of the paragraph which, in the end, does expressly refer to the most important elements: 'juvenile justice', 'relevant UN standards and norms', 'children in conflict with the law' and, most significantly, 'children deprived of their liberty'.

8. Lessons Learned

Juvenile justice once had a serious position on the agenda of the United Nations. This resulted *inter alia* in the adoption of important international instruments in the late eighties and early nineties. But for more than a decade now, juvenile justice has not been seriously present on the international agenda and indeed almost entirely absent. At the Eleventh Congress, for example, the grave human rights situation of children in conflict with the law had to compete with the global issues of organised crime, corruption and terrorism. Two rays of hope: the International Bureau for Children's Rights was successful in drafting *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* and getting this important document on the agenda of the Eleventh Congress; and a paragraph specifically on juvenile justice was ultimately included in the Bangkok Declaration.

In this sense, juvenile justice and importantly children deprived of their liberty were put back on the international agenda, not quite as high as where they belong but they are there again. The special paragraph on juvenile justice in the Bangkok Declaration can help to make children in conflict with the law visible again. Now we must undertake concerted action to maintain and heighten this visibility. One of the major challenges in this regard is the development of lobby strategies for the forthcoming annual sessions of the UN Commission on Crime Prevention and Criminal Justice. Also within the framework of the Interagency Coordination Panel on Juvenile Justice, DCI is seeking cooperation with partners in this endeavour.

Another lesson learned is how important DCI's participation at the Regional Preparatory Meetings was to the lobby process. The fact that the Bangkok Declaration even refers to juvenile justice is directly linked to DCI's lobby at the regional meetings. Furthermore, the Eleventh Congress experience shows that the decision to have DCI representatives from the regions participate at the Regional Preparatory Meetings, and a team consisting of the same representatives participate at the Eleventh Congress itself, greatly contributed to the success of the lobby.

9. No Kids Behind Bars! Global Campaign

The main objective of DCI's *No Kids Behind Bars! Global Campaign* is to promote the implementation by States of the international standard that the arrest, detention or imprisonment of a child must be in conformity with the law, and must be used only as a measure of last resort and for the shortest appropriate period of time.

Our message is that, for the full realisation of this right, States must also pay attention to the implementation of other related United Nations standards and norms concerning children in conflict with the law, as recognised in the United Nations Convention on the Rights of the Child, the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines):

- We want all governments to pay special attention to juvenile justice.
- We want all governments to undertake measures to ensure that the treatment of children in conflict with the law, particularly those deprived of their liberty, is in conformity with the applicable United Nations standards and norms, and taking into account their age, gender, social circumstances and developmental needs.
- With 2007 as our target date, we want all governments to develop and implement national action plans on juvenile justice that are aimed at:
 - Reducing the number of children deprived of their liberty; and
 - Improving the conditions of arrested, detained or imprisoned children.
- To this end, national action plans should focus on legal safeguards to ensure that the arrest, detention or imprisonment of a child is in conformity with the law, and is used only as a measure of last resort and for the shortest appropriate period of time. Furthermore, they should concentrate on measures to promote the:
 - Collection and analysis of national data on children in conflict with the law, particularly those under arrest, in (pre-trial) detention or imprisonment;
 - Prevention of juvenile delinquency;
 - Use of diversion;
 - Use of alternatives to imprisonment and restorative justice; and
 - Improvement of the conditions of children deprived of their liberty.

Children do not belong in prison. Kids do not belong behind bars. This is reflected in the international standard that the arrest, detention or imprisonment of a child must be in conformity with the law, and must be used only as a measure of last resort and for the shortest appropriate period of time, which is laid down in the Beijing Rules, the Havana Rules, and the Riyadh Guidelines. Importantly, it is also recognised in the 1989 United Nations Convention on the Rights of the Child, which has been ratified by 192 countries.

Nevertheless, on a global scale, it is estimated that over one million children are deprived of their liberty. Worldwide children in conflict with the law are being held under arrest, in detention or imprisonment, frequently in conditions that constitute degrading and inhumane treatment. Children in detention are not high on the social and political agenda. They are out of sight and easily forgotten. Official data can be difficult to obtain. Such data is often either inadequate or lacking. In the great majority of countries, most children deprived of their liberty have not actually been convicted of an offence: they have simply been apprehended or are on pre-trial remand. It is during pre-trial detention that many of the worst human rights abuses occur.

In addition, most are accused of a minor or non-violent offence, and will not receive a custodial sentence when they finally appear in court. Only a small number have committed serious offences. As regards those juveniles who are indeed sentenced to deprivation of

liberty, the high cost, overall ineffectiveness and counter-productive consequences of custodial sentences are now well documented. The statement that “kids do not belong behind bars” is not simply based on a sentiment of pity; it is the outcome of important research and numerous studies on youth and crime.

Children in conflict with the law have rights, too. Abandoning children in a penal institutional system prejudices their physical, mental, spiritual, moral and social development. It puts them at serious risk of being denied appropriate health care and education, and of mental and physical abuse inflicted or tolerated by state employees in the name of discipline. Yet recourse to custodial sentences, in most countries, continues to be anything but “a measure of last resort and for the shortest appropriate period of time”, in total contradiction with United Nations standards.

These are just some of the research results that can be found in DCI’s report *Kids Behind Bars. A study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards* (2003), which includes 22 country reports. Similarly, the United Nations Committee on the Rights of the Child has indicated, in its Concluding Observations, that all States Parties are having difficulty in implementing the Convention on the Rights of the Child, and related United Nations standards and norms concerning children in conflict with the law.

We believe that proper implementation not only gives children’s rights real meaning, but also increases the likelihood that the children themselves will have real meaning in their lives and be less likely to become involved in crime. Sound and thorough implementation is more than an investment in children. It is an investment in community safety and crime prevention.

Join Us! Contact us at kidsbehindbars@defenceforchildren.nl or visit www.kidsbehindbars.org to:

- Subscribe to the Newsletter of the No Kids Behind Bars! Global Campaign
- Order copies of our:
 - Flyer
 - Report ‘Kids Behind Bars. A study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards’ (2003)
 - Report ‘DCI Conference Kids Behind Bars: A Child Rights Perspective, Bethlehem, 30 June-2 July 2005’
 - Fact Sheets
 - 1) Juvenile justice and children’s rights
 - 2) Alternatives to deprivation of liberty and restorative justice
 - 3) Conditions of children deprived of their liberty
 - 4) Deprivation of liberty as a measure of last resort
 - 5) Diversion
 - 6) Juvenile delinquency prevention strategies
 - 7) National Action Plans on juvenile justice
 - 8) Promoting juvenile justice and the role of public opinion
 - 9) Street children and juvenile justice
 - 10) The ‘mano dura’ approach
- Follow our country studies on children deprived of their liberty
- Follow, support or join our international lobby activities, including:
 - UN Commission on Crime Prevention and Criminal Justice
 - UN Committee on the Rights of the Child
 - UN Study on Violence Against Children.

Annex 1

Eleventh United Nations Congress on Crime Prevention and Criminal Justice

Statement by Defence for Children International

Agenda item 7:

Making standards work: fifty years of standard-setting in crime prevention and criminal justice

A diploma instead of a verdict. Toys instead of handcuffs. Windows instead of walls.

Children do not belong behind bars: not a 10-year-old, nor a 13-year-old, nor a 16-year-old. Children should go to school. Children should be playing with their friends. Children should be together with their families.

During these past fifty years of standard-setting in crime prevention and criminal justice, if there is one major issue on which consensus has been reached, it is surely that children do not belong in prison.

The consequent standard – that “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time” – is recognised in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the United Nations Guidelines for the Prevention of Juvenile Delinquency. It is also laid down in the United Nations Convention on the Rights of the Child, which has been ratified by 192 countries.

Nevertheless, on a global scale, it is estimated that over one million children are deprived of their liberty. Worldwide, children in conflict with the law are being held under arrest, in detention or imprisonment, frequently in conditions that constitute degrading and inhumane treatment.

In the great majority of countries, most children deprived of their liberty have not actually been convicted of an offence: they have simply been apprehended or are on pre-trial remand. In addition, most are accused of a minor or non-violent offence, and will not receive a custodial sentence when they appear in court. It is during pre-trial detention that many of the worst human rights abuses occur.

As regards those juveniles who are indeed sentenced to deprivation of liberty, the high cost, overall ineffectiveness and counter-productive consequences of custodial sentences are now well documented. Yet recourse to them, in most countries, continues to be anything but “a measure of last resort and for the shortest appropriate period of time”, in total contradiction with United Nations standards.

These are just some of the research results that can be found in DCI's report *Kids Behind Bars. A study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards* (2003), which includes 22 country reports.

The United Nations Committee on the Rights of the Child has indicated, in its Concluding Observations, that all States Parties are having difficulty in implementing the Convention on the Rights of the Child, and related United Nations standards and norms concerning children in conflict with the law.

It is our understanding, too, that Member States seek to live up to their promise of implementing both the binding and non-binding international instruments concerning children in conflict with the law, including: the 1989 United Nations Convention on the Rights of the Child; the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency; and the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Indeed, we believe that there is widespread agreement that proper implementation not only gives children's rights real meaning, but also increases the likelihood that the children themselves will have real meaning in their lives and be less likely to become involved in crime. Sound and thorough implementation is more than an investment in children. It is an investment in community safety and crime prevention.

At the Regional Preparatory Meetings for the Eleventh Congress, we have therefore consistently recommended that Member States be urged to pay particular attention to juvenile justice, and to undertake measures to ensure that the treatment of children in conflict with the law, particularly those deprived of their liberty, is in conformity with the applicable United Nations standards and norms. It is most encouraging to note that our recommendation was adopted at all four meetings.

In the light of all of these findings, Defence for Children International would like to make the following recommendation for consideration by the Eleventh Congress.

In the Bangkok Declaration,

The Member States of the United Nations should declare as follows:

We commit ourselves to paying particular attention to juvenile justice, and to undertaking measures to ensure that the treatment of children in conflict with the law, particularly those deprived of their liberty, is in conformity with the applicable United Nations standards and norms, and taking into account their age, gender, social circumstances and developmental needs. We decide to develop, as appropriate, national, regional and international action plans for juvenile justice that are aimed at reducing the number of children deprived of their liberty, and, to this end, focus on measures to promote the collection and analysis of national data on children in conflict with the law, particularly those under arrest, in (pre-trial) detention or imprisonment, the prevention of juvenile delinquency and the use of alternatives to imprisonment, as well as at improving the conditions of children deprived of their liberty. We establish 2007 as a target date for States to review their relevant practices, in addition to developing and implementing national action plans.

Annex 2

DEFENCE FOR CHILDREN INTERNATIONAL

ORAL PRESENTATION OF STATEMENT ON CHILDREN IN CONFLICT WITH THE LAW

DON'T FORGET THE CHILDREN!

Good morning ladies and gentlemen,

Defence for Children International very much appreciates the rather unique opportunity to address the 11th UN Congress on Criminal Justice and Crime Prevention. It is one of the first occasions to let hear the word 'children' in this official meeting. I am really grateful to be given this chance because children should not only be mentioned as victims of crime, but also as children in conflict with the law.

At least one million children are in prison worldwide. Sometimes in horrible circumstances, often in pre-trial detention waiting for months or even years without any effective remedies. There is lack of specialised professionals (police officers, public prosecutors, judges, prison administrators), there are no prevention programmes, no qualified legal aid, no monitoring systems, not enough probation services. Children should not be in prison, children should go to school, children should play. The situation of children in conflict with the law is vulnerable and difficult. The children in conflict with the law are forgotten. Forgotten by the society and forgotten by the international community.

In the Outcome Document of the UN General Assembly Special Session on Children of May 2002 there is only a tiny paragraph on juvenile justice. And also – in our vision – in the current draft of the Bangkok Declaration not enough attention has been given to children in conflict with the law. These children who have problems and who cause problems are in the shadow of the big crime issues, like terrorism, organised crime and drugs trafficking. Children in conflict with the law have been marginalized in two major UN conferences: the UN Summit on Children held three years ago and this ongoing UN meeting on crime.

Defence for Children International calls for strong action to protect the minors in conflict with the law.

The administration of the justice system is the primary and exclusive responsibility of the state. The state is organising and regulating the juvenile justice system. No one else is to blame or to praise. The international community has accepted international standards as the Beijing Rules (on administration of juvenile justice), the Riyadh Guidelines (on Prevention of Juvenile Delinquency) and the Havana Rules (on children deprived of their liberty). And the UN Convention on the Rights of the Child has been ratified by 192 States. Both article 37 and article 40 (which is the most elaborate article of the Convention) focus on children in conflict with the law. But other provisions of the Convention are also applicable to children in

detention, such as the right to education (article 28 CRC), right to health care (article 24 CRC) and the right to play (article 31 CRC).

The international standards are there. What is needed now and most urgently is action at the national level to systematically implement and comply with these standards. The states can and should take action to benefit from a growing body of good practices in preventing and reducing the often expensive and not effective incarceration of children. These actions should take into account age, gender, social circumstances and developmental needs. The states can and should also benefit from international technical assistance and other support from UNODC, UNICEF, the UN Committee on the Rights of the Child, International and National NGO's.

Also for children in conflict with the law, the best interests of the child should always be the leading principle.

There is one message to the governments and intergovernmental organisations: whatever children have done to be in conflict with the law, let the law never be in conflict with the children. Giving the good example is the basis of good education. When children – in testing the limits of societal behaviour – break the law, it is the duty of the state to give a good example of showing these children that the state meets the national and international law concerning standards how to treat children who have broken the law themselves. 'You broke the law, so I break the law', it brings us back to dark primitive mediaeval times of 'an eye for an eye'.

We call upon you to support a stronger formulation of paragraph 25 of the Draft Bangkok Declaration, which would better reflect our concern for the marginalized children in conflict with the law.

Toys instead of handcuffs. A diploma instead of a verdict. Windows instead of walls. Please, help the children deprived of their liberty! And by doing so you will be helping the society at large.

Bangkok, 20 April 2005

Stan Meuwese

Member of the International Executive Council of Defence for Children International

Annex 3

NO CHILDREN ON DEATH ROW!

On behalf of *Defence for Children International*, we, as a child's rights organization, want to publicly welcome the decision of the US Supreme Court to abolish the death penalty for juveniles below the age of 18.

We have three reasons to positively react to the verdict in the *Roper v. Simmons* case of March 1st of the current year:

1. It brings the world closer not only to the universal abolition of the death penalty for juveniles but also the general abolition of capital punishment for human beings. *Defence for Children International* emphasizes the need for States to continue making progress in an attempt to abolish capital punishment for children.
2. It is also a step towards the full acceptance by the United States of the Convention on the Rights of the Child and its provisions related to juvenile justice.
3. The arguments brought up by the Supreme Court are based on applicable international human rights standards including the Convention on the Rights of the Child and the recognition that juveniles are entitled to a special approach when in conflict with the law. These arguments support the idea of a juvenile justice system which incorporates a restorative justice approach.

Furthermore, we call upon States to abolish life imprisonment of juveniles, as enshrined in article 37 a) of the Convention on the Rights of the Child: we don't want a child to spend the rest of his life in prison! A child should never die in detention!

Bangkok, 22nd April 2005

Annex 4

PREVENTING YOUTH AND JUVENILE DELINQUENCY

In urban marginalized areas of big cities in Latin America, Asia and Africa, an important population of adolescents and youth in highly vulnerable conditions live in social exclusion, reflected in the absence of a family, an educational system, a community or even the State, to look after their needs and provide them with opportunities for the enjoyment of their rights.

These populations lack protection and suffer from ill-treatment within their family environment. They are also segregated from the educational system, stigmatized and rejected by their communities, mass media and also by the State. For these reasons these adolescents join the so-called “gangs”, seeking for survival.

When strategies of survival find obstacles and difficulties, we can get a clearer picture of the activities involving violence against the physical integrity of people, some of these being catalogued as crimes.

Prevention consists in the creation of necessary opportunities for these juveniles to exercise their rights. If they are not given necessary protection, access to adequate housing and public services, including health, areas for them to play, to learn and forums where they can participate, we can expect that they will come into conflict with the law. In other words, this is linked to the real and effective implementation of the provisions and principles of the Convention on the Rights of the Child.

Repressive models are not adequate for the treatment of social problems. The best penal policies are the social policies. The effective implementation of the principles and provisions of the Convention on the Rights of the Child constitutes the best way to prevent violence and crime. DCI calls for the immediate implementation of article 40 par. 3 (which refers to the need for States Parties to take all necessary measures to promote laws, proceedings, specific authorities and institutions for children who are allegedly in conflict with the law) and of article 12 par 1. of the Beijing Rules (which goes in the direction of a specialized training of police officers dealing with children in conflict with the law). They should utilize adequate measures, and respect the applicable human rights standards and also take into consideration the fact that the populations they are dealing with are very vulnerable, in processes of development and training.

Bangkok, 23rd April 2005

Annex 5

11th UN Congress on Crime Prevention and Criminal Justice

Joint Statement by Non-Governmental Organisations

DON'T FORGET THE CHILDREN

We, NGOs with special concern for the issues related to “*children and crime*”, and recognizing that children can be associated with crime prevention and criminal justice in various ways - as victims of crime, as witnesses, in conflict with the law, imprisoned with their mothers, or having a parent in prison, call on the States at this Congress to add – in addition to other amendments already submitted - the following text to article 25 of the Draft Bangkok Declaration:

We commit ourselves to work on a comprehensive vision on children and crime. We urge that all children who come into contact with crime prevention and criminal justice – as victims, as witnesses, in conflict with the law, in prison with their mothers, or having a parent in prison - should be dealt with in accordance with the Convention on the Rights of the Child and other relevant United Nations standards and norms.

We refer in particular to those articles of the Convention that contain the basic principles (article 2 on non-discrimination, article 3 on the best interest of the child as a primary consideration, article 6 on the right to development and article 12 on participation). We also wish to emphasise the need to take into account age, gender, social circumstances and developmental needs of all children associated with crime.

It is important that States take action on the recommendations from the United Nations Study on Violence Against Children, due to be presented in 2006.

Defence for Children International
ECPAT International
International Bureau of Children's Rights
Friends World Committee for Consultation 'Quakers'
Penal Reform International
World Society of Victimology

Bangkok, 23 April 2005