

# **KIDS BEHIND BARS**

A study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards

*An international study on the situation of children in prison with country reports from:*

*Albania, Argentina, Bulgaria, Burundi, Canada, Costa Rica, Ghana, Germany, Indonesia, Kenya, Kyrgyz Republic, Mauritius, The Netherlands, Palestine, Pakistan, Philippines, Romania, Spain, Tanzania, Ukraine, United Kingdom, United States of America*

editor Stan Meuwese

with the support of Plan International The Netherlands

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“There is a crack in the Earth  
and I have fallen in.  
Down in the darkness where I have never been  
people are looking, staring at me;  
I lie here and wonder what do they see?  
Shall I be here forever?  
I cannot climb back  
rotting and dying in this horrible crack.  
Am I alive or am I dead?  
Oh God, who will save me  
from this crack in my head?”

**Maria, 16 years old**



# Contents

<b>Preface</b>	<b>3</b>
<b>Executive summary</b>	<b>5</b>
<b>1. Introduction</b>	<b>15</b>
1.1. A need to know	15
1.2. Children in prison research and action	18
1.3. Methodology	18
1.4. Content	19
<b>2. International standards</b>	<b>21</b>
2.1. The Convention on the Rights of the Child	21
2.2. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty	23
2.3. Other international documents	24
2.4. Principles and standards for the protection of children deprived of their liberty	25
<b>3. Country reports</b>	<b>31</b>
3.1. Albania	31
3.2. Argentina	35
3.3. Bulgaria	37
3.4. Burundi	40
3.5. Canada	42
3.6. Costa Rica	45
3.7. Germany	49
3.8. Ghana	51
3.9. Indonesia	55
3.10. Kenya	61
3.11. Kyrgyz Republic	64
3.12. Republic of Mauritius	68
3.13. The Netherlands	71
3.14. Palestine: occupied Palestinian territories	76
3.15. Pakistan	82
3.16. Philippines	85
3.17. Romania	96
3.18. Spain (Community of Catalonia)	100
3.19. Tanzania	104
3.20. Ukraine	107
3.21. United Kingdom (England)	111
3.22. United States of America	117
<b>4. Comparative overview</b>	<b>123</b>
4.1. Introduction	123
4.2. International and national laws	123
4.3. Numbers and registration	124
4.4. Sanctions	125
4.5. Age of criminal responsibility	126
4.6. Separate juvenile justice system	126
4.7. Police and pre-trial detention	127
4.8. Conditions in closed institutions	128
4.9. Legal protection	130

4.10.	Education, work, sports and recreation	130
4.11.	Contact with family	131
4.12.	Staff training	131
4.13.	Human rights violations	131
<b>5.</b>	<b>Conclusions and perspectives</b>	<b>135</b>
5.1.	Drain the swamp	135
5.2.	Prevention	125
5.3.	Reduction of the number of children and youth behind bars	138
5.4.	Alternatives	139
<b>6.</b>	<b>Recommendations and actions</b>	<b>139</b>
6.1.	Who should do what?	139
6.1.1.	International Governmental Organisations	139
6.1.2.	International Non Governmental Organisations	140
6.1.3.	National Governments	140
6.1.4.	National Non Governmental Organisations	141
6.1.5.	Local Governments	141
6.1.6.	Local Non Governmental Organisations	141
6.1.7.	Researchers and trainers	141
6.2.	A global campaign	142
	<b>Literature</b>	<b>145</b>
	<b>Annexes</b>	<b>147</b>
1.	Convention on the Rights of the Child	147
2.	United Nations Rules for the Protection of Juveniles Deprived of their Liberty	158



## Preface

Children do not belong in prison. Children should go to school. They should play and enjoy themselves. But at least one million children and youngsters – and maybe far more, nobody knows – are locked up in closed institutions, booth camps, detention centres, prisons and other facilities. Because... yes, because of what? Because they are in trouble, because they caused trouble, because they are living on the streets, because they are illegally in another country, because they are in conflict with the law (or is the law in conflict with them?), because their parents cannot take care of them, or because their parents do not want to take care of them.

These children, these minors and youngsters, are forgotten, out of sight, unwanted. Forgotten, sometimes by their parents, in many cases by their communities, and often even by the authorities who put them behind bars.

The situation of kids behind bars is unknown: unknown to the general public, to politicians, and even to NGOs. The country reports contained in this study sketch the conditions and circumstances under which children are being deprived of their liberty in 22 countries. We do not have the impression that more reports on more countries would alter the picture. That picture is in many cases child-unfriendly, horrifying, unacceptable, irresponsible, degrading and even inhuman.

Children in prison are not high on the political agenda. It is the task of children's rights organisations such as Defence for Children International (DCI) to ask for the attention of all relevant authorities at local, national and international level, and of other involved NGOs, for the situation of locked up children. DCI has two urgent messages: measures must be taken to drastically decrease the number of children in prison and, at the same time, measures must be taken to improve the conditions and circumstances under which children are being deprived of their liberty.

Kids behind bars have rights, too. Their need for the full and unconditional implementation of the 1989 Convention on the Rights of the Child is great. The international community has already formulated the applicable standards, not only in the Convention on the Rights of the Child but also in the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty. But these standards are being violated on a large scale.

As an advocacy and awareness raising organisation, DCI is planning to spearhead a worldwide campaign on behalf of kids behind bars with 4 slogans:

- **put no kids under 15 in prison**
- **use alternatives for imprisonment**
- **focus on prevention**
- **improve the situation for children in closed institutions.**

We need the help of many other organisations around the world to achieve our goals: less children in prison on the one hand, and better conditions for imprisoned children on the other. DCI needs your help too!

Stan Meuwese  
executive director Defence for Children International The Netherlands



## **Executive summary**

### **Introduction**

Children in prison are not high on the social and political agenda. Children in prison are forgotten and out of sight. This report wants to help bring these kids back to the attention of all who have political and social responsibility.

The report's title, "Kids behind Bars" (borrowed from the BBC documentary with the same title by Brian Woods and Kate Blewett at True Vision), refers to all children and adolescents (under 18) who, for a variety of reasons, are deprived of their liberty in closed or semi-open institutions worldwide.

### ***The unwanted child***

In a DCI report by Bruce Abrahamson, juvenile justice is called "The Unwanted Child" of state responsibilities. From the concluding observations of the Committee on the Rights of the Child (1993-2000), he concludes that all states are having difficulties in implementing the 1989 Convention on the Rights of the Child with respect to minors in conflict with the law, and many are having extreme difficulties.

### ***Children deprived of liberty***

Children can be deprived of their liberty for a variety of reasons, including:

- delinquency;
- status offences (any specific behaviour which would not be punishable if committed by an adult);
- children at risk due to the environment in which they live;
- children with physical or mental disabilities or troubles;
- children deprived of their liberty to remain with family members (e.g. children in prison with their mother);
- other reasons (e.g. detention based on immigration law).

The vast majority of offences committed by juveniles all over the world concern threats to the property of others, such as theft, and thus very often fall under the category of minor offences. Only a small number of detained children have committed serious offences. According to a variety of sources, this is between 5 and 10%.

The vast majority of children deprived of their liberty are in pre-trial detention ("preventive detention"). This is clearly unnecessary considering that most of these children are acquitted after trial.

Most of the youngsters in detention are between 14 and 18 years of age. Exact numbers are impossible to give. Data are frequently lacking or not kept and figures are not communicated by the authorities. It can also be the case that the available statistics do not cover the totality of closed establishments in a given country. In documents and estimations worldwide, the numbers vary between 80,000 children in the one country to 100 in another. According to global estimations, there are at least one million children deprived of their liberty worldwide. It is also stated that the proportion of juveniles in prison varies per country from 0.5 to 30% of the total prison population.

Contrary to international standards, children adjudicated as delinquents are frequently "sentenced" to remain detained in an institution "until rehabilitated". Unfortunately there is a distinction between what is called "law in books" and what is called "law in action". Abuses in police cells, institutions, prisons and other facilities are a reality in most countries. Children in institutions all over the world are victims of acute social discrimination, and endemic denial of their civil, political, economic, social and cultural rights, particularly in comparison with children who live with their families.

Abandoning children in an institutional system prejudices their emotional, mental and physical development. It puts them at serious risk of being denied appropriate health care and education, and of physical and mental abuse inflicted or tolerated by state employees in the name of discipline.

### ***Need for research first***

Defence for Children International (DCI) felt that there was a need for an international analysis of kids behind bars. For this reason, DCI initiated a research programme concerning children in institutions,

prisons and other closed facilities. More needs to be known about what is actually happening to these children before action plans can be made to improve their situation.

### **Definitions**

The following definitions are used in this report:

- *Children*: "...a child means every human being below the age of eighteen years..." (article 1 of the Convention on the Rights of the Child).
- *Youth*: the term "youth" is used for the group between 15 and 18 years of age when it is necessary to differentiate them from younger children.
- *Behind bars*: all institutions, prisons and other closed facilities where children are deprived of their liberty.
- *Deprived of liberty*: the deprivation of liberty means any form of detention or imprisonment or the placement of a person under the age of 18 in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority (Havana Rules).

### **International standards**

#### ***The Convention on the Rights of the Child (see Annex 1)***

The general principles of the 1989 Convention on the Rights of the Child (CRC) include the principle of non-discrimination (article 2), the best interests of the child (article 3), the right to life, survival and development (article 6), and the right of children to participate in all matters affecting them (article 12). In addition to these general principles, which are relevant for all children, articles 37 and 40 of the CRC are of particular importance for children in conflict with the law. Article 37 contains guarantees for children deprived of their liberty, and article 40 contains specific provisions concerning juvenile justice. The state responsibilities laid down in article 27 of the CRC are also important. Article 27(1) recognises "the right of every child to a standard of living adequate for child's physical, mental, spiritual, moral and social development".

There can be no doubt about the fact that all of the CRC's provisions are also applicable for children in prison, including, for example, the prohibition of child labour and the rights to freedom of religion, to play, to protection against sexual exploitation, to education, to health care and to maintain contact with parents. It is possible that there could be limitations directly connected with the fact that the children are locked up (e.g. the right to privacy). But the fact that children are behind bars is also a basis for extra efforts on the part of the state party (government) to guarantee all of the rights recognised in the CRC.

#### ***The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (see Annex 2)***

The purpose of the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) is to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of juveniles. They serve as an internationally accepted framework within which states can regulate the deprivation of liberty of all those under 18.

The Havana Rules are based upon the following fundamental principles:

- Deprivation of liberty should be a disposition of last resort and for the minimum period, and should be limited to exceptional cases.
- Juveniles should only be deprived of their liberty in accordance with the principles and the procedures of international law.
- The establishment of small open facilities is encouraged to enable individualised treatment and to avoid the additional negative effects of deprivations of liberty.
- Deprivation of liberty should only be in facilities which guarantee meaningful activities and programmes promoting the health, self-respect, and sense of responsibility of juveniles. The facilities should also foster their skills to assist them in developing their potential as members of society.
- The detention facilities should be decentralised to enable access and contact with family members and to allow for integration into the community.
- The care of juveniles deprived of their liberty is a social service of great importance.
- All juveniles deprived of their liberty should be helped to understand their rights and obligations during detention and be informed of the goals of the care provided.

- Juvenile justice personnel should receive appropriate training including child welfare and human rights.
- All juveniles should benefit from arrangements designed to assist them in returning to society.

The Havana Rules are in the form of a non-binding recommendation and are therefore not legally binding. Nonetheless, they have attained an important status under international law. Some of the rules have become binding by virtue of their incorporation into treaty law. They are also elaborations of the basic principles found in the Convention on the Rights of the Child.

#### ***Other international rules, guidelines and documents***

Other international instruments dealing with the protection of children in conflict with the law include: the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); the 1957 Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules); the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Detention Principles); the 1990 Basic Principles on the Treatment of Prisoners; and the 1990 Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules).

The Havana Rules, the Beijing Rules and the Riyadh Guidelines apply exclusively to children, while the Standard Minimum Rules, the Detention Principles, the Basic Principles on the Treatment of Prisoners, and the Tokyo Rules apply to adults and children alike. Some of the rights guaranteed by these instruments are likewise protected by the 1966 International Covenant on Civil and Political Rights, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### ***Principles and standards for the protection of children deprived of their liberty***

The Convention on the Rights of the Child, the Havana Rules and the other above-mentioned international instruments establish the minimum standards accepted by the international community for the protection of children deprived of their liberty in all forms. States should incorporate these standards into their legislation or amend it accordingly and provide effective remedies for their breach. Here follows an overview of the main elements of these standards (Van Bueren, 1995).

#### ***General***

1. The juvenile justice system shall uphold the rights and safety and promote the physical and mental well-being of children, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.
2. Children shall only be deprived of their liberty in accordance with the principles and the procedures of international law, including the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).
3. No child shall be deprived of his or her liberty unlawfully or arbitrarily.
4. Deprivation of the liberty of a child (arrest, detention and imprisonment) shall be in conformity with the law and shall be a disposition of last resort and for the minimum necessary period, and shall be limited to exceptional cases. The length of the sanction shall be determined by the judicial authority, without precluding the possibility of the child's early release.
5. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.
6. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.
7. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults and shall have the right to maintain contact with his or her family through correspondence and visits.

8. Children detained in facilities shall be guaranteed the benefit of meaningful activities and programmes which serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.
9. The competent authorities shall constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps shall be taken to foster open contacts between the juveniles and the local community.
10. The application of the national rules for the protection of children deprived of their liberty shall be monitored by the state. Regular inspections and other means of control of detention facilities shall be carried out by a duly constituted body authorized to visit the children and not belonging to the detention facility. Effective remedies shall be available, including compensation.

#### *Definitions*

1. A “child” is every person under the age of 18.  
The age limit below which it is not permitted to deprive a child of his or her liberty shall be determined by law.
2. The “deprivation of liberty” means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

#### *Children under arrest or awaiting trial*

Detention before trial shall be avoided and limited to exceptional circumstances. Alternative measures shall be used. Children who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. They have the right to legal counsel and to apply for free legal aid. They have the right to an expeditious processing of their case.

#### *The management of juvenile facilities*

Children may not be detained in any facility without a valid commitment order nor in any institution which does not maintain a proper register. All reports on children shall be placed in confidential files which are accessible only to authorised persons. The reports shall be classified in such a way as to be easily accessible. Where possible, every child shall have the right to contest any fact or opinion in his or her file so as to permit rectification.

#### *Admission, registration, movement and transfer*

In every place where children are detained a complete and secure record of information shall be kept including information on the identity of the juvenile, the fact, reasons and authority for the commitment, the day and hour of admission, transfer and release and details of notifications to parents and guardians. Any details of known physical and mental health problems shall also be included.

In order for children to be aware of their entitlements, they shall be provided with a copy of the facility’s rules and a description of their rights and obligations in language which can be understood by them. Also included should be the addresses of the competent authorities to receive complaints and the names and addresses of public and private bodies which provide legal assistance.

Where juveniles are moved to or from facilities, it should only be in conveyances with adequate ventilation and light. At no time shall juveniles be subject to hardship or indignity.

#### *Classification and placement*

After admission, children shall be interviewed to enable a determination to be made as to the most appropriate type of social care. Wherever special rehabilitative treatment is required, the trained personnel shall prepare a written, individualised treatment plan specifying the treatment objectives.

Juveniles shall be separated from adults, unless they are members of the same family. An exception may be made where it is in the best interests of the child and where the non-separation is under controlled conditions as part of a special programme.

The number of children detained in facilities shall be as small as possible and small enough to enable individualised treatment and integration into the social, economic and cultural environment of the community.

Detention facilities shall be open, i.e. with no or minimal security measures. They shall be decentralised to facilitate access and contact between the children and their families.

#### *Physical environment and accommodation*

The design of detention facilities for children and of the physical environment shall be in keeping with the rehabilitative aim of residential treatment, with due regard to the right of the child to privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities.

All facilities and services shall meet all the requirements of health and human dignity.

Every detention facility shall ensure that every child receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of hygiene and health and, as far as possible, religious and cultural requirements of the children. Clean drinking water must also be available to every child at any time.

Every child should be provided with clean bedding and sufficient sanitary installations in accordance with local and national standards. Similarly, clothing must be suitable for the climate and must not be degrading or humiliating.

Every child has the right to privacy, including the right to retain their own personal effects.

#### *Education, vocational training and work*

The purpose of education is to prepare the child for release. The provision of education must therefore avoid the risk of stigmatisation. As far as possible the education of children deprived of their liberty shall take place in the community outside of the detention facility in programmes integrated with the education system of the country. When awarding educational certificates, they should not indicate in any way that the children have been deprived of their liberty.

Children are also entitled to receive vocational training to prepare them for suitable employment.

When undertaking any work, children are entitled to choose the type of work they wish to do. Wherever possible, children shall have the opportunity to work within the local community.

In both training and work, the relevant national and international standards are applicable. Children deprived of their liberty do not forgo the right to fair remuneration for their work. At no time shall the interests of children be subordinated for the purpose of making a profit for the facility or for a third party.

#### *Recreation*

Facilities in which children are deprived of their liberty shall ensure that suitable time is allocated for daily exercise in the open air, whenever weather permits. In addition, time shall be allocated for daily leisure activities.

#### *Religion*

If children wish, they are entitled to participate in or organise their own religious services. They also have the right to possess and retain the necessary religious books and items of religious observance. Similarly, children are entitled to decline all forms of religious participation including religious services and education.

#### *Medical care*

Upon arrival children are entitled to medical examinations to record evidence of prior ill-treatment and to identify any physical or mental condition requiring medical attention. Throughout their period of deprivation of liberty all children are entitled to adequate preventive and remedial medical care, preferably through community health facilities and services in order to prevent stigmatisation. Medicines shall only be administered for necessary treatment on medical grounds and when possible after the informed consent of the child. The administering of medicines to elicit information or confessions or as a punishment or means of restraint is prohibited in all facilities. The experimental use of drugs and treatment is also forbidden.

Facilities shall adopt specialised drug abuse prevention and rehabilitation programmes. Children who are mentally ill shall be treated in independent specialist institutions.

#### *Notification of illness, injury and death*

Children shall be informed as soon as possible of the death, serious illness or injury of any immediate family member and be entitled to visit the family member or attend the funeral.

The child's family shall be informed of the state of health of the child and of any changes which have occurred. If a juvenile dies in detention, or within 6 months of release, there shall be an independent inquiry, the report of which shall be made available to the nearest relative. The nearest relative shall also be entitled to be informed of the death and to inspect the death certificate.

#### *Contacts with the wider community*

Contact with the community outside of the facilities is an integral part of the right to fair and humane treatment and is essential to the preparation of children for release. Children shall be allowed to communicate with their families, friends and representatives of organisations. Every child is entitled to receive regular and frequent visits in principle once a week and not less than once a month. All visits shall respect the child's right to privacy. Children shall also be permitted to leave the facilities for visits to their family homes and with special permission to leave the detention facilities for educational, vocational or other important reasons. Every child shall also have the right to communicate in writing or where appropriate by telephone at least twice a week with the person of the child's choice, unless legally restricted. To increase their contact with the outside world, children shall be given the opportunity to keep themselves regularly abreast of the news.

#### *Limitations of physical restraint and the use of force*

The carrying and use of weapons by personnel in facilities where juveniles are detained is prohibited. Instruments of restraint and force may only be used in exceptional cases and only as explicitly authorised and specified by law and regulation. Such instruments shall not cause humiliation or degradation.

#### *Disciplinary procedures*

All disciplinary procedures shall be consistent with upholding the dignity of the rights of children and with respecting the basic rights of all. Labour shall be regarded as an educational tool and shall not be imposed as a disciplinary sanction.

Cruel, inhuman, degrading treatment including corporal punishment, placement in a dark cell, closed or solitary confinement, reduction of diet and the restriction of family contact is prohibited.

Collective sanctions are forbidden and no child shall be punished more than once for the same disciplinary offence.

No juvenile shall be disciplined except in accordance with the terms of the law and the regulations in force and only after being clearly informed of the alleged infraction. Complete records shall be kept of all disciplinary proceedings.

#### *Inspection and complaints*

Qualified independent inspectors shall be empowered to conduct regular inspections and to undertake unannounced inspections on their initiatives. Children shall have the right to talk in confidence to any of them. Any violation shall be communicated to the competent authorities for investigation and prosecution. Children shall have the opportunity of making requests and complaints without censorship and they shall be informed of the response without delay.

States shall make efforts to establish an independent office (ombudsman) to receive and investigate complaints made by children deprived of their liberty.

#### *Return to the community*

All children shall benefit from arrangements designed to assist them in returning to the community including early release and special courses. Children shall be provided with suitable residence, clothing,



employment and sufficient means to facilitate successful reintegration. The representatives of agencies providing such services shall be consulted and have access to juveniles while they are detained. The competent authorities shall also lessen the prejudice against such children.

### *Personnel*

Adequate remuneration shall be provided to attract personnel capable of providing children with positive role models and perspective.

All personnel shall conduct themselves at all times in such a way as to gain the respect of the children. They shall also seek to minimise the differences between life inside and outside the facility.

To be effective, personnel shall receive training in child psychology, child welfare, human rights and the rights of the child.

The personnel shall protect the children from any form of abuse or exploitation.

### **Country reports**

The country reports form the main part of this study. These 22 reports cover the situation of children in prison in the following countries: Albania, Argentina, Bulgaria, Burundi, Canada, Costa Rica, Ghana, Germany, Indonesia, Kenya, Kyrgyz Republic, Mauritius, The Netherlands, Palestine (Occupied Territories), Pakistan, Philippines, Romania, Spain (Catalonia), Tanzania, Ukraine, United Kingdom (England) and the United States of America.

With respect to each country, the information has been gathered and presented according to the same format. Information is given on the relevant national legislation and about the general situation of children deprived of their liberty. Moreover, a description is provided of one specific closed institution for youth. This description is only one example of the situation in a country, and is meant to illustrate the extent to which the living conditions, etc. in one concrete facility are in compliance with international and national standards.

Finally, each report contains a critical assessment of the situation at country level.

- Application of International and National Law:
  - \* international law;
  - \* national law.
- Situation of Minors in the National Prison System.
- Description of a Specific Closed Institution:
  - \* housing;
  - \* food;
  - \* health care;
  - \* hygiene;
  - \* education and work;
  - \* sports and recreation;
  - \* discipline;
  - \* contacts.
- Critical Assessment.
- Sources.

### **Conclusions and perspectives**

The information in the country reports on the situation of kids behind bars shows the need for much more focus on prevention and alternatives. At the same time, the number of children in prisons needs to be reduced. Worldwide, the focus should be on the following 4 goals:

- put no children under 15 in prison;
- use alternatives for imprisonment;
- focus on prevention;
- improve the conditions of children in closed institutions.

It is much better to drain the swamp than fight the alligators. Across the world more than one million children and youth are behind bars on an average day. The governments of the world have agreed at

several United Nations forums to invest more in well-planned prevention, because it is more cost effective and sustainable than incarcerating children and youth.

This significant shift has been inspired by clear evidence, brought together by prestigious national commissions involving government officials, police leaders, public health experts and others in the United Kingdom, the United States and elsewhere. This evidence shows that well-planned crime prevention strategies reduce crime and victimisation, and are a more humane and cost effective response to crime than the formal criminal justice system.

### **Recommendations and actions**

In order to realise these 4 goals, concrete action must be taken by international and national actors.

#### ***Recommendations to governmental and non-governmental organisations at international, national and local level***

##### *International Governmental Organisations*

1. Set targets to reduce the number of children in prisons by 25% in the coming 5 years and by 50% in the coming 10 years.
2. Get recognition for kids behind bars.
3. Stimulate the implementation of international instruments, especially the Convention on the Rights of the Child and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
4. Lobby for an Optional Protocol to the Convention on the Rights of the Child on Minimum Standards for Children in Closed Institutions.
5. Collect and analyse national data on children deprived of their liberty.
6. Lobby for a UN Special Rapporteur on children deprived of their liberty.
7. Prepare a Handbook on best practices.

##### *International Non-Governmental Organisations*

8. Lobby and campaign to get the topic on the international agenda.
9. Stimulate a World Congress and Plan of Action on Kids behind Bars.
10. Start an International Working Group on Kids behind Bars.

##### *National Governments*

11. Reduce the number of detained children.
12. Focus on and invest in prevention.
13. Use alternatives.
14. Improve conditions in institutions.
15. Develop a National Action Plan.
16. Install a National Board to monitor the situation of children deprived of their liberty.
17. Focus on international cooperation.

##### *National Non-Governmental Organisations*

18. Set up a national campaign.
19. Monitor the government.
20. Work together at the regional level.

##### *Local Governments*

21. Monitor the situation in youth prisons.
22. Launch a Local Action Plan on Kids behind Bars.

##### *Local Non-Governmental Organisations*

23. Participate in a Local Action Plan.
24. Work with youth at risk.
25. Support children in closed institutions.

### *Researchers and Trainers*

26. Continue research on detained children and alternatives.
27. Initiate ongoing training of professionals working with children such as juvenile court judges, probation officers, prison officers, teachers and health workers.

### ***A global campaign***

The idea to hold a global campaign with the ultimate goal of having fewer kids, in better conditions, behind bars, was initially launched at the Expert Meeting that was held by the coordinators of this research project in February 2002 in Amsterdam. Under the motto “less crime through better conditions for kids”, the campaign’s main elements would be as follows:

- *proposed aim:*  
reduce the number of children deprived of their liberty with 25% in the coming 5 years and with 50% in the coming 10 years.
- *proposed strategy:*  
advocacy for the full implementation of all provisions of the CRC and other related international norms and standards, and aimed at making the deprivation of liberty of children a measure of last resort by developing and/or strengthening programmes that manage youth in conflict with the law in the community and families instead of abandoning them to police cells, pre-trial detention and prisons.
- *proposed targets:*
  1. to develop a sound international knowledge base on children deprived of their liberty;
  2. no children under 15 should be placed in prison;
  3. the construction of any additional detention or prison capacity for youth should be abandoned and avoided;
  4. alternatives to deprivation of liberty, and community and family programmes to manage youth and to prevent crime should be developed and/or strengthened;
  5. gate keeping and monitoring mechanisms should be developed and/or strengthened, in particular to prevent: children under 15 from being held behind bars; youth being detained without trial for longer than international norms allow; and youth being detained in institutions where international norms dictate that the bed or cell capacity would be exceeded;
  6. legal defence mechanisms should be developed and/or strengthened, in particular with regard to the pre-trial period.

It was agreed that an international alliance of NGOs should be established that would support and participate in the campaign (e.g. Amnesty International, Defence for Children International, Human Rights Watch, International Commission of Jurists) with as title: “No Kids behind Bars! A global campaign on justice for children in conflict with the law”.



# 1. Introduction

## 1.1. A need to know

### **Children in prison are not high on the social and political agenda**

Only one paragraph in the Outcome Document of the United Nations General Assembly Special Session on Children (May 2002) deals specifically with juvenile justice (§ 44,7). Children in prison are clearly not a priority. Children in conflict with the law are in conflict with society, and society apparently with them. There is far more political attention for children who are victims of exploitation, violence, poverty and disease. But most children in prison are also victims: victims of exploitation, violence, poverty and disease. Children in prison are forgotten and out of sight. This report wants to help bring these kids back to the attention of all who have political and social responsibility.

This study carries the title “Kids behind Bars”, meaning all children who, for a variety of reasons, are deprived of their liberty in closed or semi-open institutions worldwide. In this study a *child* means “every human being below the age of 18 years”, as defined in the 1989 Convention on the Rights of the Child (article 1). The *deprivation of liberty* means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority, as laid down in the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Everybody knows images of children locked up in dirty prisons, in small cells, without any form of privacy, literally behind bars. These are also the images in the BBC documentary carrying the same title “Kids behind Bars”, which was made by Brian Woods and Kate Blewett at True Vision in the United Kingdom. The documentary was shown on the BBC on 26 November 2001 and has been distributed to many parts of the world. Examples from the documentary have been used to illustrate the glaring need for the research that Defence for Children International (DCI) has initiated and the programme plans attached to it.

### **The unwanted child**

Almost every country in the world is party to the Convention on the Rights of the Child (CRC). Only Somalia and the United States have not yet ratified the CRC. Under article 44 of the CRC, states parties are required to submit periodic reports to the Committee on the Rights of the Child on the implementation of the rights recognised in the CRC in their countries. These reports show that most states are not sufficiently aware of how the rights laid down in the CRC apply with respect to children in conflict with the law. States use different approaches to these children, most commonly either a protection or a punishment approach. The Committee needs to inform states parties, for example in a general comment, about the requirements that the CRC places as regards the administration of juvenile justice (Mijnarends: 1, 1999).

In a DCI report (2001) by Bruce Abrahamson, juvenile justice is called “The Unwanted Child” of state responsibilities. From the Committee’s concluding observations on state party reports (1993-2000), he concludes that all states are having difficulties in implementing the Convention with respect to minors in conflict with the law, and many are having extreme difficulties.

### **Children’s needs and rights**

In the last century, there has been growing recognition that children’s special needs and life circumstances require a response from society in law and in practice that is different from adults. The Universal Declaration of Human Rights proclaims that: “Everyone has the right to life, liberty and security of the person”. The Convention on the Rights of the Child obliges states parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment...while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. The institutionalisation in boarding schools of children who are permanently or temporarily deprived of their family environment, particularly in cases of abandonment or orphans, is a principal subject of concern of the United Nations. Violence against

children by institution staff gives heightened cause to the United Nations' concern over the occurrence of maltreatment and cruelty towards children in and outside the family.

### **Juvenile justice**

The United Nations has adopted a number of international instruments dealing directly with children's rights and the administration of juvenile justice. Contrary to these international precepts, children in conflict with the law are often treated as adults. They are not protected from the harmful effects of criminal justice. In many countries, juvenile detention centres are rife with human rights violations. In many prisons and institutions, children and young persons are denied virtually every right to medical care, education and individual development. Kids behind bars are therefore a great matter of concern.

### **Children deprived of liberty**

Children can be deprived of their liberty for a variety of reasons, including:

- delinquency;
- status offences (any specific behaviour which would not be punishable if committed by an adult);
- children at risk due to the environment in which they live;
- children with physical or mental disabilities or troubles;
- children deprived of their liberty to remain with family members (e.g. children in prison with their mother);
- other reasons (e.g. detention based on immigration law).

This listing makes clear that not all children deprived of their liberty have committed criminal offences (Cappelaere: 2001, p.24).

A vast majority of offences committed by juveniles all over the world concern threats to the property of others, such as theft, and thus very often fall under the category of minor offences. Only a small number of detained children have committed serious offences. According to a variety of sources, this is only between 5 and 10%.

The vast majority of youngsters deprived of their liberty are in pre-trial detention ("preventive detention"). This is clearly unnecessary considering that most of these children are acquitted after trial. Moreover, when the courts do impose punishment after pre-trial detention, deprivation of liberty is often not used. To justify preventive detention, magistrates often invoke the needs of the investigation, the risk of flight, recidivism or collusion, or the gravity of the alleged crime (Cappelaere, p. 26).

The majority of children in detention are between 14 and 18 years of age. Exact numbers are impossible to give because data are often lacking or not kept and figures are not communicated by the authorities. It can also be the case that the available statistics do not cover the totality of closed establishments in a given country. In documents and estimations worldwide, the numbers vary between 80,000 children in the one country to 100 in another. According to global estimations, there are at least one million children deprived of their liberty worldwide. It is also stated that the proportion of juveniles in prison varies per country from 0.5 to 30% of the total prison population (see for more details Cappelaere: 2001, pp. 24-36).

### **Instruments**

The Convention on the Rights of the Child and a number of other international instruments provide a normative framework for the administration of juvenile justice, and minimum standards for prisons and other closed facilities for children and youngsters in conflict with the law. These international instruments include: the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); the 1955 Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules); the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Detention Principles), the 1990 Basic Principles on the Treatment of Prisoners; and the 1990 Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules).

The Havana Rules, the Beijing Rules and the Riyadh Guidelines apply exclusively to children, while the Standard Minimum Rules, the Detention Principles, the Basic Principles on the Treatment of Prisoners, and the Tokyo Rules apply to adults and children alike. Some of the rights guaranteed by these

instruments are likewise protected by the 1966 International Covenant on Civil and Political Rights, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All these instruments are dealt with in more detail in chapter 2.

### **Violations**

Although 192 countries have ratified the Convention on the Rights of the Child (the only exceptions are the Somalia and the United States), the evidence gathered and presented in many state party reports shows that policies towards imprisoned and abandoned children violate as many as 20 of the Convention's 41 substantive rights provisions (Children in Prison, International Prison Watch: 1999), (Defence for Children International: 2000).

Contrary to international standards, children adjudicated as delinquents are frequently "sentenced" to remain detained in an institution "until rehabilitated". Unfortunately, there is a distinction between what is called "law in books" and what is called "law in action". Abuses in institutions, prisons and other facilities are a reality in most countries.

Children in many institutions all over the world suffer acute social discrimination and endemic denial of their civil, political, economic, social and cultural rights, particularly in comparison with children who live with their families. The simple fact of abandoning children in an institutional system prejudices their physical, emotional and mental development, often denies them appropriate health care and education, and puts them at serious risk of physical and mental abuse inflicted or tolerated by state employees in the name of discipline.

Studies found that deprivation of liberty also means deprivation of rights to which persons under 18 are entitled whatever their situation. In several countries, a significant number of children are reported to be housed in adult penitentiaries. Studies have stressed that children housed with adults are 5 times more likely to be sexually assaulted, twice as likely to be beaten and 50% more likely to be attacked with a weapon than children housed in juvenile facilities. In addition, there are reports of cruel and inhuman disciplinary measures, insufficient sleeping space and living quarters, difficulties in accessing medical and dental treatment, poor quality of food, poor or nonexistent educational and vocational training opportunities, inadequate clothing and protection from the cold, poor sanitary and washing facilities with no privacy, lack of information concerning the rules in force and the rights of detainees, and little or no contact with the outside world. Lastly, many studies note that there is discrimination against poor children, street children, immigrant children and children belonging to a minority group.

At the same time, much is still unknown in this area. In many countries, data collection is lacking on the situation of detained youngsters and children, and on the relevant processes and developments. More needs to be known about the facts before concrete action can be taken.

It is also clear that issues such as gender, race and origin play an important role. However, it is still very difficult to assess the exact extent of these forms of discrimination.

### **Death penalty cases**

On 30 August 2002, 3 justices of the United States Supreme Court dissented when reviewing death sentences for juveniles. They urged the court to reconsider allowing juveniles to be sentenced to death. The death row inmate whose appeal was being considered, Toronto M. Patterson, was 17 when he killed a cousin in 1995. Unfortunately, he was executed later that same day. Discussion on the issue has started up again. One of the justices, who dissented when the court last considered the issue in 1998, said he remained convinced that it is unconstitutional to execute people for crimes committed when they are younger than 18. Many legal experts contend that the issue of executions for crimes committed as a juvenile will be the focus of the court's next major death penalty case.

Currently, 80 people who committed their crimes as juveniles are on death row in the United States. Most of them were 16 or 17 years old when they committed the offence (Adam Liptak, The New York Times, 2002). Since 1990, juvenile offenders are known to be executed in 7 countries: the Democratic Republic of Congo, Iran, Pakistan, Yemen, Nigeria, Saudi Arabia and the United States (Death Penalty Information Centre, 2003). In the last decade, China, Saudi Arabia, Pakistan and Yemen have banned the juvenile death penalty.

## 1.2. Children in prison research and action

### Need for research first

Defence for Children International (DCI) felt that there was a need for an international analysis of kids behind bars in light of the fact that more needs to be known about what is actually happening to these kids before action plans can be made to improve their situation. For this reason, DCI initiated a research programme concerning children in closed institutions, prisons and other facilities. This research programme was set up in order to record and bring to light violations of the rights of children during the period when they are deprived of their liberty. The research also focused on alternatives, prevention and ways to decrease the number of children behind bars. The programme's first stage consisted of collecting and comparing data.

### Definitions

This study uses the following definitions:

- *Children*: all human beings below the age of 18 years, as defined in the Convention on the Rights of the Child (article 1).
- *Youth*: the term "youth" is used for the group between 15 and 18 years of age when it is necessary to differentiate them from younger children. (In UN terminology "youth" includes the whole age group of 15-24 year olds.)
- *Behind bars*: all police cells, prisons, closed facilities and other institutions where children are deprived of their liberty.
- *Deprived of liberty*: the deprivation of liberty means any form of detention or imprisonment or the placement of a person under the age of 18 in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority (Havana Rules).

Unfortunately it could not be avoided that in certain parts of this report - especially in the country reports - different terms were used for the same subject matter.

## 1.3. Methodology

The research programme was divided into 2 phases: an orientation phase and a research phase.

### Phase I

During the orientation phase, DCI:

- a. Identified relevant and available literature and legislation to be used as a basis for the research.
- b. Identified key players worldwide involved with children in secure institutions.
- c. Conducted a comprehensive review of the above materials to ensure identification of all problem areas and to define their scope.
- d. Drafted and sent out questionnaires followed by an in-depth questionnaire to gather relevant and consistent information from key persons and organisations. Questionnaires were used to collect information on 25 countries in the world.
- e. Started a network of specialists (individuals as well as international organisations) in the field.
- f. Initiated a databank that includes international organisations, institutions or centres involved in the protection of children in institutions.
- g. Organised an International Expert meeting in order to discuss the draft results of the research. International Experts from 20 different countries participated at the meeting in Amsterdam in February 2002.

The orientation phase was necessary in order to be able: to conduct a literature and legislation review; to define the special problems and areas which need urgent intervention; to identify the underlying factors which should be given special attention; and to identify the limitations and difficulties in the research



programme, and reach alternative solutions. It provides the basis for a network of specialists in the field of children in institutions, prisons and other facilities. It would be advisable to create a databank that includes international organisations, institutions or centres involved in the protection of rights of the children deprived of their liberty.

## **Phase II**

Phase II was the research phase. The problem areas were examined in more depth. Country reports were written after receiving detailed questionnaires, literature, reports and experts' opinions. Phase II resulted in this report, which includes recommendations for international and national actors.

The report highlights areas which require urgent attention:

- a more in-depth report on problems in legislation, the need for prevention measures against child abuse in institutions, prisons and other facilities, etc.);
- a databank including all international organisations, institutes or centres that are involved in the protection of the rights of children deprived their liberty, with details about their aims, special role, reports and publications, etc.;
- the development of an assessment model to assess the quality of children's rights protection at the international level.

## **1.4. Content**

Chapter 2 deals with the relevant international standards. Chapter 3 contains the country reports, and chapter 4 provides a comparative analysis of the country reports. Chapter 5 contains the main conclusions of the research programme, and chapter 6 gives a set of recommendations for national and international actors.

The following main problem areas were examined in the research programme:

- General
  - national laws
  - registration and numbers
  - sanctions
  - position of minors in custody
  - age of criminal responsibility
  - separate juvenile justice system
  - police and pre-trial
- Living conditions of children and adolescents
  - housing (sufficient sleeping space and living quarters)
  - adequate nutrition (quality of the food)
  - medical care/mental health care
  - sexual assault and rape
  - adequate clothing and protection from the cold
  - adequate sanitary and washing facilities
  - separation: no commingling of children or adolescents with adults, special attention for the situation of girls
- Legal protection
  - legal aid
  - disciplinary measures:
    - \* corporal punishment
    - \* placement in isolation
    - \* reduction of diet
    - \* close or solitary confinement
    - \* restriction or denial of contact with family members
  - monitoring system
- Education, work, sports and recreation
  - education and vocational training - recreational activities
  - types and conditions of work
- Family

- contact with the outside world
- Returning after release
  - preparation for release
- Staff training
- Violations
  - violations stipulated by research and national experts

## 2. International standards

### 2.1. The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is one of the major human rights treaties of the United Nations, alongside, for example, the 1966 International Covenant on Civil and Political Rights and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination. The CRC was unanimously adopted on 20 November 1989 by the General Assembly of the United Nations (G.A. resolution 44/25) and entered into force on 2 September 1990. With 192 states parties, it has reached almost universal ratification. Only Somalia and the United States have not yet become a party.

The CRC covers the whole range of human rights. Traditionally, these have been classified as civil and political on the one hand, and economic, social and cultural on the other. By bringing these rights together in a single cohesive treaty, the CRC seeks to emphasise the inter-connected and mutually reinforcing nature of all rights. Therefore, some consider it more useful to describe the range of rights covered by the CRC as the 3 Ps: *provision, protection and participation* (Cantwell: 2, 1995). Children have the right to be provided with certain things and services. They have the right to be protected from certain acts, and the right to participate in decisions affecting their lives and in society as a whole.

Prior international instruments specifically relating to children's rights, namely the 1924 Declaration of the Rights of the Child and the 1959 United Nations Declaration of the Rights of the Child, do not refer at all to child justice and deprivation of liberty. The 1966 International Covenant on Civil Political Rights (CCPR), on the other hand, does refer to juvenile justice. In paragraph 4 of its article 14 on the administration of justice, the CCPR provides that: "In the case of juvenile persons, the procedure shall be such as will take into account of their age and the desirability of promoting their rehabilitation". But the CRC is the first international human rights treaty to adopt a coherent child rights approach to the international regulation of the deprivation of liberty for children.

The CRC and a number of other key international instruments provide the international normative framework for the protection of children deprived of their liberty. The CRC contains a number of specific provisions on children in conflict with the law and operates as an umbrella treaty for a set of 3 international instruments dealing with juvenile justice: the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); and the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules).

The United Nations also adopted, already in 1955, the Standard Minimum Rules for the Treatment of Prisoners. However, these do not seek as their primary goal to regulate the management of institutions for young people and hence do not take into account the special entitlements of children. The Havana Rules, on the other hand, specifically seek to address such matters. Importantly, they equally apply to those under 18 deprived of liberty as a result of the penal law, as well as juveniles deprived of liberty in health and welfare placements.

By becoming a party to the CRC, states parties are obliged to respect and ensure all of the rights recognised in the CRC, and to take all appropriate measures for their implementation. This implies important obligations for governments.

#### **Juvenile justice**

The general principles of the CRC include the principle of non-discrimination (article 2), the best interests of the child (article 3), the right to life and development (article 6) and the right to participate in matters that concern them (article 12). In addition to these general principles that apply with respect to all children, articles 37, 39 and 40 of the CRC are of particular importance for young offenders and/or victims. Article 37 contains guarantees for children deprived of their liberty, article 39 deals with restoration and rehabilitation of child victims. Article 40 on the administration of juvenile justice deals with the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner which takes into account the child's age and the desirability of promoting the child's reintegration in society. It embodies the right to due process of law, and the principle that recourse to formal proceedings and deprivation of liberty should be avoided wherever possible and appropriate.

Some articles of the CRC are directly applicable in proceedings before national courts. This direct application depends on how an article is worded. Whether or not an article can function in this way is left to the discretion of national courts. In principle, both the right of the child to be protected against cruel, inhuman or degrading punishment under article 37 and the right to a fair trial under article 40 can be invoked before national courts.

Here follow the texts of articles 37, 39 and 40.

#### *Article 37*

*States Parties shall ensure that:*

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. 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;*
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.*

#### *Article 39*

*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*

#### *Article 40*

- 1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*
- 2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular ensure that:*
  - a. No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;*
  - b. Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*
    - i) To be presumed innocent until proven guilty according to law;*
    - ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*
    - iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*

- iv) *Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*
  - v) *If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*
  - vi) *To have the free assistance of an interpreter if the child cannot understand or speak the language used;*
  - vii) *To have his or her privacy fully respected at all stages of the proceedings.*
3. *States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*
- a. *The establishment of a minimum age below which are children shall be presumed not to have the capacity to infringe the penal law.*
  - b. *Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*
4. *A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*

In addition, the state obligations laid down in article 27 of the CRC are relevant. Article 27(1) recognises “the right of every child to a standard of living adequate for child’s physical, mental, spiritual, moral and social development”. While primary responsibility for supporting the child rests with the parents, “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”. There can be no doubt about the fact that all of the CRC’s provisions are also applicable for children in prison, including for example, the prohibition of child labour (article 32), the rights to freedom of religion (article 14), to play (article 31), to protection against sexual exploitation (article 34), to education (article 28), to health care (article 24), to contact with the parents (article 9 and 10). It is possible that there are limitations directly connected with the fact that the children are locked up (e.g. the right to privacy in article 16), but the fact that children are behind bars is also a basis for extra efforts on the part of the state party (government) to guarantee all the rights recognised in the CRC. The full text of the CRC can be found in Annex 1.

## **2.2. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) apply with respect to juveniles deprived of their liberty. A juvenile is any person under the age of 18. Under the Havana Rules, the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority. Hence, they equally apply to those under 18 deprived of liberty in penal law placements, as well as welfare and care placements.

The Havana Rules are intended to establish international minimum standards for the protection of juveniles deprived of their liberty in all forms, consistent with human rights, with a view to counteracting the detrimental effects of all forms of detention and to fostering integration in society. They can be seen as giving further content to the basic principles laid down in the Convention on the Rights of the Child. The Rules are based upon the following fundamental principles:

- deprivation of liberty should be a disposition of last resort and for the minimum period and should be limited to exceptional cases;

- juveniles should only be deprived of their liberty in accordance with the principles and the procedures of international law;
- the establishment of small open facilities is encouraged to enable individualised treatment and to avoid the additional negative effects of deprivations of liberty;
- deprivation of liberty should only be in facilities which guarantee meaningful activities and programmes promoting the health, self-respect, and sense of responsibility of juveniles. The facilities should also foster their skills to assist them in developing their potential as members of society;
- the detention facilities should be decentralised to enable access and contact with family members and to allow for integration into the community;
- the care of juveniles deprived of their liberty is a social service of great importance;
- all juveniles deprived of their liberty should be helped to understand their rights and obligations during detention and be informed of the goals of the care provided;
- juvenile justice personnel should receive appropriate training including child welfare and human rights;
- all juveniles should benefit from arrangements designed to assist them in returning to society.

Although the Rules *per se* are in the form of a non-binding recommendation, some of the rules have become binding by virtue of their incorporation into treaty law. The full text of the Havana Rules can be found in Annex 2.

### **2.3. Other international documents**

Six other international instruments seek to protect children in conflict with the law: the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); the 1955 Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules); the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Detention Principles), the 1990 Basic Principles on the Treatment of Prisoners; and the 1990 Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules).

The Havana Rules, the Beijing Rules and the Riyadh Guidelines apply exclusively to children, while the Standard Minimum Rules, the Detention Principles, the Basic Principles on the Treatment of Prisoners, and the Tokyo Rules apply to adults and children alike. Some of the rights guaranteed by these documents are likewise protected by the 1966 International Covenant on Civil and Political Rights, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Although these instruments *per se* are in the form of a non-binding recommendation, some of the rules have become binding by virtue of their incorporation into treaty law. They are also elaborations of the basic principles found in the Convention on the Rights of the Child.

The Beijing Rules were adopted in 1985 and embody the fundamental principle that a child should have access to a special juvenile justice system. In 1990 they were followed by 2 other resolutions. The Riyadh Guidelines specify the important role of prevention within juvenile justice by recommending the establishment of a model of prevention consisting of a system of principles, participants and policies. The Havana Rules look towards the protection of the legal position of the child at the time of his or her deprivation of liberty. These resolutions are not binding upon states, but they serve as important standards of reference, also for the Committee on the Rights of the Child (Mijnarends: 5, 1999).

The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) aim at completing the development of non-custodial measures in national judicial systems. They provide alternatives to the traditional model of justice, in which offenders are isolated from the other people in society. These Rules apply to every person (including juvenile offenders) alleged as, accused of, or recognised as having infringed the penal law. The Rules are applicable at all stages of the proceedings.

The United Nations has a Commission on Crime Prevention and Criminal Justice that is based in Vienna. It provides a forum for ministers of justice, interior and foreign affairs to meet once a year and adopt strategies to deal with crime. In 2002, the commission adopted Guidelines for the Prevention of Crime, which were approved by the UN Economic and Social Council (ECOSOC). These guidelines assert that:

*Clear evidence exists that well-planned crime prevention strategies reduce crime and victimisation and are a more humane and cost effective response to crime than the formal criminal justice system (number 1).*

In 1997, in Vienna, an expert group meeting took place on the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice. This meeting culminated in the adoption of the Guidelines for Action on Children in the Criminal Justice System, including the establishment of a coordination panel on technical advice and assistance in juvenile justice (ECOSOC resolution 1997/30 of 21 July 1997).

On 3 October 2002, the WHO launched a World Report on Violence and Health. This is an important step in mobilising health ministries around the prevention of interpersonal violence (from child abuse to murder). It is complementary to the Global Report on Crime and Justice but focuses on causes and remedies instead of criminal justice. As such it is consistent with the recently adopted guidelines on the prevention of crime.

## **2.4. Principles and standards for the protection of children deprived of their liberty**

The Convention on the Rights of the Child, the Havana Rules and the other above-mentioned international instruments establish the minimum standards accepted by the international community for the protection of children deprived of their liberty in all forms. States should incorporate these standards into their legislation or amend it accordingly and provide effective remedies for their breach. Here follows an overview of the main elements of these standards (Van Bueren, 1995).

### **General**

1. The juvenile justice system shall uphold the rights and safety and promote the physical and mental well-being of children, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.
2. Children shall only be deprived of their liberty in accordance with the principles and the procedures of international law, including the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).
3. No child shall be deprived of his or her liberty unlawfully or arbitrarily.
4. Deprivation of the liberty of a child (arrest, detention and imprisonment) shall be in conformity with the law and shall be a disposition of last resort and for the minimum necessary period, and shall be limited to exceptional cases. The length of the sanction shall be determined by the judicial authority, without precluding the possibility of the child's early release.
5. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.
6. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.
7. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults and shall have the right to maintain contact with his or her family through correspondence and visits.
8. Children detained in facilities shall be guaranteed the benefit of meaningful activities and programmes which serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.
9. The competent authorities shall constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance,

and to this end active steps shall be taken to foster open contacts between the juveniles and the local community.

10. The application of the national rules for the protection of children deprived of their liberty shall be monitored by the state. Regular inspections and other means of control of detention facilities shall be carried out by a duly constituted body authorized to visit the children and not belonging to the detention facility. Effective remedies shall be available, including compensation.

### ***Definitions***

1. A “child” is every person under the age of 18.  
The age limit below which it is not be permitted to deprive a child of his or her liberty shall be determined by law.
2. The “deprivation of liberty” means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

### ***Children under arrest or awaiting trial***

Detention before trial shall be avoided and limited to exceptional circumstances. Alternative measures shall be used. Children who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. They have the right to legal counsel and to apply for free legal aid. They have the right to an expeditious processing of their case.

### ***The management of juvenile facilities***

Children may not be detained in any facility without a valid commitment order nor in any institution which does not maintain a proper register. All reports on children shall be placed in confidential files which are accessible only to authorised persons. The reports shall be classified in such a way as to be easily accessible. Where possible, every child shall have the right to contest any fact or opinion in his or her file so as to permit rectification.

### ***Admission, registration, movement and transfer***

In every place where children are detained a complete and secure record of information shall be kept including information on the identity of the juvenile, the fact, reasons and authority for the commitment, the day and hour of admission, transfer and release and details of notifications to parents and guardians. Any details of known physical and mental health problems shall also be included.

In order for children to be aware of their entitlements, they shall be provided with a copy of the facility’s rules and a description of their rights and obligations in language which can be understood by them. Also included should be the addresses of the competent authorities to receive complaints and the names and addresses of public and private bodies which provide legal assistance.

Where juveniles are moved to or from facilities, it should only be in conveyances with adequate ventilation and light. At no time shall juveniles be subject to hardship or indignity.

### ***Classification and placement***

After admission, children shall be interviewed to enable a determination to be made as to the most appropriate type of social care. Wherever special rehabilitative treatment is required, the trained personnel shall prepare a written, individualised treatment plan specifying the treatment objectives.

Juveniles shall be separated from adults, unless they are members of the same family. An exception may be made where it is in the best interests of the child and where the non-separation is under controlled conditions as part of a special programme.

The number of children detained in facilities shall be as small as possible and small enough to enable individualised treatment and integration into the social, economic and cultural environment of the community.

Detention facilities shall be open, i.e. with no or minimal security measures. They shall be decentralised to facilitate access and contact between the children and their families.



### ***Physical environment and accommodation***

The design of detention facilities for children and of the physical environment shall be in keeping with the rehabilitative aim of residential treatment, with due regard to the right of the child to privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. All facilities and services shall meet all the requirements of health and human dignity. Every detention facility shall ensure that every child receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of hygiene and health and, as far as possible, religious and cultural requirements of the children. Clean drinking water must also be available to every child at any time.

Every child should be provided with clean bedding and sufficient sanitary installations in accordance with local and national standards. Similarly, clothing must be suitable for the climate and must not be degrading or humiliating.

Every child has the right to privacy, including the right to retain their own personal effects.

### ***Education, vocational training and work***

The purpose of education is to prepare the child for release. The provision of education must therefore avoid the risk of stigmatisation. As far as possible the education of children deprived of their liberty shall take place in the community outside of the detention facility in programmes integrated with the education system of the country. When awarding educational certificates, they should not indicate in any way that the children have been deprived of their liberty.

Children are also entitled to receive vocational training to prepare them for suitable employment.

When undertaking any work, children are entitled to choose the type of work they wish to do. Wherever possible, children shall have the opportunity to work within the local community.

In both training and work, the relevant national and international standards are applicable. Children deprived of their liberty do not forgo the right to fair remuneration for their work. At no time shall the interests of children be subordinated for the purpose of making a profit for the facility or for a third party.

### ***Recreation***

Facilities in which children are deprived of their liberty shall ensure that suitable time is allocated for daily exercise in the open air, whenever weather permits. In addition, time shall be allocated for daily leisure activities.

### ***Religion***

If children wish, they are entitled to participate in or organise their own religious services. They also have the right to possess and retain the necessary religious books and items of religious observance. Similarly, children are entitled to decline all forms of religious participation including religious services and education.

### ***Medical care***

Upon arrival children are entitled to medical examinations to record evidence of prior ill-treatment and to identify any physical or mental condition requiring medical attention. Throughout their period of deprivation of liberty all children are entitled to adequate preventive and remedial medical care, preferably through community health facilities and services in order to prevent stigmatisation. Medicines shall only be administered for necessary treatment on medical grounds and when possible after the informed consent of the child. The administering of medicines to elicit information or confessions or as a punishment or means of restraint is prohibited in all facilities. The experimental use of drugs and treatment is also forbidden. Facilities shall adopt specialised drug abuse prevention and rehabilitation programmes. Children who are mentally ill shall be treated in independent specialist institutions.

### ***Notification of illness, injury and death***

Children shall be informed as soon as possible of the death, serious illness or injury of any immediate family member and be entitled to visit the family member or attend the funeral.

The child's family shall be informed of the state of health of the child and of any changes which have occurred. If a juvenile dies in detention, or within 6 months of release, there shall be an independent inquiry, the report of which shall be made available to the nearest relative. The nearest relative shall also be entitled to be informed of the death and to inspect the death certificate.

### ***Contacts with the wider community***

Contact with the community outside of the facilities is an integral part of the right to fair and humane treatment and is essential to the preparation of children for release. Children shall be allowed to communicate with their families, friends and representatives of organisations. Every child is entitled to receive regular and frequent visits in principle once a week and not less than once a month. All visits shall respect the child's right to privacy. Children shall also be permitted to leave the facilities for visits to their family homes and with special permission to leave the detention facilities for educational, vocational or other important reasons. Every child shall also have the right to communicate in writing or where appropriate by telephone at least twice a week with the person of the child's choice, unless legally restricted. To increase their contact with the outside world, children shall be given the opportunity to keep themselves regularly abreast of the news.

### ***Limitations of physical restraint and the use of force***

The carrying and use of weapons by personnel in facilities where juveniles are detained is prohibited. Instruments of restraint and force may only be used in exceptional cases and only as explicitly authorised and specified by law and regulation. Such instruments shall not cause humiliation or degradation.

### ***Disciplinary procedures***

All disciplinary procedures shall be consistent with upholding the dignity of the rights of children and with respecting the basic rights of all. Labour shall be regarded as an educational tool and shall not be imposed as a disciplinary sanction.

Cruel, inhuman, degrading treatment including corporal punishment, placement in a dark cell, closed or solitary confinement, reduction of diet and the restriction of family contact is prohibited.

Collective sanctions are forbidden and no child shall be punished more than once for the same disciplinary offence.

No juvenile shall be disciplined except in accordance with the terms of the law and the regulations in force and only after being clearly informed of the alleged infraction. Complete records shall be kept of all disciplinary proceedings.

### ***Inspection and complaints***

Qualified independent inspectors shall be empowered to conduct regular inspections and to undertake unannounced inspections on their initiatives. Children shall have the right to talk in confidence to any of them. Any violation shall be communicated to the competent authorities for investigation and prosecution. Children shall have the opportunity of making requests and complaints without censorship and they shall be informed of the response without delay.

States shall make efforts to establish an independent office (ombudsman) to receive and investigate complaints made by children deprived of their liberty.

### ***Return to the community***

All children shall benefit from arrangements designed to assist them in returning to the community including early release and special courses. Children shall be provided with suitable residence, clothing, employment and sufficient means to facilitate successful reintegration. The representatives of agencies providing such services shall be consulted and have access to juveniles while they are detained.

The competent authorities shall also lessen the prejudice against such children.

### ***Personnel***

Adequate remuneration shall be provided to attract personnel capable of providing children with positive role models and perspective.

All personnel shall conduct themselves at all times in such a way as to gain the respect of the children. They shall also seek to minimise the differences between life inside and outside the facility.  
To be effective, personnel shall receive training in child psychology, child welfare, human rights and the rights of the child.  
The personnel shall protect the children from any form of abuse or exploitation.



### **3. Country reports**

#### **3.1. Albania**

##### **Application of international and national law**

###### ***International law***

Albania ratified the Convention on the Rights of the Child on 28 February 1992. However, 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 Protection of Juvenile Delinquency are not implemented.

In April 1999, the Albanian Parliament approved 3 new laws that deal with the rights and duties of prisoners, and the obligations of the Government towards them. The Parliament approved the Law “For the Rights and the Treatment of Prisoners”, the Law “For the Execution of Penal Decisions” and the Law “For the Police of the Prisons”.

In these 3 laws, the lawmakers have described their objectives and measures of implementation, including the organisation, the responsibilities of the prison administration, disciplinary measures and the rights of prisoners, which should be acknowledged and implemented properly. These dispositions also describe the management of the prison system, the responsibilities and control over the prison system, starting from the Minister of Justice, Vice Minister of Justice, and the General Directors of Prisons.

###### ***National law***

The Albanian legal system is classified as part of the continental law system, which means that it is based on laws approved by Parliament. Prisons fall under the administration of the General Directorate of Prisons and the Ministry of Justice. Albania does not (yet) have a prison where juveniles can be detained or a special system for administration of juvenile justice.

According to article 25 of the Albanian Constitution, which was approved in its entirety by the Assembly Parliament of the Republic of Albania in October 1998, “No one may be subjected to cruel, inhuman or degrading torture, punishment or treatment”. Moreover, article 54 ensures that: “Juveniles, youngsters, pregnant women and new mothers have the right to special protection by the state. Every child has the right to be protected from violence, ill treatment, exploitation and work which could damage their health and morals or endanger their life or normal development, especially when below the minimum age for admission to work.”.

Article 12 of the Albanian Criminal Code ensures that: “A person bears criminal responsibility if he or she, at the time he or she commits an offence, has reached the age of fourteen. A person who commits petty crimes bears responsibility at the age of sixteen.”. Furthermore, article 52 entitled “Excluding minors from punishment” recognises that: “The court, after considering the dangerousness of the criminal act, the concrete circumstances under which it was committed, and the previous behaviour of the minor, may exclude the minor from punishment.”.

Moreover, article 5, paragraph 2, of the Criminal Procedure Code, which was approved by Parliament in 1995, provides that: “No one may be subjected to torture, punishment or cruel treatment.”. And paragraph 3 states that: “A person sentenced to imprisonment shall be provided humane treatment and moral rehabilitation.”.

##### **Position of minors in the national prison system**

The minimum age of criminal responsibility is 14 years of age. The majority of minors in prison have infringed the penal law. The most common offence was found to be theft.

In 1997, there were 91 male detained minors between 14-18 years of age, while there was only one female.

In 1998, there were 386 male minors and again only one female. In 1999, children below the age of 14 committed 86 offences, while 14-18 year olds committed 683 offences, or more than 10% of all offences that took place in Albania.

In 2000, the total number of offences committed by minors from 14-18 years of age was 795, of which 479 were thefts. It should be also mentioned that the vast majority of minors in prison was still awaiting trial. The maximum period of pre-trial detention is 12 months.

Alternative penalties such as community service, in the form of a work penalty and compensation orders, are imposed when requested by the penal law.

<b>Sentenced Juveniles in Albania (1991-1998)</b>							
<i>years</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1997</i>	<i>1998</i>
<i>female 14-18</i>	2	6	2	7	16	1	1
<i>male 14-18</i>	234	300	242	296	465	91	386

*Source: Children's Human Rights Centre of Albania, 2000.*

Imprisoned minors between the ages of 14-18 are in on-going contact with adult prisoners. They are held in a separate part of an adult prison but the facilities such as showers, kitchen and playgrounds are shared. Male and female minors are held separately. Five to 9 persons are held per cell. Most detained minors are denied the right to education and work. It should also be stressed that bullying, abuse and torture is used against them by the stronger inmates and by the correctional staff as well. Depression is reported to be the major health problem in prison. Moreover, corporal punishment, placement in an isolation cell, deprivation of visits and extra work (cleaning up, washing the dishes etc.) are the most common disciplinary measures. In the above cases, detained minors can only officially complain about their treatment to an ombudsman. There are no annual reports of monitoring organisations.

Although detained minors have the right to legal aid, most of them cannot exercise this right because they come from poor families who cannot afford to pay a lawyer. State legal aid representation (free of charge) is not always possible. There are no limitations on how often a lawyer can visit his/her client.

#### **Description of a specific closed institution: The prison of Vaqar**

The Prison of Vaqar is located in a village close to Tirana and is divided into 3 buildings. It is a male prison with approximately 185 prisoners, of whom 35 are minors. It is reported that the prison was built to accommodate fewer inmates than the current number. Overcrowding seems to be one of the most serious problems. The total capacity of the prison and the total number of staff is unknown because this is confidential information.

#### ***Housing***

In the main building, there are minor detainees and adults on the same floor. On the first floor, there are 12 rooms and in each room there are about 4-9 persons. The size of the cell is 4x4m. The doors of the rooms are made of steel and have a very small open space, which is used for controlling inmates.

The juveniles' rooms face the rooms of the adults and it is possible to have contact when they come outside. There are 4 toilets and 6 showers available. On the second floor, there are 18 rooms and, of these, 3 are for juveniles. On this floor there are 3 toilets and 6 showers. There are no central heating or air conditioning facilities.

#### ***Food***

Food is provided free of charge 3 times per day. It is examined daily by an external expert. However, the cleaning rules in the kitchen are not observed. It has been reported that the cooking facilities are not of a sufficient hygienic level of cleanliness.

Most juveniles do not eat meals offered by the prison. According to reports, they are not satisfied with the quality. The diet is described as poor in calories and quantity. The meals consist of tea, pasta and soup made from leaks of beans. Dairy products are not used and sweets are offered only on national holidays. Minors use a large amount of vitamins from the prison pharmacy which unfortunately are often out of date.

In some cases, the juveniles refuse to eat and others show signs of anorexia. The majority prefers to cook in a private kitchen. Family members are permitted to bring them dry food.

### ***Health care***

The prison of Vaqar has a health care unit where detained minors are screened when they enter the prison for physical problems only. The screening procedure takes place upon admission. The exact number of the medical staff is unknown. Apart from a doctor (doctors) and a nurse (nurses), no other specialisation is (psychologist, psychiatrist and dentist) available. It is very characteristic that minors when asked did not know what a psychologist was.

Special health problems such as HIV-AIDS, TB (Tuberculosis), hepatitis and skin diseases are not reported. Furthermore, the minor detainees do not seem to have drug problems, and according to a report none of them uses drugs. Apparently, they also do not show any other self-destructive behaviour, despite the lack of any suicide prevention measures.

It could be concluded that minor detainees have more mental health than physical health problems. The high quantity of antidepressant drugs (librium, diazepam and fluphenozin) that are available in the pharmacy of the prison and are given to the minors is proof of mental illness amongst them.

Unfortunately, the lack of a psychologist or/and psychiatrist, plus the fact that the dates of the given antidepressant drugs are very often expired raise significantly the mental health problem. In order to find solutions, the prison is trying to establish relations with NGOs that are offering psychosocial treatment to minors. This initiative would be assisted by psychology students and social work faculties.

### ***Hygiene***

The minor detainees are allowed to take a bath once a week (according to other sources they can take a bath whenever they want). Soap and toilet paper are not distributed. The water supply does not work efficiently, as the second floor does not have water. Thus there are some problems because of the limited number of single showers (out of 12 showers, only 6 are working).

Minors have to clean the toilets - of which there are not enough - and their clothes by themselves. There are some difficulties as housecleaning products are often not distributed, but the sheets are cleaned in the prison laundry every 10 days.

### ***Education and work***

In the prison Vaqar, the juveniles do not enjoy the right to a basic education. Some juveniles are illiterate. They say that when they get out of prison they cannot go back to school because they will be older than the other pupils. The director of the prison has requested the Ministry of Education on several occasions to organize a school for basic/primary education. The Ministry found the request appropriate and has recently decided to take such action.

### ***Sports and recreation***

Detained minors do not receive any compulsory physical education. There is a special area where sports can be played. According to some reports, football matches and discussion sessions are organised on occasion by police officers. During their 2-hour daily exercise in the open air, they can only play football. A recent report, however, indicates that minors are allowed in the garden for 30 minutes each day, but not on Sundays or on special occasions due to lack of space.

Inside the prison most of the minor detainees play cards, domino or watch TV. There are no special programmes for them. Some minors visit the prison's library but the illiterate persons cannot use it. It is stressed that the administration of the prison does not give any priority to activities. Occasionally computer seminars are organised, but only for a short period of time and for a small number of pupils.

Minor detainees complain that, in general, they are bored because they do not have anything to do during their imprisonment.

### ***Discipline***

Corporal punishment, placement in an isolation cell and deprivation of visits are the measures that are taken by the administration of the prison to discipline the minor detainees. The decision is taken by the director of the prison. It is reported that, at the prison of Vaqar, physical abuse is used against juveniles who break the internal rules of the prison, despite the fact that this is prohibited by the new Constitution and the Criminal Code. The juveniles interviewed on such issues mostly refuse to talk about it because they fear the ill treatment will be repeated.

Moreover, it is allowed to use violence to maintain order among the minors. For this reason, the use of handcuffs, firearms and tear-gas can be ordered. The rules of the prison permit the use of Special Forces, who are usually police within the prison. Juveniles describe torture as a form of violence used against them by the Special Forces.

Bullying, abuse, violence and torture also take place among the minors. Furthermore, it is reported that nothing is done to protect them against abuse by adult prisoners. The lack of separation between minors and adults leads in some cases even to sexual abuse by adult prisoners. This is enhanced by the position of the adult rooms, which are in front of those of the juveniles, and by the mixed showers and other leisure places. Finally, juveniles declare that sexual abuse takes place especially during the time when there is little supervision over the cells by the police officers. No criminal investigation or other legal action has ever been taken to follow up on these crimes.

### **Contacts**

Families are allowed to visit the minor detainees 3 times per month. Each meeting may last 30 minutes. However, when the number of visitors is large, minors have less time with their families.

Because there are no telephones available in the prison for inmates, minors cannot make calls.

Apart from family members, other persons allowed to visit them are lawyers and friends. There are no limitations on the visits of the lawyers.

The prison does not have any arrangements designed for the purposes of rehabilitation or preparation for return to the community.

### **Critical assessment**

The biggest problem is the absence of a special juvenile justice system. According to Albanian experts, other problems that minor detainees face are the lack of:

- recreation activities and education;
- contact with the outside world;
- rehabilitation programmes;
- work opportunities and vocational training;
- health and hygiene;
- psychosocial aid;
- alternative measures.

According to the main findings of a recent report on Juveniles in Albanian Prisons (November 2000):

- physical ill treatment is used against juveniles in prison;
- the best interests of the child have not been taken into consideration by the Ministry of Justice and the General Directorate of Prisons;
- juveniles lack the right to education;
- there are cases of child abuse by adult prisoners;
- there are no activities for minor detainees;
- the prisons lack any special programmes for minor detainees;
- prisons lack the assistance of a psychologist or social worker;
- the quality and quantity of food are not adequate for minor detainees;
- the prison of Vaqar is overcrowded.

The experts' recommendations include the establishment of observation groups to ensure that power is not abused and that no abuse takes place in facilities where juveniles are detained. They also recommend training for prison staff on how to work and communicate with minor detainees.

The development of working places for minors above 14 and the organisation of educational programmes are also recommended. Finally, all agree that urgent measures must be taken to improve the health and hygiene standards.

### **Sources**

This report is based on:

- Information gathering by DCI-NL after distribution of an in depth questionnaire.



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## 3.2. Argentina

### **Application of international and national law**

#### ***International law***

Following the adoption of the Convention on the Rights of the Child (CRC), and the acceptance across Latin America of its underlying principles, Argentina has not yet adopted a new legal system to regulate juvenile justice based on articles 37 and 40 of the CRC. Incorporation of the principles underlying these provisions is a necessary first step in carrying out the changes needed to achieve full respect for children's human rights. The juvenile justice systems enacted in most Latin-American countries establish that young people are no longer to be judged and condemned because of what they are or seem. They are now to be judged because of what they do and taken into the legal system only when this deed is a possible infringement of criminal law. The description that best synthesises the spirit and content of the changes that have taken place over the past decade in Latin America is the change from the "delinquent minor" as a vague sociological category to the infringing adolescent as a specific legal category. Creating a new system based on the CRC is still a pending task in Argentina.

#### ***National law***

Argentinean law makes a clear distinction between minors under 16 years of age and from 16 years of age up to their 18th birthday.

For those under 16, the applicable law is the valid tutelage legislation (the 1919 Minor's Law, 10.903), which is the oldest law in Latin America but fails to incorporate children's rights. It is unconstitutional and in flagrant contradiction with the CRC. This law grants judges an absolute power of discretion to decide what will happen to minors on the basis of their personal circumstances, without any reference to an objective code of sentences to be imposed according to the type of offence committed. So, for example, Law 10.903 allows a judge to rule that one minor under 16 years of age who has committed murder be returned to his parents and to imprison another, such as a street child (under the guise of protection), who has not committed any crime.

For those between 16 and 18 years of age, a Special Criminal System is in force (Laws 22.278 and 22.803, adopted during the last military dictatorship). In practice, this allows the courts to treat minors in this age group as if they were adults. A clear example of the hardship this causes occurred in April 2000 when the highest criminal court in Argentina (Corte de Casacion) confirmed the sentence of a judge of the First Instance who had ordered the life imprisonment of a minor.

### **Position of minors in the national prison system**

In Argentina, the federal prison system and the Buenos Aires state prison system are the largest in the country, representing probably more than 80% of the whole country.

There are approximately 20,000 minors in Argentina's juveniles institutions: juveniles deprived of their liberty both for social and penal reasons.

The exact number of children held in police cells is not available, although an estimated average of 100 daily in the Province of Buenos Aires is accepted.

According to the latest data available from the General Attorney of the Supreme Court of the Province of Buenos Aires, on 31 December 1999, there were in Buenos Aires 1,737 minors under 18 years of age deprived of their liberty for criminal causes. Out of this total, 1,556 boys and 40 girls were confined in

special institutions for “minors”, 85 boys and one girl were confined in prison units, and 55 boys and no girls in police stations. A recent research confirms these figures.<sup>1</sup>

There are frequent reports of torture and deaths in police stations among young detainees. Different sources, including the Supreme Court of Buenos Aires, agree that minors regularly die as a result of confrontations with the police and that the number of fatalities is increasing. For example, according to a press survey by the *Correpi*, 87 minors died between 1983 and 1999 in supposed confrontations with the police. From January to August 2002 alone, there were 8 deaths of this type, an increase in the average over the past 16 years.

As noted above, most Latin American countries have made reforms adapting national legislation to the spirit and text of the CRC. (In Mexico, Colombia, Chile, Argentina and Uruguay, this reform process is still pending.)

Setting apart material conditions of detention, it is important to keep in mind that both national and state law authorize deprivation of liberty for reasons other than violations of penal law, which is in flagrant contradiction with the CRC and the national constitution.

### **Critical assessment**

Countless complaints have been made, both by human rights organisations and by the mass media, regarding the general material conditions of minors deprived of their liberty. Bad material conditions, abuse and maltreatment, permanent escapes and the lack of projects and pedagogical activities linked to any plan for re-socialisation are the characteristic state of the situation of the institutions for minors in the country. To the problems pointed out for the Province of Buenos Aires in the nineties, should be added a systematic process of compulsive use of medical and psychiatric methods to treat young people deprived of their liberty. Progressively, private psychiatric clinics are taking over from the traditional institutions for the deprivation of freedom.

It is very likely that the lack of adequate records is covering up a situation which is probably much more serious and worrying than it seems. Just to give one example, in July 1998, the Advisor for Minors (*Asesor de Menores*) of the Legal Department of San Isidro (only one of the 20 Legal Departments in which the Province of Buenos Aires is divided) opened up a record of complaints regarding cases of torture, cruel, inhuman or degrading treatment. Up to January 2002, the record had registered a total of 704 cases.

There are more than enough elements to affirm that the situation of imprisoned children’s human rights in Argentina is extremely serious. This situation is in no way to be attributed exclusively to the economic hardships that the country is going through. On the contrary, it may be stated that the flagrant violations of children’s rights are to be attributed to the abominable legislation in force, to the lack of independent institutions and mechanisms to monitor management (which explains the absolute nature of all kinds of impunity), to the persistence of such an outdated and harmful corporate and cronyism type of culture. And, finally, to the complete lack of priority granted to children’s problems in general. As a consequence, without legal, political and institutional transformations, an increase in the volume of resources would only contribute to fuel all the problems that have been pointed out in this report.

### ***Recommendations include:***

- urgent legal reform;
- improvement of institutions and facilities;
- provision of alternatives to detention;
- prohibition of abuse by staff against minor detainees;
- prohibition of isolation as a disciplinary measure;
- provision of adequate educational programmes.

“Minors are victims of summary convictions and extra judicial executions, arbitrary arrests and acts of torture. The authors of these acts go unpunished. Minors detained on suspicion in prisons and police stations are kept for entire days in total inactivity. The Supreme Court of Buenos Aires denounces the

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<sup>1</sup> Informe sobre niños privados de libertad en la Provincia de Buenos Aires, Buenos Aires, CELS/UBA, 2002, mimeo.

inhumane conditions of minors in detention centres.” These were the main findings of International Prison Watch in its 1999 report.

## Sources

This report is based on:

- Information gathering by DCI-NL after distribution of an in-depth questionnaire.
- Emilio Garcia Mendez, (2002), Children and Human Rights in Argentina: Deprivation of liberty and extra-judicial execution processes. Unpublished paper, presented in the Expert Meeting “Children in Prison”, organized by Defence for Children International-Section The Netherlands, 22-23 February 2002, Amsterdam.
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- Children in prison, Observatoire international des prisons, International Prison Watch, Imprimerie Chirat, St-Just-la-Pendue 1999.
- Informe sobre niños privados de libertad en la Provincia de Buenos Aires, Buenos Aires, Centro de Estudios Legales y Sociales/Facultad de Derecho, Universidad de Buenos Aires, 2002, mimeo inedito.

### 3.3. Bulgaria

#### Application of international and national law

##### *International law*

Bulgaria ratified the Convention on the Rights of the Child (CRC) in 1991. The Beijing Rules have been translated and published. The Havana Rules and the Riyadh Guidelines are not yet known in the country. In Sofia, UNDP is presently in the process of publishing most of the international legal standards related to juvenile justice, including the Havana Rules and the Riyadh Guidelines.

##### *National law*

###### - Criminal responsibility

Under the Bulgarian Law, criminally responsible is an adult - having completed 18 years of age - who has committed a crime in a state of sanity. A juvenile person between the ages of 14 and 18 is criminally responsible in as much as he/she has been able to understand the nature and meaning of the offence and to govern his/her actions.

Criminal Law treats juveniles differently from adults. The legislator stipulates different kinds of punishments and a different procedure for their application. Juveniles are divided into 2 groups: from 14 to 16 years of age and from 16 to 18 years of age. They bear reduced criminal responsibility compared to adults and the degree of reduction diminishes for the 14-16 group. Besides these special rules with respect to juveniles, however, juvenile cases are examined by general judges and prosecutors of the regional and district courts. There is no specialisation of legal practitioners.

###### - Imprisonment

Detention can be imposed by courts, prosecutors, investigation services and police. Courts administering justice on criminal actions can impose imprisonment as a punishment and can rule on confinement measures, including detention in custody. In pre-trial proceedings, detention in custody cannot exceed one year if the accusation is for a grave intentional crime for which the provided punishment is imprisonment for 5 years and more, and 2 years if the accusation is for a particularly grave intentional crime for which the provided punishment is imprisonment not less than 15 years or life imprisonment. In all other cases, it cannot last for more than 2 months (article 152 (4) of the Criminal Code of Procedure (hereinafter “CCP”). The CCP provides for the order of appeal of the ordered detention in custody as a confinement measure. The Prosecution Office within the framework of pre-trial proceedings can order detention in custody for up to 72 hours, while Investigation Services can rule detention in custody for up to 24 hours. The police can detain for up to 24 hours as well. The very archaic but still in force Decree for Combating Minor Hooliganism, however, empowers the court to punish persons above 16 years of age with

detention at the units of the Ministry of the Interior for a term of 15 days as an administrative punishment for minor hooliganism.

The Criminal Code (hereinafter “the CC”) prescribes imprisonment as a punishment for certain crimes. Imprisonment can be life (with or without option for replacement) or for a certain period of time. According to article 39, imprisonment may continue from 3 months to 20 years. Only as an exception the term of imprisonment may be up to 30 years when it replaces life imprisonment, when it is a cumulative punishment for several crimes and in some particularly grave deliberate crimes. The CC sets out that life imprisonment shall not be imposed on juveniles. Besides, regular punishments are replaced or their terms diminished when imposed on juveniles. Article 63 of the CC stipulates that the maximum duration of imprisonment for juveniles shall be up to 10 years for children aged between 14 and 16 and up to 12 years for young persons between 16 and 18. According to article 64 of the CC, a prison sentence of a maximum of one-year duration shall be automatically replaced by placement in a correctional boarding school. Prison sentences may be executed effectively or may be conditional. In the latter case, the execution of the punishment may be suspended from 3 up to 5 years (article 66 CC).

The Criminal Code of Procedure (CCP) introduces specific rules for the examination of cases for crimes committed by juveniles and sets out the conditions for preliminary detention applied for juveniles only. The CCP provides that as a confinement measure with respect to juveniles, detention in custody shall be taken in exceptional cases only. In such cases, the juveniles are placed in suitable premises separately from the adults, while their parents or guardians are notified without delay together with the director of the educational establishment, when the detained person is a school student (article 378 CCP).

The legal status of juveniles deprived of liberty is regulated by the Law on the Execution of Punishments (hereinafter “the LEP”) and the Regulation to this Law. Juveniles serve their prison sentences at juvenile detention facilities. After the inmates attain their majority, they are transferred to an ordinary prison or labour and correctional lodging place. To enable the inmates to complete their education or qualification, upon proposal of the Pedagogical Board of the juvenile detention facility and with the approval of the public prosecutor, they can be left in the juvenile detention facility until they complete 20 years. Juveniles can be detained in juvenile detention facilities also while pending trial or during trial.

The LEP stipulates that the objective of the execution of the “deprivation of liberty” punishment is primarily in the re-education and preparation for socially useful work. This objective is different for adults whose prison sentences have also the goal for segregation or prevention.

Juvenile prisoners serve their sentences in 2 regimes only: a general and a stringent one. A stringent regime may be imposed exceptionally to adolescents who have already been in a juvenile detention facility or who are sentenced to imprisonment for more than 5 years. The reinforced stringent regime, which is the most severe regime, is applicable to adults only.

#### - Placement in Special Schools

The other laws regulating deprivation of liberty of juveniles are the Law on Combating Anti-Social Behaviour of Juveniles, the Correctional Boarding Schools Regulations and the Social Educational Boarding Schools Regulations. These acts regulate the placement and the organisation of correctional boarding schools and social educational boarding schools. Children who have committed anti-social acts or children who are likely to commit anti-social acts are forcibly placed in these schools by the state. In other words, these are punitive and correctional institutions through which the state implements its policy of combating juvenile delinquency.

### **Position of minors in the national prison system**

Bulgaria has a special juvenile justice system. Although juveniles are prosecuted by regular prosecutors and tried by regular judges there are special material and procedural norms regarding juvenile justice. These norms concern laws applying to everybody (like the Criminal Code and the Criminal Code of Procedure) as well as in special acts like the Law on Combating Anti-Social Behaviour of Juveniles, the Correctional Boarding Schools Regulations and the Social Educational Boarding Schools Regulations, which apply only to juveniles. The latter law sets up administrative bodies - the local commissions and the

central commission for combating anti-social acts - and prescribes a number of measures that these bodies can impose on juvenile delinquents. The aim of these alternative administrative procedures is to prevent court intervention. When a juvenile case is brought to the court it can impose on the delinquent most of the punishments provided for adult offenders including imprisonment.

Specific institutions for juvenile delinquents are the correctional boarding schools (hereinafter "CBS") and the social educational boarding schools (hereinafter "SBS"). Although many do not consider the children there as detainees because these institutions are called schools, the analysis of the peculiarities of CBS and SBS leads to the conclusion that the juveniles confined there are de facto deprived of liberty, from the point of view of the European Court of Human Rights.

Both CBS and SBS are designed as correctional institutions where juveniles can be placed following a compulsory order. While SBS are de jure institutions of open character, law and practice define CBS as closed ones. No outside persons are allowed in the latter without permission. Pupils from both schools do not have the right to go outside the region of the school without permission. To attend a cultural event outside the region of the school, they must be accompanied by a teacher or an educator. Home or town leave is defined as a special reward. The children are separated from their families and friends. Contact with the outside world is maintained mainly through correspondence, which is controlled and read by the school authorities.

In the year of 2000 the number of children in these institutions was relatively small: a total of about 2,400, which is about 7% of all institutionalised children in Bulgaria.

### **Description of a specific closed institution: a centre in Boychinovtsi for boys**

There is no centre for girls because there have never been more than a few girls sentenced to imprisonment or detained pending trial. For that reason they are detained or imprisoned in the women's prison in Sliven. They stay there in a separate ward.

There is one juvenile detention facility for boys in Bulgaria with a capacity to accommodate approximately 250 persons in the town of Boychinovtsi. Juvenile females are placed at a separate ward in the women's prison in the town of Sliven. In February 2002 there were 101 boys out of whom 56 boys were convicted, 5 accused and 40 under trial<sup>2</sup>. In February 2002 there were 3 girls in the women's prison in Sliven.

### ***Housing***

The inmates' building of Boychinovtsi juvenile detention facility has 4 floors. Originally the building was designed as a military barrack. The sleeping rooms were later turned into cells. On the first floor there are a canteen, a library and a radio station. The second floor is for the boys placed on a lighter regime, the third floor is for those who are on regular regime and the 4th floor is for boys who are on the stringent regime. There are about 40 cells. Each of them is about 30 square meters. In February 2002 the biggest number of inmates in one cell was 6. Normally there are 4 boys in one cell. All cells have toilets and sinks with running water. They are warmed by central heating in the winter. Cells have regular windows with metal grills. The furniture consists of standard beds, nightstands and wardrobes. All rooms are electrified and provided with lamps. There are TV rooms on each floor.

According to article 113 of the LEP on admittance in the juvenile detention facility, the juveniles may stay in the admission units up to 30 days. During this time, medical, psychological and pedagogical examinations shall be carried out, together with adaptation activities. First-time offenders shall be placed separately from the rest.

### ***Food***

Article 31 of the LEP stipulates that prisoners shall have a right to free food following a caloric regime approved by the Ministry of Justice and consulted with the Minister of Public Health and the Minister of Finance.

In February 2002 there was a regular menu, as well as a menu for diabetics. Both menus are made every week and approved by the head of the medical unit and the director of the detention institution.

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<sup>2</sup> Data obtained by Boyko Boev from the Bulgarian Heslinki Committee during a visit in Boychinovtsi on 6 and 7 February 2002. All the data from February 2002 was obtained by Boyko Boev.

### ***Health care***

Article 30 of LEP provides that those who are deprived of liberty shall have the right to free medical treatment including free medicines during outpatient treatment. Special care shall be given to those who suffer from psychiatric disorders. The law also allows medicines to be received from outside prison if such are prescribed by a physician.

There are a physician, a dentist, a psychiatrist and a paramedical on the pay roll at Boychinovtsi. The first 3 have separate offices. Children can visit them after making a note in the medical books provided for every floor of the detention facility. According to information given by the physician, about 10 boys visit her office per day. A note made in the morning allows a visit in the afternoon if not earlier. In emergency situations such notes are not required.

The medical ward consists of 2 rooms with 10 beds. When juveniles cannot be treated at Boychinovtsi they are transported to the town hospital of Montana, which is about 25 kilometres from the detention facility.

## **3.4. Burundi**

### **Application of international and national law**

#### ***International law***

The last 10 years juvenile delinquency appears to be on the rise because of the crisis and the spread of poverty in Burundi. According to the Committee on the Rights of the Child, if ignored, the problem could become a major cause of concern.

The Havana Rules are translated but not implemented by the state. Furthermore, Burundi has no non-custodial options. According to reports, overcrowding is a matter of great concern as all prisons contain more than their capacity.

#### ***National law***

In Burundi there is no special juvenile justice system. Also, there is no distinction between adult prisons and juvenile institutions. Therefore, minor detainees are held together with adult inmates. There is only one prison in which minors are detained in a specific closed part of the institution. As the judicial system does not have special jurisdiction for minors, children found guilty of any offence are brought before the same courts and judges as adults.

According to the Penal Code, the minimum age of criminal responsibility is 13 years. The Committee on the Rights of the Child is concerned to learn that even children under the established minimum age of criminal responsibility of 13 are frequently detained.

### **Position of minors in the national prison system**

In the year 2000 there were said to be 100 minors in the prisons of the whole country. The vast majority committed a crime against the penal law but there were also cases where minors were deprived of their liberty together with their detained mother. Mothers can keep their children with them up to the age of 3. Women have separate quarters and there is a special women's prison in Ngozi.

### **Description of conditions in closed institutions**

The information received concerns the situation for detained minors in the country in general.

#### ***Housing***

Imprisonment conditions are persistently difficult. All minor detainees, often nearly a hundred, are assigned to one cell that is not bigger than 55 square meters where there does not exist even a toilet.

Central heating and air conditioning are not available.

#### ***Food***

As there are no central kitchens, meals are prepared and distributed by the incarcerated children themselves. Actually they are eating one meal per day. The quantity is usually inadequate and the quality very poor.

### ***Health care***

Access to medical care, psychological support and screening do not exist. The absence of a health care unit and special medical staff is of great concern. Cases of tuberculosis (TB), hepatitis and skin diseases have been reported. Moreover, AIDS victims are not given adequate medical assistance and drug addicts are not given treatment at all.

### ***Hygiene***

The hygiene conditions seem to be deplorable. There are no shower facilities but only one robinet (small changing room) where the minors are making use of cans. In Burundi prisons deprivation has reached extremes as there are no soap, no toilet paper, no house cleaning products. It is worth mentioning that minor detainees have to pay for all, which is not possible. Sometimes NGOs have to overcome the cost, as the ICRC that distribute soaps. Water supply is a problem in most prisons. To address this, the ICRC is building at the moment tanks inside prisons.

### ***Education and work***

The lack of educational and vocational programmes is making the imprisonment of the minor detainees even harsher.

### ***Sports and recreation***

In addition, no sports or recreational activities are taking place.

### ***Discipline***

Placement in an isolation cell is the most common punishment, which is often arbitrary, left to the discretion of the director or the correctional staff. In addition, beating is a kind of formal violence allowed to maintain order. It is stressed that bullying, abuse, violence and torture is taking place by the correctional staff. Furthermore, as minors live in the same prison accommodation as adults, they are exposed to the risk of abuse and particularly sexual abuse.

### ***Contacts***

Minor detainees are granted one visit per month. The only visitors allowed are members of the family and the lawyers who have the right to visit their clients any time.

### ***Critical assessment***

According to experts, the main problem of concern is the lack of juvenile institutions in Burundi. There are no specific recommendations in this area other than for the government to keep its focus on giving funds to separate the minors from the adult prisoners.

In particular, the Committee on the Rights of the Child is concerned about the weakness of the Burundi justice system, as children who have been charged with a criminal offence are obliged to wait long periods of time before trial is held. In addition, the duration of pre-trial detention of children frequently exceeds the maximum prison sentence to which a child can be sentenced if found guilty.

The Committee is also concerned that children are usually held in the same facilities as adults and that conditions of detention are very poor. In its report the Committee urges the state party to make every effort to ensure that investigations and trials of children accused of criminal acts are conducted rapidly, that periods of pre-trial detention are kept to a minimum, that children are kept separately from adults and that conditions of detention are improved.

Finally, the Committee recommends that the state party make further efforts to ensure that the Convention on the Rights of the Child (CRC) is implemented and respected, in particularly articles 37, 39 and 40, along with other United Nations standards in the field of juvenile justice, including the Beijing Rules, the Riyadh Rules and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

The International Prison Watch report of 1999 concluded: "In 1996, security forces, soldiers, and police killed of hundreds of civilians, including children. No juvenile detention centre exists in the country. Minors are held in prisons for adults, which are overcrowded and under the supervision of military personnel. Medical care and sanitation are cruelly lacking."

Amnesty International released on 24 September 2002 a report on juvenile justice in Burundi: "Poverty, isolation and ill treatment". It is partly based on field visits to 6 prisons. It highlights the multiple abuses children are suffering from the hands of law. Children have been affected by armed conflict and related human rights' and humanitarian crises in Burundi leading to violations by government security forces and armed political groups. Children are said to be a vulnerable minority in prison. More vulnerable to abuses because they are impoverished, poorly educated and detained with adults. The prison population is predominantly male and adult. A relatively small number is younger than 18: out of a total of approximately 9,000 there are 160 minors, mainly boys. They suffer from the same abuses as inflicted on adult detainees. The report states that they are arrested in violation of procedures regarding arrest and detention. Some are tortured, some detained for long periods of time without trial, often in conditions amounting to cruel, inhuman and degrading treatment. Sexual abuse and exploitation are also happening. Most minors do not see a lawyer.

Several cases were described, such as that of Mossi Rukundo, who was arrested in November 1998 at the age of 14 in Bubanza province on suspicion of links with an armed political group. He is still awaiting trial 3 years later.

Joseph Masabire was arrested aged 15 in southern Burundi in May 2000 by soldiers on suspicion of belonging to an armed political group after failing to produce any identification. He was repeatedly beaten on his legs and on the back of his head and neck, and stabbed in his arm while in custody of the gendarmerie.

Amnesty International calls on the government to:

- end the practice of incommunicado detention for children;
- issue clear and public instructions to all security and law enforcement officers that torture or ill treatment of detainees is not permitted in any circumstances;
- prioritise monitoring of juvenile arrests to ensure that children are remanded in custody for questioning in a minimum of cases;
- that arrest and detention procedures are observed when in custody;
- juvenile detainees should be given access to relatives, legal counselling and medical assistance;
- prioritise examination of the case files of children;
- ensure that child detainees are not detained with adults.

### **Sources**

This report is based on:

- Information from DCI-Burundi: Project: Mineurs et nourrissons dans les prisons du Burundi, 2000.
- CRC report 1998.
- Children in prison, Observatoire international des prisons, International Prison Watch, Imprimerie Chirat, St-Just-la-Pendue 1999.
- Amnesty International report on juvenile justice in Burundi: Poverty, isolation and ill treatment, Amnesty International, 24 September 2002.

## **3.5. Canada**

### **Application of international and national law**

#### ***International law***

Canada ratified the Convention on the Rights of the Child (CRC) in December 1991. One legal protection for children laid down in the CRC has already proved to be problematic for Canada. They made a reservation to article 37(c), which relates to the provision of separate detention facilities for adult and juvenile offenders. Canada has accepted the general principles of the article, but reserves the right not to detain children separately from adults where this is not appropriate or feasible. In the view of DCI-Canada, this reservation could and should be withdrawn.

#### ***National law***

The reservation to article 37 of the CRC shows some problems with the Canadian implementation of the CRC such as the need to coordinate federal and provincial action. Although criminal law is a federal head



of jurisdiction under the Constitution Act 1867, the administration of justice falls within the legislative authority of the provinces. Not all provinces were willing to abide by article 37(c), largely for reasons relating to the costs. Federal-Provincial rivalries hamper attempts to establish a countrywide juvenile justice policy. It could also interfere with the creation of local detention centres where the contacts between detainees and their families are very important, especially in the north and in aboriginal communities. But this is again a matter of choosing the least expensive response, the one that hurts the provincial pocket book least but hurts young people and their families more.

Canada has a New Youth Criminal Justice Act. The core principles state that: protection of society is the paramount objective of the youth justice system, which is best achieved through prevention, meaningful consequences for youth crime and rehabilitation.

The Government of Canada is working to establish a renewed youth justice system - one that commands respect, fosters values such as accountability and responsibility and makes it clear that criminal behaviour will lead to meaningful consequences. A renewed youth justice system must also make a distinction between violent and non-violent crime and ensure that youth face consequences that reflect the seriousness of their offence. Finally, it must make every effort possible to prevent youth crime and to support youth, if they do become involved in crime, to turn their lives around. Establishing a youth justice system that promotes accountability, is more effective and reflective of current social values is the key to regaining public confidence.

These are the basic principles on which the Government of Canada has based its strategy for the renewal of youth justice. The strategy focuses on 3 key areas that work together to protect the public: preventing youth crime; ensuring there are meaningful consequences that encourage accountability for offences committed by youth; and improving rehabilitation and reintegration for youth who will return to the community.

Since the release of the Youth Justice Strategy in May 1998, the Government of Canada has consulted widely with Canadians on specific proposals for a new youth justice system. These included a series of round-table discussions with experts across Canada, as well as consultations with the provinces, victims, police, the legal community, municipal representatives, community organizations and many others. These discussions have helped in developing a new law, the Youth Criminal Justice Act (YCJA), which will replace the Young Offenders Act.

The changes the government has proposed to the youth justice system share a number of important features:

- flexibility for the provinces;
- treating violent and non-violent crimes differently;
- a cooperative, integrated approach to youth crime;
- children as a national priority.

The Government of Canada's youth justice initiative has a number of components, including a new law and a new framework of supporting programmes.

The new Youth Criminal Justice Act will improve the youth justice system in 4 ways:

1. it promotes accountability, responsibility and meaningful consequences for the full range of youth crime;
2. it supports more constructive, long-term and sustainable solutions to youth crime that: reinforce important social values like respect, responsibility and accountability; focus on the individual needs of youth in ways that are also sensitive to culture and gender; make clearer distinctions between violent and non-violent crimes, so that young people who have committed a crime face consequences that reflect the seriousness of their offence; involve communities in identifying and finding innovative solutions to their unique youth crime problems; expand the role of victims; and support improved rehabilitation and reintegration measures;
3. it is more consistent with national and international human rights in protecting the interests of children while, at the same time, protecting public safety; and
4. it promotes a more flexible and streamlined youth justice system that is less time-consuming, more responsive to the needs of victims and families, and permits provinces to develop measures that meet their unique needs.

In Canada, the National Crime Prevention Strategy is launched and has achieved some momentum, particularly with the Provinces. The National Crime Prevention Centre and its partners are the only logical strategy capable of empowering Canadians to reduce youth crime and putting the YCJA in a context that will contribute to Canada's future.

But, much more is needed from Canada to achieve and sustain significant reductions in crime, violence and insecurity. Much of what must be done was identified in both the Horner report and the Quebec task force in 1993. This includes:

- commitment to crime reduction as an objective;
- use of what has worked and is likely to work as well as what is cost effective;
- municipal leadership in prevention;
- mobilization of agencies able to influence causes around a rigorous local analysis;
- training and capacity development;
- basic data systems on victimisation and persistent offenders.

For more than a decade, other leading countries and city leaders have spearheaded a shift to crime policy that makes crime reduction and community safety the main objective. These are constrained by issues such as respecting the rights of offenders and basic justice for victims as well as not wasting public funds. Recent developments in England and its commitment to a learning based approach provide a unique opportunity for Canada to learn from the leaders and regain our place at the forefront of the most up to date efforts in the western world to make our country safer from crime.

These developments include:

- a national vision to reduce crime;
- using international evidence;
- developing the capacity to make it happen;
- significant reallocation of funds into what has worked and is likely to work;
- country wide local government involvement in crime and disorder reduction strategies;
- creation of a separate Youth Justice Board to overcome entrenched bureaucratic barriers;
- use of basic management information systems.

### **Position of minors in the national prison system**

Young offenders are housed separately in most provincial jurisdictions. Unfortunately, the trend towards privatisation of services, towards larger and more secure institutions (super-prisons), and the politicisation of corrections introduces other, more influential standards than "the best interests of the child".

### **Critical assessment**

Reducing youth crime, respecting the needs of victims, and limiting custody to where it is most needed are as important to Canadians as are our systems of health promotion and care, and our systems of education and employment.

The YCJA in its present form or without sound management systems put around it is unlikely to make a significant contribution to:

- decreasing youth (occasional, persistent or serious) crime in Canada;
- reducing the number of young persons caught in the justice system, including in custody on an average day;
- using scarce human and financial resources to achieve less youth crime and greater respect for victims.

Despite some decreases in rates of crime in the last few years, Canada is worse off than most comparable countries. Further, demographics and a recession in some provinces may worsen these crime rates significantly.

Indeed, several comparable countries have instituted strategies that affirmatively are reducing crime and using scarce resources more appropriately. Those countries use a vision for crime reduction, international scientific evidence, national operational data systems and accountability as the major levers for their success.

What will make a difference in Canada is to integrate the lessons, knowledge, new concepts and success of other countries to where the Federal, Provincial and local governments have got in dealing with crime in Canada.

This will require:

1. The realignment of the national crime prevention centre as a separate agency with equitable human and financial resources to foster the planning, research and development, and accountability necessary.
2. The funding of the Centre for Justice Statistics so that it can undertake annual victimisation and youth offending surveys as well as create a complete operational data system so that offenders entering and re-entering the justice system can be tracked.

Among the products that these 2 centres with the cooperation of the Federal and Provincial departments of Justice and Solicitor General and Public Security should undertake is:

- a joint federal, provincial, municipal vision to make Canada safer from crime which specifies percentage reductions in crime within 5 and 10 year periods;
- using what has worked, is likely to work and is cost effective, including establishing an advisory group of Canadian and International Experts to advise;
- creating a culture in police, justice, school and many other agencies that is committed to crime reduction through partnership and analysis of causes;
- universalising efforts to promote social mediation, reparation and assistance for victims;
- promoting capacity development to implement what is likely to work to reduce youth crime by harnessing Canadian and international experience and expertise;
- fostering data systems that will enable Canada to reduce crime;
- engaging the public to meet their needs and negotiate a vision that will work.

The Canadian government is very proud of the new legislation that it has produced, after years of sometimes heated dialogue. The official Government statements about the new legislation show clearly a sincere effort to balance the demands of large sectors of the population for more punitive, eye for an eye responses to juvenile offenders with more thoughtful, child friendly attitudes. DCI-Canada takes the position that the new legislation does not meet the standards of the Convention on the Rights of the Child. It will do nothing to address the question of discrimination, which results in higher percentages of poor children, of indigent children, and of black children. It pays lip service but provides no protection for the best interests of the child as a "primary consideration". It does not establish an effective mechanism to assure the right of the child to be heard.

It leaves to chance and the charity of provincial governments the quality of care which will be provided.

In consequence, the emphasis on "dignity and worth" which the Convention expects is absent from most institutional programmes for children in conflict with the law and they have become close parallels to adult programmes. There are some notable exceptions but they are notable in contrast to the norm.

In our view, the change in legislation will be irrelevant to the rights of children who come into conflict with the law until Canada provides an effective office of Child Advocacy or a Children's Ombudsman to ensure that they have a voice.

## **Sources**

This report is based on:

- Information given by Defence for Children International section Canada.
- An ounce of prevention is worth a pound of cure, by Irvin Waller, Professor of Criminology, University of Ottawa, 2002.

## **3.6. Costa Rica**

### **Application of international and national law**

#### ***International law***

Costa Rica has ratified the Convention on the Rights of the Child (CRC) and is informed about the Havana

Rules as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

### *National law*

The juvenile justice system in Costa Rica has adopted the Juvenile Penal Legislation (n 7576 of February 6th, 1996). Even though the law does not mention penal responsibilities, this law is applicable to all minors between 12 and 18 years of age who have committed penal crimes or a contravention or violation of the penal code or the special laws. This law makes a clear distinction between 2 groups of detained minors: those between 12 and 15 years of age, and 16 to 18 year olds.

Concerning minors under 12 years, all the cases must be under the tutelage of the Penal Juvenile Judges and the Juvenile Administrative Organisation of Protection (Patronato Nacional de la Infancia). The aim is to grant minors all the necessary attention and monitoring. It also establishes a guarantee that cases where the administrative measures lead to deprivation of liberty for penal code crimes must fall under charge of the Penal Juvenile Judge, who will control and supervise them.

The Juvenile Justice Penal Law of Costa Rica only gives sanctions. The sanction of deprivation of liberty for penal code crimes is divided into 3 different groups:

1) The imprisonment of minors in a special Institution Centre: the law rules this as a penalty for minors who are sentenced to more than 6 years of imprisonment.

The law sets a maximum sanction of 15 years for juvenile offenders of 15 to 18 years of age. This maximum of deprivation of liberty has no precedent in any other law, before or after the Juvenile Justice Law. The maximum sentence for minors between 12 and 15 years of age is also very high: 10 years (article 131).

2) Imprisonment in leisure time: this measure of deprivation of liberty must take place in a Special Centre in the minors free time during the week. This detention may only last for one year.

3) Home detention: the arrest of a minor in his own house, within his family atmosphere.

In Costa Rica there are 2 main organisations responsible for minors deprived of liberty. The National Programme for the Attention of the Penal Juvenile Justice Population, which depends on the Ministry of Justice, is responsible for the implementation of the alternative sanctions. Juveniles deprived of their liberty are held in the Juvenile Centre Zurqui, where minors with a heavy sentence are placed.

### *Alternative sanction programme*

The Juvenile Justice Law is recognized on the national and international level as a law endorsing adolescent rights. This has made a significant change from the old tutelage legislation to one that clearly provides obligations and rights to the juvenile delinquents who are in the process of being and taken into the legal system.

This law gives priority to a wide range of alternative sanctions: community service in the form of an educational penalty and compensation orders. The law enacts different sanction possibilities in order to avoid, when possible, the imprisonment of juveniles.

It is important to emphasize the educational character of the law, also involving civil society and the local community.

The Alternative Sanction Programme was created in August 1996, with the purpose of monitoring and supervising the practice of alternative sanctions. These sanctions are for minors of 12 to 18 years in the entire country. Depending on the length of the sanction, the programme can continue even when the person becomes an adult. He or she may still then be covered by the protection of the programme (article 2 of the Juvenile Justice Law).

### *General objectives*

- 1) To promote the participation of the civil society, to support the execution of alternative sanctions and to strengthen inter-organizational cooperation and community networks.
- 2) To promote specific projects, aiming to achieve effective attention for alternative sanctions.
- 3) To involve and to commit the personnel in charge of the execution and monitoring of the sanction with the implementation of different projects created by the programme.
- 4) To establish a systematic evaluation mechanism for the functioning and supervision of the programme and for the final outcome of the alternative sanction.

### Position of minors in the national prison system

In Costa Rica the national prison system has one main institution for detained minors. However, there is no clear information on how many of the Costa Rican young offenders are held within police cells and for how long.

<b>Comparison of the total number of participants attending population according to Attention Programme 1998-2000</b>				
<i>Attention Programme</i>	<i>absolute</i>	<i>frequency</i>	<i>relative</i>	<i>frequency</i>
	<i>1998</i>	<i>2000</i>	<i>1998</i>	<i>2000</i>
<i>alternative sanctions</i>	88	162	51%	88%
<i>specialized center</i>	85	22	59%	12%
<i>total</i>	173	184	100%	100%

<b>Comparison of the absolute number of participants attending population according to Programme and by Sex</b>				
<i>Programme</i>	<i>1998</i>	<i>2000</i>	<i>1998</i>	<i>2000</i>
	<i>Male</i>		<i>female</i>	
<i>alternative sanctions</i>	81	147	7	15
<i>specialized center</i>	73	20	12	2
<i>total</i>	154	167	19	17

<b>Comparison of the total number of participants attending population according to Age groups 1998-2000</b>				
<i>Age groups</i>	<i>absolute</i>	<i>number</i>	<i>relative</i>	<i>number</i>
	<i>1998</i>	<i>2000</i>	<i>1998</i>	<i>2000</i>
<i>from 12 to 15</i>	11	9	6%	5%
<i>from 15 up to 18</i>	85	85	49%	46%
<i>from 18 up to 20</i>	56	67	32%	36%
<i>from 20 up to 22</i>	3	23	3%	13%
<i>not indicated</i>	18	-	10%	
<i>total</i>	173	184	100%	100%

The difference in offenders was 11 cases more. Nevertheless, the variability was exactly in the year 2000, with the alternative sanction programme increasing a 46%.

At the same time, the specialized centre's population decreased with 74% in comparison with 1998. This may be due to the fact that the Juvenile Justice Penal Law was implemented in 1996. This law gives priority to alternative sanctions in order to avoid imprisonment if possible.

### Description of a specific closed institution: Juvenile Centre Zurqui

In Costa Rica there is only one closed specialized institution, which is for convicted or non-convicted minors aged 12 to 18 years.

#### **Housing**

The Juvenile Centre Zurqui is located outside San Jose. It is a closed institution for males and females. It has 2 blocks of housing with 5 modules each. The number of detained minors was 40 by the time the DCI-NL questionnaire was made. The number of persons held in each cell is counted according to how many minors are held in total.

Each module is about 60 square meters, and they have toilets, and washing facilities such as showers and taps. No heating system is required because of the tropical weather, but there is no air conditioning.

### ***Food***

Food is provided 3 times a day: breakfast, lunch and dinner. There are 2 coffee breaks during the daily activities. The food is observed daily by the kitchen staff who is also in charge of cleaning the kitchen and the coffee-room. Control and monitoring fall under responsibility of the director.

### ***Health care***

Detained minors are medically screened for physical and mental health problems when they enter into the prison system. In addition, every month they go through medical controls. There is a doctor permanently available, as well as a psychologist who makes reports, and recommends treatment, advice etc. Social workers are available in the institution and a medical room is open 24 hours. The minors are also members of the National Security System (Health care).

There is no data on specific deceases (HIV, Hepatitis etc.), but there have been HIV cases reported. No specific information is given about these cases. There have been no reports of suicide attempts or on drug abuse.

### ***Hygiene***

Toilets and showers are clean, but there are individual showers only in the commune modules. Cleaning products are brought by the minor's family. If not, the institute will distribute them for free. The water works well. Hot water is not needed because of the tropical weather. The minors can have a bath whenever they ask for it.

### ***Education and work***

There are educational programmes inside the institution on an elementary level. It is optional to continue studies until they reach a bachelor level. Apart from these educational programmes, vocational programmes are provided such as mechanic techniques. The minors also learn social and daily life skills (habits in hygiene, health etc.). There is also a drug dependency workshop. All this is in order to provide them with different skills, to deal with daily life problems, as well as to be able to build relationships among each other.

The minors do not work while they are in the institution

### ***Sports and recreation***

Sports and exercises are practiced daily. There is an indoor centre for sports training and also outdoor activities are practiced, like art and theatre performances.

Minors are allowed to have radio, tv, etc. They have a library inside the institution with books, magazines and newspapers, which are all provided by the centre

### ***Discipline***

The most commonly used disciplinary measure is the placement in an isolation cell. Also overwork or punishments like washing dishes are common. All these measures are decided by the director. There have been no reports of bullying, torture or other forms of violence by the institution's staff.

### ***Contacts***

Visits from family and friends are allowed only on Sunday. Other persons are allowed with special permission, like a lawyer's visit. The minors can have legal advice whenever they ask for.

### ***Critical assessment***

In January 2000, the Committee on the Rights of the Child concluded are regards the second report of Costa Rica that:

- The Committee welcomes the enactment of additional legislation on children's rights related issues and the information on the conduct of training programmes for professionals.
- The Committee is of the opinion that training programmes for professionals working with and for children need to be reinforced
- The Committee remains concerned that the new Law on Juvenile Justice (1996) has not yet been fully implemented; that there is an insufficient number of specialized judges; that there is only one

- specialized centre for children in conflict with the law; that there is a lack of adequate training for the police on the Convention and other relevant international standards; that there is a high number of children placed in pre-trial detention; and that the penalties imposed to children in conflict with the law are disproportionately grave in relation to the nature of the offence.
- The Committee recommends that the State party continues effective measures to overcome these and other obstacles in fully implementing its juvenile justice system with the Convention, especially, articles 37, 40 and 39 and other relevant international standards such as the Beijing Rules, The Riyadh Guidelines and the Havana Rules. In this regard the Committee further suggests that the State party consider seeking technical assistance.

## **Sources**

This report is based on:

- Information gathering by DCI-NL after distribution of an in depth questionnaire.
- CRC/C/15/Add.117 - 28/01/2000.
- Report DCI - Costa Rica.

## **3.7. Germany**

### **Application of international and national law**

#### ***International law***

Germany ratified the Convention on the Rights of the Child on 2 October 1990. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, also known as the Havana Rules, are implemented in the German juvenile justice system. Also the Riyadh Guidelines and the Beijing Rules are known and applied in the country.

#### ***National law***

The legal position of minors who have committed a crime in Germany is regulated in the German Criminal Code for Minors (Jugendgerichtsgesetz, JGG). This law is a national law and applies in all of the 16 federal states (Bundesländer) of the Federal Republic of Germany. This law deals with both formal and the material aspects.

As soon as sanctions have been implemented the jurisdiction falls under the authority of the federal states. That means that practical matters concerning the imprisonment, for example housing and health care in the institutions, is organised and regulated by the states. This implies differences from state to state, although they are also bound by national (paragraph 91 JGG) and by international standards. All 16 states have an administrative regulation, which regulates the various aspects of the imprisonment of a minor.

### **Position of minors in the national prison system**

The juvenile justice system in Germany is based on 2 main principles: the principle of education and the principle of resocialization. To achieve these principles, primarily alternative sanctions should be used in the first place. Detention of a minor should be a measure of last resort. Detention is only used if the minor has a great deal of "criminal energy" (Schädlichen Neigungen) or in cases of serious guilt. (par. 17 JGG)

The minimum age of criminal responsibility is 14 years of age. The maximum age for the juvenile justice system is 20 years of age. The juvenile justice system is applicable for youngsters between 14 and 21 years of age. Differences are made between Jugendlicher (14-18 years) and Heranwachsender (18-21 years). The legal consequences for the youngsters who are in conflict with the law have an educational dimension. The law knows the following sanctions: educational measures, disciplinary measures and youth sanctions.

For youngsters aged 14 to 17 the juvenile justice system applies in all of the cases. When the offender is aged between 18 and 20 the juvenile judge decides if the criminal code for minors (JGG) is applicable or the regular Penal Code. The Criminal Code for minors has a broad catalogue of alternative sanctions, which are used in most cases. In 1991 only 6.6% of the convicted youngsters ended up in prison. (Total: 17.8%, of which 11.2% received sentences conditional (Schaffstein Beuke: Jugendstrafrecht, 1995).

The following alternative sanctions are used: community service (in the form of a work penalty and/or in the form of an educational penalty), compensation orders for the victim / restorative justice (victim offender mediation).

When a minor is convicted, there are different types of facilities where the detained minors are held:

- a. Closed juvenile institutions (locked up in a certain area with no or limited freedom of movement).
- b. Semi-open juvenile institutions.
- c. Open prisons (locked up in area which provides a certain degree of freedom of movement).

In Nordrhein-Westfalen, the biggest federal state, 1,596 young people were detained in juvenile institutions (1,499 boys, 70 girls) as per 31 March 1999.

There are 5 juvenile institutions for boys and there is one for girls. From the 5 institutions for boys, 3 are closed institutions and the 2 others offer the possibility for open or semi-open imprisonment. Of these 1,596 prisoners, 11.8% were in the age 14-18; 48% were in the age 18-21; 40.2% were 21 and older. Reason for imprisonment in these institutions is always infliction of the penal law.

As stated in the law, the basics of education during imprisonment are: order, work, school, sports and sensible full free time activities (paragraph 91 JGG). To reach successful education the minor can be placed in semi open or open institutions. All juvenile institutions provide educational training, vocational training and work.

Each convicted minor receives an individual plan on how the sanction can be carried out.

The minors have the right to legal aid.

In most closed institutions the youngsters stay in their own cell, sometimes with 2 per room. In some juvenile institutions in Nordrhein-Westfalen special living groups exist.

### **Description of a specific closed institution: Justizvollzugsanstalt Siegburg**

The "Justizvollzugsanstalt" Siegburg in Nordrhein-Westfalen is an institution with a total number of 800 cells/rooms. It is a closed institution for males and it is situated in the centre of town. In the prison are working-guards, medical staff, social workers, teachers and a psychologist.

### ***Housing***

The youngsters are in a cell alone or with another minor. The corridors contain washing facilities with shower, tabs and toilets. There is a recreation room in the institution.

### ***Food***

In the institution 3 meals a day are served by a central kitchen. The food is free of charge.

### ***Health***

Each minor is medically screened when entering the institution. This screening consists of an examination for physical or mental health problems. In cases of diseases like hepatitis or aids the minors receive special treatment during their detention. Medical staff are working in the health care unit of the institution.

Among the youngsters certain drugs like marihuana, speed or alcohol are being circulated.

### ***Education and work***

Various educational programmes are offered to the detained minors, according to their age and level of education. Minors can go to school. They also receive vocational training during their imprisonment. It is possible to work, although it is sometimes difficult to find a job.

### ***Sports and recreation***

The minors receive physical education. There is a special area where different sorts of sports can be played. Alternatives for those who are not interested in sports are music, handicraft and discussion groups. Radio, tv, cd players are allowed. There is also a library.



### ***Discipline***

Different measures can be taken to discipline minors who are not following the rules of the institution. The most common ones are deprivation of visits, placement out of the group and financial compensation.

### ***Contacts***

A family visit is allowed once a week. Exceptions are possible. There is no limitation on access to legal aid.

### ***Critical assessment***

A specific problem in youth institutions in Germany is the lack of staff and education for staff. There is also not enough training available for the young prisoners for the period after their imprisonment.

Rules for imprisonment should be regulated by formal national law and not by an administrative regulation. International Prison Watch highlighted in 1999: "The court of Frankfurt of Main declares the use of emetics illegal in October 1996. Cases of self-inflicted injuries, attempted suicides and escape attempts are reported in 1997 in institutions for minors. Female minors are detained in prisons for women. Centres for minors are paired with centres for adults. In 1996, 20 children accompanying their parents are detained for more than 23 days in a transit zone in inhumane conditions."

### ***Sources***

This report is based on:

- Interviews with 2 judges from Euskirchen and Nordrhein-Westfalen, 2002.
- Information gathering by DCI-NL after distribution of an in depth questionnaire.
- Children in prison, Observatoire international des prisons, International Prison Watch, Imprimerie Chirat, St-Just-la-Pendue 1999.
- Claudio Morelli, Annemieke Wolhuis, The Dutch and the German Juvenile Justice Systems, in: Kinder und Jugendkriminalität, Strategien der Prävention und Intervention in Deutschland und den Niederlanden, Opladen 2000.
- Strafvollzug in Nordrhein-Westfalen, Justizministerium des Landes Nordrhein-Westfalen, 12. Auflage 2000.
- Schaffstein/ Beulke, Jugendstrafrecht, 13. Auflage, 1998.

## **3.8. Ghana**

### **Application of international and national law**

#### ***International law***

Ghana ratified the Convention on the Rights of the Child in February 1990. The Havana Rules are not fully known and implemented.

#### ***National law***

In Ghana, juveniles, i.e. persons under the age of 17 years, who commit an offence are tried by a juvenile Court. Section 346 (2) of the Criminal Procedure Code of Ghana, Act 30 states: "No juvenile under the age of 17 years shall be sentenced to imprisonment by a juvenile Court.". In short, a juvenile (under 17) cannot be imprisoned in Ghana. But he/or she can be sent to a juvenile institution, which can be a closed setting. When in Ghana a Juvenile Court is convinced that a juvenile has committed an offence the juvenile is supposed to be sent to an industrial school or an industrial institution established under Criminal Procedure Code Act 30 Part XI. There are many options for punishment available to a judge in dealing with a juvenile and the committal into a juvenile institution is normally the last option. All other punishments do not deal with confinement.

The Ghanaese Criminal Procedure Code, Act 30 1960 has not been criticised in the Concluding Observations of the Human Rights Committee or the Committee on the Rights of the Child because the punishments meted out to juveniles are not punitive. These sanctions include discharging, entering into a

recognizance and committal into the care of a relative, ordering parents to pay fines, ordering parents to give security for good behaviour.

The committal into an industrial school or the Borstal Institute aims at reforming the child and is not seen as a retributive way of punishment. It has proved to be an effective form of reformation and is imposed when a juvenile commits a serious offence like murder, manslaughter, armed robbery.

### **Position of minors in the national prison system**

Ghana has a special juvenile justice system, which is executed out in juvenile courts (special courts of summary jurisdiction). The Chief Justice confers the jurisdiction to be exercised by the juvenile courts.

Under the system, a panel of 3 members is appointed to hear cases involving minors in an informal procedure, which involves the juvenile, and his parents or the guardian in the trial of the case.

The system is such that any case involving a child should be referred to the juvenile court for trial. Juveniles are separated from adults and boys are separated from girls. Although in practice some children end up in adult prisons. According to the Commission on Human Rights and Administrative Justice Fourth Annual Report of 1997, about 15 juveniles were found in the Sunyani Central Prison and 8 in James Town Prison in Accra. Few were found in other prisons as well. Detention should be the last resort after considering all other alternatives. In Ghana, the Havana Rules are known and implemented. In the criminal justice system, minors are persons below 18 years and adults are above 18 years. The minimum age of criminal responsibility is 12 years while the maximum age for the juvenile justice system is 17 years. In terms of criminal issues a minor is someone below 17 years. There is a distinction between adult prisons and juvenile institutions. The age group for detention in juvenile institutions is from 14 to 17 years. Some juveniles are kept in juvenile remand homes pending trial of their cases while others are kept in police cells together with adult criminals.

The types of facilities used to hold or detain minors are:

- closed juvenile institutions (locked up in a certain area with no or limited freedom of movement);
- semi-open juvenile institutions;
- open prison (locked up in an area which provides a certain degree of freedom of movement);
- secured training centres and private juvenile institutions.

Detained minors are not to be held together with other age groups. Minors can be held with adults only if they inflate their ages in order to get short sentences instead of going to the borstal homes for 3 years. Minors are not held in a specific closed part of an adult prison. Male and females minors are also held separately.

Reasons for detaining young people in Ghana include the following:

- waiting for trial (for an average of 3 months);
- when convicted (for an average of 30 months);
- through detained mother (not often);
- by family law (supervision order, etc.).

Young people are not detained for being mentally or physically disabled or having no place to live (street children). They are not detained due to immigration law or political activities. Correctional officers (guards, warden etc.) of detained minors receive special training on how to deal with young people once during their studies and occasionally during their employment. It is not possible for detained minors to complain officially about their treatment while in custody and there are no annually published reports available from monitoring bodies.

There are alternative sanctions within the juvenile justice system which include the following:

- compensation orders for the victim/restorative justice through mediations and sometimes orders by the court;
- sending the juvenile to an industrial school or an industrial institution established under Ghana law;
- ordering parents to give security for good behaviour, entering into recognisance etc.

All juvenile institutions provide obligatory educational and vocational training, while provision of work and counselling for psychological development is provided voluntarily.

The one borstal home and the 4 industrial institutions (school for training juvenile delinquents in various trades) have schools for juvenile offenders who are still in school and provide vocational training for those who dropped out of school. In such institutions, dormitories are provided. Between 10 to 15 minors stay in each dormitory. The major health problems among detained minors in the institutions include HIV-AIDS, drug abuse, use of alcohol, malaria, hepatitis, TB (tuberculosis) and skin diseases.

Measures that are taken to discipline the detained minors include:

- placement in isolation cells;
- deprivation of visits;
- extra work (cleaning up, washing dishes, etc.);
- they are made to stay longer than the normally stipulated 3 years required for their rehabilitation.

There is no evidence or reported cases of bullying, abuse, violence and torture by correctional staff. Detained minors have the right to legal aid with unlimited lawyer visits.

### **Description of a specific closed institution: Accra Borstal Home**

Name of Institution:	Accra Borstal Home
Location:	Centre of the Town
Type of Institution:	Correction Institution for males, open
Total number of Cells:	17 dormitories
Total number of Detained minors:	150 inmates in 1999 and 117 in 2001
Total number of Staff:	170 prisons service staff in 1999, including correctional staff, medical staff, social workers, teachers, vocational trainers All of them work at the Borstal shifts.

### ***Housing***

The accommodation exists of dormitories, with between 5 to 10 youngsters per cell. The cell is about 16 square meters and about 2 square meters is available per person. Cells and corridors for detained minors contain a toilet and taps. There is no central heating available neither do they have air-conditioning. Ventilation and sanitation in the cells are sometimes so poor that in-mates get malaria and other diseases. Other facilities available include recreation room, eating room and a room for staying during the day.

### **Food**

Food is provided for free from a central kitchen to the detained minors on a 3 times a day basis. The food is examined daily to ensure safety, adequacy and quality by the matron of the institution. Cleanliness rules are not observed on a regular basis by the prison commanding officers.

### ***Health care***

When they enter the juvenile institution detained minors are medically screened for infectious and contagious diseases. This is the only time screening takes place. No cases of self-destructive acts, attempted suicides and suicides have been reported. Some of the detained minors use drugs. They get those drugs, especially Indian hemp, when they go out to work. Known drug users are held separately from the rest of the detained minors. Counselling has been used as a therapy programme for this specific category of detained minors. There are no known cases of HIV-AIDS, hepatitis and TB cases. Some detained minors, however, suffer from skin diseases. They receive special treatment from specialists such as psychologists, doctors and nurses at the institution's infirmary. Serious cases are referred to the police hospital for treatment. Psychological supervision often takes the form of counselling.

### ***Hygiene***

Toilets and showers are not clean when compared with the required standards. A limited number of single showers and toilets are available for the youngsters. House cleaning products including soap and toilet papers are distributed irregularly. The water supply works efficiently, and occasionally there is warm water. The minors normally take their bath twice a day.

### ***Education and work***

Formal education is given to offenders with a school background and vocational training is available for non-school children. The average educational level of the detained minors in the institution is a few grades of elementary school.

Detained minors receive some vocational training during their imprisonment in skills like wood working, leather working, draughtsmanship, electrical installation, ceramics, etc.

In the first 3 months the youngster is strictly detained to prevent him from running away. After that, the next 3 months are used to counsel the child. In this period he also studies the various professions from which he can choose the one he would like to learn. The remaining 2 and a half years are used by the youngsters to learn a profession. Those who have not yet completed their basic education are sent to the Junior Secondary School. Those children who take the training serious are able to get a certificate from the National Vocational and Technical Institute after their training.

The detained minors voluntarily work every day from of 9am - 3pm during their stay in the institution. There is no remuneration as their work is seen as part of their training, but they receive some tips from clients they produce things for.

### ***Sports and recreation***

The detained minors receive physical education for one hour per day, doing exercises every morning in the open air. There are also special areas where sports can be played.

### ***Discipline***

Placement in a isolation cell is the common disciplinary measure taken against minors by the correctional officers in charge. There are no cases mentioned of bullying, abuse, violence or torture among the detained minors or by the correctional staff.

### ***Contacts***

The family and other concerned persons are allowed to visit a detained minor during the weekend (twice a week). There are no telephones available for detained minors. They have the right to legal aid and can be visited by their lawyers as often as they want. Detained minors can also ask for a visit of their lawyer at all times. They are allowed to read books, newspapers, magazines, etc., but are not allowed to have a radio, record player, CD player or a TV in the cell. There is no library available.

In most cases, children in prison face a problem of neglect, dejection and frustration since their parents/guardians seldom come to visit them in the prison.

### ***Critical assessment***

#### ***Problems***

Some specific problems faced by the juvenile justice prison system in Ghana include:

- lack of adequate financial resources to maintain existing facilities and to cater for the detained minors. The buildings and other infrastructures have not been maintained properly. Therefore, these structures are worn out, especially the windows of the dormitories and the workshops;
- the detained minors are often neglected by their relatives;
- deterioration of training facilities. The machines and other equipment in the workshops are old and obsolete. Many need to be replaced;
- inadequate space for accommodation and recreation;
- inadequate security available at the institutions.

#### ***Recommendations***

- Encourage community services as a form of punishment.
- Provision of adequate funds to maintain the facilities and improve their maintenance.
- Introduction of more marketable skills and profession training for the detained minors.
- There should be a stop to incarceration of juveniles together with adults.
- There should be regular in-house training for personnel in charge of juveniles in prisons.

- Regular visits by parents of detained minors to give/assure them continuous care and concern by their families and relatives.
- All should contribute to the good care and training of the children so they can become good citizens and can contribute meaningfully to the growth of the nation.

## Sources

This report is based on:

- 2000 Country Report on Ghana's Children by Ghana National Commission on Children (GNCC).
- Information gathered by DCI-Ghana through a detailed questionnaire.
- Ghana Government CRC report 1995.
- CHRAJ 4th Annual Report of 1997.
- Report on DCI – Ghana's Reconnaissance visit to Accra Borstal Institute, 1999.
- Newspaper clippings from the Ghana Dailies.

## 3.9. Indonesia

### Application of international and national law

#### *International law*

Indonesia is one of the countries that signed the Beijing Rules and the Riyadh Guidelines. The country has also ratified the Convention on the Rights of the Child (CRC). Commitment to implement the international standards, however, is not readily evident. Most judges are not aware of the country's commitment to the rules and guidelines. Dissemination of the Beijing Rules and Riyadh Guidelines among law enforcement is very minimal if not absent. Upon ratification of the CRC, for example, reservations were made as regards 7 articles of the CRC namely articles: 1 definition of a child; 14 on freedom of thought, conscience, and religion; 16 on privacy; 17 on the rights to access information; 21 on adoption; 22 on refugee; and 29 on education, human rights and fundamental freedoms. In the ratification document it is clearly stated that Indonesia does not commit itself to change any national laws beyond the mandate of its constitution. Until this date the status of the ratification of CRC is a Presidential Decree, which is lower in legal authority than an Act. No wonder that national policies that may affect children do not consider the CRC.

#### *National law*

Indonesia does not have a separate court system for juvenile offenders. According to Act No. 14/1970, there are 4 court systems in Indonesia, namely:

- (1) Courts of General Jurisdiction;
- (2) Religious Courts;
- (3) Military Courts; and
- (4) Administration Courts.

Until today, cases - both civil and criminal - involving juvenile offenders are prosecuted under the Courts of General Jurisdiction.

Before the enactment of Act No. 3/1997 on Juvenile Court, the administration of juvenile offenders was mainly processed using the Civil and Criminal Codes and their respective judicial procedures (Sarwata, 2000). Additional regulations on the judicial procedures for child offenders can be found in the Regulation of the Ministry of Justice No. M.06-UM.01.06/1983, which mentions that hearings should be conducted in a family manner to maintain the child/public welfare. In 1987 the Attorney General issued a Circular Letter, which stated that the Courts should have separate registration for juvenile offenders, only a judge (single judge) who had special interest in juvenile cases should lead the hearing, the hearing should be closed to the public, parents or a guardian and a counsellor should attend the hearing. It should also be noted that available provisions in the Criminal Code comply with the standards in the CRC, such as article 46(1) which defines children as individuals under the age of 18 years, and article 47 (1&2) prohibiting the life and death sentence. Articles 51 and 52 of the Code of Criminal Judicial Procedures mention that every juvenile suspected of committing an offence has the right to legal assistance from the time of arrest and

detention. The child's and public's interests shall be considered in preserving a familiar atmosphere and smooth judicial procedures (CRC First Periodic Report, 2001).

#### *The Correction Act No. 12/1995*

This act regulates the rights of juvenile prisoners (articles 22, 29 and 36), including the right to worship, to spiritual and physical care, to education and learning, to health care and proper food and so on. Article 20 of this act also mentions that in the interest of assimilation and developmental needs, juvenile prisoners are categorized by age, sex, and length of sentence plus other criteria. Article 37(a) prohibits capital punishment and life imprisonment. In accordance to the Act, the Directorate General of Correction has issued policies to support the recognition of the rights of the juvenile including: the right to a healthy place to sleep, to decent food and eating utensils, to humane treatment, to health check ups, to education, counselling and guidance, the right to report in confidence on any problems of a physical or mental nature, to physical and psychological recovery and social reintegration, and so on.

#### *Juvenile Court Act No. 3/1997*

The goal of enacting the Juvenile Court Act is to provide umbrella protection to convicted children. The enactment of the law is not without criticism. The definition of a child, for example, still includes marital status. The inclusion of marital status surely puts girl children at more risk of being treated as adults. The age of criminal responsibility is very low - 8 years old – and is inconsistent with the Riyadh Guidelines. The provision that spells out the requirements for a judge who will preside in the court hearing is very weak. Article 10(a) suggests that the judge should have enough experience in presiding court hearings in the Courts of General Jurisdiction and, under article 10(b), has an interest, attention, dedication and understanding of problems involving children/juveniles. Another point of criticism is the number of days a child may be detained before he/she is sentenced by the court. This procedure, along with other procedural provisions, is regulated in Chapter V articles 40 to 50. Existing judicial procedures otherwise mentioned in this act are still applicable. According to articles 44 to 50, a child may be detained as long as 200 days for investigation by different stakeholders in the court system.

This law, however, reaffirms earlier Acts by recognizing that children have certain rights that need to be respected. The Act prohibits capital punishment and life and death penalties, which is reaffirmed by the Human Rights Act No. 39/1999. More specifically, the provisions call for the following:

- prison sentence should not exceed half of the penalty for adults;
- death and life imprisonment should be changed to imprisonment for no more than 10 years;
- offenders aged 12 and younger should be referred back to parents, legal guardians, or Government Institutions appointed as custodial institutions as specified in article 24(1);
- those aged 12 and younger when committed petty crimes can be reprimanded and warned by the judge.

It should be noted that according to article 19 the Supreme Court has ultimate supervision over the juvenile court. Parents, guardians, or legal aids of a juvenile offender may appeal to the Attorney General in accordance to the existing laws.

#### *Child Protection Act No. 23/2002*

On the 23 September 2002, the People Assembly finally passed the long awaited Child Protection Act. Early in November 2002, the president finally signed the Act and numbers it as Act No. 23. This Act consists of 14 chapters and 93 articles. There are several fresh features of the newly enacted Act:

- The definition of a child does not include marital status anymore.
- The Act provides severer penalties to offenders.
- Children committing criminal offences such as prostitution or drug trafficking are perceived as victims rather than as criminal offenders.
- Most of the penalties do not require Government Regulation for their implementation as in previous law (e.g. The Child Welfare Act No. 4/1979).
- It specifies state responsibilities more clearly.

Article 64 confirms the recognition of children’s rights to protection, legal assistance, and the fulfilment of their basic needs (paragraph 1). Paragraph 3(c) guarantees state protection for juvenile witnesses and survivors/victims. Paragraph 3(d) provides accessibility to information on the progress of his/her case.

### Position of minors in the national prison system

Indonesia is a vast country consisting of 31 provinces and its 210 million residents are spread over 5 major islands and over 5,000 smaller islands. This situation imposes a very serious challenge to the administration of prison or correction institutions. Until this date, for example, Indonesia has no more than 14 Juvenile Correctional Institutions that are mostly situated in the provincial capital cities.

Table 1: Below indicates where these institutions are located.

number	name of institution	province
1	Medan juvenile Correctional Institution	North Sumatra
2	Tanjung Pati Juvenile Correctional Institution	West Sumatra
3	Palembang Juvenile Correctional Institution	South Sumatra
4	Pekanbaru Juvenile Correctional Institution	Riau
5	Tangerang Juvenile Correctional Institution for boys	Greater Jakarta
6	Tangerang Juvenile Correctional Institution for girls	Greater Jakarta
7	Kutoardjo Juvenile Correctional Institution	Central Java
8	Blitar Juvenile Correctional Institution	East Java
9	Sungai Raya Juvenile Correctional Institution	West Kalimantan
10	Martapura Juvenile Correctionnel Institution	South Kalimantan
11	Pare-pare Juvenile Correctional Institution	South Sulawesi
12	Tomohon Juvenile Correctional Institution	North Sulawesi
13	Gianyar Amlapura Juvenile Correctional Institution	Bali Island

Source: Directorate of Corrections, Department of Justice (April, 2000) - adapted from CRC First Periodic Report 1993-2000.

As depicted above, many major provinces such as Aceh and Bengkulu in Sumatra and cities like Yogyakarta and Bandung in Java have no such institutions. In these provinces and cities, child detainees and prisoners are sent to adult facilities. This situation is reflected in the statistics below. If we look at Table 2, we may wonder about the gap between the number of juvenile offenders vis-à-vis the number of juvenile offenders in Juvenile Correctional Institutions. The gap is caused by the lack of facilities for children. The readers should also be aware that the number of children in Juvenile Correctional Institutions never exceed 4,000, which may suggest that the statistics reflect the ceiling effect of limited facilities.

Table 2: Number of Juvenile Criminal Offenders Referred to District Courts and Average Number of Juvenile Offenders in Juvenile Correctional Institutions throughout Indonesia (1993-1998).

year	Juvenile Criminal Offenders	In Juvenile Correctional Institutions		total
		male	female	
1993	18,815	3,669	24	3,693
1994	30,204	3,223	23	3,246
1995	24,914	2,448	34	2,482
1996	31,307	2,339	23	2,362
1997	28,748	3,361	15	3,376
1998	26,297	3,549	37	3,586
1993-1998	160,285	30,346	294	30,640

Source: Directorate of Corrections, Department of Justice (April, 2000) - adapted from CRC first periodic report 1993-2000.

Studies conducted in 1997 (CRC First Periodical Report, 2000) suggest that juvenile offenders brought before the courts in 1995-1997 tend to be sentenced to prison. Irwanto (1998) reported that among 1,727 offenders aged 16 and younger in 27 provinces in Indonesia 82.5% were sentenced to prison, 10.5% received probation, and only 4.04% were returned to their parents.

The First Periodic Report on the CRC (2001) also suggests that 99.3% of juvenile offenders in 1995, 98.7% in 1996 and 99.8% in 1999 were sentenced to prison. This is partly to the clear lack of awareness of judges about international standards on the administration of juvenile justice, as well as the absence of legal standards in the country. More current data are not available.

Although the Juvenile Court Act was passed in 1997, the implications of the Act in the administration of juvenile justice in practice are yet to be observed. Table 3 below describes the kinds of offence committed in 1997.

Table 3: Different kinds of offences in 1997 by age groups.

Offences	below 16 years	16-21 years <sup>3</sup>
Political	1	5
public order	78	108
tempering with public security	10	84
tempering with public authority	1	17
forging money	8	35
forgery of seals and legal papers	3	41
Unlawful acts against decency	93	578
liberty of other persons	10	96
lives of others	12	232
physical violence	175	2,454
Theft	868	8,548
Extortion	15	228
smuggling	10	205
Fraud	3	143
destruction of other people's belongings	15	94
abuse of power	0	6
accessories of crime	24	176
Economy	0	5
drugs use/abuse	6	58
other criminal acts	93	1,276
Total	1,425	15,356

Source: CBS (1998), *Crime statistics 1997*.

It should also be noted, however, that the law in Indonesia is not equally applied to all citizens. Many children from well-to-do families or in a position of power (influence) are able to buy their way out of conflict with the law. There are instances in which the law is used by corrupt officers to extort offenders. Observations in Jakarta and elsewhere, for example, indicate that the police or district security officers may arrest suspects or detain the subjects - such as children involved in prostitution and suspected drug users - and release them when they negotiate their way out.

When we observe the 1995-1997 statistics on the severity of the prison sentences (Table 4) it is very clear that most juvenile offenders were sentenced below one year and none were given life imprisonment. The number of those sentenced to 5 years or more, however, is over 10% of the total number, which is quite concerning. In addition to that, male or boys dominate the population, which also applies to the children who receive over 5 years of imprisonment.

<sup>3</sup> Age grouping before the enactment of Juvenile Court Act No. 3/1997. The definition of a child during this period is "individuals age below 21 years old or not married".



Table 4: Length of prison sentence.

length/kind of prison sentence	1995		1996		1997	
	male	female	male	female	male	female
<i>life</i>	0	0	0	0	0	0
<i>above 5 years</i>	58	5	83	0	66	0
<i>1-5 years</i>	447	8	455	10	401	3
<i>below 1 year</i>	4,603	78	3,813	63	3,549	51
<i>fine</i>	29	6	39	16	5	4
<i>total</i>	5,137	97	4,390	89	4,021	58

Source: CBS (1998), *Crime statistics 1997*.

### **Description of specific closed institutions: in Tangerang and in Medan**

A study of juvenile offender registration in 4 courts in Jakarta and Tangerang (where the Juvenile Correctional Institution is situated) involving 928 registered cases (Prasadja, 1998) suggests that the prison sentence received by children from 1995-1997 ranged from 4 months imprisonment to 11 years. After the enactment of the Juvenile Court Act in 1997, it was observed that more child offenders were sentenced to less than a year imprisonment when compared to incidences prior to the enactment of the law.

Data categorized according to age, gender, length of sentence, reason for imprisonment, ethnic origin and so on are available only at individual institutions. Detailed information on education services for child prisoners is not readily available (CRC First Periodic Report, 2001).

A qualitative account of children who have been imprisoned in Jakarta, Tangerang, and Medan in 1997 indicates that many children who were charged with a criminal offence experienced police violence during detention and were detained for over 15 days before they were brought to court (Marthini, 1998; Ikhsan, 1998). Other observations by researchers from the Department of Criminology of the University of Indonesia in Jakarta confirm unlawful treatment by the police. When captured, the police often fail to inform the child of his/her legal rights. They also frequently fail to inform parents of their child's arrest. Many children are detained by the police despite lack of evidence. The Public Prosecutor often disregards the child's confession/report. Social reports made by the Probation Officer tend to be neglected by the judge. Information available from the institution in Tangerang and Medan can be found below.

### **Housing**

The cells in prison are relatively small, damp, and not well maintained. The average size of a room in Tangerang is 9 square meters and is used to host 1-3 juvenile prisoners. Overcrowding that may lead to violence is a frequent problem.

### **Food**

Although children receive adequate food and nutrition, the presentation of the food is perceived as monotonous (CRC First Periodic Report, 2001). The following Table 5 (next page) describes the kinds and amounts of food served for child prisoners in the Juvenile Correctional Institution. Please note that the actual amounts and kinds of food may be tempered by mismanagement of funds.

### **Health care**

Budget for health care is very low. To maintain a clinic in Tangerang Juvenile Institution the government provides 1,730,000 IDR or less than USD 200. These funds are for drugs, maintenance of the facility, as well as for the honorarium of the paramedics (Ministry of Justice & Human Rights, Petunjuk Pelaksanaan Dik T.A., 2002). Consequently, not much preventative and curative health intervention could be developed.

### **Hygiene**

Water sanitation is all right but drinking water is not available in the country. Water must be boiled before served to drink. The kitchen is simple but relatively clean. The closet is old and not well maintained.

Table 5: Inventory of rations per juvenile offender in Juvenile Correctional Institutions.

number	foodstuff	Amount	notes
1	rice	0.45 kb	
2	sweet potato/cassava	0.15 kg	usually served at breakfast
3	beef	0.07 kg	twice a week
4	salted fish	0.04 kg	3 days a week
5	duck egg	1 piece	twice a week
6	soybean cake	0.03 kg	everyday, boiled or steamed
7	mung beans	0.01 kg	for breakfast
8	coconut	0.02 kg	
9	fresh vegetables	0.25 kg	everyday
10	fermented shrimp paste	0.005 kg	
11	cooking salt	0.012 kg	
12	coconut oil	0.007 kg	
13	chilli peppers		everyday
14	fruit (banana, watermelon, papaya)	1 slice	twice a week
15	fuel	1 litre	daily

Source: Directorate of Corrections, Department of Justice, April 2002.

### **Education and work**

Limited observation in juvenile prison in Tangerang and Medan also suggests that many services such as recreation, healthy food, and education are not delivered according to the standard quality due to a seriously limited budget.

Although education facilities from elementary school to secondary school are available in Tangerang Juvenile Correctional Institution, limited observation suggests that teachers' availability and learning facilities are serious problems (Marthini, 1998; PKBI - personal communication 2002).

### **Sports and recreation**

See under education.

### **Discipline**

Observations in Medan (Ikhsan, 1998) suggest the use of violence leading to death, that children are often detained longer than legally allowed, and that children are often put together with adults.

### **Contacts**

Weekly contacts with parents are allowed. Parents, guardians, or friends may visit the prisoners at least twice a week. Contact with a lawyer is allowed, but not much information could be obtained. Most children have no legal advisors.<sup>4</sup>

### **Critical assessment**

Indonesia is equipped with legal regulations to protect juvenile offenders that comply with international standards. One of the problems in the implementation of the laws is that children's rights are only beginning to be recognized as urgent issues in the political scenes. In addition to that, there is a lack of concerted effort and (perhaps) limited financial capacity to promote new laws and international standards. With regard to International Standards and Guidelines, for many years under the New Order Regime, the bureaucracy in the country has been accustomed into thinking that Indonesia has their own standard for human rights and the international community should not impose their standard to a sovereign state. Until this date any provisions coming from the international community are suspect. Many national NGOs and international PVOs and UN institutions are currently promoting child rights and rights-based policy in this country.

<sup>4</sup> As described earlier, the implementation of the law is biased towards lower socio-economic minors. None of them were legally assisted in the court.

Points of criticism are also related to the fact that the age of criminal responsibility is very low - 8 years old – which is inconsistent with the Riyadh Guidelines. And the number of days a child may be detained for investigation by different stakeholders in the court system before he/she is sentenced by the court can be as long as 200 days. Also the use of violence is often mentioned.

Prison Watch concluded in 1999: “The age of responsibility is 8 years. A 16-year-old minor is executed in 1996. Violence is rife among detained minors, and they are often subjected to corporal punishment.

Although specialised detention facilities exist, minors are often detained with adults.”. The number of detained minors was then estimated at 15,000 to 20,000.

### **Sources**

This report is based on:

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- *Children in prison*, Observatoire international des prisons, International Prison Watch, Imprimerie Chirat, St-Just-la-Pendue 1999.

### **3.10. Kenya**

#### **Application of international and national law**

##### ***International law***

Kenya has tried to apply the United Nations Guidelines for the Prevention of Juvenile Delinquency and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. Though Kenya has only partly implemented the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules). The Convention on the Rights of the Child was ratified by Kenya in 1990.

##### ***National law***

The Constitution and the Criminal Procedure Code (Cap. 63, Laws of Kenya) provide due process rights in respect of any individual accused of a criminal offence. A child is entitled to due process rights and enjoys additional safeguards provided by the Children and Young Persons Act, which is the principal statute on juvenile justice in Kenya.

There is only one Juvenile Court, which is situated in Nairobi. In other towns adult courts are converted to juvenile courts on an ad hoc basis.

The minimum age of criminal responsibility is the age of 8 years. Between the ages of 8 and 12, a child can be held liable for an offence if it is proved that he or she was aware of the offence.

Under the Children and Young Persons Act, children may legally be deprived of their liberty when they have been in conflict with the criminal law, when they need social care, or are neglected or abused. In these instances, children may be placed in a juvenile remand home awaiting trial. Kenya has 12 juvenile remand homes. According to the Committee on the Rights of the Child, these are inadequate to meet the

needs of all children in conflict with the law. This means that some children are held with adults in prison remand homes.

A sentence of death must not be pronounced on a person if at the time when the offence was committed he or she was under the age of 18 years. Furthermore, a person under the age of 18 cannot be sentenced to imprisonment except when the court is of the opinion that he or she cannot be suitably dealt with in any other way permitted by the law.

Other ways of dealing with a young offender include discharge of the offender, probation, corporal punishment, payment of compensation or costs, committal to the care of a fit person or an approved voluntary institution or approved school (if the child is less than 15 years old), and committal to a borstal institution.

### **Position of minors in the national prison system**

In Kenya children can be deprived of their liberty when they come in conflict with the law, but also when they are street children, or mentally or physically disabled. It is worth mentioning that some of them have to remain locked up permanently.

Particularly street children are subject to frequent arrest, simply because they are homeless. "Vagrancy" is a criminal offence under Kenyan Law. There are currently estimated to be 25,000 street children in Nairobi alone and upwards of 40,000 nation-wide.

As stressed by Human Rights Watch, street children are vulnerable to arbitrary detention as locking up is viewed as a way to keep the population in control and to clean up the streets, particularly at times of international conferences or during holiday seasons when national and international attention is focused on a city.

According to reports of Human Rights Watch, Amnesty International and children's rights organisations, once arrested street children are held under deplorable physical conditions in crowded police station cells, often without toilets or bedding, with little food and inadequate supplies of water. They are almost always mixed with adults, beaten and harassed by police in the station, and held for periods extending from several days to weeks without any review of the legality of their detention by judicial authorities. Despite the requirement that children's cases be heard in special juvenile courts, it was found that children's cases are often heard in regular courts along with adult cases.

Street children are committed by courts to temporary detention in remand institutions (remand homes for children 14 years old and younger) or to adult remand prisons (for children at least 14 years old) where they have to stay for indefinite periods of time.

Human Rights Watch reported that conditions in remand were particularly disturbing in adult remand prisons. Rooms were so overcrowded that children were sleeping while sitting up next to toilets because there was not enough room elsewhere. Boys said they endured extreme physical abuse, usually by older inmates and sometimes by prison guards. Sexual harassment by inmates was also reported, along with the failure of guards to protect children from inmate abuse.

From remand, children may finally be committed by courts to approved schools (for children 15 years old and younger), borstal institutions (for boys at least 15 years old) and adult prisons (if the child is at least 14 years old).

Furthermore, in female prisons there are children held together with their incarcerated mother. In cases requiring longer terms, they are placed in Government facilities. In order to avoid mother- and- child imprisonment, alternative community services are provided in the event of longer sentences.

Not all institutions are providing obligatory educational and vocational training. Actually educational programmes are offered only in Juvenile Approved Schools and vocational activities in Borstal Institutions. Working opportunities are extremely limited and unpaid.

Overcrowding seems also to be a problem of great concern as sometimes a lot of persons are held together in the same dormitory room (approximately 100 children).

### **Description of a specific closed institution: Nakuru Juvenile Remand Home, Nairobi**

The Nakuru Juvenile Remand Home is a closed institution in the centre of the town Nairobi. Juvenile Remand Homes, established under article 36 of the Children and Young Persons Act, are under the administration of the Children's Department.

Until 1997 there were 11 homes in Kenya, with a reported total capacity of 2,500 children. Human Rights Watch reported that the 3 most common legal bases for the detention of children in juvenile remands home are “destitution and vagrancy” (1,800), beyond parental control (500) and “found begging” (480).

In 1997, at Nairobi Juvenile Remand Home 90% of locked up children were street children.

The Nakuru Juvenile Remand Home is for male and female offenders and they are held separately in 2 different divisions. There are approximately 100 minors and 8 staff members.

### ***Housing***

In Nakuru minors are deprived of their liberty in dormitories. Each dormitory is about 7 square meters, has bunk beds and provides room for 25 young persons. Not all dormitories have toilet and washing facilities. Central heating and air conditioning are not available.

### ***Food***

Food is provided for free, 3 times a day. The food is examined randomly by the director of the remand home and the cleanliness of the kitchen is examined daily by the children themselves and their supervisors.

### ***Health care***

Minors are medically screened for physical and mental health problems when they enter the juvenile remand home. There is medical staff available (doctor, psychiatrist) but because of the lack of a hospital or a health care unit, in matters of emergency, minors are transferred to the provincial general hospital.

Users of drugs like glue and marijuana seem to be a matter of concern. According to a report, all minors were found to sniff glue on admission. There have been reported tuberculosis victims as well.

Moreover, it is indicated that minors adopt sometimes suicidal behaviour (self destructive acts, attempted suicide) but there are no specific data available (numbers of suicides during the last 3 years, etc.). Finally, there are outbreaks of skin disease. Victims are given special skin ointments and extra separate cloths.

### ***Hygiene***

The hygiene conditions in the institution are poor. The water supply either does not work at all or works poorly. House cleaning products are distributed free of charge whenever it is possible. Toilets and shower facilities are not enough for the entire Nakuru Juvenile Remand Home incarcerated population. Each minor has the right to take one bath per day with only cold water. Soap and toilet paper are distributed as needed.

### ***Education and work***

Education opportunities are extremely limited and vocational programmes do not exist. The average educational level for detained minors are a few grades of elementary school. They all have to work in cleaning- and cooking facilities, 4 hours per day. They do not receive any payment or other privileges for their job.

### ***Sports and recreation***

In Nakuru Juvenile Remand Home the opportunities for sports and recreation are not much. Minors receive daily exercise in the open air for 4 hours every day. Furthermore, during their free time they can play soccer in the special field of the institution. It should be stressed that no other alternatives are offered during recreation time.

### ***Discipline***

Corporal punishment, placement in an isolation cell, deprivation of food and extra work are disciplinary measures that are frequently imposed in this specific juvenile remand home. There are reported cases of bullying, abuse, violence and torture taking place by correctional staff. In addition, staff members are allowed to make use of canes, with which they hit the minors, in order to maintain order when needed.

### **Contacts**

An average of 2 visits a week is allowed. Apart from family members, minors can receive visits from their lawyers and doctors as well. Telephone access is strictly prohibited. Moreover, TV, radio and record players are not allowed. Minors are given permission to read a book but not a newspaper or a magazine.

### **Critical assessment**

Human Rights Watch stressed that conditions of remand centres vary but generally suffer from common problems such as run-down facilities, inadequate supplies of water, inoperative sanitary installation and dirty bedding materials. They are also concerned about the frequent use of corporal punishment and the lack of provisions for the recreational and educational needs of children.

Very often the principle complaint of children is the overuse of corporal punishment by staff. In the borstal institutions the problems are the same. In contrary to international standards boys complain about severe brutality (canings and beatings with kicks and slaps).

Furthermore, conditions of adult remand centres were found to be life threatening. Under the Kenyan Law children of 14 years of age and above may be remanded to adult remand prisons where they must be kept separate from the adults. In contravention of national and international standards, however, the children are often mingled with adults in the remand prisons. As regards Remand Institutions, Approved Schools and Borstal Institutions, Human Rights Watch recommends that:

- the Children's Department should undertake measures to ensure that children are separated according to the nature of their underlying offences or status, and separated in detention or correctional facilities accordingly;
- every juvenile confined in a detention or correctional facility should have immediate access to adequate medical care and medical facilities for the prevention and treatment of illness. Every juvenile in custodial care who is ill, who complains of illness or who demonstrates symptoms of illness, physical or mental, should be examined promptly by a qualified medical officer and treated;
- corporal punishment and physical abuse by staff against children should be prohibited. Staff found to have abused children should be appropriately disciplined, including dismissal. Where appropriate, criminal charges should be brought against the staff.

Below are the recommendations from the NGO ANPACAN Kenya Chapter:

- improve methods of recording and storing data relating to each child;
- educate the children on their rights in the prison system and involve them in certain decision making progress;
- reviewing legislation and policies on children in need of protection and those in need of discipline. Avoid "protection" cases ending up in the prison system;
- using institutionalisation and deprivation of a child's liberty as a last resort and for the shortest period of time;
- incorporating UNCRC principles in the legislation governing the system;
- training of the personnel in the juvenile justice system on aspects of child development and children's rights should be introduced.

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## **3.11. Kyrgyz Republic**

### **Application of international and national law**

#### ***International law***

The Kyrgyz Republic ratified the Convention on the Rights of the Child in 1994. The United Nations

Rules for the Protection of Juveniles Deprived of their Liberty are unimplemented and unknown.

### ***National law***

Kyrgyz law includes a number of instruments that provide special protection for minors:

- the Penal Code, which became effective in 1998, contains for the first time an entire section devoted to the criminal responsibility of minors;
- the Code of Criminal Procedure;
- the Administrative Offences Code of the Kyrgyz Republic; and
- the Regulations on the Commission for Minors.

Kyrgyz law also defines the extent of criminal responsibility for different age groups:

- a special non-judicial body “Commission on Minors’ issues” deals with children who commit crimes and offences before the age of 14. Such children can be sent to a special closed type institution. The time that juveniles stay in reform schools may vary between 1-5 years. (The commission by itself does not determine the sanctions. These sanctions are regulated in internal documents of reform schools);
- for the most serious offences, criminal responsibility begins at the age of 14, and in other cases criminal responsibility begins at 16 years of age.

### ***The extract from the Criminal Code***

Article 18. The age with which the criminal responsibility begins.

1. The person is subject to the criminal responsibility if at the moment of committing a crime he has reached the age of 16.
2. The person who has reached 14 years is subject to criminal responsibility in case of murder; deliberate “painful and more painful crimes”; kidnapping; rape; violent sexual actions; theft; rustler (cattle stealing); robbery; stealing property in a large quantity; extortion; car-stealing; deliberate arson; terrorism; capture of a hostage; hooliganism; vandalism; stealing or extortion with fire-arms; illegal drugs: producing possession, distribution and selling; stealing or extortion for drugs.

Also, the Penal Code (article 82) specifies the length of prison sentences appropriate for minors convicted of a criminal offence:

- There is a maximum prison sentence of 3 years when the minor concerned has committed a “less serious crime” (article 11 Criminal Code). Examples: theft; rustling (cattle stealing); robbery; extortion; deliberate destruction of monuments of history and culture.
- The maximum is 5 years for a “more serious crime” (article 12 Criminal Code). Examples: murder; kidnapping; repeated rape or rape committed by a person with a previous conviction or committed by a group, or rape leading to sexual disease; theft; multiple robbery or robbery committed by a group or on arrangement, or by organised group; car-theft.
- 15 years for a “most serious crime” (article 13 Criminal Code). Examples: murder of 2 or more persons with high cruelty, or connected to rape, or from mercenary killing, killing a committed by a group, arranged killing, having killed repeatedly; rape leading to death or AIDS infection, or committed by organised group; stealing property on a large scale.

### **Position of minors in the national prison system**

The prison system makes a distinction between minors and adults. Male minors aged from 14-18 years are held in the “Educational Colony”, which is a closed juvenile institution. In contrast, female detainees are held together with adult incarcerated women. Young people up to a maximum of 21 years are also held with minors.

Educational and vocational training are compulsory in the Educational Colony and in special reform institutions for males in the age of 14-18 years. This is not the case for female minors who are imprisoned with adult women.

Minors in the age of 9-14 get education in special reform schools.

In general, medical care is poor. This is despite existing health problems among the minors, including drug abuse, alcohol abuse, hepatitis, tuberculosis and skin diseases. Furthermore, minors held in the

juvenile prison system of the Kyrgyz Republic do not have the right to complain officially about their treatment. Bullying, abuse, violence and torture often take place among detained minors and also are inflicted by prison staff.

It is not possible to obtain accurate information on the extent to which children actually have the right to legal aid. There are no precedents of legal aid for such children.

### **Description of a specific closed institution: Educational Colony OII-36/14**

The Educational colony OII-36/14 for male minor detainees is in the centre of the village of Selo Voznesenovka. It is the only educational/labour colony for boys. It is a closed institution with limited freedom of movement and holds about 200 boys from 14 to 18 years of age. It has around 50-70 employees (correctional staff, medical staff, teachers, tutors, administration, etc).

### ***Housing***

Minors are held in 2 single storey buildings with latticing on the windows.

Each of the buildings measures 9x19m and consists of 3 bedrooms, one room for recreation, one wash-stand (4x4m) and one corridor. The bedrooms measure about 36m<sup>2</sup>. There are bunk beds in each cell bedroom. In each cell 20 to 35 minor detainees are held. There is approximately 1-1.5m<sup>2</sup> available per person. The toilets are outside the cell (boys must obtain permission from the prison staff to use them) and showers are available only in the summer. For the winter, there is a bathhouse, which boys can use once every 2 weeks. Inside the cell there are taps with only cold water. Central heating is not available.

### ***Food***

Due to the serious financial situation, the government cannot provide the institution with enough food. Relatives try to help minor detainees by bringing them some food products, although not all products are allowed (raw/uncooked food is prohibited). When the financial situation permits it, inmates receive 3 meals per day. The food is then of a reasonable quality, but in general the food is poor, low in calories and every day more or less the same. The central kitchen seems to be sufficiently clean.

### ***Health***

Educational Colony OII-36/14 for male minor detainees has a health care unit (one doctor and 5 or 6 nurses). If special treatment is needed, minors are transferred to the central hospital at the adults colony. The boys are screened generally for health problems only on arrival, but they are examined annually for tuberculosis. There are also reported cases of illegal drug use. Most of the users are addicted to "Hemp" (marihuana), which is a special local grass. Drugs can be supplied by relatives and friends through food products. Furthermore, colony employees often provide minor detainees with illegal alcohol drinks for personal financial profit. There are no special therapy programmes for drug addicts held in Educational colony OII-36/14.

A further cause of concern is the problem of skin diseases (80% of the minor detainees have this diagnosis). Unfortunately, the treatment for minors suffering from skin diseases is very limited because of the lack of medicaments. In some cases, relatives offer help by providing medicines.

Minors suffering from serious diseases (such as hepatitis) receive special treatment at the central hospital of the prison system. Tuberculosis patients are isolated immediately from healthy minors. Only in the case of a serious type of tuberculosis (patient hardly moves, strong cough), patients are sent to a special hospital, which serves merely as a quarantine unit since treatment is not available.

There is no psychological care because of the lack of special medical staff (psychologist, psychiatrist).

### ***Hygiene***

Hygiene standards are generally poor. There are inadequate shower and toilet facilities and only a bathhouse where minors can go once per 2 weeks for 20 minutes. The water supply works efficiently but the problem is the absence of warm water since most of the time the temperature is very low. Moreover, the colony has no means to provide house-cleaning products, toilet paper seems to be a luxury and soap is not distributed. Relatives and NGOs try to deal with the problem.



### ***Education and work***

The educational colony provides general education, vocational and technical training and practical working skills. There is a school that follows the same general educational programme as ordinary schools. Some of the minor detainees have completed elementary school before they enter the prison system but most of them are illiterate. In addition, during their time in prison, minors receive vocational training (carpentry, joinery, etc.) on a voluntarily basis. After they have completed the programme they obtain a certificate. Only some of the children can change from theoretical skills to practice (criteria: long term and excellent behaviour). They can earn USD 3.5 per month, but only after their release do they have a salary. Often there is no cash, and they do not have earned means.

Minors work in the same village for 3-5 hours per day and in fields for 8 hours. In return, they get the privilege of a more friendly treatment or an extra visit from a member of the family.

### ***Sports and recreation***

In Educational Colony OII-36/14, detained persons have daily exercise in the open air or physical training. The alternatives that are offered are table tennis, chess and checkers. Furthermore, they can visit the library, listen to music or watch television at a specially scheduled time. If the weather is not bad, they can play football in the football field of the colony.

### ***Discipline***

The main official disciplinary measures consists of confinement in an isolation cell and deprivation of visits. Unofficially corporal punishment is used. Bullying, abuse and violence are common among minors. It is reported that strong boys oppress the weaker ones. There are also reports of sexual abuse among the children as a punishment. In addition, prison staff violates the rights of the minors by transferring them to the adults colony, depriving them of visits or making illegal use of corporal punishment. Also, the use of cuffs and isolation in a cell without hygienic conditions (water, toilet) and reduction of meal portions in halt times are permitted to maintain order in the institution.

### ***Contacts***

Minors are entitled to a 2-hour visit per month. Extra visits can take place only after payment. The boys have access to telephone cells on Saturday and Sunday night, under the tutor's supervision. It should be stressed that minors have to pay for their calls. For this reason, calls are allowed only to detained persons that have enough money on their accounts.

The right to legal representation is rarely respected. In practice, minors are appealing against the court's decision by writing special legal documents without the help of a lawyer, who actually has (according the legislation) no right to visit the detained minors.

### ***Critical assessment***

The juvenile prisons face a big problem of overcrowding. Moreover, the conditions of imprisonment are disastrous and dehumanising while alternative sanctions are very limited in the legislation and are almost not applied. Food is provided poorly, hygiene is often disastrous, medical care inadequate and contacts with the outside world extremely limited. Furthermore, detained minor girls are held together with adult women-inmates.

The Committee on the Rights of the Child is concerned that minors are not dealt with respect under the justice system and that there are no special procedures or specially trained personnel. In relation to pre-trial detention, the Committee has expressed its concern at the length of detention, the limited access to visitors and the fact that juveniles are often detained with adults during this period. Other concerns are:

- punitive attitude to prisoners does not promote rehabilitation. Staff follows old militaristically methods of work, which causes return reactions among the minors;
- the often disproportionate length of sentences meted out in relation to the seriousness of offences;
- the inadequate psychological and medical care;
- the lack of facilities for social reintegration of minor detainees; and
- the inadequate social provision (clothing).

The Committee recommends that the Kyrgyz Republic takes all measures to integrate the provisions of the CRC fully into the national legislation and practice, in particular articles 37, 39 and 40, as well as other relevant international standards in this area. Facilities and programmes for physical and psychological recovery and social reintegration of juveniles should be developed.

NGOs stress the importance of the adoption of effective alternative measures instead of the deprivation of liberty and the necessity of the division of minors according to the committed offence. They also recommend preparation programmes for release.

### **Sources**

This report is based on:

- Information gathering from DCI-NL after the distribution of an in-depth questionnaire.
- Information gathering from “Pokolenie” Support Centre in Kyrgyzstan.
- The initial report of the Committee on the Rights of the Child, (CRC/C/15/ADD.127, 2000).

## **3.12. Republic of Mauritius**

### **Application of international and national law**

#### ***International law***

The Republic of Mauritius has ratified and implemented the Havana Rules. Furthermore, according to the Mauritius Constitution, Mauritian citizens have the right not to be subjected to torture or to inhuman or degrading punishment.

The Child Protection Act provides for the protection of children with respect to physical, psychological, emotional or moral injury.

The Juvenile Offenders Act was enacted in 1935 to deal particularly with cases of juveniles who are in conflict with the law. According to NGOs, there is a concern about current legislation for minor detainees as the Juvenile Offenders Act is almost 60 years old and has never been properly revised. Save the Children stressed in its report of 1999 that the Government missed a chance to bring the Juvenile Offender Act in line with the Convention on the Rights of the Child (CRC) when they passed the Child Protection Act through the National Assembly.

#### ***National law***

The Mauritius juvenile justice system deals with age groups from 11 (minimum age of criminal responsibility) till 18 (maximum age of criminal responsibility) years. There are special judicial arrangements regarding offences committed by children under the age of 14. According to the national law, minor detainees below 14 appear before a magistrate in chambers and the proceedings are held in camera (no public and no press is admitted).

There are no juvenile courts and the magistrates do not have any specialist training in cases involving young offenders

Convicted minors placed on probation are sent to a Rehabilitation Youth Centre or Correctional Youth Centre. So called “Probation Hostels for Boys” and “Probation Hostels for Girls” also exist.

Young persons aged 11 and over who have committed offences for which the punishment is imprisonment are sent to the Correctional Youth Centre. The Rehabilitation Youth Centre is for juvenile offenders ordered by the court for a longer period of detention, in view of the nature of offence, for rehabilitation purposes.

### **Position of minors in the national prison system**

The Juvenile Offenders Act provides a number of alternatives to imprisonment for convicted juveniles. When a juvenile is charged with an offence, the court can choose among:

- a. community service;
- b. discharge the offender;
- c. send the offender to an industrial school;
- d. order the offender to pay the fine, damages or costs; if he/she is in employment in cash or if not, otherwise;

- e. order the parent or guardian of the offender to pay a fine, damages and costs;
- f. commit the offender to custody in a place of detention provided under this Act;
- g. deal with the case in any other manner in which it may be legally dealt with.

In practice, community service in the form of an educational penalty is the most frequently adopted alternative sanction.

The 2 fundamental principles stated in the law are:

- a. the division of minor detainees; and
- b. the separation from adult inmates. Detained minors are held separately from adults in closed or semi-open juvenile institutions. In contrary to what was mentioned in a publication in 1999, there are no provisions for facilities in police stations specifically for children, so they are kept in custody together with adults in cramped and filthy cells.

Most of the minor detainees are held in prison for penal reasons. In some cases children are deprived of their liberty with their mother.

All juvenile institutions provide compulsory educational training, vocational training and work.

Mental health problems, drug abuse and alcohol abuse are a great matter of concern.

In matters of discipline, the most frequently taken measures are placement in an isolation cell, deprivation of food and extra work (cleaning up, washing the dishes, etc.).

Minor detainees have the right to legal aid. Their lawyer can visit as often as required. Furthermore, minors have the right to complain officially about their treatment while in custody to an ombudsman.

### **Description of a specific closed institution: The Probation Home for Girls in Curepipe**

The Probation Home for Girls in Curepipe, is located near to a town. It is a semi-open institution for girls aged between 11 to 18 years. There is one warden and there are 3 probation officers for the 10 minor detainees held in the Probation Home. Furthermore, a middle-aged couple is also working there, playing the role of substitute parents.

#### ***Housing***

Girls are accommodated in a common dormitory that contains toilet and washing facilities. There is also a room for recreation. Central heating and air-conditioning facilities are not available.

#### ***Food***

Food is prepared by an employed cook in the central kitchen and is provided for free. Breakfast, lunch and dinner are served. At 3 p.m. there is also a tea break time. Wardens are to examine the quality of the food and the cleanliness of the kitchen daily.

#### ***Health care***

Concerning health, girls are medically screened when they enter the Probation Home for both physical and mental health problems. The screening procedure takes place periodically.

There have been no reports of suicide victims during the last 3 years, but it is claimed that sometimes detained girls are adopting suicidal behaviour, including self-destructive acts and attempted suicide. The staff receives special training as a suicide prevention measure.

When need arises, girls are sent to a local public hospital because of the lack of a health care unit inside the Probation Home.

For less serious incidents there is a medical staff of general practitioners and nurses.

In cases of need of psychological help, counselling takes place by the psychologist of the Probation Home.

#### ***Hygiene***

Hygiene conditions are described as good. Toilets and showers are reported to be clean as house cleaning products are distributed free of charge. The water supply works efficiently and there is warm water. The girls are allowed to take a bath everyday. It should be mentioned that soap and toilet paper are distributed only after request.

### ***Education and work***

There are compulsory educational (English, French, mathematics and environmental studies at primary school level) and vocational programmes (sowing, painting, handicraft and gardening). Contrary to what happens in other Mauritanian institutions for minors, in the Probation Home in Curepipe, girls do not work during their stay.

### ***Sports and recreation***

Everyday girls receive physical training in the open air. Often they are playing sports, watching TV or they are taking part in educational tours and outdoor activities that are organised by the Probation Home. They are allowed to listen to the radio, to read books, magazines and newspapers, and to visit the library.

### ***Discipline***

The main disciplinary measures that can be decided upon only by the warden consist in restricting the right to visits or extra work (cleaning up, washing the dishes, etc.). There have been no reported incidents of bullying, abuse, violence and/or torture among detained girls or by the staff.

### ***Contacts***

Family visits are authorised at least once a week. Girls are also allowed to contact by phone their parents whenever the need arises. Frequently, girls receive visits from probation officers, too. Lawyers can visit their clients upon request. Minor detainees have the right to ask for their visits at any time.

### ***Critical assessment***

Among the most serious problems that face the Mauritanian juvenile prison system are:

1. the lack of training of personnel at regular intervals;
2. the lack of a satisfactory number of psychologists and staff for counselling;
3. the lack of regular medical visits.

The experts' recommendations include:

- revision of the Juvenile Offenders Act;
- establishment of juvenile courts;
- review of juvenile arrest;
- regulation of police practices (separation from adults during custody);
- juvenile police units;
- establishment of rehabilitation programmes.

In the concluding observations of the Committee on the Rights of the Child in 1996, the Committee saw to the situation of the administration of juvenile justice and, in particular, its lack of compatibility with articles 37, 39 and 40 of the Convention, as well as other relevant international standards, as a matter of concern.

The recommendations of the Committee include: comprehensive reform of the Juvenile Offender Act in the spirit of the CRC and related Guidelines. According to the Committee, particular attention should be paid to:

- considering deprivation of liberty only as a matter of last resort and for the shortest possible period of time;
- protecting the rights of children behind bars and to due process of law; and
- ensuring the full independence of the judiciary.

Lastly, training programmes for professionals should be set up and technical assistance should be considered.

### ***Sources***

This report is based on:

- Information gathering by DCI-NL, after the distribution of an in-depth questionnaire.
- "Children's Rights: Reality or Rhetoric?", Save the Children, 1999.
- Initial report of the Committee on the Rights of the Child, 1995, Concluding Observations: CRC/C/15/Add.64.

### 3.13. The Netherlands

#### **Application of international and national law**

##### ***International law***

The Netherlands ratified the Convention on the Rights of the Child (CRC) in 1995. The Dutch government proposed to parliament to make a reservation to have the possibility to lock up minors and adults together in case of emergency or lack of cells. The parliament rejected this proposal.

Other international instruments governing the care and treatment of children in conflict with the law (such as the Beijing Rules, Riyadh Guidelines and Havana Rules) have not been translated into the Dutch language and are not widely known among policy makers, police and justice authorities, and management and staff of closed youth facilities.

##### ***National law***

Special provisions relating to the treatment of juveniles under criminal law have been inserted into the Dutch code of criminal law (Criminal Code, Wetboek van Strafrecht, Sr) and the code of criminal procedure (Criminal Procedure Code, Wetboek van Strafvordering, Sv). The relevant articles of law are 77a-77g Sr and 486-509e Sr. These provisions replace in part the regulations for adults. The original notion behind special provision for juveniles under criminal law is the idea that any related punishment must be reformatory in nature; the notion of education and reform is pivotal. In 1995, a new amendment to juvenile criminal law was passed in the Netherlands. On the one hand, the amendment reinforced the legal basis for alternative penalties, which in practice had operated until then. At the same time, provisions relating to juvenile criminal law were also tightened up: the maximum sentence for juvenile delinquents for imprisonment was raised from one to 2 years and restrictions barring the application of general criminal law to juveniles were eased. Substantive law governing juvenile crime must be applied in cases where a juvenile is between 12-18 years of age at the time when the crime was committed (Article 77a Sr). Children below 12 are below the age of criminal responsibility (Article 486 Sv). If any action is taken under civil law, such as the appointment of a legal guardian, then this is only permitted on condition that it will benefit the juvenile. However, a regulation recently entered into force that gives the police officers the possibility to refer children below the age of 12 years to an agency for community services and training courses for young persons (12-18 years) who have committed petty crimes (so-called HALT-Bureau). These bureaus have also developed special programmes for those below the age of 12 (so-called STOP-reaction). Under certain conditions juveniles aged between 16 and 18 may also be subject to the general provisions of the (adult) criminal code. This depends on the personality of the offender, the circumstances surrounding the case and the gravity of the offence (Article 77b Sr). According to the former provisions of juvenile criminal law, all of these conditions had to apply. However, since 1995, simply the gravity of the offence can suffice for the general provisions of the criminal code to be applied. Nonetheless, the resulting legal proceedings are still bound by the provisions of juvenile criminal law.

Juvenile criminal law may be applied to young adults (18-21 years old) - even though Dutch law does not recognise this notion - if the personality of the offender or the circumstances surrounding the case make this necessary (Article 77c Sr). This condition is met if the juvenile displays signs of mental retardation or has committed typically juvenile offences. Criminal proceedings, which arise under the provisions of juvenile criminal law, are in line with general criminal law.

Recently, there have been certain calls for lowering the age of criminal responsibility. After several cases of murder had been committed by children below the age of criminal responsibility some politicians argued that even 10 year-old children should be made subject to the provisions of criminal law. Dutch organisations for the protection of children's rights, Juvenile Court judges and the majority of deputies in parliament have rejected these demands.

Instead of penalties laid down in general criminal law, the penalties, reprimands and alternative sanctions of juvenile criminal law apply (Article 77g Sr):

- a. Penalties:
  - youth detention with a general maximum of:
    - \* 12 months for 12, 13, 14 and 15 years olds;
    - \* 24 months for 16 and 17 years olds;
  - a fine.

- b. Alternative sanctions:
  - unpaid Community Service to a maximum of 200 hours;
  - work to Make Amends to a maximum of 200 hours;
  - attendance of a Learning Scheme.
- c. Subsidiary penalties:
  - lapse;
  - withdrawal of Driving License.
- d. Measures:
  - placement in a Juvenile Treatment Centre;
  - confiscation;
  - revocation of ill-gotten gains;
  - compensation.

There is a special youth judge and the Board for Child Protection will advise the court in serious cases. The legislature has left the choice of sentencing largely up to the discretion of the presiding judge of the juvenile criminal court. Apart from the instance in which a juvenile may be referred to a remand centre, the law does not stipulate how sentencing is determined by the circumstances surrounding the case. Consequently the judge is more or less free to move for the imposition of a penalty, fine or alternative sanction for young offenders. In such cases, the judge's decision should always be based on the reformatory principle. Two or more penalties may be imposed concurrently. However, it is not possible to sentence a convicted juvenile to a major penalty and an alternative sanction or to a fine and to a penalty for young offenders.

Apart from imposing a penalty or an alternative sanction the judge may also refer a juvenile to an appropriate remand centre. In the Netherlands especially, juvenile crime is not just processed under criminal law. If there are grounds to suppose that the young person involved suffers from a psychological illness, intervention under civil law can take the form of a Child Protection Measure: the Family Supervision Order (Ondertoezichtstelling, OTS). In such cases the young person is assigned to a family guardian. Usually this measure is also accompanied by referral to an open or closed juvenile treatment centre.

### **Position of minors in the national prison system**

The legal position of minors in prison in the Netherlands is regulated, inter alia, by the Law on Basic Principles of Juvenile Justice Facilities (Beginselenwet Justitiële Jeugdinrichtingen) and all the regulations based on this law. This law entered into force on 1 September 2001 and replaces the legal provisions on closed youth facilities as formulated in the Child and Youth Care Act 1990. The new law is one of 3 laws on prisons (adult prisons, facilities for forced treatment for convicted perpetrators, juvenile justice facilities). The new law makes a distinction between 2 types of closed facilities: reception centres (opvanginrichtingen) and treatment centres (behandelinrichtingen).

Reception centres are meant for minors:

- in pre-trial detention;
- in youth detention (convicted by the youth judge to a maximum of 12 months (12-15 year olds) or 24 months (16-17 year olds));
- in detention based on the immigration law;
- in placement in a closed institution based on a (family law) supervision order, in cases of emergency or waiting for a treatment centre;
- treatment centres are meant for minors;
- placed in a closed institution for treatment based on a measure taken by the youth judge on the basis of criminal law;
- placed in closed institution based on a (family law) supervision order.

This scheme shows that in the Netherlands minors placed in a closed institution based on criminal law and minors placed in closed institutions based on family law are sent to the same facilities and are living in the

same units. The argument of the government is that children who cause problems do not differ much from children who have problems. There is a lot of dispute about this policy.

The current capacity for the whole country is 2,367 cells: 1,083 for “reception” and 1,274 for treatment. In 1991, 714 minors were placed in closed institutions, of whom 291 based on criminal law and 423 on family law. The figures for 2001 are 1,708 in total: 970 based on criminal law and 738 on family law. An enormous raise of the total number and a remarkable shift from family law to criminal law.

There are in total 17 closed institutions. About 5,701 young people are placed in the closed institutions in 2001. The average stay of a minor in a reception centre is 75 days and in a treatment centre 355 days. The total available capacity is used for 92% in 2001.

The Law on Basic Principles of Juvenile Justice Facilities is the basis of a lot more detailed rules and regulations concerning the (legal) position of minors in closed institutions. The most important rules are that a minor in a closed institution:

- has the right to his/her own room (= cell) of at least 10 m<sup>2</sup> with a window;
- has the right to the following minimum furniture in his/her room: bed, table, chair, cupboard, mirror and 2 sockets;
- has the right to stay in a group; this means on the unit or at the day programme (= school) for 12 hours on weekdays and 8.5 hours in the weekend;
- has the right to have visits from outside for at least one hour a week (under certain conditions);
- has the right to recreate in the open air for one hour a day;
- has to accept that his mail can be opened and read by or on behalf of the director (with the exception of mail from his/her lawyer, or other privileged persons);
- has to accept that he can be searched at his/her body, clothes and belongings;
- has to accept that in certain cases violence can be used against him and technical means as handcuffs can be used upon him;
- has the right to make phone calls of a maximum of 10 minutes outside the facility twice a week;
- can be punished by the director in cases of misbehaviour with one of the following penalties:
  - \* solitary confinement in an isolation cell for a maximum of 4 days;
  - \* no visitors,
  - \* confined to one’s own room and no participation in the day programme (no school);
  - \* no leave;
  - \* fine (with a maximum of 9 euro);
- has the right to take part in sports activities 3/4 hour twice a week;
- has the right that his/her religion is taken into account concerning the food;
- has the right to make use of the library of the facility once a week;
- has the right to pocket money of 1.26 euro a day.

The law also prescribes a monitoring committee and a youth council for each facility.

The monitoring committee is independent from the facility and among its members there are at least a judge, a lawyer and an expert with a socio-pedagogical background. The monitoring committee has the task to monitor the institution, especially by appointing among its members a “commissioner of the month” who makes visits to the facility and speaks with the minors who ask for a meeting with the commissioner. The committee also deals with formal complaints of the minors about the way they are treated. There is a possibility to appeal a decision of the complaint commission at the national level.

The director has to meet a representation of the minors of the institution on a regular basis to discuss all matters the youth council wants to raise.

### **Description of a specific closed institution: Jongerenopvangcentrum (JOC, Youth Reception Centre) in Amsterdam**

The JOC is a “reception” facility. The JOC is part of a private child and youth care organisation SAC-Amsterdam Jeugdzorg, a multi-function organisation with a variety of services and provisions for child and youth care, including foster care and residential care.

The JOC has a capacity of 79 boys, divided over 7 units. There are 2 units called “reception” (entry), 2 units called “paso”, for longer stay (awaiting placement in a treatment centre), and 3 units called “reso” meaning “resocialisation”, the units for boys who are about to leave the JOC.

In the year 2000, 436 boys were locked up in the JOC with an average stay of 46 days. Seventy-five percent pre-trial detention, 5% youth detention (based on a conviction), 5% placement in treatment centre (waiting) and 15% on basis of a (family law) supervision order. Ten percent of the boys are 12-13 years, 40% 14-15 years, 45% 16-17 years, 5% 18 years and older. Thirty percent of the boys have a Dutch background, 25% Moroccan, 5% Turkish, 20% Surinamese, 5% Dutch-Antillean, 15% other.

### ***Housing***

The JOC building consists of 3 parts: the original building built in the 70's with 3 units, a semi-permanent building from the 90's with 2 units and a recently opened new part with 3 units. The JOC is situated in the outskirts of Amsterdam in the Western Port Quarter on an industrial park, rather far away from a neighbourhood with family houses and apartments. A high gate with barbed wire, cameras and lights surrounds the building. The quality of the housing is decent, simple and sober. The semi-permanent part of the facility can be rather hot in summertime, especially the sleeping rooms (= cells). Every unit has a rather big living room. A staff room is connected to the living room by a window. Upstairs are the rooms, for each boy a separate room, with an iron door with a lock. The newer units have a toilet in the rooms. Each room has a window (which can't be opened).

### ***Food***

Three meals per day are served. There are a lot of complaints about the quality and sometimes about the quantity of the food. The food is cooked outside the facility and brought in containers. An inspection by an official food quality expertise agency showed that the quality does not meet the official standards. As a consequence, a food quality commission (with staff and boys as members) is established. The situation has improved but not to the satisfaction of the vast majority of the boys.

A provision is made for boys who want to have a special diet based on religious grounds.

### ***Health***

The health service is now at a reasonable level. There is still a problem during the evenings, nights and weekends: the medical emergency service does not always realise that, even in case of minor medical problems, the doctor has to visit the youngster and not the other way around.

### ***Hygiene***

There are no remarks to make about the hygienic situation at the JOC: the building is rather clean. The boys have to clean their own rooms and have regular duties to wash the dishes and clean the living room.

### ***Atmosphere***

The atmosphere within the facility is strict and severe, but not inhuman or degrading. Some of the boys who have experienced other closed facilities have the opinion that the JOC's climate is rather mild. But for many boys, for whom it is the first time that they are locked up, have serious problems to adjust themselves to the rules and customs of the JOC.

### ***Education and work***

There is a school at the JOC. This school is organised by an educational organisation from outside the JOC. During the weekdays a so-called "day programme" is carried out. The boys follow the lessons in very small groups of 5-6 persons. Normal school activities as language and arithmetic, but also computer lessons, woodcraft and other more technical crafts. They also get sports and physical training. Every boy has to go to the day programme. There is no offer of work (so no possibility to earn more than the pocket money).

### ***Recreation and sports***

Most of the recreation activities take place "on the group": in the unit. In most units, equipment for table football and table tennis is available. There is a tv-set in every unit, but this can only be used in the evening from 7.30 p.m. till bedtime. Not in the afternoon, not even in the weekends when there is no school. Television sets are not allowed in the cells, CD players are.



### ***Contacts***

Visiting is allowed at the weekends and on Wednesday, for at least one hour. They take place in the unit, in the living room. There are no separate provisions for visitors. The director of the JOC can refuse visitors for a variety of reasons. "Privileged people" (such as lawyers and social workers) can visit the boys every day during office hours.

Phone calls can be made twice a week for 10 minutes at the boys own expense. It is possible that the staff listens to telephone conversations, but not to the phone calls with the boys' lawyers.

### ***Supervision***

On the units, staff are professionals. The total staff of the JOC consists of 120 people (105 on full time basis). Most of them have had vocational training for social work. They do not wear a uniform and do not consider themselves as guards, but as social workers with a pedagogical task.

### ***Reintegration into the community***

The boys at the "reso"-units are about to leave the JOC and return into society. There are possibilities that - with the approval of the youth judge or the public prosecutor - boys are allowed to go to school or to work outside the JOC, the so called "night detention". This is an exception.

There are also programmes (so called "educational training programme") to make the transition back to society easier.

### ***Discipline***

The new law has set new rules for discipline and penalties. The staff on the unit can separate a boy from the group as an order measure for the safety of the boy or the group. Only the director is entitled to impose an official penalty.

The boys always have the possibility to make a complaint to the Monitoring Committee. A boy can do so when he is not in agreement with decisions taken by the director or with behaviour of staff.

### ***Critical assessment***

The Council on Application of Penal Sanctions and Child and Youth Protection is concerned about the situation in most closed youth facilities in the Netherlands. In December 2001 the Council expressed its concern over:

- the fact that the young people systematically have to stay longer in their rooms than legally allowed;
- the education provisions are not fully used due to lack of competent personnel;
- the lack of regular staff has a negative effect on the way the youngsters are treated,
- as a result of the pressure, the staff is dealing more with controlling the young people than treating them properly.

There is a lot of discussion, also in the parliament, about the fact that minors who are placed in closed institutions based on a (family law) supervision order are locked up together with minors detained based on the criminal law.

The law does not exclude the possibility that a child below the age of 12 years is locked up on the basis of a (family law) supervision order in a closed institutions together with older boys (till 18 years) detained on the basis of criminal law. There have been reports of several cases of very young children in closed institutions. Since 1991 the Dutch criminal system has become more and more punitive. All new policy documents on juvenile delinquency lay emphasis on more severe and longer detention for young people who commit offences. The figures show an alarming increase of the numbers of young people in closed facilities. And at the same, the ministry of Justice is more and more incapable of guaranteeing its own minimum legal standards on the quality of care for imprisoned young people.

### ***Sources***

This report is based on:

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law at risk, Council on Application of Penal Sanctions and Child and Youth Protection, Year Report 2001).

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- *Handboek Rechtspositie Jeugdigen Justitiële Jeugdinrichtingen 2001/2002 (Handbook Juveniles Juvenile Justice Facilities 2001/2002)*, SDU Uitgevers, Den Haag, 2001.
- Various issues of *House*, a magazine for young people in residential care, published by Defence for Children International The Netherlands.
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### **3.14. Palestine: occupied Palestinian territories**

*This report only addresses the situation of Palestinian children in the Occupied Palestinian Territories who have been arrested by Israeli authorities. It is based on the fieldwork and documentation of Defence for Children International/Palestine Section (DCI/PS). The treatment and situation of kids behind bars who have been arrested by Palestinian authorities is not dealt with in this report.*

#### **Application of international and national law**

##### ***International law***

Israel ratified the Convention on the Rights of the Child (CRC) on 2 November 1991. It ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 3 October 1991. Israel is also a High Contracting Party to the Geneva Conventions of 1949. In particular, as an occupying power, Israel is bound to uphold the provisions of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

Israel has argued that it is not responsible for applying either the CRC or the CAT to the occupied territories.<sup>5</sup> However, both the Committee on the Rights of the Child and the Committee Against Torture have affirmed the applicability of those conventions to the occupied territories.<sup>6</sup> With reference to international humanitarian law, Israel has rejected the de jure applicability of the Fourth Geneva Convention. However, the international community as well as the consensus of the High Contracting Parties has repeatedly affirmed the applicability of the Fourth Geneva Convention to the occupied territory<sup>7</sup>. Affidavits provided by Palestinian child prisoners indicate that they face gross and systematic violations of international standards as articulated in the aforementioned Conventions, as well as violations of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

##### ***National law***

Since 1967, Israel has occupied the Palestinian territories of the West Bank, including East Jerusalem, and Gaza Strip. Palestinian residents of East Jerusalem are subject to domestic Israeli legislation. Palestinian residents of the West Bank and Gaza Strip are subject to Israeli military orders, which are not laws, but rather policy directives. These orders govern all aspects of life. Alleged offenders are brought before Israeli military courts, located inside Israeli military camps in the West Bank and Gaza Strip. These orders

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<sup>5</sup> See *Implementation of the Convention on the Rights of the Child in Israel, Response of the State of Israel to the document titled "List of items to be taken up in connection with the consideration of the initial report of Israel (CRC/C/8/Add.44)"*, August 2002, p.19.

<sup>6</sup> See Conclusions and Recommendations of the Committee against Torture: Israel, 23/11/2001, CAT/C/XXVII/Conv1.5 (Concluding Observations/Comments, and *Concluding Observations of the Committee on the Rights of the Child: Israel*, 4/10/2002, CRC/C/15/ADD. 195).

<sup>7</sup> See *Declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention*, 5 December 2001, and UN General Assembly Resolution A/Res/54/77 *Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to the Occupied Palestinian Territory, including Jerusalem, and the other occupied Arab territories*, 6 December 1999.

do not apply to Israeli citizens residing in illegal Israeli settlements in the occupied territories. Over 1,500 military orders have been issued in the West Bank, along with over 1,000 in the Gaza Strip. The nature of Israeli military orders in and of themselves constitute a violation of basic rights embodied in international human rights and humanitarian law. For example, Military Order No. 378 creates a system of military “justice” with only one level of courts whose decisions cannot be appealed. Military Order No. 1500 allows that an Israeli soldier or police officer can detain a Palestinian for 18 days without facing trial or having access to a lawyer. After 18 days this period can be extended indefinitely for up to 6 months. Palestinian political prisoners are frequently detained under an “Administrative Detention” order, essentially imprisonment without charge that is based on “secret” evidence that neither the accused, nor the attorney has access to. These orders can be renewed indefinitely. Israeli military order no. 132 defines as a “child” any person below 16 years of age. This definition contravenes both the internationally accepted definition of a child as under 18, and the definition applied within Israeli domestic legislation (under 18).

### **Position of minors in the national prison system**

The issue of Palestinian child prisoners cannot be separated from the overall political environment, characterized by the 35 year long illegal Israeli occupation of Palestinian land and Palestinian resistance to that occupation. Thus, the number of Palestinian children arrested and the manner in which they are dealt varies depending on the political situation, rather than on any objective legal standards. Since September 2000 and the beginning of the Palestinian Intifada (uprising), over 1,400 Palestinian children have been arrested by the Israeli military authorities. As of September 2002, approximately 350 Palestinian children were detained in Israel prisons, detention and interrogation centres, located both in Israel and the occupied territories. At least 8 are imprisoned under administrative detention orders (detention without charge or trial).

The majority of Palestinian children are arrested from their home, on the street or at Israeli checkpoints located throughout the occupied territories. A common Israeli practice is to surround the child’s home in the middle of the night and forcibly invade the home with large numbers of fully armed soldiers present. Frequently, the contents of the home are destroyed or upset and the child and his/her family are threatened or physically abused. The child is then usually handcuffed and blindfolded and transferred to an interrogation facility located in an illegal Israeli settlement. Palestinian children are routinely beaten during transfer. During arrest and interrogation, Palestinian child political detainees are exposed to violent physical and psychological mistreatment. Affidavits provided by child prisoners indicate that the majority have been subjected to one or more forms of mistreatment during their period of arrest and interrogation, such as beating, having scalding and freezing water poured on them alternatively, tied in painful positions for long periods of time, sexually harassed, and being subject to physical and psychological threats by Israeli interrogators.

Palestine children arrested by the Israeli military are tried in Israeli military courts. These courts are not based on any objective legal standards but rather come under the system of Israeli military orders that are issued by the Israeli military authority. There are no child-specific procedures. Frequently, the judges serving in Israeli military courts in the West Bank and Gaza Strip lack any legal background or training. Instead, these judges are career military officers from military intelligence.

In terms of sentencing, a prison sentence is the only sentence given to Palestinian children. In addition, the length of sentences issue to Palestinian children is actually getting longer. (see TABLE 1 below)

In 1999, 19.08% of the cases represented by Defence for Children International/Palestine Section received a sentence of 6 months to one year. In the year 2001, that percentage increased to 48.94%, a 156% increase in cases receiving sentences of between 6 months and one year, while the major charge (stone-throwing) has remained the same. Also, there is gross discrimination in the sentences issued to Palestinians and those issued to Israelis.

Palestinian children are detained in 4 main prisons in Israel; 2 of which, Megiddo and Ketziot, are under the administration of the Israeli military. The other 2, Telmond and Ramle (Neve Tertze) prisons, are under the administration of the Israeli Prison Authority. In addition, Palestinian children are detained in interrogation centres located inside Israel and in the occupied territories.

Major issues affecting Palestinian child political prisoners are: arbitrary arrest; torture and other cruel, inhuman, or degrading treatment; denial of family visits; restricted access of lawyers; lack of adequate food, sanitary conditions of detention and medical follow-up; minimal or no access to education while detained; attacks by prison guards; and detention with and attacks by Israeli criminal prisoners.

Table 1: A Comparative Analysis of DCI/PS Cases from 1999-2001<sup>8</sup>

Breakdown	1999		2000		2001	
	<i>cases</i>	<i>percentage</i>	<i>cases</i>	<i>percentage</i>	<i>cases</i>	<i>percentage</i>
<i>age group</i>						
12 years	12	5.94%	0	0%	0	0%
13-14 years	20	9.90%	55	21.83%	31	16.94%
15-16 years	87	43.07%	118	46.83%	79	43.17%
17-18 years	83	41.09%	79	31.34%	73	39.89%
Total number of cases	202	100%	252	100%	183	100%
<i>duration of sentence</i>	<i>cases</i>	<i>percentage</i>	<i>cases</i>	<i>percentage</i>	<i>cases</i>	<i>percentage</i>
Less than 1 month	57	43.51%	22	35.50%	19	20.21%
1-6 months	40	30.53%	9	14.5%	14	14.89%
6-12 months	25	19.08%	25	40.3%	46	48.94%
More than 1 year	9	6.88%	6	9.7%	15	15.96%
Total number of sentences	131	100%	62	100%	94	100%

### Description of conditions in a specific closed institution: Telmond Prison

Telmond Prison is located inside Israel. Telmond prison is an old building that dates back to the 1920s, and has been continuously used as a prison. It is located on land extending from the west of Qalqilya to near the coast. Telmond prison contains 2 facilities that detain Palestinian child political prisoners: Hasharon and Ofek.

### Housing

Male Palestinian child political prisoners aged under 16 at the time of arrest are normally detained in Telmond prison, though recent practice has varied the places of detention for children in that age group. Hasharon is for both children and adults (Palestinian child political prisoners and Israeli adult prisoners). In the past, it included 2 sections, 7 and 8, designated for "security prisoners", i.e. Palestinian child political prisoners. Throughout 2001, the number of detained Palestinian children in this prison ranged between 55-80 children, aged between 14-18 years.

Ofek, opened towards the end of the year 1999, consists of 4 sections and is designed to hold criminal Israeli juvenile detainees. However, the facility also holds a number of Palestinian child political prisoners. Throughout 2001, between 15-25 Palestinian children have continually been detained in this prison. In early 2002, the prison administration closed one of the 2 sections (section 8) in Hasharon designated for Palestinian child political prisoners, transferring all prisoners into one section. The maximum capacity of Section 7 is 48 detainees. To move the extra prisoners to this section exceeds this maximum and creates absolutely intolerable living conditions. As of March 2002, 67 Palestinian children were detained in this section, in the following conditions:

- 3 prisoners were held in every 2m x 2m room that also contained a toilet. One of the prisoners was forced to sleep on the ground and there was inadequate bedding material;
- the rooms have small windows that are covered by iron and thus there is no airflow into the rooms - this is a big problem, particularly in summer.

<sup>8</sup> Defence for Children International/Palestine Section (DCI/PS) is an independent Palestinian child rights organisation, established in 1992 to promote and protect the rights of Palestinian children. For over 10 years, DCI/PS has represented Palestinian children detained by the Israeli military authorities, followed-up their conditions of detention, and worked to re-integrate child prisoners upon their release.

The prisoners requested an improvement in their living situation but no action was been taken by the prison administration.

The situation for Palestinian children detained in Ofek facility is particularly dangerous. Child rights organizations have documented numerous cases of Palestinian child political prisoners being attacked by Israeli juvenile criminal prisoners, including being beaten, having scalding water thrown at them, being attacked with razor blades, having their personal belonging stolen, and being sexually harassed. There were 2 cases of attempted rape in 2001 in this section. Child rights advocates from Defence for Children International/Palestine Section presented 3 complaints against the prison administration for the mistreatment of children in this facility in 2001, calling for the transfer of the political prisoners from Ofek facility to the adjacent Hasharon prison. The administration promised to solve this problem, and some detainees were transferred from Ofek to Hasharon. However, the Palestinian child political prisoners continue to be transferred into Ofek, rather than Hasharon. The Prison Administration has allowed these attacks to continue without taking any action against the perpetrators. The continued placement of Palestinian child political prisoners together with Israeli criminal prisoners is life threatening.

### ***Food***

The quality and amount of food and beverage is small and often inedible.

### ***Health care***

Patients in Hasharon facility repeatedly face mistreatment when seeking medical treatment. If a prisoner wants to seek medical treatment, he is not allowed to go to the clinic. Instead, a doctor or nurse comes to the prisoner and “examines” them through a chain link fence. There is no direct contact between the patient and the physician.

According to the affidavit, on 27 April 2001, a prison doctor was called to attend to a Palestinian child prisoner who was ill. According to the representative, when the child explained his ailments, the doctor responded to him in Hebrew, recommending that he take a shower and that he would feel better. The prison guard, instead of translating the doctor’s comments, verbally assaulted the youth by saying: “Take off your pants, turn your backside to the window (in the cell door) and (explicit sexual threat) we’ll make you feel better.”.

### ***Hygiene***

In Hasharon, the level of hygiene is very low. Detainees from section 7 report that they are forced to cover their faces when their cellmates use the toilet due to the lack of privacy. In a report submitted to Israeli Public Security Minister Uzi Landau in September 2001, Zahava Gal-On, a member of the Israeli Knesset from the Meretz Party, stressed that the Hasharon (Telmond) Detention Centre should be closed immediately, due to inhuman living conditions. Citing such poor conditions as lack of windows and ventilation, poor lighting, inadequate and often inedible portions of food, and lack of sanitary toilet facilities, Gal-On concluded that: “Conditions at the Hasharon detention centre are unfit for humans, infringe the detainees’ human rights and violate the law.”. She further stated: “We must not forget that although behind lock and key, detainees are human beings too.”.

Another important factor affecting the conditions of detention for Palestinian child political prisoners is the lack of food, beverage, clothes and other supplies provided by the prison administration. Child prisoners are provided with no clothes from the prison administration. In terms of hygiene products, prisoners are provided with rudimentary supplies that are below standard quality.

One way of dealing with the lack of services is through purchasing needed supplies from the prison cantina. There, prisoners can purchase snacks and beverages, cleaning supplies, etc. to supplement the lack of services. Nadi Asir (Prisoners’ Club) provides some spending money to the prisoners, but their budget is limited and the increase in arrests has resulted in a situation wherein they do not have the resources to adequately provide stipends to all prisoners.

In the past, it was the prisoners’ families who provided changes of clothes, supplemented the amount of spending money, and provided adequate hygiene products. However, with the restriction on family visits, this too has stopped. Most prisoners are in desperate need of additional basic items, such as socks and underwear, as well as spending money for supplies from the cantina.

### ***Education and work***

In November 1997, the Central Court in Tel Aviv ruled that detained Palestinian children have the right to education and that the education of Palestinian children will be implemented according to the Palestinian curricula. This decision has never been fully implemented.

In Hasharon, Palestinian male child prisoners receive instruction for 2-3 hours day, 3 times per week. However, in contrast to the 1997 court decision, they receive instruction in only 3 subjects (Hebrew, Arabic and Math), though the Palestinian curriculum contains 8 subjects. In addition, students are not allowed to keep schoolbooks or related material with them and the assigned teachers are not qualified to teach the Palestinian syllabus. Moreover, there is one instructor who teaches all of the detainees at once, regardless of age differences or educational level. Consequently, the education received by the detainees does not compensate children for the education they lost due to the detention and does not prepare them to resume their studies upon release.

In Ofek, Palestinian children sit in on classes according to the Israeli curriculum, in Hebrew, a language they do not understand. The administration pays no attention to the special educational needs of Palestinian children who do not understand Hebrew. Effectively, these children receive no education while detained.

### ***Sports and recreation***

Prior to the combining of the 2 sections in Hasharon, when going to the recreation area, detainees from section 7 were subjected to painstaking body searches. The situation in section 8 was slightly better and the detainees were not searched when going to recreation. However, as mentioned, the latter section has since been closed.

The detainees were also allowed only one hour of daily recreation time as opposed to the usual 6 hours each day.

### ***Discipline***

In general, the prison administration treats the Palestinian child political prisoners very poorly. The prison guards continually threaten the prisoners with being sent to isolation, being beaten or being punished in some other way. Isolation is a common form of punishment, as is confiscation of personal belongings, restricting recreation time, and beating of prisoners. For example, one problem concerns the speech (khutba) given during Friday prayer for Muslim prisoners. One of the child prisoners prepares the speech and gives the speech during the prayers for the prisoners. If the prison administration does not object to the content of the speech, life proceeds smoothly. If the prison administration objects, however, the person who wrote the speech is taken to isolation. Another problem is that the prison administration consistently refuses to recognize the child detainees elected by the child political prisoners as their representative with the administration.

The rate of attacks by prison guards on Palestinian child prisoners is increasing. From the beginning of the year 2000 until the present, several attacks by prison staff on Palestinian child political prisoners in Telmond occurred. These attacks have been characterized by severe beatings (with hands, rifle butts, and heavy batons), use of tear gas and dragging prisoners on the ground. Following the attacks, child prisoners are often either placed in isolation or tied to their beds for extended periods of time. One attack in Telmond prison, which occurred on 26 June 2001, left 3 children unconscious and 11 with severe injuries to their bodies.

On 31 January 2002, following additional attacks of Palestinian child political prisoners in Telmond prison (on 24 and 31 January) and confiscation of the prisoners' personal possessions, 5 Palestinian boy children were placed in isolation in Telmond prison. On 11 February 2002, the Palestinian juvenile detainees in isolation launched a hunger strike protesting the abuse. As of 13 February, the 5 boys remained in isolation. As of 23 March, the 5 children had been removed from isolation, but their personal belongings had not been returned.

### ***Contacts***

There have been virtually no family visits for children from the West Bank since the beginning of the Intifada in September 2000, due to the strict Israeli imposed closure of the occupied territories. Families that managed to reach prison facilities in spite of the closure were refused entrance, informed that they did not possess the required permits from the Israeli military leader of the area. The majority of children,

some of whom serve sentences of over 10 months, are released before their families were able to visit them. From the beginning of the year 2001, the Israeli authorities have placed obstacles impeding Palestinian lawyers' visits. Sometimes, lawyers were denied permission to visit and sometimes they were forced to wait for hours at the entrances of prisons before they were allowed to enter. Sometimes, the lawyers were not allowed to visit the sentenced detainees and were only allowed to visit interrogated detainees after presenting official authorization and court protocol that includes the lawyers name to prove that she/he represents the detainee.

During the year 2001, the Ministry of Public Security issued new procedures effecting Palestinian lawyers' visits to child detainees. Consequently, Palestinian lawyers from the West Bank and Gaza Strip have been essentially prevented from visiting their clients in Israeli prisons since 5 July 2001.

The new procedures amount to a flagrant violation of legal rights and include the following:

- meetings between the lawyers and the detainees should be attended by a police officer who speaks Arabic and records the details of the visit. Such procedures contradict a basic right of the detainee, that is attorney-client confidentiality, and they contradict Israeli law;
- lawyers must have permission from the Israeli military to leave the West Bank and Gaza Strip. According to the requirements of the Israeli prison administration this permission must clearly state that they have been given permission because they are lawyers. However, when the DCI/PS lawyer requested such a permit he was told that this reason is not one of the categories given by the District Coordinating Office when issuing permits (only businessman, VIP or humanitarian reasons are stated on the permits);
- only visits to Palestinian detainees who have not been sentenced are permitted. This means that approximately 40% of Palestinian children (those who have been sentenced) have been completely withhold from lawyer visits;
- the lawyer must prove that he/she is representing the child in court. In order to prove this, the child must sign a form, however, the Prison Administration will not allow a lawyer to meet face-to-face with their client. Instead, the lawyer must fax a form to the prison where the guards will ask a prisoner to sign it. In at least one case, the prison guards have deceived the detainee into signing a confession along with the form. The form is normally written in Hebrew, a language the child does not understand;
- the lawyer must send his ID card, proof of power of attorney and a permission to enter Israel as a lawyer to the prison 48 hours before the visit. This means that it is impossible to visit the prison quickly in cases of emergency;
- Palestinian children from Jerusalem are forbidden to make use of the services of Palestinian lawyers from the West Bank or Gaza Strip. In many cases, children from the West Bank who are arrested in Jerusalem are tried in Jerusalem courts and thus refused the services of a West Bank lawyer;
- these conditions do not apply to Israeli lawyers, who only need to show their lawyer ID at the gate of the prison in order to visit.

All of these conditions place serious barriers in front of Palestinian lawyers in the West Bank and Gaza Strip. Given the almost total ban on family visits in this place since the beginning of the Intifada in September 2000, lawyers are often the only link a Palestinian child prisoner has with the outside world. In the case of repeated attacks on detainees by prison guards it is imperative that a lawyer has unimpeded and immediate access to the prisons. Any sanctity of the lawyer-client relationship is broken without this type of access.

With reference to lawyers possessing Israeli identity cards, access is granted, but generally after a time-consuming bureaucratic process.

### **Critical assessment**

#### ***Major problems:***

- no juvenile justice system exists for Palestinian youth in the Occupied Territories;
- children are detained in prisons outside of the Occupied Territories;
- prevention of family and lawyer visits;
- conditions of detention after sentencing are poor and inhuman;

- Palestinian child political prisoners are often imprisoned with Israeli criminal juvenile prisoners;
- sentencing depends on prevailing political situation not on objective legal standards;
- inadequate or no education provided;
- arbitrary arrests are commonplace;
- torture and other cruel, inhuman and degrading treatment is widespread;
- discrimination is codified in law between Palestinian youth and Israeli youth.

### **Sources**

This report was based on the fieldwork and documentation of Defence for Children International/Palestine Section (DCI/PS). Since 1992, DCI/PS has provided legal representation to Palestinian children detained by Israeli military authorities, as well as monitored general conditions of detention for Palestinian child political prisoners. Since 1996, DCI/PS has documented violations of Palestinian children's rights as a result of Israeli military and settler presence in the occupied territories. Information and documentation included in this report comes from reports prepared by child rights attorneys, following court hearings and prison visits, as well as affidavits provided by child prisoners and their families.

## **3.15. Pakistan**

### **Application of international and national law**

#### ***International law***

Pakistan ratified the Convention on the Rights of the Child on 12 November 1990. Alternative sanctions are not available. The Havana Rules are unknown and not implemented.

#### ***National law***

The Juvenile Justice System Ordinance 2000 is the first federal law specifically dealing with juvenile justice. It sets the definition of a child at 18 years of age, raising it from 15 to 16 years in the Provincial laws and ending the ambiguity that prevailed earlier. The minimum age of criminal responsibility is 7 years, and the maximum, 18 years of age. The new law prohibits death penalty for individuals under the age of 18. Furthermore, the Ordinance calls for the establishment of juvenile courts with exclusive jurisdiction to try cases in which a child is accused of committing an offence. However, no Province so far established Exclusive Juvenile Courts and the Courts of District Session Judges have been empowered to work as Juvenile Courts. The Ordinance gives a child accused of an offence the right to legal assistance at the expense of the State.

A common prison manual known as the Pakistan Prison Rules is effective throughout the country. The manual grew out of the federal government's Jails Reforms Conference of 1972 and was adopted by the provinces in 1978.

### **Position of minors in the national prison system**

Youngsters and children up to 21 years of age are kept in juvenile institutions. They are separated according to age: up to 12 years, 13 to 15 years, 16 to 18 years and from 19 to 21 years. But, there are only 2 juvenile institutions in the country both in Punjab Province and a couple of certified schools. Two provinces do not have any juvenile institution or certified schools and minor detainees are kept in adult prisons, but in separate barracks, called "juvenile cells".

In 2000 there were 3,698 children deprived of their liberty in Pakistan. From them 3,431 are on remand and 267 are convicted. (In August 2002 SPARC collected information from the IG Prisons Offices in all 4 Provinces that shows that there are 4,555 Juvenile Prisoners. 3,195 are under trial and 1,299 were convicted, 61 were condemned to death but their sentence was reversed and turned into to life imprisonment). The vast majority is in conflict with the penal law. They are detained on charges of murder, causing hurt with a dangerous weapon, theft, breaking prohibition laws (forbidden to Muslims in Pakistan are not allowed to manufacture, sell, possess or consume any intoxicant), drug trafficking and zina (sexual acts outside of marriage). Prohibition and zina are defined under a parallel body of criminal law: the "Hudood Ordinances".



The prison conditions are described as bad, but the last years there is a will for improvement. Efforts have been made for example in Karachi, where young prisoners are involved in vocational training. Nine hundred boys from about 10 to 18 years of age learn skills such as barbering, tailoring, cooking and electrical work, which are partly used to serve each and to improve their surroundings. They do their own cooking and cleaning and even have constructed their own beds. These changes were realised through collaboration between jail authorities, local philanthropists, NGOs and committees including government appointees. A new Borstal Institution was established in Faisalabad Punjab. The government of North West Frontier Province has made a budgetary allocation for establishing 2 Borstal Institutions in Peshawar and Bannu in the year 2002-2003 and 2003-2004.

### **Description of a specific juvenile institution: Bahawalpur in Punjab**

Bahawalpur, is a borstal institution located in southeaster Punjab. Although governed by separate legislation from the Prisons Act of 1894, the Bahawalpur borstal and Karachi's industrial school essentially function as jails. They are managed and staffed by the provincial prison administrations and the Prison Rules provide all or part of their internal guidelines.

It houses more than 450 children sentenced to terms of 2 months or more. The exact number of correctional staff is unknown: only 3 teachers, one doctor and one nurse are reported.

### ***Housing***

In Bahawalpur inmates are held in dormitories. Twenty-five to 50 children stay in 6 dormitory-style barracks with a size of 20 by 40 feet on average. Of the population of 396 minors, 165 are detained as pre-trial detention and 231 are detained after conviction by the court.

Children held in Borstal are separated according to status - as convicts or as inmates who are under trial. Next to that there are 4 age categories: under 14, 14-16, 16-18 and 18-21 years of ages. There is a toilet in each dormitory but there are complaints that this is not enough for all young inmates. Central heating is not available. Furthermore, the lack of air-conditioning facilities poses health problems as the daily temperature during the summer exceeds 40 degrees Celsius.

### ***Food***

It is reported that food is provided for free. If they like it and are able to afford it minors can also cook for themselves in the central kitchen. Three meals are served every day (breakfast, lunch and supper). These are occasionally examined for their quality by the Jail Superintendent.

### ***Health care***

Under the Borstal Rules, each institute must have an "infirmary, hospital, or a proper place for the treatment of sick prisoners", and an infectious diseases ward. Furthermore, the Prison Act and the Prison Rules require the appointment of a medical officer, a junior medical officer and a dispenser. According to a report from Human Rights Watch in 1999, the medical facilities in the borstal include a dispensary and 2 wards. A great matter of concern was the absence of a medical officer. Since a few years a health unit and a doctor are available. In cases where emergency treatment is required, the borstal was authorized by the government to send juveniles to Bahawalpur Victoria Hospital, less than a mile from a prison.

The prison administration puts an emphasis on the medical screening procedure that takes part only on admission. The majority of the inmates are suffering from skin diseases due to unhygienic conditions. It is a matter of great concern that they do not receive any special treatment. Furthermore, it is reported that some of the minor detainees are suffering from tuberculosis. The exact number of detainees who are ill is unknown. In addition, there is no information on drug addicted, suicidal and HIV-AIDS inmates. A concern however is the absence of a psychologist. Therefore, psychological supervision is not provided.

### ***Hygiene***

Hygiene standards are generally very poor. Bathroom and toilet facilities are inadequate. The water supply does not work efficiently and the hot water supply is breaking down. The scarcity of soap, toilet paper and cleaning products leads to serious hygienic problems. These products are not distributed by the prison authorities. Minor detainees can only buy them, but almost none can afford such a cost. Furthermore, they are not allowed to take a bath very often.

### ***Education and work***

Under the Prison Rules, juvenile convicts sentenced to a prison term of one year or more “shall be brought under a course of Instruction, in reading, writing, and arithmetic for 2 hours daily”. In addition, the borstal has to ensure that children obtain an 8th grade education, thereby completing middle school under Pakistan’s educational system. Religious education is compulsory both for convicts and inmates who are under trial. However, it is claimed that only about 10% of the children in the borstal are attending school classes. It is also indicated that a very limited number of the children who have been detained in the borstal since its start have obtained higher education diplomas following their period of confinement. Furthermore, the Borstal Rules call for the provision of “barracks or other suitable buildings” to be used as teaching facility. It means that here are no proper classes in the Institution rather children sit in Verandas. However, the classes that were observed by Human Rights Watch were held in open barracks. The students sat on the floor and a few of them had their legs in iron shackles as disciplinary measures.

### ***Sports and recreation***

According to a recent report there are no vocational programmes or working places. Detained minors have the obligation to work only if they have been misbehaving. Labour in Bahawalpur is imposed as a disciplinary measure. It is worth mentioning that UN Rules indicate that “labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community”. Sometimes children have to work under very difficult conditions that damage their health. Prolonged periods spent in crouched position under poor light conditions and constant inhalations of tiny wool fibres are found to make minor detainees particularly vulnerable to tuberculosis and other lung diseases.

### ***Discipline***

The Borstal Rules make the punishments provided for in the Punjab Jail Manual (superseded by the Pakistan Prison Rules in 1978) applicable to borstal inmates, except for the use of handcuffs, fetters, and confinement to the cell. Separate Confinement is limited to a period of one month. There are more disciplinary measures than assignment to hard labour. Despite the regulations above, corporal punishment and placement in an isolation cell are frequently used in order to “rehabilitate” the minor detainees. According to a report, for offences that are not of an extraordinary nature, children are placed in a cell for 15 days. If the offence were of a severe nature, their confinement would be extended by a further 4 days. The disciplinary measures are decided by the director of the borstal institution. It should be also stressed that bullying, abuse, violence and torture by correctional staff is a big problem, and among the detained minors as well.

### ***Contacts***

There is no specific information on how often minor detainees are allowed to receive visits. It is only stressed that a lot of difficulties are posed by the borstal’s location. The travel and accommodation costs prevent family from visiting their incarcerated family members often. According to one minor, his parents are visiting him only once a year because of the distance. Despite that they are entitled to legal aid, they cannot ask for a visit of their lawyer at any time they like. In addition, phone calls are not allowed to the detainees in Pakistani prisons in general.

The contact with the outside world is quite limited as minors in Bahawalpur do not have access to outside information. Radio and TV are forbidden (TV sets are available in some barracks). During their free time minors can only visit the library that is available in the borstal institution. They also can play in the grounds inside the institution. Last year SPARC provided the inmates with indoor games, footballs and cricket bats and balls.

### ***Critical assessment***

Overcrowding is a matter of great concern, as in the whole country there are only 2 Borstal institutions and 2 certified schools. A majority of the inmates is under trial and has spent more time in prisons than the actual sentence for the crime committed. Another serious problem is the lack of training for correctional staff. Furthermore, there are no psychologists, psychiatrists and social workers available for counselling of the minor detainees. The provided education is very poor and the school inside the

institution works without very basic requirements. The standard of hygiene is often low. There is not even a drinking water supply system

The experts, people working in NGOs who are working on Juvenile Justice in Pakistan, e.g. Unicef, SPARC, AGHS Legal Aid Cell and HRCP etc., make the following recommendations:

- establishing separate juvenile institutions with facilities for health care, education and training in every province of Pakistan;
- detaining children only as a measure of last resort and for the shortest possible period of time;
- minimizing custodial sentences and employing alternative measures, improving the probation system that is very weak and currently very few children are on probation;
- providing training for staff and personnel responsible for managing juveniles;
- fighting torture, illness and unhealthy living conditions;
- speedy trials through establishment of exclusive Juvenile Courts.

International Prison Watch concluded in its report of 1999 that: "The age of criminal responsibility is 7 years. Over 4,000 minors are being held in adult prisons, the majority still awaiting judgement. Two specially designated juvenile facilities are in existence. Approximately 50 under-age children are sentenced to death. Torture is endemic in central police stations. Poor accommodations and low sanitary standards exacerbate the ill-health of detainees."

### **Sources**

This report is based on:

- Information gathering by DCI-NL, after the distribution of an in-depth questionnaire.
- Human Rights Watch (2001), World Report.
- Children in prison, Observatoire international des prisons, International Prison Watch, Imprimerie Chirat, St-Just-la-Pendue 1999.
- Juvenile Justice in Pakistan, Presentation by Mr. Arshad Mahmood of SPARC Pakistan at the Experts Meeting: Children in Prisons at Amsterdam on 22-23 February 2002.

## **3.16. Philippines**

### **Application of international and national law**

#### ***International law***

The Philippines is a state party to a host of international human rights treaties, especially those concerning children, notably the Convention on the Rights of the Child (CRC), which entered into force on 2 September 1990, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

#### ***National law***

The 1987 Philippine Constitution accords special protection to children and youth. Its Bill of Rights provides for the basic constitutional rights of persons, including children, under arrest and during trial. This includes the right to a speedy, impartial and public trial, to confront the witnesses against them and to adduce their own evidence. Like any other person, children during custodial investigation are entitled to be informed of their right to remain silent and to a competent and independent counsel preferably of their own choice. The Constitution proscribes the use of torture, force, violence, threat, intimidation or any other means that vitiates the free will. It also prohibits the admission in evidence of any confession or admission obtained in violation of the said rights. During trial, children are entitled to be presumed innocent until the contrary is proven beyond reasonable doubt. Children also have the right against self-incrimination and to confront witnesses against them as well as to a compulsory process to secure the attendance of witnesses and the production of evidence in their favour.

Several domestic laws have incorporated into Philippine municipal law the basic provisions of the CRC. The Philippine Congress has passed the Family Courts Act of 1997 (Republic Act 8369) with express reference to the provisions of the CRC. Recently, the Philippine Supreme Court issued the 2002 Rule on Juveniles in Conflict with the Law pursuant to the provision of the Family Courts Act. The Rule on

Juveniles mandates the adoption of the principle of restorative justice as the broad policy framework in dealing with children in conflict with the law. The establishment of the Philippine Judicial Academy, which trains judges, is a big factor towards the introduction and popularisation of new child laws among judges of family courts.

Pursuant to its treaty obligation under the International Covenant on Civil and Political Rights as well as the provisions of the Revised Penal Code providing for the privileged mitigating circumstance of minority to children in conflict with the law, the death penalty is not imposable upon children, notwithstanding the existence of a death penalty law in the Philippines applicable to heinous crimes such as drug trafficking, rape, kidnapping for ransom, and murder. However, there are prisoners on death row who were children at the time of the alleged commission of the crime and calls have been made for their segregation from adult convicts.

Earlier, the Philippines came out with the Child and Youth Welfare Code (Presidential Decree 603), which contains provisions on the entitlements of children in conflict with the law, including the mandatory requirement for providing separate detention facilities for children from that of adult prisoners' as well as providing for the benefit of a suspended sentence upon a finding of guilt. The benefits of a suspended sentence, however, cannot be availed of by children convicted of a capital offence, that is, one that is punishable with life imprisonment to death pursuant to PD 603 and the Rule on Juveniles. Children could avail of a suspended sentence only once pursuant to PD 603 and as affirmed by the Supreme Court in its decisions.

Upon a finding of guilt, by virtue of the Child and Youth Welfare Code (PD 603) and the Family Courts Act of 1997 (RA 8369), children availing of the benefits of a suspended sentence are sent to rehabilitation facilities run by the government's Department of Social Welfare and Development.<sup>9</sup>

Article 189 of PD 603 defines a youthful offender as a child, minor or youth who is over 9 years of age but under 18 at the time of the commission of the offence. Chapter 3 of PD 603 deals with so-called youth offenders. A child over 9 years of age, but under 15 is exempt from criminal responsibility unless the child acted with discernment. Those under 9 years of age are absolutely exempt from criminal liability.

The benefits of privileged mitigating circumstances which lowers the imposable penalty for children still serves as the basic guideline in dealing with them. Hence, under such an approach, children arrested and detained for the crime of substance abuse are kept in prison for a year or more since the imposable penalty for such a crime is stiff. Robbery and theft with which majority of the children are charged entail stiff penalties.

Another law, RA 7610 or the Special Child Protection Act, provides for the rights of children arrested for reasons related to armed conflicts. Section 25 of this law states that children arrested as a combatant, courier, guide or spy are entitled to separate detention from adults, immediate free legal assistance, immediate notice of such arrest to the parents or guardian of the child, and release on recognizance of the child to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court within 24 hours.

Section 8 of RA 8369 provides that "alternatives to detention and institutional care shall be made available to the accused including counselling, recognizance, bail, community continuum, or diversions from the justice system". It also ensures that "the human rights of the accused are fully respected in a manner appropriate to their well-being".

### *Gap*

However, a wide gap exists between law and reality. While recent policy developments prove promising for children in conflict with the law, the traditionally punitive approach of the criminal justice system virtually negates these advancements. For example, the recently enacted Comprehensive Drugs Act of

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<sup>9</sup> These are the National Training School for Boys in Tanay, Rizal, located in the Metro Manila suburbs for boys found guilty, and the National Training School for Gils in Marillac Hills, in Alabang, Metro Manila. Children in these centres are supervised by government social workers who periodically report to the court about the children's behaviour. If they show good behaviour, the social workers recommend that the case against them be dismissed. If the children, however, prove to be incorrigible, the social workers would report the same to the court who would then proceed to pronounce the sentence for the supposedly incorrigible child who would be ordered to serve the same. However, the child's period of stay in the centre is deductible from the prison term.

2002 (Republic Act 9165) does not expressly grant children arrested and convicted for the crime of drug trafficking the benefits of a suspended sentence, thereby putting children in an equal status with adults in this respect. This law penalizes drug traffickers with the penalty of life imprisonment to death. It is debatable whether the privileged mitigating circumstance of minority is applicable to children convicted for drug trafficking considering that RA 9165 is a special law.

A growing number of children are being arrested, detained, and tried for drug trafficking. The Child and Youth Welfare Code, the Family Courts Act of 1997, and the 2002 Rule on Juveniles in Conflict with the Law expressly exclude children found guilty of having committed capital offences (those punishable by life imprisonment to death) from availing of the benefits of a suspended sentence. A Philippine Supreme Court ruling held that while children so charged are entitled to the privileged mitigating circumstance of minority, they are not entitled to avail of the benefits of a suspended sentence if convicted.

The approach still remains to be largely punitive. In general, though, like other prisoners, children may eventually avail of parole or executive clemency, in case they were lucky enough for their case to be looked into.

### *Prejudice*

Prosecutors, public defenders, and judges share the prejudice society has against detained prisoners. The social stigma attached to detention contributes to the prolonged detention of children. The insensitivity of judicial players to the special circumstances of children in jail contributes to the neglect of their cases.

### *Torture*

The point of arrest is critical. It is at this stage where some children suffer torture in the hands of the police as a form of punishment or as a way of exacting confession. Others receive blows in the hands of local guardsmen and/or their fellow inmates. Since the processing of court orders for the commitment of these children to detention facilities take quite a while, the time lapse allows for the healing of children's wounds sustained on account of police brutality.

### *Handcuffing*

The government also came out with the Police Handbook on the Management of Cases of Children in Especially Difficult Circumstances on the apprehension of children. While this handbook prohibits the handcuffing of children, this practice is rampant and actually stands as the basic rule among policemen as well as personnel of the Bureau of Jail Management and Penology. Hence, in the Philippines, it is common to see children walking in handcuffs in the company of jail officers on their way to and from their court hearings.

### *Prolonged Detention*

The prolonged detention of children highlights the broad schism between Philippine law and the reality obtaining with respect to child prisoners. The snail-paced administration of justice results in the undue and prolonged detention of children, unaided in no small way by a lack of a child-oriented judicial, prosecutory and public attorney's defence system. Prosecutors and judges feel that the impossible penalty under the Philippine Revised Penal Code or other penal statutes justify the prolonged detention of children, notwithstanding their constitutional right to a speedy trial. In practice, for instance, the trial of detained children are reset twice or thrice notwithstanding the absence of prosecution witnesses by judges upon motion of the prosecutors on the ground that there exists no proof that the prosecution witnesses had received the subpoena issued to them by the court. In most cases, only if the prosecution witnesses failed to appear in court and there is proof that they had duly received the subpoena would the case be dismissed upon the witnesses' failure to appear twice or thrice.

### *Punitive mindset*

While the Family Courts Act of 1997 has paved the way for the establishment of Family Courts that exclusively deal with cases involving children in conflict with the law, the traditionally punitive approach of prosecutors, public attorneys and judges with respect to children still prevails in the general sense. The existing laws providing for offences with which children are charged still serve as the basic yardstick of prosecutors, public attorneys and judges in dealing with children although RA 8369 speaks of the best

interests of the child and the “peculiar circumstances” of “youthful offenders”. This is generally the case although the 2002 Rule on Juveniles in Conflict with the Law mandates judges to observe the principle of restorative justice and the principle of proportionality in imposing penalty upon children.

*Provisional release pending trial*

While about 95% of cases involving them are bail able, children suffer from undue and prolonged incarceration since seldom could they and their families afford to post bail due to poverty. This is also explained by the fact that a significant number of child detainees are actually street children who are quite vulnerable to arrest due to the existence of various laws, such as the anti-vagrancy law, the substance abuse law, as well as laws on theft and robbery. Recently, a curfew was imposed for children in Manila by virtue of a city ordinance that provides for the counselling and detention of children.

Virtually all cases involving children in conflict with the law are handled by the Public Attorney’s Office. The PAO provides free legal services to indigent litigants. It is under the control and supervision of the Department of Justice. However, the heavy workload of PAO lawyers prevents them from giving full attention to the cases of children in prison.

The other remedy for children is to resort to recognizance, wherein responsible members of the community or their parents, if available and capable based on the assessment of the social workers, would assume custody over their persons and ensure their appearance in court for trial. However, judges and prosecutors abhor the act of releasing children on recognizance for fear that they would fail to appear for their trial. The usual ground for the rejection of children’s motion to be released on recognizance is the gravity of the offence with which they are charged. Some judges also believed that releasing children to the custody of their parents would be ineffective, citing that in the first place, they were arrested while supposedly under the care and custody of their parents.

In general, thus, the provisional release of children pending trial, such as by means of bail or recognizance, is not necessarily always available to them.

**Position of minors in the national prison system**

Historically, the phenomenon of children in conflict with the law is not entirely new in the Philippines. The defunct Bureau of Prisons reported that a total of 1,111 children aged 9 to 15 had been arrested in Metro Manila from January to December in 1969 and 523 in the months of January to June in the ensuing year. The year 1979 (January to March) saw the arrest of 142 children belonging to the 9 to 15 age group, followed by 262 in 1980 (January to June), 280 in 1991 (January to June) and 540 in 1982 (January to December). Based on figures of the Philippine Department of Social Welfare and Development, the following is the number of so-called youth offenders served by the DSWD by programme/project from 1996 to 2000:

<b>year</b>	<b>Total</b>	<b>community-based programme</b>	<b>centre-based</b>
<b>1996</b>	7,057	6,292	0,765
<b>1997</b>	8,623	7,486	1,137
<b>1998</b>	6,410	5,575	0,835
<b>1999</b>	13,073	11,289	1,784
<b>2000</b>	10,094	8,883	1,261
<b>male</b>	9,391	8,198	1,193
<b>female</b>	703	635	68
<b>growth rate in percent (%) of youth offenders served 1999-2000</b>	- 22.79%	- 21.76%	- 29.32%

Through its community- and centre-based centres nationwide, the DSWD also served 12,878 CICL from 1990 to 1992. This figure rose to 30,377 from 1994 to 1997. These figures were collated from DSWD’s 10 regional rehabilitation centres throughout the country.

According to the Philippine Bureau of Jail Management and Penology, there were a total of 96 detained children throughout the country (91 boys and 5 girls) who had been sentenced (for a period of 3 years or below) as of April 2002. During the same period, there were a total of 1,936 detained children undergoing

trial, including 1,830 boys and 106 females throughout the country. This figure on sentenced child detainees and jailed children undergoing trial forms part of the overall number of prisoners totalling 39,038 under the custody of the BJMP as of April 2002<sup>10</sup>.

In 2001, there were a total of 99 sentenced child prisoners under the custody of the BJMP, including 96 boys and 3 girls as well as a total of 1,824 child detainees (consisting of 1,714 boys and 110 girls) undergoing trial during the same period. This 2001 figure on child detainees reported by the BJMP is included in the BJMP's 37,158 total number of inmates as of 2001.

The year 2000 registered a total of 137 sentenced children including 130 boys and 7 girls, according to the BJMP. Child detainees facing trial reached a total of 1,800 in 2000, including 1,678 boys and 122 girls.

These figures are included in the 35,783 total number of prisoners culled by the BJMP in 2000.

In 1999, out of the 33,725 total inmates, the BJMP recorded a total of 121 sentenced children consisting of 115 boys and 6 girls all over the country. A total of 1,808 detained children (1,686 boys and 122 girls) undergoing trial were also noted by the BJMP in 1999.

*Statistics of children in conflict with the law (CICL), National Capital Region, as of September 1999.*

<b>jails</b>	<b>total number of detained CICL</b>	<b>number of CICL ages 15 and above who were charged of heinous crimes</b>	<b>number of CICL 11-15 years</b>	<b>number of CICL 16 and above</b>
<i>Caloocan City</i>	57	4	21	36
<i>Las Piñas City Jail</i>	8	0	4	4
<i>Makati City Jail</i>	11	1	0	11
<i>Malabon Municipal Jail</i>	21	4	11	10
<i>Mandaluyong City Jail</i>	24	1	7	17
<i>Manila City Jail</i>	121	6	0	121
<i>Manila Youth Reception Centre</i>	143	10	60	83
<i>Marikina City Jail</i>	12	1	2	10
<i>Metro Manila Rehab.Centre</i>	1	0	0	1
<i>Molave Youth Home</i>	133	17	44	89
<i>Muntinlupa City Jail</i>	12	6	2	10
<i>Parañaque city Jail</i>	31	2	3	28
<i>Pasay City Jail</i>	22	2	6	16
<i>Pasig City Jail</i>	9	1	2	7
<i>Pateros Municipal Jail</i>	3	0	0	3
<i>Rodriguez Municipal Jail</i>	7	0	2	5
<i>San Juan Municipal Jail</i>	1	0	1	0
<i>San Mateo Municipal Jail</i>	5	1	3	2
<i>Taguig Municipal Jail</i>	8	0	3	5
<i>Valenzuela city Jail</i>	8	5	2	6
<b>Total</b>	<b>637</b>	<b>61</b>	<b>173</b>	<b>464</b>

*Source: Youthful Offenders' Profile -BJMP- NCR Report & MYRC Logbook.*

For 1998, the BJMP reported a total of 111 sentenced child prisoners (103 boys and 8 girls) out of a total of 27,805 inmates. There were a total of 1,431 child prisoners (1,346 boys and 85 girls) undergoing trial during the period.

In 1997, a total of 114 sentenced children (106 boys and 8 girls) were recorded by the BJMP. Child detainees undergoing trial totalled 1,250, including 1,178 boys and 72 girls.

Property-related offences ranked highest in terms of the number of crimes allegedly committed by children as of April 2002, based on BJMP figures. Out of a total of 1,770 crimes registered during the period, 786 were crimes against property (337 for robbery and 449 for theft). Drug-related offences ranked second, totalling 165, followed by rape (157) and murder (129). The other crimes with which the children were

<sup>10</sup> This excludes the prisoners serving time at the National Penitentiary which is under the Bureau of Corrections, likewise under the control and supervision of the Department of Justice.

charged as of April 2002 include homicide (78), acts of lasciviousness (7), physical injuries (15), and other unspecified crimes (433).<sup>11</sup>

According to the BJMP, most prisoners, including children, suffer detention for a period below one year. The BJMP reported that 27,810 inmates suffered detention for below one year as of April 2002, out of a total of 29,038 prisoners during the same period. Prisoners who suffered detention for one year and 11 months reach 7,554. Those who endured detention for 2 years and 11 months total 2,512. Those detained for 3 years and 11 months number 808 and for 4 years and 11 months, 244. A total of 110 prisoners who suffered detention for 5 years and more were noted.

Generally speaking,

- 10% or one out of 10 CICL are charged with a heinous crime;
- 73% of CICL are 16 years old and above.

### **Description of a specific closed institution: Molave Youth Home in Quezon City**

The Molave Youth Home is a detention centre for children age 10 to 17, undergoing trial for various offences before the 7 family courts in Quezon City, Metro Manila.

As of 19 November 2002, Molave houses 158 child prisoners, including a dozen girls, although it has the capacity of only 70-80 inmates.

Molave was established way back in 1977. It was not meant to be a jail, but simply a temporary centre for kids then. It was under the jurisdiction of the local police prior to its takeover by the Social Services Department of the Quezon City local government in the 1980s.

While the Bureau of Jail Management and Penology ensures, through its discreetly armed personnel, that the child prisoners do not escape, the Social Services Department actually manages and provides social services for the kids detained at the Molave through its 8 social workers and 2 psychologists. Molave also employs administrative personnel, including house parents.

The Residential and Rehabilitation Division coordinates with the psychiatrist of the BJMP in subjecting some children to psychiatric examination.

BJMP is the one that allocates budget for the food of the children.

### ***Social services***

Social workers are the ones at the forefront of care giving in Molave. The social workers conduct home, community, and school visits, interview the kids, and prepare social case study reports together with their recommendations for submission to the courts. They also represent the kids in court and accompany them home upon release if necessary. The social workers facilitate the conduct of drug testing among kids charged with substance or drug abuse or peddling. They also establish contact with the family of the kids, especially runaways, by coordinating with DSWD offices in other parts of the country or writing letters addressed to the kids' families.

### ***Education***

The Department of Education, Culture, and Sports assigns teachers who provide education for the kids who are grouped according to their literacy levels. Classes are held during weekdays inside Molave, except Fridays, when children engage in socialization activities, particularly singing and dancing.

During detention, the children earn academic credits for the classes inside Molave. They also avail of acceleration examinations to enable them to enrol in higher academic levels upon their release from detention.

Value-formation seminars and workshops are facilitated by NGOs among the kids. Religious lectures are sometimes conducted by nuns. Social workers also conduct seminars among parents of the kids in order to enhance their commitment and skills in providing support for their kids.

As part of Molave's skills-building programme, vocational activities are carried out by the kids, including the manufacture of handicrafts, soap, and candles.

Masses are held on weekends at the instance of volunteer civic and religious groups.

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<sup>11</sup> Note that there are cases wherein children are charged with 2 or more crimes.



### ***Support groups***

Molave enjoys the support of international and local non-government organizations, and civic and religious organizations. The Unicef under the leadership of Alberto Muyot donated money for the construction of the second floor at the Social Services Department building where the children are now detained and the social workers attending to them are holding office since February this year. Prior to this, the children were detained at 4 cramped dormitories meant for only 70 kids at the ground floor, beside the DSWD office.

Through its web of government and non-government support groups, Molave kids who are homeless get referred to appropriate centres. Upon dismissal of cases against them, homeless kids get referred to non-governmental institutions.

Upon conviction, however, boys are transferred by virtue of a suspended sentence to the National Training School for Boys (NTSB) located in Sampaloc, Tanay, Rizal. Convicted girls are transferred to the National Training School for Girls in Alabang, Metro Manila. The confinement of homeless girls and boys to these DSWD-run rehabilitation centres serves as an option in disposing of the cases involving children, rather than allowing them to return to the streets and risk running afoul again with the law.

Before delimiting its operations, the Medicines Sans Frontieres-Belgium provides medical services to Molave kids, including the provision of medicines and water whose scarcity in the previous years sparked an epidemic among inmates.

Some children were observed to be deliberately creating conditions for them to return to Molave upon their release due to the difficult conditions in the streets.

### ***Physical conditions***

Due to the Unicef support, children now enjoy better ventilation and a relatively bigger space for themselves, although the structure was also built with prison bars. Double decks are provided for them. Bathing facilities are located right inside their dormitories. It is through its network of support that children enjoy watching cable TV, from inside their cells, or at the lobby.

A mess hall where children eat their meal by batches thrice a day as well as meet their visitors was also built at the second floor, courtesy of Unicef.

Girls are separated from boys. A cell was also built in order to quarantine children afflicted with contagious diseases.

### ***Regulations***

Some kids are entrusted with certain duties, including cleaning and the preparation of food.

Their parents and relatives, aside from conferring with social workers, are allowed to visit the kids.

However, for certain misdemeanours, children are individually or collectively prohibited from enjoying visits for certain periods.

The packages of visitors are rigorously inspected.

Children are only released by the BJMP upon the completion of the needed papers.

Punishment in the form of physical exercises like push-ups and rabbit-jump are imposed upon the kids by BJMP personnel. Physical contact, however, is absolutely prohibited.

In the past, the BJMP reported the discovery and seizure of improvised weapons from the inmates, a significant number of who are tattooed.

### ***Non-segregation***

Other than gender segregation, no grouping, for its sheer difficulty, exists among children of Molave, whether according to the crime alleged to have been committed, or age. Hence, a child charged with substance abuse may be detained at the cell where others charged with murder, homicide, robbery, or theft are also confined.

### ***Sub culture***

Adopting the sub culture among adult prisoners, children of Molave also have their own informal structures of leadership. An overall leader among all the child detainees is recognized, more often the longest staying inmate. Inside their respective cells or "dormitories" as social workers would like to name them, the child prisoners, or "wards", also have their own respective leaders, who, in turn, have their

own advisers, also from among themselves. They also have their own “bastonero,” who enforces the rules among and within themselves inside their respective cells, through beatings. However, children generally keep mum about these practices among themselves in order to avoid reprisals from prison authorities.

### ***Stress-induced activities***

Their anxiety resulting from their imprisonment drives some kids to inflict injuries upon themselves, usually in the form of cutting their arms, by means of any possible object, such as a soft drink cap. Some boys engage in fisticuffs as their pastime, subject to the rule that they only hit their sparring partner in the chest and abdomen. In some instances, these fisticuffs become intense and lead to real fights.

Sodomy was also reported by at least one kid to social workers, allegedly committed by the longest staying inmate, sometime in 2000.

### ***Number of child prisoners***

Alarmingly, the number of children detained at Molave reached 207 during the first quarter of 2002.

The number of prisoners has skyrocketed over the years. Beginning 1990, the number of children was pegged at 227 (197 boys and 30 girls). This increased to 237 the following year with the detention of 206 boys and 31 girls.

Their number decreased in 1992 to 182 (167 boys and 15 girls), but again steadily rose up to 196 by 1993 (178 boys and 18 girls) and further leaped to 251 in 1994 with the detention of 206 boys and 45 girls.

The following year, 264 kids were incarcerated at Molave (241 boys and 23 girls). The ensuing year registered 263 child inmates, consisting of 229 boys and 34 girls.

The Asian financial crisis saw the ballooning of the number of child prisoners with 324 of them composed of 235 boys and 89 girls detained at Molave in 1997. This leapfrogged to 420 in 1998 with the confinement of 368 boys and 52 girls.

This momentarily ebbed to 382 (348 boys and 34 girls) in 1999, but leaped up again to 418 by the turn of the century, following the detention of 375 boys and 43 girls.

The year 2001 marked a significant increase in the number of child detainees, which rose to 538, consisting of 492 boys and 46 girls.

### ***Age distribution***

The bulk of children detained at Molave belong to the 15-17 age group, accounting for a total of 176 out of a total of 227 inmates in 1990; 166 out of a total of 237 in 1991; 147 out of a total of 182 in 1992; 146 out of 196 in 1993; 185 out of 251 in 1994; and 196 out of 265 in 1995.

Virtually all inmates belong to this category (200 out of 263) in 1996.

Nearly half of the total 324 inmates in 1997 (numbering 130) include 15 to 17 year olds.

They also account for 321 of the 420 total prisoners in 1998, and for 305 inmates out of a total of 382 in 1999.

By the turn of the century, 330 of these 15 to 17 year olds account for 418 total inmates, maintaining the same significant number in 2001 (408 out of a total of 538).

### ***Crimes charged***

Property-related offences figured prominently among the crimes attributed to children over the 10-year period from 1991 to 2001, totalling 2,128. Theft pegged at 985 ranks highest among the said crimes, followed by robbery totalling 902, and qualified theft (156).

These overshadowed crimes against person numbering 254 from 1991 to 2001, with frustrated homicide registering the highest at 75, followed by frustrated murder (70), homicide (53), and murder (34).

Drug-related offences account for 262 cases, followed closely by crimes of substance abuse (totalling 225).

Crimes against chastity such as rape (totalling 109) and acts of lasciviousness (4) were recorded at 113 during the 10-year period.

Children were not spared from imprisonment on vagrancy raps, accounting for 157 cases over the 10-year period. For sporting tattoos identified with gangs, 140 children also suffered from detention in Quezon City. One hundred and two others were incarcerated in Molave for carrying deadly weapons.

### ***Economic background***

Most child detainees come from the poorest of the poor families living below the poverty threshold. A number of detainees (178 out of 538) belong to families with an income of P3,000 a month in 2001, followed by those belonging to the P4,000 income bracket (142).

Only 63 kids come from families earning P6,000 a month during the same year.

The same pattern emerges over the 10-year period with most kids coming from the P3,000 income group: 121 kids in 2000; 103 in 1999; 123 in 1996; 102 in 1995; 118 in 1994; 94 in 1993; 91 in 1992; 150 in 1991; and 141 in 1990.

The highest number of the kids in 1998 totalling 127 belongs to the P4,000 income group and those belonging to the P2,000 income bracket in 1997 totalled 101.

### ***Violations of child rights***

Children attending court hearings are handcuffed to avoid incidents of escape while walking amid the crowd in the company of uniformed BJMP officers. Most often, due to limited supplies, children are handcuffed in pairs, or even in 3's. The Hall of Justice where the courts sit is just across Molave. They also wear shirts readily identifying them as prisoners.

### ***Lack of separate facilities***

The Child and Youth Welfare Code's mandatory requirement for the separation of child detainees from adult prisoners is generally not observed. In Metro Manila alone, only 3 cities have separate facilities for children. These facilities are the Molave Youth Home in Quezon City, the Manila Youth Reception Centre in Manila, and the new jail facility in Pasig City, all run by the local government. These facilities are congested. The MYRC can no longer accommodate newly arrested children, hence, MYRC personnel turn them away. Instead, the children are detained at the Manila City Jail, which provided separate cells for children, although in practice, young detainees could freely mix up with adult prisoners inside the prison compound. As of March 1997, the Bureau of Jail Management and Penology reported that there were only 209 separate cells for boys out of the 1,430 jails managed by the BJMP or the Philippine National Police throughout the country. The BJMP does not provide for separate detention cells for girls, only boys.

In a research conducted by the Philippine Action for Youthful Offenders (PAYO) in 1996, it was reported that 50.9% of the youth respondents were mixed with adult detainees, 8.2% were detained with adult women, and 20.7% in separate cells, although in the same compound where adults were detained.

These facilities suffer from budgetary constraints, and depend on donations from non-government organizations, civic groups, as well as charitable institutions for support. These institutions are understaffed, with social workers generally suffering from stress due to their heavy workload, aside from their low salary. Other key cities and municipalities of Metro Manila alone lack separate facilities, not to mention resources, for children detainees. The Camanava area (comprising the cities and municipalities of Caloocan City, Malabon, Navotas, and Valenzuela) lacks separate detention cells for children who abound in these parts. Neither does its social workers have adequate social workers to look into their plight, much less assist them in court.

### ***Police detention***

Prior to their transfer to these separate facilities for children, however, children upon arrest are first detained in cramped police detention cells in various police stations scattered throughout Metro Manila and the rest of the county. At this point, children are mixed up with adult prisoners due to the lack of separate facilities for them.

While the law requires law enforcers to inform the Department of Social Welfare and Development about the fact of arrest of children within a period of 8 hours, this is not at all observed. In general, children suffer from relatively prolonged detention in the hands of the police, until the courts order the children's transfer to detention facilities meant for prisoners undergoing trial. In Quezon City, for instance, children suffer from detention in the hands of the police for about a week to one month in the company of adult inmates.

### ***Abuse***

Child detainees representing 31.37% (16 boys) of the respondents in the 1993 DSWD-NAPOLCOM survey suffered from physical abuse during detention. Sexual abuse was reported by a boy and a girl, representing 3.92%. Eight male respondents (15.69%) had also experienced gang wars during their imprisonment.

### ***Housing***

The 1996 research conducted by the Philippine Action for Youthful Offenders (PAYO), a non-government organization, revealed that 102 respondents or 44% slept on the floor due to lack of facilities, while 29.3% shared beds; 25% slept on separate beds; and 1.7% elsewhere, such as chairs and tables.

A big number (92% of the respondents) slept without mats or blankets; while 27.2% slept with both mats and blankets; 30.1% slept on mats; and 3% slept with blankets only (UNICEF 1998).

At the time of the PAYO research, it was found out that each inmate enjoyed about a 3 square meter-space.

### ***Food***

The research showed that 88.3% of respondent child detainees have drinking water inside their cells.

### ***Health care***

Most child detainees (61.6% of the respondents) complained about their lack of a balanced diet. Budgetary allocation for their food at the time of the PAYO research was pegged at P25 per day.

In another survey conducted by the government's Bureau of Child and Youth Welfare and the National Police Commission, 52.94% of child detainees (numbering 27 out of 51 respondents) lambasted their inadequate food supply, while 24 child inmates or 47.06% expressed satisfaction with their food ration. Twenty-eight of the child respondents (54.90%) reported that their food was unpalatable.

### ***Hygiene***

The bulk of respondent child detainees (95.3%) reported in the PAYO research that they had toilet and bath facilities inside their cells. Only 2.6% had such facilities outside of their cells.

Child detainees also reported in the PAYO research that they usually rely upon themselves for their own clothes, soap, tissue paper, and toothpaste. An estimated 66.8% said they brought their own supplies, while the rest (19.4%) averred that these were provided to them.

Less than half of the respondents (45.3%) expressed satisfaction over the lighting and ventilation of their cells. Others complained (30.2%) that while they enjoyed proper lighting, they suffered from poor ventilation. Too, 17.7% complained about the poor, if not lack of, lighting inside their cells. Some child inmates (3.4%) lamented they lacked both proper lighting and ventilation.

### ***Education and work***

In the 1993 DSWD-NAPOLCOM survey, it was reported that virtually all child detainees totalling 48 (including 43 boys and 5 girls) and representing 94.12% were deprived of education.

Education was made available to only 3 boys representing 5.88% of the respondents.

Counselling and spiritual services were also not made available to 64.71 (30 boys and 3 girls) and 9.8% of the kids, respectively.

Nor were livelihood programmes made available for the child detainees, according to the same 1993 report. A whopping 94.12% of the kids (33 boys and 5 girls) complained about the absence of livelihood programmes.

Similarly, the child prisoners were bereft of skills training with 86.27% (representing 44 kids including 39 boys and 5 girls) of the respondents reporting such lack.

Somehow, this was offset by the availability of recreational and cultural activities for the kids, with 66.67% of them (34 boys) responding affirmatively to the survey; but 33.33% (12 boys and 5 girls) of the remaining respondents suffered from a deprivation of such opportunities.

### ***Sports and recreation***

Five respondents in the 1993 Bureau of Child and Youth Welfare-DSWD and NAPOLCOM survey representing 9.81% reported happy experiences during their detention, including courtship, good treatment, singing, and dancing. A greater number, 9 respondents (17.65%), however, suffered from homesickness.

### ***Discipline***

The 1993 survey showed that 20 or 39.22% of children suffered from corporal punishment during detention. Isolation as a form of discipline was experienced by 15 or 23.53% of the respondents, including 11 boys and 4 girls.

The penalty of hard labour was imposed upon 6 or 11.76 of the child respondents.

One child or 1.96% complained against the curtailment of his privileges as a prisoner. Twelve or 23.52% of the child detainees surveyed, however, did not indicate the type of disciplinary measures meted out on them.

### **Critical assessment**

In the Philippines, in spite of its being a state party to the CRC, which treaty it has incorporated into municipal law by virtue of RA 8369, the arrest and detention of children by and large still remains to be the measure of first resort. Their detention in most cases is not limited to the barest minimum period but lasts even beyond the imposable penalty for the crime with which they are charged due to the snail-paced administration of justice.

The failure of some judges to keep themselves abreast of developments in human rights law concerning children contributes to the wide gap between law and reality. Thus, while RA 8369 speaks of alternative to detention and institutional care, the said legal mandate has yet to be observed in practice by the courts, that still opt to impose punitive measures upon children.

The worsening poverty in the country saw an upsurge in the number of street children who sometimes become enmeshed in activities, like substance abuse, that make them prone to arrest.

While the 2002 Rule on Juveniles in Conflict with the Law provides for a system of diversion for children in conflict with the law, its impact could be considered nil, in view of the fact that the offences with which children are commonly charged are punishable by stiff prison terms, while cases which may be referred to the diversion committee only involve those with imposable penalties of less than 6 months imprisonment. Crimes commonly involving children are robbery, theft and substance abuse. Others are charged with illegal possession of and/or use of illegal drugs or firearms.

New proactive initiatives in favour of children in conflict with the law are negated by traditionally punitive laws and practices. The social bias and prejudice against prisoners doubly victimize the children. These pro-child initiatives, such as the passage of RA 8369 and the 2002 Rule on Juveniles in Conflict with the Law, also need to be introduced and popularised among the various stakeholders.

### **Sources**

This report is based on:

- Information gathering by DCI-NL after distribution of an in depth questionnaire.
- Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System, published by the Adhikain para sa Karapatang Pambata of the Ateneo Human Rights Centre, Ateneo Law School and the United Nations Children's Fund, copyright UNICEF 1998.
- Survey on the Youth Offenders at Camp Sampaguita and Correctional Institute for Women, Bureau of Child and Youth Welfare, a joint project of the Department of Social Welfare and Development and the National Police Commission Crime Prevention and Coordination Service, published by the Bureau of Child and Youth Welfare, Department of Social Welfare and Development, April 1993.
- 1996 Research of the Philippine Action for Youthful Offenders (PAYO) as cited by the Ateneo Human Rights Center.
- Situation of the Youth in the Philippines, National Youth Commission, Philippines, 1998, pp. 135-142.
- Philippine laws and regulations as cited.

- Statistical data concerning the Molave Youth Home was provided by the Residential and Rehabilitation Division, Social Services Department, Quezon City Government.
- The observations made in this piece emerged from the direct experiences of the author as a lawyer for child prisoners.

### 3.17. Romania

#### Application of international and national law

##### *International law*

Romania ratified the CRC in September 1990 and the CRC came into effect on 28 October 1990. However, the country has not taken into account other international standards: the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Universal Declaration of Human Rights, the Beijing Rules and the Riyadh Rules. In Romania there is no legislation aimed exclusively at juveniles. The Romanian Penal Code lacks a clear statement and guidelines that recognise the fact that juveniles require special protection and consideration. Thus, youth are treated according to the same laws as an adult and the result is a punitive system that is contrary to international standards. The special protection of youth as enshrined in the CRC and other international standards is not implemented.

##### *National law*

There is a section of the Penal Code that is dedicated to children, but it is very limited. The minimum age of criminal responsibility is 14 and the maximum age is 18 years. Persons between the ages of 14 and 16 have penal responsibility only if it can be proved that they had “complete judgement” when they committed the offence. A forensic doctor or psychologist makes this decision after they are arrested. Those over 16 are fully responsible for their actions and are not assessed.

According to Romanian law, police have the discretion of whether it is necessary to inform a young person’s parents or upper authorities of a child’s arrest and investigation. It is stressed that this is an ideal situation in which police or other public officials can take advantage of the person and abuse human rights. According to reports of all phases of the criminal system, the time during the arrest and police custody is the most likely period when the children will become a victim of torture and other forms of cruel treatment.

Moreover, the lack of specialised youth or family courts emphasise the problem. Children attend regular adult court and bear all the stigmatisation. When sentenced, articles 99-110 of the Penal Code remind judges to take into account the social danger of the offence, and the intellectual and moral development of the child.

#### **Position of minors in the national prison system**

Juvenile delinquency in Romania is increasing. In 1989, there were approximately 600 crimes per 100,000 children. In 1998 the rate was well over 3,000 per 100,000. According to reports, property crimes account for more than two-thirds of minor detainee crimes. Moreover, homicides, rapes, aggravated assaults and grievous bodily harm are becoming more frequent.

*Table 1: Children deprived of their liberty in Romania in 1995 and 2000.*

<b>year</b>	<b>figures</b>
<b>1995</b>	2,675 (1,377 in juvenile re-education centres 1,298 in prisons)
<b>2000</b>	1,521 (580 in juvenile re-education centres 941 in prisons)

According to the Romanian Prison Administration Web Pages, the following data was officially recorded as of February 2001:

- in the 34 prisons of the country: 904 minor detainees;
- in the 5 prison hospitals of the country: 20 minor detainees;
- in the 2 re-educational centres: 564 minor detainees.

The rate of recidivism, although low at 8%, has in fact doubled in the period 1993-1998. More than 50% of offenders come from a violent family background where over 90% of parents had a low educational level of achievement. In the period 1993-1998 approximately 55-60% of the parents of child offenders were unemployed.

The available sentencing options for a child within the criminal system are limited. In all cases they are required to proceed through the full criminal process and trial. The possibilities are the following:

- warn the child;
- release the child into community under supervision;
- impose a fine;
- send to a re-education centre;
- send to a medical-education centre (there are currently no operational institutes in Romania);
- send to prison.

At the majority of the prisons both adults and minors are held in the same facility. As indicated, only 3 out of the 34 prisons of the country do not have minors. Moreover, the number of beds and legal capacity is far outnumbered by the actual number of prisoners. Overcrowding seems to be a great matter of concern to as in every cell there are between 8 to 28 persons altogether.

Furthermore, Romania has very limited non-custodial sentencing options. Despite the existence of alternative sanctions, they are rarely used. Unfortunately, for first time, non-serious or repeat offenders, imprisonment is too often the punishment. In addition, probation is only a new development and it is not always available.

According to the law, detained minors will be held separately but the problem is that the Romanian criminal system does not differentiate between adult prisons and juvenile institutions.

Because of the limited range of penal sanctions, many children are deprived their liberty in prisons or so-called "re-education" centres for non-violent and non-serious crimes with other inmates who may have committed very serious crimes and professional offenders.

In the re-education centres, children must stay at least one year in order to finish scholastic and vocational training. The objective of a re-education centre is to "help" the children and ensure that they finish the appropriate school diploma and learn a trade. If this cannot be accomplished by the age of 18, the child can potentially remain in the institution for 2 more years. The time of incarceration can be much longer than in traditional prison. At the moment there are 2 re-education centres.

On the other hand, if punishment by imprisonment is considered necessary, children have to stay in an adult prison. In that case, according to the Penal code, they are required to serve one half of their sentence and then will be considered for release.

Despite the existence of a specific closed part in adult prisons, one of the major problems in the criminal justice system is the mixture of the adult prisoners and minor detainees in the same prison. As mentioned, it is not uncommon for one adult to be put in a cell with minors in order to "maintain control"!

Correctional officers do not receive any special training on how to deal with them. Moreover, it is reported that there are incidences of bullying, abuse, violence and torture taking place by correctional staff. The same problems happen among detained minors as well.

In addition, placement in an isolation cell, deprivation of visits, public reproof and transfer to a restrictive unit are the most common disciplinary measurements that are taken against the incarcerated children when considered needed.

Minor detainees have the right to complain officially about their treatment while in custody to the administration of the centre, the director of the prison, the Ministry of Internal Affairs, to the military prosecutor and finally to an ombudsman in general.

Compulsory educational and vocational training is offered in both prison and re-education centres. Work is compulsory in prisons and on a voluntary level in the re-education centres. Many minors suffer from mental health and skin disease problems.

#### **Description of a specific closed institution: Gaesti Re-education Centre**

In the Gaesti re-education centre - which is located near to a village - 300 minor detainees are held. Male and female detainees are held separately in some of the 25 cells of the centre. The number of correctional

officers is unknown. There are also 3 medical staff members, one social worker, one psychologist, one sociologist, 6 probation officers and 30 teachers.

### ***Housing***

It is reported that 8 to 28 minor detainees are held per cell. Toilets are outside the dormitory and the detainees must be accompanied by a guard to get there. There are no data available for the exact size of the cell.

Re-education centres are only for young people, which means that, contrary to what takes place in prisons, minor detainees and adult inmates are not held together.

### ***Food***

The food is said to be not adapted to the nutritional needs of a child. There are 3 meals served every day (for free). The food is examined every 2-3 months by the inspector of juvenile institutions. The cleanliness of the central kitchen is observed daily by the director of the institution.

### ***Health care***

In Gaesti re-education centre, detained minors are screened medically in a special health care unit. This happens when they enter the centre, but it concerns physical problems only. The screening procedures take place only once and not periodically, but the minor detainees can be examined if presenting symptoms of any particular illness. There are no reports of any death from suicide even it is noticed that minors are adopting suicidal behaviour. According to estimates, the adoption of self-destruction behaviour in Gaesti re-education centre has more a manipulative than a self-aggression character. Apart from general counselling there are no special suicide prevention measures.

Data on drug-addicted persons are not available. It is only known that users are not being held separately from the rest of the detained minors and that there is not any therapy for this specific category. It is also unknown if there are other serious health problems, such as HIV-AIDS, tuberculosis (TB), hepatitis, skin diseases, etc. There are no available data on this either.

In some cases psychological supervision takes place, including psychological testing, counselling and treatment.

### ***Hygiene***

The conditions of hygiene are described as tolerable. The house cleaning products, the soap and the toilet paper are distributed free of charge. Despite the efficient water supply and the existence of warm water, minor detainees are allowed to take a bath only once per week. As mentioned, the single showers and toilets are not enough for all.

### ***Education and work***

Detained children are assigned to a particular class according to the level of their knowledge, and not according to their age. The centre is supposed to offer full-time and part-time courses of elementary education.

For the full-time programme, the curricula are the same as in a normal school of elementary education. For children that take part-time courses or evening classes, the curricula is made by the Ministry of Internal Affairs after consulting the Ministry of Education.

According to the law, some of these children may be allowed to enrol at a local high school, after graduating the elementary school with good results and good behaviour. The average educational level for detained minors is a few grades of elementary school.

Vocational training programmes are also offered. According to the rules of the administration, a detained child may undertake either vocational training if he/she has completed elementary school education or is at least 15 years of age, or a professional qualification programme if he/she is at least 16 and has completed at least 4 grades of elementary education. The boys learn carpentry, locksmith's trade, turner's trade, and the girls learn tailoring and hairdressing.

Finally, in Gaesti re-education centre there is no access to work during the incarceration period.



### ***Sports and recreation***

Twice a week detained minors receive physical training. They do not receive a daily exercise in the open air. In Gaesti there is a special area where sports can be played but there is no recreation room. They are allowed to listen to the radio (record players, CD players and TVs are not allowed in the cells), and to read books, newspapers or magazines, which are available in the centre's library.

### ***Discipline***

The punishments that are adopted to discipline the detained minors are placement in an isolation cell, deprivation of visits, public reproof, placement in another class or placement in another centre. The above measures happen on order by the Director of Gaesti.

Moreover, in case of protest movements, bullying, abuse, and violence among detained minors or other behaviours that can lead to order problems, the use of handcuffs and globs is allowed.

Furthermore, if the children want to make a complaint, they are most often discouraged or their complaint gets lost somewhere in some office.

### ***Contacts***

There are no exact visitation rules. The number of visits may depend on the gravity of the crime the minor has committed and on his/her behaviour and school results. Basically, the family may visit the detained minor any time but the subject needs the approval of the director of the centre. The lawyers of the detained persons have to follow the same visitation rules. Minors have the right to ask for a visit of their lawyer at any time, but everything depends on the director's decision.

### ***Critical assessment***

"Many minors undergo maltreatment in police stations. Children of gypsy origin are the main object of discriminatory practices during arrest and detention. Minors can be placed in rehabilitation centres or in reserved zones of the prisons for adults. The buildings are depressing. Hygiene and conditions for food preparation are not respected." These are the main conclusions of the Children in Prison report by International Prison Watch in 1999.

The most serious problem in the juvenile justice system of the country is the lack of measures aimed at the protection of children in prisons and re-education centres. The Romanian National Agency for Child Protection does not even include them in their child protection strategy. There is no rehabilitation programme for these children.

Both in prisons and centres they come into contact with other offenders, thus having the opportunity of completing their "knowledge". Physical and emotional abuses are very frequent.

The access to the re-education centres is difficult, as public transport is lacking or too expensive for some of the families.

Unfortunately, there is almost no difference between re-education centres and prisons: both are military, closed institutions.

Romania violates international standards by incarcerating young people to overcrowded, substandard and unhealthy places. Bunk beds piled 3 and sometimes 4 high with up to 12 or more minors in a room. Some beds are crammed into small locked cells. They eat and sleep in the unsanitary cells. In some institutions, the water is below standard. The lack of fresh air and sunlight produces frustration, resignation and anger amongst the inmates. Many of them suffer beatings, intimidation tactics, torture, degradation, abuse, isolation and the denial of their fundamental human rights.

The educational curricula the minor detainees are forced to take are not adopted to their needs. Most times the education they receive resumes to merely teaching them to read and write. The people providing this education are only "educators" or schoolteachers at the most. There are no programmes aiming at the psychological counselling or social/educational recuperation of these children.

Helsinki Watch reported, in 1993, that the Romanian system was harsh, biased, corrupt and punitive.

From the results of a juvenile justice questionnaire, done by UNICEF-Romania, it can be concluded that the main areas of concern are:

- the increasing rates of juvenile crime;
- the lack of separate legislation and infrastructure aimed at young people in conflict with the law that take into account international standards and human rights;

- the lack of alternative measures to the institutionalisation of youth;
- the lack of social programmes and services aimed at young people focussed on crime prevention, re-integration and social development within the community;
- the lack of training for professionals or government officials who work with juvenile delinquents.

For improvement the juvenile institutions need qualified personnel specialised in working with children. Minor detainees should never be sent to prisons but to juvenile recuperation centres of smaller capacity (100 persons at most), which should be under the administration of local authorities or the National Agency for Child Protection.

Social workers from the public child welfare service should be in these centres as often as possible (so far only NGO assistance has been available to these children).

Programmes directed at the psychological counselling and proper educational recuperation of these children should be devised.

The recommendations of Save the Children include:

- special courts;
- juvenile crime prevention strategy;
- street children programme;
- measures to prevent children falling into crime;
- measures to combat habitual crime;
- separate juvenile detention facilities.

### **Sources**

This report is based on:

- Information gathering by DCI-NL, after the distribution of an in-depth questionnaire.
- Children in prison, Observatoire international des prisons, International Prison Watch, Imprimerie Chirat, St-Just-la-Pendue 1999.
- Report Helsinki Watch, 1993.
- Information provided by Save the Children Romania.

## **3.18. Spain (Community of Catalonia)**

### **Application of international and national law**

#### ***International law***

Spain has ratified the Convention on the Rights of the Child. The Juvenile System of the country has implemented, besides others, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) and the United Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

#### ***National law***

The minimum age of criminal responsibility in Catalonia is 14 years and the maximum is 18 years. Due to the flexibility of the law, minor detainees can remain under the protection of the juvenile justice system until 23 years of age (depending on the length of sanction). Alternative sanctions (community service in the form of an educational penalty, and compensation orders) are adopted in order to avoid imprisonment if possible. In 1995 the new Spanish Penal Code raised the age of majority in penal matters from 16 to 18. It also allowed for the possibility, in future legislation, that young adults between 18 and 21 could in certain cases be subject to new regulations. In December 1999 the Congress of Deputies approved further new provisions that came into effect in January 2001. The main features of these provisions were to fix the age of 14 as the limit below which no penal responsibility can be exercised and to introduce a new range of sanctions and measures.

In its explanation of intent the new law set out 3 objectives: to integrate the young offender into society, to obtain reparation for the harm suffered by the victim and to restore the public order disturbed by the offence.

First of all the new law fixes the age from which penal responsibility can be exercised for offences defined by the Penal Code. Between 1992 and January 2001 juvenile courts dealt with young people over the age of 12 but below the age of 16. Now the minimum age is raised to 14 and below that age the new law allows only the exercise of protective and administrative measures. The new law also provides that young people between the ages of 16 and 18 who are suspected of committing an offence and, in exceptional cases, young adults between the ages of 18 and 21 will be within the competence of the juvenile courts - though the implementation of this measure will remain in abeyance for 2 years.

The new law continues to offer to young minor offenders the possibility of making good the damage caused to the victim as an alternative to prosecution. There can also be diversion from prosecution where the young offender has no history of recidivism and the response of the family and significant others is judged to be sufficient. Other measures which can be taken for less serious offences include socio-educational activities and/or confinement to the home or at a centre for between one and 16 weekends. For serious offences, the law allows sanctions and measures such as:

- placement in an open or semi-open institution;
- supervision in the community (which may include very precise rules of conduct);
- the performance of community service;
- deprivation or limitation of certain rights (driving licence or other administrative licences etc.).

The loss of liberty in a closed institution can only be imposed for very serious offences where there has been violence against the person. The law also allows the possibility of imposing educative measures or specific treatment for those suffering from mental health problems or problems of drug or alcohol addiction. The new law provides a variety of possibilities of suspension, substitution or combination of measures and sanctions. The main ones are:

- the conditional suspension of the execution of measures of less than 2 years for first offenders and/or participation in educative activities;
- the addition to a sanction involving loss of liberty of a final period, always defined, of supervision in the community.

These provisions will introduce a profound change in penal policy for minors and young offenders in Spain, particularly because they are applicable in the Autonomous Communities which, with the exception of Catalonia, did not have such powers except in respect of minors of less than 16. As a result these governments are faced with important challenges, both quantitative and qualitative.

### **Position of minors in the national prison system**

One of the main characteristics of the Juvenile Justice System in the Autonomic Community of Catalonia in Spain is the incarceration of minors in small institutions of no more than 50 persons.

Young offenders are not placed with adult inmates but it is a matter of concern that young persons above 18 are held in the same place with detained persons as young as 14 years.

There is a classification in open, half-open and close facilities. Moreover, there is a distinction in male and in mixed institutions, where male and females are living in separate modules but are sharing some activities (training, cultural activities etc.). Correctional officers receive special training, each year 40 hours.

*Table 1: Minor detainees in Catalonia-Spain (1995-2000).*

<b>year</b>	<b>figures (for detention order in Catalonia preventives and convicted)</b>
<b>1995</b>	326
<b>1996</b>	386
<b>1997</b>	290
<b>1998</b>	337
<b>1999</b>	297
<b>2000</b>	440

The vast majority of minors in Catalonia are deprived of their liberty for (only violent) Penal Code crimes. The average stay in an institution for non-convicted persons is one month and for convicted persons 6 months (since January 2001). In 2000 there were 440 confinements (both preventives or convicted) in all detention facilities.

Foreign street children are sometimes detained for a few hours. It is said that the main aim is to take care of them by providing provisional residence and by trying in the meanwhile to localise their parents. If they are suspects of committed crimes, they stay in detention until the trial.

One to 2 persons are held in each cell. All institutions provide educational training on an compulsory basis. Minor detainees can follow vocational programmes and/or can work voluntarily.

Alcohol, drugs and mental health problems are a matter of concern. There are reported incidents of abuse, bullying and violence among detained minors. Placement in an isolation cell is the most frequently adopted disciplinary measure.

Furthermore, minors deprived of their liberty in Catalonia's institutions have the right to complain officially about their treatment. The complaints are sent to the inspectorate of the Ministry of Justice (Departament de Justícia). These issues are sometimes (but not systematically) mentioned in the annual reports of institutions. Finally, minors are entitled to legal aid. Lawyers are allowed to visit them whenever it is necessary.

### **Description of a specific closed institution: L' Alzina in Palau de Plegamans**

As at February 2002, thirty-two minors were being held in L' Alzina in Palau de Plegamans, which is a closed institution for males with a total capacity of 55 places. There are 48 educators, one doctor, one psychologist, one social worker and 11 teachers at L' Alzina.

#### ***Housing***

There are 25 single and 15 double cells with toilets, washing facilities (shower and taps), central heating and air conditioning.

The size of each cell is 4x3 meters. There are 12 square metres available per person in a single room and 6 square metres available per person in a double room.

#### ***Food***

Food falls under the responsibility of the administration and is provided for free, 4 times per day. Co-ordinators and educators share the same food. The quality of the food and the cleanliness of the central kitchen are checked daily by the kitchen staff and the co-ordinators.

#### ***Health***

Detained minors are medically screened when they enter the prison system for physical and mental health problems. The screening procedure is repeated monthly and whenever the incarcerated persons ask for medical care.

There is a health care unit in the institution under the supervision of a doctor and a nurse. A psychiatrist and a dentist visit the detained minors periodically. The psychological supervision includes only group therapy. There are reported incidents of self-destructive behaviour, but without known suicide victims. Suicide prevention measures are adopted by the institution.

According to the management of the centre (because of the lack of disciplinary reports concerning the use of drugs inside), minors in L' Alzina institutions do not use drugs during their incarceration. A drug prevention programme with prevention activities, information, sittings and interviews with educators and experts is organised by the administration of the closed institution.

Furthermore, there were 3 HIV-AIDS victims among the detained minors. They receive a special treatment while in L' Alzina. One incident of hepatitis was also reported. Special treatment for such cases is provided as well.

#### ***Hygiene***

As regards hygiene, prisoners take a bath everyday. The water supply works efficiently and there is warm water as well. General speaking, the standards of hygiene in L' Alzina seem to be high. Toilets and

showers are reported to be clean. In addition, housecleaning products, toilet paper and soap are distributed for free.

### ***Education and work***

The average educational level of the vast majority of the detained minors is just a few grades of elementary school. In order to enrich the education of those children, national education programmes take place. The minors also learn social and daily life skills (habits in hygiene, health, etc.). Apart from educational there are also vocational training programmes (Gardening, carpentry, electricity, bricklaying, labour initiation).

Minors work during their stay in the institution (2 hours per day on average) on a voluntary basis. They receive approximately 18,000 PTA (108 euro) per month. The kind of work varies from period to period. At the time this report was written, they were assembling little motors.

### ***Sports and recreation***

Minors are entitled to receive physical training and exercises in the open air daily. There are also recreation rooms where they can play table games. Workshops on subjects as radio, computers, literature and video are often organised.

Sport seems to be the most widely practised activity at L' Alzina. There is a special area where basketball, football and volleyball can be played and there is also a swimming pool. In their cells they are allowed to have a radio, a record player and/or a CD player but no TV. A library provides them with books and other reading materials.

### ***Discipline***

The main disciplinary measures are ordered by the director of the prison and include placement in an isolation cell, placement in their own cell or reparation of damage.

Furthermore, the use of handcuffs and truncheons is allowed in order to maintain discipline in the institution. There are no reported incidents of bullying, abuse, violence and torture by the correctional staff. In contrary, it is mentioned that the above-mentioned incidents are taking place among minors.

### ***Contacts***

Visits by family members and friends are allowed without limitations whenever requested by the detained person.

Lawyers can visit their clients upon request. Minors are entitled to ask for a visit of their lawyers when is needed. Moreover, they have access to phones from where they are allowed to call daily.

### ***Critical assessment***

Save the Children notes that the Spanish Juvenile Justice System in general does not give priority to preventive action. It is stressed that the risk factors leading to marginalisation and delinquency are not being assessed. There is a need to adopt specific programmes and policies at all levels.

Furthermore, human resources and facilities need to be boosted to implement the measures decided by the courts. There is a tendency to send the minors to detention centres rather than to apply measures that can be implemented in a non-custodial environment, such as community service or probation.

### ***Figures of demands of intervention on the judicial system in Catalonia, 2000.***

victim offender mediation	1,409	41.8%
probation and community services	1,525	45.2%
placement in institutions	440	13%

Restorative justice has to be implemented, in all ways, and special attention should be given to immigrant minors in order to promote social inclusion and to prevent delinquency. Since 1990 there is a penal mediation programme in Catalonia. During the last years, 40% of all minors in the juvenile justice system in this region benefits from this programme - at the prosecutor level - and because of this the judicial process is avoided in the majority of this cases.

Experts say a great debate is needed on: juvenile crime; the participation of the community in the implementation of community measures; sanctions; and the social re-integration of young offenders. It is important to strengthen primary social prevention measures and the management of conflicts in schools and in the community, so that, in the future, there will be a greater chance of handling the majority of these situations without recourse to judicial process.

It is very clear that, without the participation of the community, there can be no successful operation of any model of restorative justice or of giving responsibility to people while at the same time respecting the rights and legal guarantees for children and young people provided by institutional justice. It is only with this participative and collaborative approach, in effect applying the principle of subsidiarity in public policy that measures which provide alternatives to detention and the social re-integration of young people will really progress.

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## **3.19. Tanzania**

### **Application of international and national law**

#### ***International law***

Tanzania has been implementing the international treaties that have been ratified such as the Convention on the Rights of the Child (CRC) in the national laws. The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) are known by the legislators in Tanzania, but the Rules are not implemented.

#### ***National law***

The legal position of minors in Tanzania is regulated by 3 main types of provisions:

- the Criminal Code;
- the Criminal Procedure Act 1985; and
- the Children and Young Persons Act of 23 April 1937.

Under Tanzanian law, the age of criminal responsibility is now 10 years old. Until 1998 it was 14 or, in certain cases, 12 years old, although courts may not impose a life sentence or the death penalty on a minor. In addition, minors who are less than 16 years benefit from special procedural rules designed to ensure that their best interests are respected both on arrest and later in the judicial process. More generally, minors must be brought before a court within 24 or, at the latest, 48 hours after their arrest and may not be subject to cruel, inhuman or degrading treatment. It is also a basic constitutional principle that every person who is charged with a criminal offence is innocent until proven guilty.

### **Position of minors in the national prison system**

In 2000, 880 minors were held in the Tanzanian prison system. According to an assistant prison commissioner, the minors held in prison fall mainly into 4 categories:

- they were born in prison;
- their imprisoned mothers are still breastfeeding them and asked for the child to be with them;
- children under 16 years of age, including some held because they are street children; and
- young prisoners aged between 16 and 21 years of age. The most common crimes for which children are imprisoned in Tanzania include drugs trafficking and abuse, robbery, pick pocketing and travelling on public transport without a ticket.

Children held in prison with their mothers stay, on average, between one month to one year. Those who have been convicted of a criminal offence stay between one to 5 years.

Tanzania has limited facilities especially for minors in the juvenile system: a single donor funded juvenile court has operated since 1998 and there are 5 juvenile remand centres. In other cases, minors are tried and held in the adult system. For example, in 1999 around 35 children aged between 11 and 17 years and one 9 year old boy were held in the adult male Butimba Prison. A further 21 boys under 16 years old were found in the adult male Maweni and Shinyanga Prisons.

The children themselves complain that they are mixed with older boys and adults, and that they are mistreated and sexually abused. They ask to be held separately from adults.

### **Description of a specific closed institution: Juvenile Remand Prison, Dar-Es-Salaam**

The Juvenile Remand Prison Dar-Es-Salaam is in the middle of the city and holds 40 to 50 male and female prisoners. There are 2 wardens, 3 social workers and one teacher.

#### ***Housing***

The prison is divided into cells containing 4 to 6 prisoners each. Each cell, or at least each corridor, has its own toilets and showers. There is no air conditioning and, although there is a central heating system, it does not work.

#### ***Food***

Although food is prepared and provided for free, it usually is insufficient and of poor quality. A typical day's menu would be maize porridge for breakfast followed by a stiff bean porridge (known as Ugalia Maharage) for both lunch and supper, although often the latter 2 meals are combined and served between 2 and 4 pm. Where this happens, the children do not get any more food after 4 pm.

#### ***Health care***

There is no medical screening of new prisoners and serious health problems exist at the Juvenile Remand Prison - Dar-Es-Salaam. The more serious diseases are HIV-AIDS, hepatitis and tuberculosis. The prison authorities do take action to deal with these: HIV-AIDS sufferers are released; hepatitis sufferers are quarantined; and tuberculosis sufferers usually receive treatment. Notwithstanding this, most of the other prisoners suffer from a skin disease for which there is no adequate medical care.

Drug abuse - mostly marihuana, known locally as "Bhang" is an issue too. Marihuana is available in the prison either from inmates or wardens who want to increase their income or via visiting relatives.

Lastly, suicides are a problem. Although minors often act in a way that suggests that they may be contemplating suicide, there are no effective suicide prevention measures. Some newspapers have reported incidents of suicides during the last 3 years.

#### ***Hygiene***

There is a serious lack of hygiene at the Juvenile Remand Prison - Dar-Es-Salaam that leads directly to increased illness. For example, because of old pipes, the prison's water supply does not work and children have to fetch water themselves. There are inadequate toilet and bathroom facilities with hardly any soap and no toilet paper.

#### ***Education and work***

The inmates are required to work between 8 and 10 hours a day doing heavy work such as farming, digging, fetching water and firewood, and cleaning houses and toilets. They are not paid for this, although they do gain other privileges.

The Juvenile Remand Prison - Dar-Es-Salaam does provide primary school education (which is much needed since most of the minors held there did not finish primary school while they were in the community) as well as vocational training.

### ***Sports and recreation***

Detained minors receive physical training and daily exercise in the open air and spend their leisure time singing or telling stories. (Due to financial problems there is a lack of facilities for playing, listening to music, watching television or reading books, newspapers or magazines.)

### ***Discipline***

Staff members and the Director of the prison may impose disciplinary measures, including placement in an isolation cell or out of the group into their own cell, deprivation of food and/or visits and extra work. The use of firearms and tear gas is allowed to maintain order in the prison. Bullying, abuse, violence and torture are reported to take place among detained minors and by correctional staff as well. According to reports in other prisons where minors are held, corporal punishment is still used in schools and against adults and children under 16 years as a sentence in relation to criminal offences, in spite of the international condemnation and the official abolition of corporal punishment.

### ***Contacts***

Visiting day is once a week. Minors are allowed visits from family, friends and neighbours. In practice, however, most children do not have family to visit them since their parents are often divorced or have died (usually from AIDS). Many children are from single parent families or have left home because of poverty. (For example, in the male Butimba Prison, 85% of the children were living alone and 90% of them have no contact with parents and relatives.)

The children held in the Dar-Es-Salaam prison may also see a lawyer once a week. However, there are no telephone facilities, radio, television, books, newspapers or magazines.

### ***Critical assessment***

Experts feel that children in Tanzania suffer regular human rights violations for many reasons. For example, the lack of closed institutions specifically for minors means that they are put in prison with often hardened adult criminals and suffer sexual abuse. Girls suffer particularly from this. More generally, the children suffer from inadequate clothing, food, beds, space, legal aid, education and health care.

The Committee on the Rights of the Child notes that while Tanzania recently has established its first juvenile court, it is concerned that the juvenile justice system still does not adequately cover all the regions of the country. It recommends that:

- Tanzania should imprison children only as a last resort and for the shortest possible period of time;
- improve conditions in detention facilities;
- protect the rights of children deprived of their liberty, including their right to privacy;
- ensure that children remain in contact with their families while in the juvenile justice system;
- introduce training programmes for all professionals involved with the administration of juvenile justice;
- abolish corporal punishment as a sentence within the juvenile justice system; and
- strengthen rehabilitation and reintegration programmes.

Concern is also expressed about the limited number of personnel trained to work with children in prison, the lack of rehabilitation and reintegration programmes, and the lack of a complaint mechanism for children whose rights have been violated.

A local NGO, the Kimanga Women's Health and Development Organisation (KIWOHEDE) has made the following recommendations after a review of the country's children's prisons:

- the community should support government to establish more remand homes and approved schools;
- courts should make greater use of alternative sanctions;
- Tanzania should implement international conventions that it has ratified;
- mass media, which plays a role in educating businesses, should extend this to educating parents, guardians and the general public about the well being of children;
- child offenders should be dealt with more by community councils rather than being put straight into the court system;
- government and NGOs should give greater priority (including by allocating additional funding) to the issue of children in prison.



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## 3.20. Ukraine

### Application of international and national law

#### *International law*

Ukraine has ratified the Convention on the Rights of the Child (CRC), but the content is not widely known. This is the same with the relevant United Nations Rules and Guidelines.

In January 1997 research by the Council of Europe was done on the prison situation in relation to possible membership of the Council. One looked at the European Prison rules. During this investigation also a youth prison was visited, but no specific check has been done in relation to the CRC or the Havana Rules.

Unknown is also the status of discussions about setting up specific juvenile justice courts as stipulated under the 1995 Act "On juvenile affairs agencies and services and on special juvenile institutions".

Among NGOs working with children and others working in the field of education there is a call for material and knowledge on the CRC and the UN Rules (Beijing, Havana, etc.) and their implementation. Defence for Children International The Netherlands started an education training programme on the CRC for trainers and teachers in Ukraine in October 2002 (MATRA project).

#### *National law*

Matters concerning the administration of juvenile justice are laid down in section 8 of the Ukrainian Code of Criminal Procedure. In general it is administered in accordance with the general rules governing the procedure in criminal cases.

Cases of juveniles who committed a crime are tried in courts of general jurisdiction. The participation of a defending council is permitted from the moment at which the charge is brought (article 44) and, in the case of arrest, from the moment of arrest.

Under article 8 of the Pre-Trial Detention Act, minors are detained in investigation blocks separately from adults. As an exception, not more than 2 adults being prosecuted for the first time in connection with non-serious crimes may with the sanction of the prosecutor be placed in a cell together with minors in the interests of avoiding overcrowding.

Minors may not be detained in solitary confinement cells. In case of threats to their lives, they must be transferred to fresh cells.

Article 24 of the Criminal Code states that the death penalty cannot be applied to minors. Persons below the age of 18 cannot be sentenced to more than 10 years deprivation of liberty (article 25).

Convicted minors serve their term of punishment in educational-labour colonies under one of 2 regimes: general and reinforced. The conditions in such colonies are designed to ensure the inmates' social reintegration. Socially useful labour, social educational work, provision of general education and vocational training are part of it.

On 1 September 2001 the new Criminal Code entered into force. The most important change was the abolishment of the death penalty, although for juveniles this was already not possible anymore under article 24 of the old Criminal Code.

Section XV deals with “Peculiarities of criminal responsibility and punishment of minors”. It knows a modern system of penalisation (article 98): fine, social tasks, correctional tasks, arrest, deprivation of freedom for a determined period.

The punishments, divided in 5 different classes, are quite high according to European standards: for a crime of small gravity committed repeatedly the maximum is 2 years; average gravity: 4 years; grave crime; especially grave crime: 10 years. Especially grave accompanied with the intentional deprivation of the life of a person: 15 years.

The law also includes the possibility of alternative sanctions. Although this does not mean that they are (already) practically available. So far these alternatives have not been used by the judges. Since 1995, the police have had the task of undertaking preventive supervision on children after their punishment. There is in practice a lack of knowledge in the police on methodologies to do this in a professional way. At the same time there are no probation officers available.

### **Position of minors in the national prison system**

Ukraine has the size of France. The situation of youngsters in detention should be seen within the context of the bad economic situation of the country: about 70% of the population lives below the poverty level. The number of youngsters in prison (only on penal grounds) was 3,200, in 2000. Of this total only 160 were girls.

In Ukraine there are 11 closed facilities for youth between 14 and 18. One of these is an institution specifically for girls. The prisons host in average 300 to 400 youngsters.

The system is a military one. It was created in Soviet times when delinquents were seen as a danger to state safety. The direction and guards are dressed in military uniforms. Children have to march daily.

Most prisons host about 500 persons. They are mainly between 14 and 18 years of age. In principle youngsters should move to an adult prison when they turn 18, but in practice this often does not happen.

About 80% have a penalty of longer than 2 years. The maximum for them is 7 years. Imprisonment is not used as a measure of last resort, and not many alternatives are available or developed.

About 30 to 35% are released early, but this is not a right and it only happens on the basis of good behaviour to be decided by the management of the prison.

Pre-trial detention is possible for serious offences. This can vary from several days, to weeks, to a year. This happens in an institution without specific facilities for youngsters such as education or sports. Under-aged men and young women are detained in groups of 10 under surveillance of one adult detainee. The State Department for the Execution of Punishments is currently working on a programme to improve the situation. In Ukraine the International Renaissance Foundation, sponsored by SOROS, set up programmes to stimulate probation activities. The IRF Penitentiary Reform Support Programme includes as one of its priorities the social work with young prisoners and helps them after release.

During last 2 years Dutch organisations supported several projects with regards to juvenile prisoners: “Social adaptation of young prisoners” (2 grants, 6 young offenders institutions covered); “Training courses for prison staff of Pavlograd prison” (Dnipropetrovsk region); “Organization of professional training of young offenders in Maryupol and Melitopol prisons”; “Distant psychological help to young offenders”; “Social help to juvenile prisoners in Perevalsk institution” (Lugansk region); “Practical law and computer skills to young prisoners” (Maryupol institution, Donetsk region); “Legal help to juvenile offenders” (Dnipropetrovsk region); “Professional training of offenders-girls in Melitopol institution”; “Educational and legal work with juvenile offenders in Kharkiv CIZO”; “Physical training and leisure activities with juveniles in Artemivsk SIZO” (Donetsk region); “Social and psychological help to juveniles before their release” (Dubno institution, Rovenska region); “Social therapy centre in Berezhany institution” (Ternopyl region); “Psychological help to the staff and young prisoners in Perevalsk institution” (Lugansk region); “Social and educative work with juveniles in Ivano-Frankivsk SIZO”; “Rehabilitation programmes with juveniles in Maryupol institution” (Donetsk region); “Psychological help to juvenile victims of violent offences” (Kiev). A lot of activities are set up in Ukraine or are planned for the next 2 years.

**Description of a specific closed institution: youth facility in Prelukye**

Prelukye is one of the detention centres. The following information counts in general for children deprived of their liberty in Ukraine.

***Housing***

The youth institutions are housed in very old buildings, which are in poor and sometimes bad conditions.

***Food***

The support of the Department for material support, food, etc. is very minimal and mainly covers only the salaries of the personnel.

***Health***

There is a small medical centre based at each prison with some beds. Most of the time a doctor and a psychiatrist are part of the team, as well as some nurses, a part time dentist and a psychologist. All newcomers stay in “quarantine” for 14 days in the medical centre.

***Hygiene***

Most of the institutions are old and worn out. Mainly the detainees themselves do cleaning regularly. Serious cases of unhygienic situations or diseases are not reported.

***Education and work***

All activities such as education, work, sports take place in groups of about 25 people (so-called brigades). The pedagogical vision of the institutions is based on the ideas of Makarenko, a pedagogue of the twenties. There are schools where the youngsters follow lessons. The teaching material is not always sufficient and funds are lacking to get new materials. They follow courses of about 6 hours a day, during 5 days a week. This comes on top of the work they are doing, also including cleaning and taking care of the terrain. As regards gifted children, it can be noted that they are often looking for special talents of the children, such as learning, sports, music. Development of these skills is stimulated. One is very proud if an ex detainee is doing well after release.

***Sports and recreation***

Sports are part of the education programme. Every year the Ministry organises a big sport, music and dance festival for the youth institutions.

***Discipline***

Youngsters who do not behave according to the rules can be punished with a warning and a limitation on the number of packages they may receive. In serious cases, when violence has been used, they can use isolation. This does not happen very often. The director cannot make such a decision on his own. He or she needs to propose this to a regional director, who is making the decision. In cases of “isolation”, schooling is still provided for one hour a day as well as one hour of fresh air per day. No visiting is allowed.

***Contacts***

The youngsters have a right to receive visitors: 12 short term visits and 4 long term visits per year. The short visits are for 4 hours and can be face to face. For the more long term visits there is a special unit where relatives can stay for a maximum period of 3 days. Every 3 months they can telephone for 15 minutes. Letters are checked, but can be sent out and received.

**Critical assessment**

The Committee on the Rights of the Child recommended in 1995 that the legal reform in the field of juvenile justice at that time should take fully into account the CRC, in particular articles 37, 39 and 40 and the other relevant international standards in the field. “Particular attention should be paid to the prevention of juvenile delinquency, the protection of the rights of children deprived of their liberty, respect for

fundamental rights and legal safe guards in all aspects of the juvenile justice system and the full independence and impartiality of the juvenile judges.” Training programmes on the international standards for professionals were also recommended.

In September 2002 the country report of Ukraine was discussed by the Committee on the Rights of the Child. The report gives a positive picture of children’s rights in Ukraine. Still lacking are continuity and coherence in dealing with children’s rights. The report does not give insight into the developments of the plan made by the government in 1991 called: “Children of Ukraine”

The Ministry of Youth has been changed into the State Committee for Youth Sports and Tourism and recently, in 2002, into the State Committee for Family and Youth Affairs. The country report does not give any information on its activities and the progress made.

The strategy paper of the IRF (International Renaissance Foundation (SOROS) states:

Ukraine’s penitentiary system, which was beyond public control for a long time, is now going through a transformation process that includes changing penitentiary legislation in accordance with international standards of treatment of prisoners, achieving a humane attitude to convicts, making the system more open to state and public control, and cooperation with NGOs.

Today, Ukraine has the preconditions for speeding up the democratisation of its penitentiary system, re-orientation of activities towards a humane attitude to convicts and their social rehabilitation by ensuring a broader participation of civil society in reforming the system and dealing with the urgent tasks of re-socializing prisoners.

There are some positive tendencies that give reasons to hope for the reform’s success:

- New legislation.

In 2001 the Verkhovna Rada of Ukraine adopted a new Criminal Code containing a number of democratic innovations such as a longer list of alternative sentences or more pardon opportunities for minor offenders. The draft Criminal Execution Code that has been submitted to the Verkhovna Rada is, for the most part, in keeping with Ukraine’s international obligations regarding the carrying out of criminal punishments, human rights observance and adherence to international standards of treatment of prisoners.

- Changing social mentality.

Society is gradually changing its attitude toward the penitentiary system and individuals serving their sentences. It is becoming more tolerant and beginning to concern itself with the penitentiary system’s problems. This is evidenced by the fact that more than 60 NGOs, youth centres and educational institutions are taking part in implementing democratic initiatives aimed at reforming the system, as well as by the regular media coverage of the reform’s progress.

- External factors.

The Council of Europe (through its Legal Committee, Human Rights Directorate and Committee against Torture) and other international organizations closely monitor Ukraine’s performance of its penitentiary reform obligations.

Key problems impeding the penitentiary reform are:

- imperfect legislative regulation of the work of the penitentiary system and its employees, execution of criminal punishments and provision of released individuals with social adaptation;
- overcrowded prisons. The number of prisoners has doubled over the last 10 years, which makes it much more difficult to ensure the implementation of corrective activities, employment for inmates, proper living conditions, catering and medical care for convicts. As of 1 April 2002, Ukraine had 195,000 prisoners;
- insufficient state funding, which impedes the reform;
- inadequate material basis, which rule out education and vocational training of convicts, their full employment, proper medical care, re-socialization, and conducting cultural and entertainment activities;
- inadequate basic and special training of correctional personnel, particularly as regards human rights, international standards of treatment of prisoners, and using effective rehabilitation programmes;
- absence of a system of social rehabilitation of newly released individuals, which greatly impedes the adaptation of almost 80,000 persons that are released from prisons every year.

#### Urgent needs:

- developing a scientifically substantiated concept of a long-term reform of Ukraine's penitentiary system taking into account international experience;
- preparing, harmonizing with international human rights documents and standards of treatment of prisoners; public approbation of a new Criminal Execution Code to provide for humanizing and democratisation of prisons and pre-trial detention facilities; and creating mechanisms of introducing its democratic innovations into penitentiary practice;
- propagating among judges alternative sentencing and non-prison punishments introduced by the new Criminal Code in order to decrease Ukraine's prison population (more than 35% of those brought to criminal trial in 2001 were sentenced to imprisonment, and almost half of that number received prison terms up to 3 years);
- creating conditions and mechanisms for utilizing alternative sentencing (corrective labour, community services, conditional release on probation, restrictions on movement) and a relevant probation service that would execute such sentences;
- training employees for corrective institutions;
- implementing comprehensive re-socializing programmes for prisoners (in particular juveniles, women, drug addicts, violent offenders, rapists, prisoners serving long and life sentences, and so on), for example in providing educational services and training/professional development, involvement in work, provision of legal assistance, preparation for release;
- developing a network of social adaptation centres for newly released individuals and a patronage service to ensure reintegration of ex-convicts into society.

Except for the support by the International Renaissance Foundation, Ukraine has no systemic and consistent support for penitentiary reform initiatives. Some work in this field is being done by the embassies of the United States, the United Kingdom and The Netherlands, USAID, ABA/CEELI, Prison Reform International, and Prison Fellowship International, which provide insignificant financial aid to Ukrainian NGOs. Among organizations making the biggest contribution to the success of the penitentiary reform are the Ukrainian-American Human Rights Bureau, Donetsk Memorial, Melitopol Memorial, Ukrainian John Howard Penitentiary System Reform Foundation, Ukrainian Section of the International Human Rights Society, All-Ukrainian Children's Rights Committee and a number of youth, women's, educational and information organizations and centres.

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### 3.21. United Kingdom (England)

#### Application of international and national law

##### *International law*

The United Kingdom has ratified the Convention on the Rights of the Child (CRC). It has not

implemented various other international instruments governing the care and treatment of children who break the law (such as the Beijing Rules and Havana Rules), although interested parties working with children in prison are aware of them and at least one organisation active in this area is concerned that the quality of care provided in UK prisons fails to meet these standards.

### ***National law***

The legal position of minors in prison in the United Kingdom is regulated, inter alia, by the Crime and Disorder Act 1998 and the Prison Service Order 4950, which sets forth targets for the care of children in prison. Note that children in prison are excluded from the UK's main piece of child protection legislation, the Children Act 1989. The government also has a Crime Reduction Strategy, which deals specifically with young offenders.

### **Position of minors in the national prison system**

In the United Kingdom, 7,653 minors were sentenced to prison in 1999; this figure is up from the 5,464 sentenced to custody in 1995. At any one time, around 4,000 minors are serving prison sentences for violating criminal law with around 2,000 minors being refused bail and thus spending some time in prison awaiting trial.

UK law treats minors differently according to their age:

- children aged under 10 years are not held criminally liable;
- minors aged between 10 and 16 years are subject to special juvenile laws. These provide, for example, that the criminal courts may imprison minors only from the age of 12. Minors aged between 12 and 15 years will be held in a local authority secure unit or in a secure training centre. Here, the standards of care are higher than those applicable to minors held in prison. Minors aged 15 years and over will be held in a designated juvenile unit, usually located within an adult prison and, hence, losing the protection that they would otherwise have had under the Children Act (see above); and
- 17 year olds are sentenced under juvenile law but are dealt with under adult legislation with regard to police detention and remand provision.

Those aged 18 and above are treated as adults under UK law.

### ***Pre-trial regulation when a child is not granted bail***

Children aged between 10-16 years who are not granted bail pre-trial are remanded to local authority accommodation under the Children and Young Persons Act 1969 (as amended). The local authority may then apply to the court for permission to place children aged 10-11 years in secure accommodation. This means that the child concerned will be looked after by the local authority. The court grants this request by issuing a secure accommodation order under the Children Act 1989.

Girls aged 12-16 years and boys aged 12-14 who are remanded to local authority accommodation may be made subject to a "court ordered secure requirement". This means that the child concerned must be placed in a local authority secure unit that is regulated and protected under the Children Act. Recent legislation permits placement also in a secure training centre that is privately owned and operated on a profit-making basis, although these are not regulated by the Children Act.

Boys aged 15-16 years who are remanded to local authority accommodation are dealt with differently. The court will decide whether the boy concerned would be "vulnerable" in a prison setting. If so, and if a place is available, the court should make the court ordered secure order as above (and the boy becomes "looked after" and cannot be placed in prison). However, there regularly is no local authority accommodation available and thus the court must remand in prison boys that it has deemed "vulnerable". The court will also remand in custody boys that it does not consider "vulnerable". Note, however, that many organisations consider that all boys aged 15-16 years would be vulnerable in prison and should be held elsewhere.

Boys and girls aged 17 are dealt with as adults for remand purposes and, if bail is refused, they are remanded in custody. Some of them are placed in adult prisons - a particular problem for girls, whose proportionate incarceration has gone up dramatically.

### ***Post-Trial Sentencing***

Since last year, new legislation, the Criminal Justice and Police Act 2001, has lessened the criteria that must be satisfied before a child can be remanded in custody or in a secure institution to allow those charged with less serious offences to qualify. This was despite opposition from many organisations.

Following the trial, sentencing to custody is for grave offences - up to life imprisonment or the maximum allowed for an adult. The definition of "grave" has altered over recent years to include less serious offences and to apply to younger children.

The Crime and Disorder Act 1998 allows certain lower level courts (magistrates courts) to impose a detention and training order on 12-17 year olds (this used to be 15-17 year olds and may soon be further extended to 10 and 11 year olds) who have committed a single offence. The order lasts for up to 2 years. The legislation allowing magistrates to give 2 years to 10-12 year olds was implemented with little opposition; in contrast, there has been much more debate about the powers of magistrates, who operate at a fairly low level of the court system, to sentence adults. Children who receive a detention and training order are denied "looked after" status under the Children Act but may be placed in any part of the "secure estate" (prison, STCs and local authority secure units).

Following the implementation of the Crime and Disorder Act 1998, UK prisons have been reorganised to allow for male minors to be held separately from male adults - all boys under 18 in prison should be held in designated juvenile accommodation separate from adults, except in exceptional circumstances. This is not always the case in practice, especially when boys are held on remand. There are, however, no separate units for girls held in prisons; they are held with adult women prisoners. Also, although adult male and female prisoners are held separately in prison, minor boys and girls aged between 12 and 15 years old are held together in local authority secure units and in secure training centres. There are different types of prison in the United Kingdom ranging from closed juvenile institutions, semi-open institutions, open prisons and the local authority and private training secure units referred to above. Once in prison, minors may be held in either a single or a double cell. There are not usually enough single showers and toilets for detained minors - in many prisons, inmates shower in groups.

The main health problems experienced by minors in prison in the United Kingdom are drug and alcohol abuse related as well as to do with mental health. Tuberculosis and skin diseases are not an issue.

Inmates get drugs from visitors and from other inmates who have been out of the prison to court. Drug users are not held separately from other minors. Some, but not all, prisons offer drug therapy programmes. It is not clear how many minors in prison have HIV-AIDS.

There is evidence of bullying, abuse and violence among imprisoned minors. There are also indications that some prison officers also are violent towards inmates but this is hard to substantiate.

In terms of discipline, common measures are placement in an isolation cell, placement out of a group into their own cell and deprivation of privileges such as television, association and spending money. Until fairly recently, prison officers were able to add days to a minor's prison sentence for misbehaviour and used this, or the threat of this, as a disciplinary measure. Many prison officers blame the loss of this disciplinary tool for increasing levels of disorder in UK juvenile prisons. Although corporal punishment is not permitted, there is a high incidence of complaints that prison staffs do use violence and abuse to discipline minors in prison. There are also concerns that bullying, abuse and violence is taking place between the prisoners themselves.

Minors detained in the United Kingdom do have a right to legal aid and to receive as many visits as necessary from his/her lawyer. UK law also aims to ensure that imprisoned minors are educated during their time in prison. Provision of vocational training and work experience is at the discretion of each institution. Some provide it, others do not. (cf. NAYJ info which states that educational and vocational training and the provision of work is obligatory "by prison orders and contracts only").

In addition to the traditional system of imprisonment, UK law also provides for alternative sanctions such as community service, electronic monitoring and compensation orders in favour of the victim. Also used are supervision orders, action plan orders, drug treatment and testing orders and curfew orders.

### **Description of Specific Closed Institutions: The Lancaster Farms Young Offender Institution - Buttermere Unit; and H.M. YOI and R.C. Onley.**

This section compares 2 institutions. The first, Lancaster Farms, Buttermere Unit shows how prison life

works reasonably well. The second, H.M. YOI and R.C. Onley is perhaps more representative of prison life for minors in the United Kingdom.

### **Lancaster Farms Young Offender Institution, Buttermere Unit.**

Buttermere Unit is a purpose built prison dating from 1992. The block which now houses the juvenile accommodation was added in 1996 and is fenced off from the rest of the prison. Although not perfect, it is an example of how life could be better for minors detained in prison.

#### ***Housing***

The Buttermere Unit is new, light and clean. It is well designed and composed of 2 identical 2-storey house blocks, which have cells on 3 sides, helping to create a calm and safe atmosphere. Its main disadvantages are that, although they have toilets and running water, the cells are stuffy and the Unit regularly holds 130 boys rather than the 120 it was designed to hold. This means that when the unit is full, as it usually is, 20 boys have to double up in single cells, leading to cramped and uncomfortable conditions. There is central heating but no air-conditioning (the latter is not really necessary or usual in the area).

Both remand and sentenced prisoners are held at the Unit; all boys wear prison uniform and follow the same regime.

When boys first come to the prison, they must wait in the main reception room with young adults while the necessary paperwork is completed and a caseworker from the Buttermere Unit comes to collect them. Some minors reported that they had to wait for over an hour with young adults before being transferred to the Unit.

#### ***Food***

Three meals per day are served by a clean central kitchen and provided free of charge. The Board of Visitors examines (and tastes) the food on a weekly basis.

#### ***Health***

Boys are screened for medical problems once when they enter the Unit. Lancaster Farms has a health care unit with sufficient nursing staff, some of whom have mental health expertise. In addition, local doctors visit the prison every weekday morning and specialist doctors provide more specific care.

#### ***Atmosphere***

The Buttermere Unit at Lancaster Farms seems to have a better atmosphere than other prisons and to operate successfully, primarily because there is a strong emphasis on maintaining good relationships between staff and prisoners rather than an excessive use of punitive sanctions.

Moreover, the regime at the Buttermere Unit is structured specifically to ensure that there are as few opportunities as possible for bullying. For example, boys usually shower one at a time and additional items that they are allowed to purchase (such as sweets, tobacco and phone cards) are ordered in advance and distributed in a bag to the boys' cells. As a result, the Buttermere Unit has not experienced the increased levels of violence and disorder that have beset other institutions. No cells have been smashed up and there have been no serious assaults on staff. There is, however, still bad behaviour and prison officers do use the isolation unit. Also, despite the relatively good relations between prison officers and inmates, there is still a "them and us" attitude, which was reflected in the way the officers talked about the boys as "cons" (short for "convicts") and about "taking them out to feed them".

There are instances of suicide.

#### ***Education and work***

The Buttermere Unit aims to ensure that minors spend as close as possible to 10 hours per day outside of their cell and that 6 hours of this time is spent in purposeful activity, such as education, training or work. One problem here, however, is that because the Unit is almost always holding 10 minors more than it was designed to hold, there are not enough places for them all to be educated or to receive training or work. (In any event, there are relatively few work places for under 18s who have finished their education.)



### ***Recreation and sports***

Moreover, there is little for the boys to do in the evening or at weekend. This makes the boys bored and frustrated and means that fights are more likely to break out.

Boys have no access to open air other than when moving between units. This means that there is little opportunity for between 120-130 adolescent boys to burn off their excess energy, leading inevitably to frustration and aggression.

### ***Contacts***

Visiting is allowed at the weekends.

### ***Supervision***

The Buttermere Unit aims to have one prison officer for each 12-14 minors. This ratio is often less where staff are ill or otherwise unavailable.

### ***Reintegration into the community***

Although much thought has been given to this at the Buttermere Unit, it is difficult to achieve smoothly because there is not enough manpower to ensure that boys receive sufficient time with an appropriately trained prison officer. In addition, there are concerns that the education that boys receive while at Buttermere is lacking in 2 respects: (i) it does not give them practical skills, such as managing on a tight budget, accessing social security benefits and basic cooking; and (ii) it is not linked to work opportunities in the community. Lastly, during their time at Buttermere, the boys have very little contact with the outside community - they are not allowed out for security reasons and there has been very little involvement of the outside community in Buttermere.

### ***H.M. YOI and R.C. Onley***

This is a closed prison housing 240 minors and 400 adult male prisoners, located in Willoughby, Warwickshire. There are approximately 300 prison staff, of whom 250 are prison officers with 20 teachers, 8 medical staff, 6 probation officers and 4 psychologists.

### ***Housing***

The prison provides each minor with a single cell measuring approximately 8 by 6 feet. Each cell has a toilet and taps with hot and cold running water but minors must shower in separate shower blocks of 6-10 showers located in each wing. (Although showers are sometimes missed because of time constraints or bullying and abuse.) There are no baths. There is also central heating, but no air-conditioning (this is normal for the area and not really necessary).

### ***Food***

Three meals per day are provided without charge by a central kitchen at 7.30 a.m., 11.30 a.m./noon and 4.30 p.m.. There are regular routine inspections of the food and kitchen staff follows cleanliness rules. (There has been only one known complaint by an inmate working in the kitchens who saw another prisoner spit in the food.) Minors have to eat alone in their cells.

### ***Health***

All minors are screened for medical problems once when they are admitted to the prison and thereafter as well if required. If a problem is brought to their attention, medical staff will offer treatment either at the prison's own health care unit (which is not fully operational due to lack of staff) or using external help. The prison does not routinely screen for mental health problems but will refer these to appropriate professionals where necessary. However, it does offer psychological testing, counselling and a group course in enhanced thinking skills.

Minors frequently try to harm or kill themselves. Although there have been numerous serious and near fatal attempts none have, as yet, been successful at this prison. Remand prisoners are more likely to try to hurt or kill themselves. Prison staff are taking steps to prevent minors hurting themselves including by setting up a "listening scheme" as well as operating a self harm watch/file whereby minors that prison staff suspect are at risk have a specific care plan.

Although the exact numbers of drug users are not known, the prison has a permanent “sniffer dog” which regularly finds cannabis throughout the prison. Amphetamines and heroin are also used in the prison. It is believed that family and friends smuggle the drugs in during visits. Drug users are not held separately from other minors. There is no specific therapy programme for minor drug abusers, although there is a drug free/programme wing for 18-21 year olds only. It is not known whether there are any HIV-AIDS victims or if any of the minors suffer from hepatitis or tuberculosis. Certain detained minors do suffer from skin disease.

### ***Hygiene***

The prison staff distribute soap and toilet paper when required, although some minors complain about toilet paper running out. Staff are sometimes reluctant to provide more paper because they believe the prisoners use it as a wick for cigarettes. Cleaning the showers and toilets is the personal responsibility of the detained minors who are supposed to be given appropriate equipment and cleaning materials.

### ***Education and work***

The prison does have an educational programme. However, places are limited and many minors do not attend even though they are legally required to do so. The general level of education among detained minors is low. Although most had attended some high school classes. More than 60% of the 15-21 year olds were dyslectic. Vocational training is not available. There are some work places. Minors may choose whether they take up an available place. Those who do work an average of 5 hours per day. They are paid between 2-3 pounds sterling per week but also receive additional privileges such as extra visits, being able to wear their own clothes or being able to play on computer games.

### ***Sports and recreation***

Minors may choose to take part in physical exercise but many do not because of bullying and abuse as well as because of a lack of self-esteem. Minors do not get daily exercise in the open air, although there is a sports area. Other forms of recreation include the use of library facilities, pool, table tennis, music and television (although CD players and televisions, etc. are not allowed in the cell).

### ***Discipline***

Prison staff may place misbehaving minors in an isolation cell or place them out of the group in their own cell, deprive them of visits or certain amounts of food or impose fines. Decisions on appropriate disciplinary measures are taken by the prison director and correctional officers based, in part, on reports by all prison staff. In certain circumstances, prison staff are also able to use control and restraint techniques, including handcuffs.

### ***Contacts***

Remand prisoners are allowed 2 visits per week. Sentenced prisoners receive between one and 4 per month depending on their behaviour and other factors such as whether they have worked. Other people may also visit provided they are named on a visiting order. In addition, prisoners may use the telephone when they are on association outside their cell, provided they have enough money to do this.

Detained minors do have the right to legal aid. They also may ask to arrange to see their lawyer at any time during the week.

### ***Critical assessment***

Experts in the United Kingdom believe that the system of imprisoning minors could be improved, in particular by:

- significantly increasing the level of training received by staff who dealing with the minors involved;
- revising existing inadequate complaints procedures.

Moreover, Amnesty International has shared with the Committee on the Rights of the Child its concerns about the extent to which the UK has implemented the Convention, inter alia, the right of children in prison not to be subjected to torture or other ill treatment in certain young offenders institutions in England and Wales.

International Prison Watch concluded in its report of 1999: “Six minors die in detention in 1997. Twenty-eight prison revolts are officially reported. Despite the existence of institutions designated for juveniles, and separate prison quarters for young detainees, some minors are in contact with adults. Five prisons for youths aged 12 to 14 are under construction. Many minors are locked in their cells for 23 hours a day.”.

### **Sources**

This report was based on:

- Information gathering by DCI-NL after distribution of an in depth questionnaire: information provided by the Howard League for Penal Reform and the National Association for Youth Justice.
- Children in Prison - Provision And Practice At Lancaster Farms, The Howard League for Penal Reform, National Association for Youth Justice.
- Children in prison, Observatoire international des prisons, International Prison Watch, Imprimerie Chirat, St-Just-la-Pendue 1999.

## **3.22. United States of America**

### **Application of international and national law**

#### ***International law***

Although the United States has made a significant contribution to the development of the international system of human rights protection during the last 50 years, it still stands alone against the rising tide of international concern in this area by failing to ratify key human rights treaties, notably the Convention on the Rights of the Child (CRC). Further, although the United States has signed (1977) and ratified (1992) the International Covenant on Civil and Political Rights (ICCPR) that prohibits the execution of juvenile offenders (article 6(5)), it still reserves the right, subject to its Constitutional restraints, to impose capital punishment on any person, “including such punishment for crimes committed by persons below 18 years of age”. The Human Rights Committee has found the USA reservation to article 6(5) invalid because it is incompatible with the object and purpose of the Covenant. In 1989, in the case of *Stanford v. Kentucky*, the USA Supreme Court held that it was not unconstitutional to execute those persons arrested at the age of 16 or 17. In 2002, 4 justices indicated that the execution of juveniles “is a relic of the past and is inconsistent with evolving standards of decency in a civilized society. We should put an end to this shameful practice.”. However, 5 justices voted against accepting the habeas petition of Kevin Stanford. Indeed, 22 USA states still expressly permit the use of the death penalty for those under 18. It is prohibited by 28 states and the federal government. There are 82 juvenile offenders currently on death row among those states but only 7 states have used the execution of juveniles in the past 25 years. A total of 20 juvenile offenders have been executed in that time. Texas has executed 12, more than all other states combined. In the past 15 years, 5 states have repealed their juvenile death penalty statutes, most recently Montana in 1999 and Indiana in 2002, and no state has lowered the age of execution.

An important development is the Supreme Court decision that the execution of the mentally retarded is unconstitutional (*Atkins v. Virginia*, June 2002). The reasoning in *Atkins* is similar to the situation of juveniles, involving culpability and current standards of decency.

Only 2 nations other than the USA continue to authorize the legal execution of juvenile offenders: Iran and the Democratic Republic of the Congo. In the last decade, China, Saudi Arabia, Pakistan and Yemen have banned the juvenile death penalty.

#### ***National law***

On the domestic level, the United States’ Constitution sets out the fundamental rights of the American people including the basic principles with which all USA law must comply. In certain cases, notably in its Eighth Amendment, the Constitution parallels principles laid down in the CRC. That amendment proscribes the use of torture or inhuman or degrading treatment of individuals, including children - just like article 37 of the CRC. Several state courts have charged juvenile and adult correctional facilities with violations of the Eighth Amendment. Thus, in practice, requiring them to achieve this goal of the CRC, albeit via their own national legal instrument.

However, the Supreme Court has also interpreted the USA Constitution in a way which does not comply with the high level of child protection set forth in the CRC: Although it is unconstitutional - and hence prohibited - to execute children who were under the age of 16 when the crime was committed, the Court has held that the Constitution does not prohibit the capital punishment of a child who has committed a crime of murder when over 16 but less than 18.

The federal government delegates to the states power to regulate their own criminal justice systems, both juvenile and adult. (Although over the past decades the federal government has expanded its role in criminal law. For example, the federal death penalty does not permit the execution of juvenile offenders.) Within the area defined by the federal government, the states adopt their own detailed criminal justice legislation, which must comply with the USA Constitution as interpreted by the Supreme Court. To take 2 examples: the USA federal government has not fixed the minimum age of criminal responsibility - this is a matter for the USA states to determine and varies widely. Certain states have dealt with the minimum age issue by setting a specific age above which minors are held criminally responsible for their actions. Others deal with this on a case-by-case basis, legislating that a minor is criminally responsible for his actions if he understood the consequences that they would or might have and allowing their courts to determine if this is so. Secondly, states also define the maximum age at which a minor or young person may be tried in the state juvenile court system and this age threshold varies from state to state.

All USA states have a juvenile justice system, which deals with the great majority of children arrested on suspicion of violating criminal law. It comprises separate courts, programmes and services and residential facilities (including secure institutions in which a child may be held and from which they cannot leave without permission). As a general rule, and in response to an earlier perceived increase in violent juvenile crime, at least 40 states have made it easier to try children as adults in the 1990s, despite an 8-year drop in youth crime since 1994. Children may be transferred to the adult criminal court in a variety of ways, each of which includes the likelihood of mandatory sentencing laws. Despite strong research evidence that young people tried and sentenced in adult criminal court re-offend sooner, more seriously and more frequently, state laws continue to make it easier to transfer or waive a juvenile offender to adult criminal court. In particular, African-American and Latino children are disproportionately transferred to criminal courts. In 1997, children of colour accounted for 62% of children detained nationwide. The disproportionate confinement rate of such children in the largest states - California, Florida, Texas and New York - could well reach 100% of the institutions' populations within the next 10 years.

### **Position of minors in the national prison system**

On a randomly chosen day in 1999, 107,000 children were recorded as being incarcerated in the United States. Of these, 14,500 children were held in adult facilities, 9,100 in local jails awaiting trial and 5,400 in adult prisons. The remainder were in juvenile facilities.

An Amnesty International and Human Rights Watch document (1999) states that there are intolerable conditions for children in many USA juvenile and adult correctional facilities, the most common being:

- severe overcrowding. In February 1995, nearly 70% of public juvenile facility residents were held in facilities operating above their design capacity;
- using the denial of proper food, clothing and health care as control measures;
- tolerating violence, sexual abuse and fighting among peers in institutions, often between racial and ethnic groups;
- staff abuse, both physical and sexual;
- segregation and isolation for extended periods of time and often in places of serious sensory deprivation;
- denial of appropriate education and prescribed medicine;
- cruel and inhumane punishments, the use of injurious restraints and the denial of privileges;
- lack of separation of children and adults in adult facilities; and
- lack of proper nutrition.

With particular regard to adult facilities, the following was also noted:

- isolation and segregation leading to suicide and death (the incidence of suicide is 5 times more likely in an adult facility than a juvenile one);
- children convicted of minor crimes are held for extended periods;
- juveniles are unused to the rigid scheduling and this leads to conflict with staff and ultimately longer stays in the facility or placement in high security level facilities regardless of the original crime;
- lack of proper educational programmes;

- punishment, torture and abuse of children are more common in adult facilities;
- little age-appropriate recreational activities; and
- lack of training programmes for staff in dealing with children.

It should also be noted that some of the worst violations of children's rights occur in facilities operating under private for profit ownership (for example, Tallulah and Jena Facilities in Louisiana) where there is very little surveillance by state administrative agencies or by committing courts.

### **Description of a specific closed institution: Baltimore City Detention Centre**

Baltimore City Detention Centre, Maryland, is an adult detention centre housing some 150 children. The vast majority are male, with no more than 5 to 10 girls in detention at any one time. Many children remain in detention for 6 months or more.

#### ***Housing***

Male children are housed in the men's detention centre and females are housed in the women's detention centre. The 2 juvenile sections are subdivided into 3 areas: a section for the general population, one for those under protective custody (i.e., for those inmates who are particularly vulnerable or have been threatened by other juveniles) and an administrative segregation section (including isolation cells) for those inmates who pose a security risk or who are awaiting transfer to the state prison after a sentence of more than 15 years has been passed. These different regimes are outlined in more detail below.

The general housing for male children was formerly used for inmates on lockup status (a disciplinary measure involving increased time in cells each day and loss of privileges). The male section has a total of 60 cells divided into 2 sections, each has an upper and lower tier of 15 cells each; bars along the front of each row of cells open on to a passageway. The cells were originally designed for single occupancy. The average daily occupancy for these cells is 70 and before 1998, the section routinely housed in excess of 100, reaching 120 in June 1997. In practice, most of the cells have 2 bunks, a sink and a toilet. The majority of the cells measure 8 by 7 feet and have an 8 and one-half feet high ceiling. The only natural light is provided by 4 or 5 large windows in each passageway. Most of these windows are partially blocked by plywood or covered by opaque plexiglass and where the windows are not covered, most of the glass panes are broken. Each side of the section has 2 telephones and a dayroom. The single shower room for each section has 6 shower heads (2 were not working during the inspection).

The girls' dormitory is a large room holding 12 beds. Floor to ceiling bars run along the front of the dormitory. One of the walls has small windows. The shower and bathroom are at the back of the dormitory. There are no adults housed with children in this dormitory although there is an adult dormitory next door, which the girls would pass everyday on their way to and from activities such as school.

#### ***Protective custody section***

There is a protective custody section for boys and girls. Both have poor daylight and hygiene with few activities available to relieve the boredom.

#### ***Boys in administrative segregation***

The boys in segregation are held in long tiers of dark, depressing cells similar to those in the protective custody section. The paint is crumbling from the walls and these are covered in graffiti and grime. Children are interspersed with adults in violation of international law. Inmates are allowed 2 10-minute showers each week and 3 one-hour periods of dayroom recreation each week. This can be used for watching TV or making telephone calls. Many inmates held here also lose certain privileges (for example, they are not allowed telephone calls and cannot buy food or toiletries, etc.) possibly for the entire time they are placed on administrative segregation. The boys interviewed stated that they sometimes also did not receive any recreation periods at this time.

There are 2 isolation cells, with solid heavy metal sheets placed over the bars, which shut out virtually all light for anyone inside. These are used for inmates who assault guards. The inmates housed in these are

allowed out only for brief periods to shower or to see their lawyer. They do not receive phone calls or other general visits.

### ***Girls in administrative segregation***

Girls are placed in the women's segregation area but do not share cells with women detainees. The section has 16 cells, each with a single bunk, a sink and toilet. Each cell has a heavy metal door with small plexiglass windows and a narrow slot for food trays - the only source of fresh air. There are no external windows.

Only one of the 2 showers was functioning and this was very dirty - moldy with a torn shower curtain. The girls are allowed 2 showers a week with a total of 15-20 minutes outside their cell to clean it and to go to the shower.

Cockroaches and other vermin were crawling in the cracks in the concrete.

Detainees are allowed only attorney visits and receive no commissary privileges.

### ***Health care***

Children are occasionally placed in the psychiatric section, the medical section and the hospital. In addition, pregnant girls may be placed in the maternity dorm.

### ***Separation from adults***

Children housed in the general population and protective custody sections are generally kept separated from adult inmates. This is not true in the administrative segregation section where children are housed alongside adults. Girls are also housed with adults in the maternity dormitory although recreation is taken with other juveniles.

### ***Ventilation and temperature***

Generally ventilation is poor. During summer the extreme heat and during winter the extreme cold causes the children real hardship.

### ***Clothing***

Children are required to wear institutional uniforms only outside their cells. They are allowed to bring their own clothes to wear inside the cells. Although the children are responsible for cleaning their clothes, this is difficult to do. They are unwilling to use the laundry as they fear not getting their clothes back. However, they have also reported difficulties in getting clothing to and from family members for cleaning because of extended periods of lockdown, which entails no family visits.

### ***Bedding***

Children complain that their mattresses are dirty, thin and inadequate. Several complained that clean sheets are not provided frequently enough. Theft of blankets during the cold winter months is also an issue.

### ***Hygiene***

There was evidence of cockroach infestation in the showers and complaints of mice and other vermin in other parts of the jail. There is an obvious lack of maintenance - smashed windows, broken showers, grimy cells. Baltimore Detention Centre also restricts showers for those in segregation and during lockdowns. This is contrary to the National Commission on Correctional Health Care which calls for a daily opportunity to bathe. Children do receive basic toiletries but the purchase of other personal toiletries during lockdown is prohibited.

### ***Food***

Complaints mainly concern the insufficient quantity of food. Many children need to supplement their regular meals with food purchases.

The report studied fails to mention outdoor recreation and there is no detail about schooling. During a Human Rights Watch visit, girls complained that they had not been taken to classes for 3 days.

### **Critical assessment**

The United States still fails to adhere to many of the conventions that govern the treatment of children in the justice system. The key problem areas are as follows:

- some states still continue to execute children convicted of crimes committed under the age of 18;
- the United States still continues to use life imprisonment without the possibility of parole against defendants who are under 18 at the time of the crime;
- although the majority of child offenders are tried in the juvenile justice system, some children are still transferred into the general criminal justice system. If this happens they will be sentenced under adult sentencing guidelines (except for “blended sentencing” laws) and, in Florida, will then be sent to an adult prison. However, in most states, children tried under the adult system will still be incarcerated in juvenile facilities until they reach the age of criminal majority in that state (17 in Illinois, for example; 18 in the majority of states). On their birthday, the juvenile concerned will be moved to adult prison unless the juvenile facility holding them wishes to keep them until age 21;
- conditions of confinement violate many provisions of the ICPPR with respect to punishment, abuse, torture, overcrowding, segregation and lack of appropriate supervision;
- children and adults are not sufficiently segregated whilst incarcerated;
- children of colour are increasingly over-represented in the juvenile justice system relative to their proportion in the total youth population; and
- because of the relatively small number of females accused and convicted of crimes, few detention and correctional facilities are oriented to deal with female detainees.

The United Nations recommends that the United States takes all measures to integrate fully into legislation and practice provisions of the ICCPR. It also recommends that the United States ratifies the CRC without reservation.

Unless a child is likely to be convicted of a serious or violent crime, juvenile justice procedures do favour the release and parole of a child, and these children will receive counsel and a speedy trial.

Concerted action is required to reduce the numbers of children who are incarcerated in both juvenile and adult facilities. Deprivation of liberty should be a measure of last resort. Certainly, a major trend throughout the USA juvenile justice system has been the proliferation of alternatives to incarceration. In most states, the large majority of children accused of committing less serious offences, such as property crimes, are not formally charged and diversion techniques such as counselling, rehabilitation programmes, community service and restitution are used.

### **Sources**

This report was based on:

- Information gathered from various sources by DCI-NL, most notably from Amnesty International, Human Rights Watch, the United Nations and various American legal studies.
- Information provided by Bernadine Dohrn, Associate Clinical Professor, Northwestern University School of Law, Chicago.





## 4. Comparative overview

### 4.1. Introduction

The 22 country reports in chapter 3 reflect the diversity of juvenile justice systems worldwide. Unfortunately, in many of these countries, the situation of children deprived of their liberty does not meet international standards. Often, children suffer from maltreatment, live under unhygienic conditions, are detained together with adults, and do not get enough to eat. Of course, there are also examples of good practises which need to be highlighted, too.

This chapter provides a comparative overview of the national research findings on a number of key issues: international and national laws; numbers and registration; sanctions; age of criminal responsibility; separate juvenile justice system; police and pre-trial detention; conditions in closed institutions; legal protection; education, work, sports and recreation; contact with family; staff training; and children's rights violations. For more detailed information on each of these items per country, see chapter 3.

### 4.2. International and national laws

National laws in relation to imprisoned children differ from country to country. Certain countries have specific laws for minors and a special juvenile justice system, others rely on laws included in more general legislation. Often, several ministries are responsible for detained minors, including the ministries of legal affairs, interior, health, education and social affairs, but the exact responsibilities vary from country to country.

In most countries, the laws are in line with the Convention on the Rights of the Child (CRC) or the countries are in the process of working towards compliance. In practice, however, implementation of the CRC is lacking and, in the country reports, violations of international norms and standards are frequently noted by the experts.

The CRC has been ratified by all of the countries involved in this study, with the exception of the United States, which has only signed the CRC. Several of these countries, however, have submitted reservations which state that, under certain circumstances, minor detainees do not have to be separated from adult prisoners.

**United States:** Although the United States has made a significant contribution to the development of the current international system for the protection of human rights, it still stands alone against the rising tide of international concern in this area by failing to ratify key human rights treaties, including the Convention on the Rights of the Child.

**The Netherlands:** The Netherlands was the 167<sup>th</sup> country to ratify the Convention on the Rights of the Child, in 1995. The Dutch government proposed to parliament to make a reservation to article 37 in order to have the possibility to detain minors and adults together in cases of emergency or lack of cells. The parliament rejected this proposal, however.

**Germany:** The legal position of minors who have committed an offence is regulated in the German Criminal Code for Minors, which deals with both formal and material aspects. This Code is part of the Law of the Federal Republic of Germany and applies in all of the 16 states.

**Kenya:** There is only one Juvenile Court which is situated in Nairobi. In other towns, adult courts are converted to juvenile courts on an ad hoc basis. Under the Children and Young Persons Act, children may be deprived of their liberty when they have been in conflict with the penal law, when they need social care, or in cases of neglect or abuse. In these instances, children may be placed in a juvenile remand home awaiting trial.

**Mauritius:** The Mauritius juvenile justice system deals with 11-18 year olds. There are special judicial arrangements regarding offences committed by children under the age of 14. Detained minors below 14 appear before a magistrate in chambers and the proceedings are held in camera (no public and no press is admitted). In practice, there are no juvenile courts and the magistrates do not have any specialist training in cases involving young offenders.

**Ukraine:** Matters concerning the administration of juvenile justice are laid down in section 8 of the Ukrainian Code of Criminal Procedure. In general, juvenile justice is administered in accordance with the general rules governing the procedure in criminal cases. Juveniles cases are tried in courts of general jurisdiction. The participation of a defending council is permitted from the moment the charge is brought (article 44) and, in the case of arrest, from the moment of arrest. Under article 8 of the Pre-Trial Detention Act, minors are detained in investigation blocks separately from adults. As an exception, no more than 2 adults who are being prosecuted for the first time in connection with non-serious crimes may, with the sanction of the prosecutor, be placed in a cell together with minors. This is in order to avoid overcrowding.

**United Kingdom (England):** The legal position of minors is regulated, *inter alia*, by the Crime and Disorder Act 1998 and the Prison Service Order 4950, which sets forth targets for the care of children in prison. Children in prison are excluded from the main piece of child protection legislation, the Children Act 1989. The government also has a Crime Reduction Strategy dealing specifically with young offenders.

**Costa Rica:** The juvenile justice system has adopted the Juvenile Penal Legislation (n 7576 of February 6th, 1996). Even though the law does not mention penal responsibilities, it is applicable to all minors aged 12-18 years who have committed penal crimes, or a contravention or violation of the penal code or special laws. This law makes a clear distinction between 2 groups of detained minors: 12-15 year olds, and 16-18 year olds.

### 4.3. Numbers and registration

Recent studies say that approximately one million children are deprived of their liberty worldwide (Cappelaere, 2000). Others say this estimate is probably too low. Clear figures are not available. Most of the questionnaires and studies used for this research do not give any clear statistics. It turns out that, also at national level, registration is often poor. If statistics are given, it is often piecemeal data covering a few number of years or a certain region in the country. That would could be found in the country studies and available reports is listed below.

**Argentina:** There are approximately 20,000 minors in juvenile institutions. The exact number of children held in police cells is not available. According to the latest data available from the General Attorney of the Supreme Court of the Province of Buenos Aires, on 31 December 1999, 1,737 minors under 18 years of age were deprived of their liberty on penal grounds in Buenos Aires. Out of this total, 1,556 boys and 40 girls were confined in special institutions for minors, 85 boys and one girl were confined in prison units, and 55 boys and no girls in police stations.

**Tanzania:** In the year 2000, 880 minors were held in the prison system. According to an assistant prison commissioner, the minors held in prison fall mainly into 4 categories: born in prison; living with their imprisoned mothers; children under 16 years of age, including some held for being street children; and young prisoners aged between 16 and 21 years.

**United States:** On a randomly chosen day in 1999, 107,000 children were recorded as being incarcerated in the United States. Of these, 14,500 children were held in adult facilities, 9,100 in local jails awaiting trial and 5,400 in adult prisons. The remainder were in juvenile facilities.

**Romania:** According to the Romanian Prison Administration Web Pages, the following data was officially recorded as of February 2001:

- in the 34 prisons of the country: 904 minor detainees;
- in the 5 prison hospitals of the country: 20 minor detainees;
- in the 2 re-educational centres: 564 minor detainees.

**Ukraine:** The number of youngsters in prison on penal grounds in the year 2000 was 3,200. Of this total only 160 were girls.

**The Netherlands:** In the year 1991, 714 minors were placed in closed institutions, of whom 291 based on criminal law and 423 on family law. The figures for 2001 are 1,708 in total: 970 based on criminal law and 738 on family law. This shows an enormous raise of the total number and a remarkable shift from family to criminal law.

**United Kingdom (England):** In the United Kingdom, 7,653 minors were sentenced to prison in 1999. This figure is up from the 5,464 sentenced to custody in 1995. At any one time, around 4,000 minors are serving prison sentences for violating criminal law, with around 2,000 minors being refused bail and thus spending some time in prison awaiting trial.

#### 4.4. Sanctions

Sanctions for juveniles recognised as having infringed the penal law vary extremely worldwide. Imprisonment is used in all countries and very often not as a measure of last resort. Most country studies give examples of deprivation of liberty for simple cases of theft and other first offences. In some countries, such as (in certain States of) the United States, the death penalty may be imposed for offences committed by persons below the age of 18 years.

**Germany:** Detention of a minor should be a measure of last resort and primarily alternative sanctions should be used. Detention is only used if the minor has a lot of “criminal energy” (Schädlichen Neigungen) or in cases of serious crimes. The following alternative sanctions are used: community service (in the form of a work penalty and/or in the form of an educational penalty), compensation orders for the victim/restorative justice. This system seems to work well.

**Costa Rica:** Under the Juvenile Justice Penal Law, 3 different kinds of deprivation of liberty can be sanctions for penal code crimes:

1) The imprisonment of minors in a special Institution Centre. This is the penalty for minors who are sentenced to more than 6 years of imprisonment.

The maximum sanction is 15 years for juvenile offenders aged 15-18 years. The maximum sentence for minors aged 12-15 is also very high, namely 10 years.

2) Imprisonment in leisure time. This measure must take place in a Special Centre in the minor’s free time during the week. The total period of time for this type of detention may not exceed one year.

3) Home detention. The arrest of a minor in his/her own house, within the family atmosphere.

The Juvenile Justice Law introduced alternative sanctions. The law gives priority to a wide range of alternative sanctions: community service in the form of an educational penalty and compensation orders. The law provides various sanction possibilities in order to avoid, when possible, the imprisonment of youngsters. The Alternative Sanction Programme was created in August 1996, with the purpose of monitoring and supervising the practice of alternative sanctions. This programme is meant for minors aged 12-18 across the entire country.

**Ghana:** There are alternative sanctions within the juvenile justice system, including the following: compensation orders for the victim/restorative justice; sending the juvenile to an industrial school or an industrial institution established under the law of Ghana; ordering parents to guarantee the juvenile’s good behaviour; entering into recognisance. Nonetheless, many youngsters still end up in prison.

**Ukraine:** Article 24 of the Criminal Code prohibits the death penalty for minors. Persons below the age of 18 may not be sentenced to more than 10 years deprivation of liberty (article 25). Minors may not be detained in solitary confinement cells. However, many children serve long sentences in the military regime. Convicted minors serve their term of punishment in educational-labour colonies under one of 2 regimes: general or reinforced. The conditions in such colonies are designed to ensure the inmates’ social reintegration, including socially useful labour, social educational work, provision of general education and vocational training.

**Indonesia:** Studies conducted in 1997 suggest that juvenile offenders brought before the courts in 1995-1997 tend to be sentenced to prison (CRC First Periodic Report). Irwanto (1998) reported that, among 1,727 offenders aged 16 and younger in 27 provinces in Indonesia, 82.5% were sentenced to prison, 10.5% received probation, and only 4.04% were returned to their parents. The First Periodic Report on the implementation of the Convention on the Rights of the Child also suggests that 99.3% of juvenile offenders in 1995, 98.7% in 1996 and 99.8% in 1999 were sentenced to prison. When observing the 1995-1997 statistics on the severity of the prison sentences (Table 4), it is clear that most juvenile offenders received a sentence of below one year and that no one was sentenced to life imprisonment. The number of those sentenced to 5 years or more, however, is over 10% of the total number, which is quite

concerning. In addition, males or boys over-dominate the population, including in the group of children who received over 5 years of imprisonment.

#### 4.5. Age of criminal responsibility

In the 22 countries involved in this study, the age of criminal responsibility varies from 7-14 years of age.

**Indonesia:** The purpose of the Juvenile Court Act is to provide umbrella protection to children accused of, or recognised as having infringed the penal law. The enactment of the law is not without criticism. The definition of a child, for example, refers to marital status. This puts girl children at more risk of being treated as adults. The age of criminal responsibility is very low - 8 years old - and is inconsistent with the Beijing Rules and the Riyadh Guidelines.

**United Kingdom (England):** UK law treats minors differently according to their age:

children under 10 years of age are not held criminally liable;

minors aged between 10 and 16 years are subject to special juvenile laws. These provide, for example, that the criminal courts may imprison minors only from the age of 12. Minors aged between 12 and 15 years will be held in a local authority secure unit or in a secure training centre. Here, the standards of care are higher than those applicable to minors held in prison. Minors aged 15 years and over will be held in a designated juvenile unit, usually located within an adult prison and, hence, losing the protection that they would otherwise have had under the Children Act (see above); and

17 year olds are sentenced under juvenile law but are dealt with under adult legislation with regard to police detention and remand provision.

**Albania:** The minimum age of criminal responsibility is 14 years of age. The majority of the minors are in prison for infringing the penal law. The most common offence for which minors are held in prison was found to be theft.

**Tanzania:** Under Tanzanian law, the age of criminal responsibility is now 10 years; until 1998 it was 14 (or in certain cases 12) years of age, although courts may not impose a life sentence or the death penalty on a minor. In addition, minors who are under 16 benefit from special procedural rules designed to ensure that their best interests are respected both on arrest and later in the judicial process.

**Spain (Catalonia):** The minimum age of criminal liability in Catalonia is 14 years and the maximum is 18 years. Due to the flexibility of the law, minor detainees can remain under the protection of the juvenile justice system until they are 23 (depending on the length of sanction).

**The Netherlands:** In the Netherlands, children are held responsible under criminal law as from the age of 12. Between 12 and 18 a separate juvenile justice system is active, which can also be used for youngsters up to 21.

**Costa Rica:** The age of criminal responsibility is 12.

#### 4.6. Separate juvenile justice system

Most states have, at least on paper, a separate Juvenile Justice System. There are also countries without a separate system including Burundi and Liberia.

**Burundi:** In Burundi there is no special juvenile justice system. Coupled with the lack of a separate system for juveniles, is the lack of any distinction between adult prisons and juvenile institutions. Therefore, minor detainees are held together with adult inmates.

**Tanzania:** In Tanzania, laws regulating a separate juvenile justice system are in place, but it has limited facilities specifically for minors in the juvenile system: a single donor funded juvenile court has operated since 1998 and there are 5 juvenile remand centres. In other cases, minors are tried and held in the adult system.

**Albania:** The imprisoned minors between 14-18 years of age are in on-going contact with the adult prisoners. They are held in a specific closed part of an adult prison but the facilities such as showers, kitchen and playgrounds are shared. Male and female minor detainees are held separately. Five to 9 persons are held per cell.

**Argentina:** The law makes a distinction between minors under 16 years of age and from 16 years of age up to their 18th birthday. For those under 16 years of age, the applicable law is the valid tutelage legislation (the 1919 Minor's Law, 10.903), which fails to incorporate children's rights into Argentinean law. This law grants judges an absolute power of discretion to decide what will happen to minors on the basis of their personal circumstances, without any reference to an objective code of the sentences to be imposed based on the type of offence committed. It allows a judge to rule that a minor under 16 years of age who has committed murder be returned to his parents, and to imprison another, such as a street child, who has not committed any crime.

**Bulgaria:** Criminal law treats juveniles differently from adults. The legislator stipulates different kinds of punishment as well as a different procedure for their application. Juveniles are divided into 2 groups: 14-16 year olds and 16-18 year olds. They bear reduced criminal responsibility compared to adults and the degree of reduction diminishes for the 16-18 group. The legal status of juveniles deprived of liberty is regulated by the Law on the Execution of Punishments (LEP). This law stipulates that the objective of the execution of the "deprivation of liberty" punishment is primarily re-education and preparation for socially useful work. This objective is different for adults, whose prison sentences have also the goal of segregation or prevention.

**Mauritius:** The Juvenile Offenders Act provides a number of alternatives to imprisonment for convicted juveniles. The court can choose among:

- a. community service;
- b. discharge of the offender;
- c. sending the offender to an industrial school;
- d. ordering the offender to pay a fine, the damages or costs; if he/she is in employment in cash or if not otherwise;
- e. ordering the parent or guardian of the offender to pay a fine, the damages and costs;
- f. committing the offender to custody in a place of detention provided under the Juvenile Offenders Act;
- g. dealing with the case in any other manner in which it may be legally dealt with.

In practice, community service in the form of an educational penalty is the most frequently adopted alternative sanction.

**Canada:** The core principles of Canada's new Youth Criminal Justice Act state that: protection of society is the paramount objective of the youth justice system, which is best achieved through prevention, meaningful consequences for youth crime and rehabilitation. The Government of Canada is working to establish a renewed youth justice system - one that commands respect, fosters values such as accountability and responsibility and makes it clear that criminal behaviour will lead to meaningful consequences.

#### **4.7. Police and pre-trial detention**

Many children are kept in pre-trial detention without knowing how long they have to stay. Practice is often not in line with laws and regulations. Minors are not always treated well by the police.

**Albania:** In 2000, 479 thefts took place. The total number of offences committed by minors aged 14 to 18 years was 795. The vast majority is still awaiting trial. The maximum period of pre-trial detention is 12 months.

**Burundi:** The Committee on the Rights of the Child is concerned over the weakness of the justice system in Burundi. Children who have been charged with a criminal offence are obliged to wait long periods of time before trial, and the duration of pre-trial detention of children frequently exceeds the maximum prison sentence to which a child can be sentenced if found guilty.

**Ghana:** Some juveniles are kept in juvenile remand homes pending trial of their cases while others are kept in police cells together with adult criminals.

**Kenya:** According to reports of Human Rights Watch, Amnesty International and children's rights organisations, once arrested, street children are held under deplorable physical conditions in crowded police station cells, often without toilets or bedding, with little food and inadequate supplies of water. They are almost always mixed with adults, beaten and harassed by police in the station, and held for

periods extending from several days to weeks without any review of the legality of their detention by judicial authorities.

**Indonesia:** There are instances in which the law is used by corrupt officers to extort offenders. Observations in Jakarta and elsewhere, for example, indicate that the police or district security officers may arrest suspects or detain the subjects - such as children involved in prostitution and suspected drug users - and release them when they negotiate their way out.

#### **4.8. Conditions in closed institutions**

##### **Housing**

The housing situation differs extremely, for example from 50 minors in a cell in bad conditions to private rooms with all facilities (including radio/tv). Most reports contain critical observations about housing. Overcrowded prisons are a common phenomenon in many developing countries. In many states, minors are detained with adults in violation of article 37(c) of the Convention on the Rights of the Child (CRC).

**Burundi:** In Burundi, cells are small, overcrowded and shared with adults.

**Canada:** One legal protection for children laid down in the CRC has already proved to be problematic for Canada. The government made a reservation to article 37(c) which relates to the provision of separate detention facilities for adult and juvenile offenders. Canada has accepted the general principles of the article, but reserves the right not to detain children separately from adults where this is not appropriate or feasible.

**Kenya:** In Nakuru, minors are deprived of their liberty in dormitories. Each dormitory is about 7 square metres, has bunk beds and is provided hospitality to 25 young persons. Not all of the dormitories have toilet and washing facilities. Central heating and/or air conditioning are not available.

**Liberia:** Detained minors are not held in a specific closed part of an adult prison, but share the same cell together with adult inmates. As reported, more than 50 minors are held in a cell without toilets and washing facilities.

**United States:** In the Baltimore City Detention Centre, Maryland (an adult detention centre housing some 150 children), male children are housed in the men's detention centre and females are housed in the women's detention centre. The 2 juvenile sections are subdivided into 3 areas: a section for the general population, one for those under protective custody (i.e. for those inmates who are particularly vulnerable or have been threatened by other juveniles) and an administrative segregation section.

**Mauritius:** The Probation Home for Girls in Curepipe is a semi-open institution for girls aged between 11-18 years. The girls are accommodated in a common dormitory that contains toilet and washing facilities. There is also a room for recreation. Central heating and air-conditioning facilities are not available.

**Pakistan:** Overcrowding is a great matter of concern. In the whole country there is only one Borstal institution and 2 certified schools.

**Romania:** It is reported that, in one prison, 8-28 minor detainees are held per cell. Toilets are outside the dormitory and the detainees must be accompanied by a guard to get there. There are no data available on the exact size of the cell.

**Spain (Catalonia):** L' Alzina in Palau de Plegamans is a closed institution for males with a total capacity of 55 places. In February 2002, 32 minors were being held there. L' Alzina has 25 single and 15 double cells with toilets, washing facilities (shower and taps), central heating and air conditioning. The size of each cell is 4x3 metres. There are 12 square metres available per person in a single room and 6 square metres available per person in a double room.

**Ukraine:** The youth institutions are housed in very old buildings, which are in poor and often very bad condition.

**Indonesia:** The room cells in the prisons are relatively small, damp and not well maintained. The average size of a room in Tangerang is 9 square metres and is used to host 1-3 juvenile prisoners. Overcrowding which may lead to violence is a frequent problem.

##### **Food**

The quality and quantity of food varies. In most developing countries, there is a lack of variety and vitamins, and often there is not enough. In most western countries such as The Netherlands and Canada,

the food is good and sufficient, also according to most youngsters living in the institutions. Some institutions have projects whereby the youngsters, on certain days, can cook for themselves.

**Ghana:** At the Accra Borstal Home in the capital, where 150 inmates are kept, food is provided free of charge from a central kitchen to the detained minors on a 3-times-a-day basis. The food is examined daily to ensure safety, adequacy and quality by the matron of the institution. But cleanliness rules are not observed regularly by the prison officers.

**Liberia:** Food is theoretically provided by the administration on a once-a-day basis. The quantity is quite inadequate. Food frequently runs out and prisoners must purchase their own recipients.

**Romania:** According to estimates, the food is not adapted to the nutritional needs of a child.

**Ukraine:** The support of the Department for material support, food etc. is very minimal and mainly covers only the salaries of the personnel. This has impact on the quality and quantity of the food.

**United States:** Complaints in the Baltimore City Detention Centre mainly concern the insufficient quantity of food. Many children need to supplement their regular meals with food purchases.

### **Health care**

Health care in one form or another is always provided, but most of the time this care is not sufficient. Circumstances such as bad hygiene and housing result in more sickness and disease.

**Burundi:** Medical care and sanitation are cruelly lacking in the prisons in Burundi.

**Kenya:** Minors are medically screened for physical and mental health problems when they enter the juvenile remand home. There is medical staff available but because of the lack of a hospital or a health care unit, in matters of emergency, minors are transferred to the provincial general hospital. Drug users of glue and marihuana seem to be a matter of concern. It has been reported that all minors were found to sniff glue on admission. Tuberculosis victims have been reported as well.

**United Kingdom (England):** The main health problems experienced by minors in prison in the United Kingdom are drug and alcohol abuse related as well as to do with mental health. Tuberculosis and skin diseases are not an issue. Inmates get drugs from visitors and from other inmates who have been out of the prison to court. Drug users are not held separately from other minors. Some, but not all, prisons offer drug therapy programmes. It is not clear how many minors in prison have HIV-AIDS.

**Mauritius:** The girls in the Probation Home for Girls in Curepipe are medically screened when they enter the Probation Home for both physical and mental health problems. The screening procedure takes place periodically. There have been no reports of suicide victims during the last 3 years, but it is claimed that sometimes detained girls are adopting suicidal behaviour.

**Romania:** In Gaesti re-education centre, detained minors are screened medically in a special health care unit. This happens when they enter the centre, but it concerns physical problems only.

### **Hygiene**

Hygiene is another matter that causes concern over the health and well being of kids living behind bars. Some of the interviews and reports show that hygiene conditions can be deplorable.

**Burundi:** The hygiene conditions seem to be deplorable. There are no showers but only cans with water are available. In Burundi prisons deprivation has reached extremes as there is no soap, no toilet paper, no housecleaning products. Minor detainees have to pay, which is not possible for them. There are inadequate bathroom and toilet facilities. The water supply does not work efficiently and the hot water supply is breaking down. The scarcity of soap, toilet paper and cleaning products leads to serious hygienic problems.

**Tanzania:** There is no medical screening of new prisoners and serious health problems exist at the Juvenile Remand Prison - Dar-Es-Salaam. Hygienic standards are low, which also results in diseases. The more serious diseases are HIV-AIDS, hepatitis and tuberculosis. Drug abuse (mostly marihuana) and suicide attempts are another problem.

**Spain (Catalonia):** In L' Alzina in Palau de Plegamans (closed institution for young males), prisoners take a bath every day. The water supply works efficiently and there is warm water as well. The standards of hygiene in L' Alzina seem to be high. Toilets and showers are reported to be clean. Housecleaning products, toilet paper and soap are distributed free of charge.

## 4.9. Legal protection

### Legal aid

Legal aid or intervention from probation officers is frequently lacking for juveniles in conflict with the law. Basic principles are often not met. Children are often not even informed of their rights.

**Tanzania:** The children held in the Dar-Es-Salaam prison may see a lawyer once a week. However, there are no telephone facilities, radio, television, books, newspapers or magazines.

**Catalonia:** Minors deprived of their liberty in Catalonia's institutions have the right to complain officially about their treatment. The complaints are sent to the inspectorate of the Ministry of Justice. These issues are sometimes - but not systematically - mentioned in the annual reports of institutions. Minors are entitled to legal aid. Lawyers are allowed to visit them whenever necessary.

**United Kingdom (England):** Minors detained in the United Kingdom have the right to legal aid and to receive as many visits as necessary from their lawyer.

**United States:** Detainees are allowed only attorney visits and receive no commissary privileges.

### Disciplinary actions

Some of the disciplinary measures and procedures used in prisons are in violation of human rights. Sometimes torture is used. In some countries, this has resulted in cases of death. Placement in closed or solitary confinement happens quite often, in various settings quite arbitrarily, and with no complaint mechanisms in place.

**Burundi:** Placement in an isolation cell is the most common punishment. Its use is often arbitrary and left to the discretion of the director or the correctional staff. In addition, beating is a kind of formal violence that is allowed to maintain order.

**Liberia:** The Constitution prohibits torture and other degrading treatment, but according to reports detainees are tortured while in detention. Victims reported being held in water-filled holes in the ground, being injured when fires were kindled on grates over their heads, being urinated on, and suffering beatings and sexual abuse. Regarding incarcerated children, corporal punishment takes place above all.

**Albania:** Corporal punishment, placement in an isolation cell, deprivation of visits and extra work (cleaning up, washing the dishes, etc.) are the most commonly adopted disciplinary measures. Detained minors can officially complain about their treatment but only to an ombudsman. Monitoring bodies do not make annual reports.

**United Kingdom (England):** In terms of discipline, common measures are placement in an isolation cell, placement out of a group into their own cell, and deprivation of privileges such as television, association and spending money. Until fairly recently, prison officers were able to add days to a minor's prison sentence for misbehaviour and used this, or the threat of this, as a disciplinary measure. Many prison officers blame the loss of this disciplinary tool for increasing levels of disorder in juvenile prisons in the country. Although corporal punishment is not permitted, there is a high incidence of complaints that prison staff do use violence and abuse to discipline minors in prison. There are also concerns that bullying, abuse and violence is taking place between the prisoners themselves.

## 4.10. Education, work, sports and recreation

Through education and work young people in conflict with the law can learn important skills with which to continue their lives in society. Unfortunately, such facilities and possibilities for youngsters are frequently lacking. This differs per region. In most western countries, education, possibilities to learn working skills and recreation are well provided. But in Tanzania, for example, it is reported that children are subjected to hard labour while detained.

**Albania:** Most detained minors are denied the right to education and work. Bullying, abuse and torture is used against them by the stronger inmates and by the correctional staff as well. Depression is reported to be the major health problem in prison.



**Germany:** Education is provided. In addition, minors receive physical training. There is a special area where different kinds of sports can be played. Alternatives for those who are not interested in sports are music, handicraft and discussion groups. Radio, tv and cd players are allowed. There is also a library.

**Ghana:** Formal education is provided for school children who become offenders, and vocational training for non-school children. On average, minor detainees have only followed a few grades of elementary school. They receive some vocational training during their imprisonment in areas like wood works, leather works, draughtsmanship, electrical installation, ceramics. etc.

**Kenya:** Education opportunities are extremely limited and vocational programmes do not exist. The average educational level of minor detainees is a few grades of elementary school. They have to work in cleaning- and cooking facilities 4 hours per day. They do not receive any payment or other privileges for this. In Nakuru Juvenile Remand Home, the opportunities for sports and recreation are few. Minors receive daily exercise in the open air for 4 hours every day. During their free time they can play soccer in a special field of the institution.

**Pakistan:** It is claimed that only about 10% of the children in the borstal are attending school classes.

**Tanzania:** The inmates are required to work between 8-10 hours a day doing heavy work such as farming, digging, fetching water and firewood, and cleaning houses and toilets. They are not paid for this, although they do gain other privileges.

**United Kingdom (England):** The law aims to ensure that imprisoned minors are educated during their time in prison. Provision of vocational training and work experience is at the discretion of each institution. Some provide it, others do not. (cf. NAYJ info which states that educational and vocational training and the provision of work is obligatory “by prison orders and contracts only”).

#### **4.11. Contact with family**

Family visits are not always allowed or can be impossible because of long distances between the prison and the place where the parents or other family members live. In some countries, parents do not visit their children because of shame or lack of interest, or because they are not able to.

**Germany:** Family visits are allowed once a week. Exceptions are possible. There are no restrictions on access to legal aid.

**Mauritius:** Family visits are authorised at least once a week in the Probation Home for Girls in Curepipe. Girls are also allowed to contact by phone their parents whenever necessary. Frequently, girls receive visits from probation officers, too. Their lawyers can visit them upon request. Minor detainees have the right to ask for these visits at any time.

**Tanzania:** Visiting day is once a week. Minors are allowed visits from family, friends and neighbours. In practice, however, most children do not have any family members to visit them since their parents are often divorced or have died, for example due to AIDS. Many children are from single parent families or have left home because of poverty. In the male Butimba Prison, for example, 85% of the children were living alone and 90% of them have no contact with parents and relatives.

#### **4.12. Staff training**

According to experts, staff training must be improved in almost all countries.

**Germany:** A specific problem in youth institutions in Germany is the lack of staff and of staff training. Furthermore, insufficient training is provided to young prisoners to assist them in returning to society after release.

#### **4.13. Human rights violations**

International human rights standards are frequently violated when it comes to the conditions and circumstances under which children are being deprived of their liberty in prisons and other closed

institutions. Contraventions of the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and other relevant international instruments occur on a daily basis. International and national action is needed to stop these practices. Measures concerning alternatives and rehabilitation must be taken at the national level, as stipulated in the critical assessments. In the majority of the countries of Latin America that have completed the legal reform process and are in an advanced stage of institutional reform, the most common violations of children's rights are: the use of prison as a measure of first, rather than last, resort; unacceptable conditions in children's prisons; and the systematic confinement of children and adolescents in adult prisons or police stations for lengthy periods of time.

**Argentina:** The human rights situation of children in Argentina is extremely serious. This situation is in no way to be attributed exclusively to the economic hardships that the country is going through. On the contrary, the flagrant violations of children's rights can be attributed to the abominable legislation in force, to the lack of independent institutions and mechanisms to monitor management (which explains the absolute nature of all kinds of impunity), to the persistence of such an outdated and harmful corporate and cronyism type of culture. And, finally, to the complete lack of priority granted to children's problems in general. As a consequence, without political and institutional transformations, an increase in the volume of resources would only contribute to fuel all the problems that have been pointed out here.

**Ghana:** Some specific problems faced by the juvenile prison system in Ghana include:

Lack of adequate financial resources to maintain existing facilities and also to cater for the detained minors. No renovations have been made to the buildings and other infrastructures since their establishment. This has led to the wearing out of these structures, especially the windows of the dormitories and the workshops.

The detained minors are often neglected by their relatives.

Deterioration of training facilities. The machines and other equipment in the workshops are old and obsolete. Many need to be replaced.

Inadequate space for accommodation and recreation for detained minors.

Inadequate security available at the institutions.

**Kenya:** Human Rights Watch stressed that conditions on remand centres vary but generally suffer from common problems of run-down facilities, inadequate supplies of water, inoperative sanitary installations and dirty bedding materials. They are also concerned about the frequent use of corporal punishment and the total lack of provisions for the recreational and educational needs of children

**Mauritius:** Among the most serious problems facing the juvenile prison system are:

1. The lack of training of personnel at regular intervals;
2. The lack of a satisfactory number of psychologists and counsellors;
3. The lack of regular medical visits.

**Pakistan:** International Prison Watch concluded in its report of 1999 that: "The age of criminal responsibility is 7 years. Over 4,000 minors are being held in adult prisons, the majority still awaiting judgement. Two specially designated juvenile facilities are in existence. Approximately 50 under-age children are sentenced to death. Torture is endemic in central police stations. Poor accommodations and low sanitary standards exacerbate the ill-health of detainees."

**Tanzania:** According to reports, corporal punishment is used in prisons where minors are held even though it has officially been abolished. Corporal punishment is still used in schools and against adults and children under 16 years of age as a sentence in relation to criminal offences.

**Romania:** "Many minors undergo maltreatment in police stations. Children of gypsy origin are the main object of discriminatory practices during arrest and detention. Minors can be placed in rehabilitation centres or in reserved zones of the prisons for adults. The buildings are depressing. Hygiene and conditions for food preparation are not respected." (Children in Prison report, International Prison Watch, 1999).

**Spain (Catalunia):** The Spanish juvenile justice system in general does not give priority to preventive action. The risk factors leading to marginalisation and delinquency are not being assessed. There is a need to adopt specific programmes and policies at all levels. Furthermore, human resources and facilities need to be boosted to implement the measures decided by the courts. There is a tendency to send the minors to detention centres rather than to apply measures which can be implemented in a non custodial environment, such as community service or probation.

**United Kingdom (England):** Amnesty International has shared with the Committee on the Rights of the Child its concerns about the extent to which the United Kingdom has implemented the Convention on the Rights of the Child, *inter alia*, the right of children in prison not to be subjected to torture or other ill-treatment in certain young offenders institutions in England and Wales.

**Canada:** DCI-Canada takes the position that the new juvenile justice legislation does not meet the standards of the Convention on the Rights of the Child. It will do nothing to address the question of discrimination which results in higher percentages of poor children, of indigent children, and of black children. It pays lip service but provides no protection for the best interests of the child as a “primary consideration”. It does not establish an effective mechanism to assure the right of the child to be heard.



## 5. Conclusions and perspectives

One of the conclusions to be drawn from the research results, especially the main tendencies described in chapter 4, is that the norms and principles laid down in the relevant international instruments are frequently violated when it comes to the conditions and circumstances under which children are being deprived of their liberty in prisons and other closed institutions.

The information in the country reports shows the need for more focus on prevention and alternatives. At the same time, the number of children in prison needs to be drastically reduced.

The focus should be on the following 4 goals:

1. Put no children under 15 in prison;
2. Use alternatives for imprisonment;
3. Focus on prevention;
4. Improve the conditions of children in closed institutions.

The age limit of 15 has been chosen to apply here because it is seen as a transition age under international instruments on children's rights. Article 38 of the Convention on the Rights of the Child, for example, obliges states parties to take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. In many countries, children up to 15 are obliged to attend school; beyond that age they can make their own choice.

### 5.1. Drain the swamp

It is much better to drain the swamp than fight the alligators. Across the world more than one million children and youth are behind bars on an average day. Many of these children and youth are placed behind bars through processes and under conditions that do not meet the international minimum standards that were agreed upon by governments and laid down in, among other instruments, the Convention on the Rights of the Child. We are convinced that fewer children in better conditions will result in less crime.

The governments of the world have agreed at several UN forums to invest more in well-planned prevention because it is more cost effective and sustainable than paying to incarcerate children and youth. This is particularly important in developing countries where the demands on limited resources are acute.

This significant shift has been inspired by evidence brought together by prestigious national commissions involving government officials, police leaders, public health experts and others in the United States, the United Kingdom and elsewhere.

The situation as regards children and youth deprived of their liberty needs to be improved and their numbers reduced. One important remedy is to invest more in prevention. Another remedy is to improve the conditions under which children are being incarcerated.

### 5.2. Prevention

The UN Commission on Crime Prevention and Criminal Justice is based in Vienna. It provides a forum for ministers of justice, interior and foreign affairs to meet once a year and adopt strategies to deal with crime. In 2002, the Commission adopted guidelines for the prevention of crime, which were approved by the UN Economic and Social Council (ECOSOC).

These guidelines assert that:

*Clear evidence exists that well-planned crime prevention strategies reduce crime and victimisation and are a more humane and cost effective response to crime than the formal criminal justice system (number 1).*

Several other international organisations and major agencies in the UN system have come to similar conclusions.

In May 2002, the UN General Assembly Special Session on Children culminated in the adoption of an Outcome Document with 21 specific goals and targets for the next decade. This plan includes many

references to general prevention, but also the following paragraph which specifically states that governments should:

*Promote the establishment of prevention, support and caring services as well as separate juvenile justice systems consistent with the principles of restorative justice that fully safeguard children's rights, and provide specially trained staff that promote children's reintegration in society.*

Another example is Habitat's programme on "Safer Cities" to assist developing countries (UNCHRS). This programme, with projects in Johannesburg, Dar-Es-Salaam and Abidjan, emphasises the critical role that cities play in well-planned crime prevention, as demonstrated in Europe and North America in the Nineties when several achieved unprecedented reductions in crime. In October 2002, the World Health Organisation released a World Report on Interpersonal Violence and Health, which argues that greater investment in prevention, combined with improved services for victims, is the way in which to reduce the costs of interpersonal violence. The above-mentioned *Guidelines on Crime Prevention* produced by the UN Commission on Crime Prevention and Criminal Justice provide the most detailed proposals. These guidelines build on earlier decisions of the Commission, such as the workshop on crime prevention that took place during the 10th UN Congress on the Prevention of Crime and Treatment of Offenders in 2000, where it was re-emphasised that crime had multiple causes, including:

- difficulties in social development, such as the exclusion of youth from school, particularly in situations where the gap is widening between rich and poor;
- cultural problems, such as violence in the home and community or rapid urbanisation with atomisation of families and communities;
- increased availability of products that encourage crime, such as:
  - \* cars and consumer goods without adequate security and surveillance; or
  - \* increased access to firearms, alcohol and other drugs.
- the limits of traditional methods of enforcement and justice to provide protection.

The guidelines call for action:

- all levels of government should play a leadership role in developing effective and humane crime prevention strategies, and in creating and maintaining institutional frameworks for their implementation and review, in particular:
  - \* centres or focal points of responsibility with expertise and resources;
  - \* a crime prevention plan with clear priorities and targets over time.
- cooperative partnerships between agencies responsible for policing, justice, schools, families, private sector and others should be an integral part of effective crime prevention, given the wide ranging nature of the causes of crime and the skills and responsibilities required to address them. To support this, governments must:
  - \* advance knowledge of what makes partnerships successful;
  - \* foster the formation of partnerships at different levels;
  - \* tackle crime problems through diagnosis of causes, focussing on solutions and evaluating results.
- crime prevention should be based on knowledge about crime problems, the multiple causes and promising and proven practices, and governments must therefore foster:
  - \* professional development for senior officials in relevant agencies;
  - \* universities, colleges and other relevant educational agencies to offer basic and advanced courses, including in collaboration with practitioners;
  - \* the educational and professional sectors to develop certification and professional qualifications.
- crime prevention must take into account issues of gender, diversity and individual rights;
- successful improvements will require public engagement, planned change and raising the awareness of senior officials.

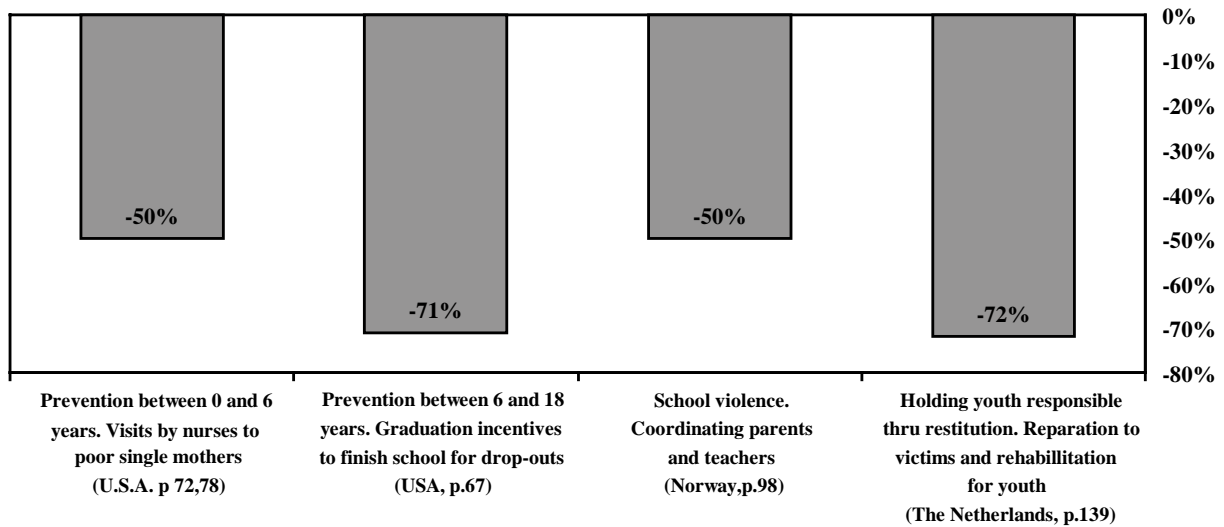
The basis for the UN directives can be traced back to several prestigious commissions who have confirmed that projects which tackle risk factors reduce crime significantly, for instance by:

- assisting teenagers at risk by mentoring or helping them to complete school;

- working with families in difficulty to help them raise young children and those attending school;
- tackling bullying and other violence in schools;
- assisting victims with information on how to reduce opportunities for crime and limiting accessibility to firearms;
- taking care of victims, promoting community justice and encouraging reparative sanctions (for examples of what has worked, see: ICPC, 1999b; Sherman et al. 2002 and 1997; Elliott, 2002: Goldblatt et al, 1998).

These types of projects have led to significant reductions in offending. Indeed, they have resulted in much greater reductions than have been achieved through placing children and youth behind bars, where the reductions are little more than those achieved during the time the kids are behind bars.

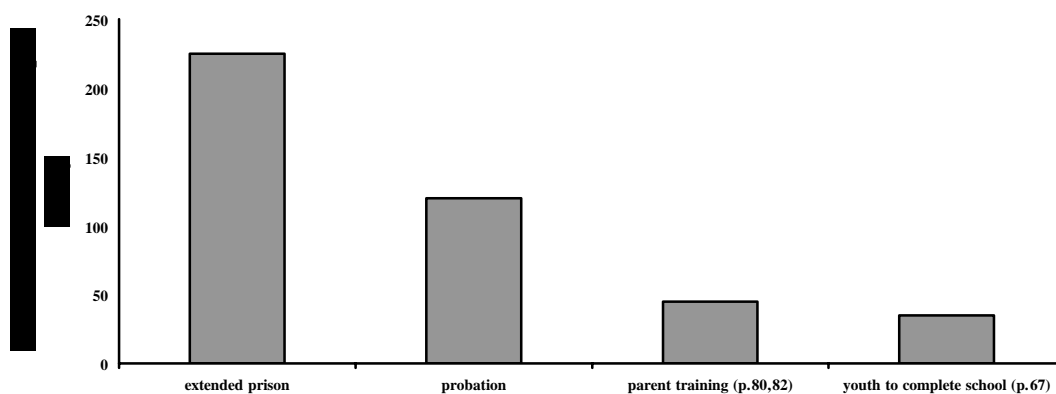
**Examples of programs in USA: reduction exceeds 10% (ICPC, 1999b)**



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The comparative costs in reducing crime by placing kids in trouble behind bars or on probation, rather than assisting their families or providing incentives for them to complete school, are illustrated in an analysis by the ICPC. This analysis uses data from a study by the Rand Corporation to illustrate the increase in taxes that would be necessary to achieve a 10% reduction in crime in the United States.

**Increases in taxes to achieve 10% reduction in crime (ICPC, 1999a)**



extrapolated from evaluations of programs (wallerirving@msn.com)

It would cost American taxpayers an additional USD 225 per year in taxes to achieve a 10% reduction through putting persons behind bars, whereas training parents at risk and helping youth at risk to complete

school would achieve the same through increases of only USD 35-45 per year in taxes. In addition, these prevention programmes provide many important collateral benefits, as the children at risk grow up to be citizens who contribute to society as parents and taxpayers themselves.

This analysis would most likely apply to Western Europe and other similarly situated countries such as Australia, Canada or New Zealand without major modifications.

In many developing countries, the expenditures on prisons are low because the institutions do not meet international minimum standards, but prisons cost more than community programmes because of the costs of building and maintaining the prison. Furthermore, strategies that tackle well-established causes in the community are much more likely to reduce crime and provide long-term benefits for the youth and society as they grow up. The nature of the strategies may focus more on social bonds between the family, the school and the family than on parent training or incentives to complete school.

The *Guidelines on Crime Prevention* of the UN Commission on Crime Prevention and Criminal Justice also reflect the success that several cities have had in Europe and North America in reducing crime and violence. Reductions of 50% or more in rates of violence and property crimes have been achieved over the last decade. These reductions were often as much as double the reductions in the rates of crime in the surrounding areas that have been ascribed to trends in the demographics of the population, crime or sanctions. The strategies used have included:

- the Mayor making the reduction of crime and violence a city priority;
- a joint effort by municipal government and police services to address the causes of crime in the city;
- a plan to identify the causes, the current responses, joint initiatives and evaluations (see for instance ICPC, 1999a, 2002a).

### **5.3. Reduction of the number of children and youth behind bars**

In order to reduce the number of children and youth behind bars, courts should be required to keep young offenders in the community and to use alternatives to prison such as fines, reparation to victims, community work and mediation. Incarceration should be restricted to those cases where it is the only acceptable sanction (i.e. measure of last resort), and may only be imposed for the shortest appropriate period of time.

### **5.4. Alternatives**

In the last 20 years, countries have widened the range of alternatives to incarceration in an effort to reduce the number of persons behind bars. Often, in the medium-term, these alternatives have increased rather than reduced the number of children and youth behind bars. For example, in countries where the alternative punishment of community work has been introduced, some offenders who would have previously been sent to prison are sentenced to community work, but another group of offenders who would not have been sent to prison are also sentenced to community work. Many of these offenders become re-involved in crime and the court imposes a prison sentence, which is longer than the one that would have been imposed the first time round because they offended after having been given a chance.

Nonetheless, alternatives that tackle the causes of the offending successfully will reduce crime. Alternatives that foster reparation to the victim may be better than incarceration. Some countries are using mediation in the community as opposed to sanctions in an effort to resolve disputes in a manner that satisfies both victim and offender. Other forms of *restorative justice*, such as family group conferences and circles, whereby restoring the harm created by the offence and taking responsibility are central, are also being more widely used. For youth, it is necessary that parents, the school and the community in general set clear limits on what is acceptable or not.



## 6. Recommendations and actions

### 6.1. Who should do what?

In chapter 5, conclusions and priorities for the future are drawn. The main 4 goals are:

1. Put no children under 15 in prison;
2. Use alternatives for imprisonment;
3. Focus on prevention;
4. Improve the conditions of children in closed institutions.

This chapter focuses on concrete recommendations for international and national actors. What are the main tasks for the organisations and players involved in the chain of dealing with children in conflict with the law? First of all, the role of International Governmental Organisations (IGOs) is discussed, followed by that of International Non-Governmental Organisations (INGOs), in lobbying and improving conditions in prisons. The main tasks and obligations of national governments and NGOs, local governments and NGOs, and other actors are also addressed.

#### 6.1.1. International Governmental Organisations

The main tasks of international governmental organisations (IGOs) and linked bodies, such as UNICEF, the UN Criminal Justice Branche in Vienna, the UN Committee on the Rights of the Child, the World Health Organisation (WHO) and the UN Youth Programme, are to lobby and undertake action to improve the conditions of kids behind bars worldwide.

The IGOs should lobby the national and local authorities. Their main activities in this regard should be:

- 1. To set targets to reduce the number of children in prison**  
They should set targets for the total number of children in prison, and to reduce the number of children in prison with 25% in the coming 5 years and 50% the coming 10 years.
- 2. To get recognition for kids behind bars**  
Kids behind bars are often a forgotten group. IGOs should lobby to get recognition and more attention for the issue, which is still not a priority for governments.
- 3. To stimulate implementation of international instruments**  
They should aim to improve conditions by stimulating the implementation of the UN Convention on the Rights of the Child (CRC) and related instruments, such as the Havana Rules (UN Rules for the Protection of Juveniles Deprived of their Liberty) and the Riyadh Guidelines (UN Guidelines for the Prevention of Juvenile Delinquency).
- 4. To lobby for an Optional Protocol on Minimum Standards for Children in Closed Institutions**  
IGOs should lobby to put the contents of the non-binding Havana Rules into an *Optional Protocol to Article 37 of the CRC on the Minimum Standards for Children in Closed Institutions*, which would be open to ratification by the state parties to the CRC and can thus become a binding international instrument.
- 5. To collect and analyse national data on children deprived of their liberty**  
IGOs should monitor the standards and norms in institutions by collecting data from national governments and/or specialised organisations.
- 6. To lobby for a Special Rapporteur on children deprived of their liberty**  
Another important task is to lobby for the instalment of a UN Special Rapporteur on children deprived of their liberty. This Rapporteur will undertake country missions and report on the situation of imprisoned children to the United Nations. Human rights violations can come to light. This can lead to serious international pressure to change laws and practice.
- 7. To prepare a Handbook on best practices**  
They should work on a joint Handbook that can be used as a guide to improve standards and

policy in closed institutions, including an assessment form, which could be filled in by national governments and NGOs.

### **6.1.2. International Non-Governmental Organisations**

The main role of international NGOs (INGOs) is to get the topic of kids behind bars on the agenda. To this end, their main activities should be:

- 8. To lobby and campaign to get the topic on the international agenda**  
They should lobby and campaign with the United Nations, the European Union, the Inter African Committee and other regional institutions for the realisation of the 4 goals listed above.
- 9. To stimulate a World Congress and Plan of Action on Kids behind Bars**  
They should prepare a World Congress on Kids behind Bars, such as existing in the field of the Commercial Sexual Exploitation of Children. Goals for the future can be set at such an event, including, for example, the launch of an International Plan of Action on Kids behind Bars.
- 10. To start an International Working Group on Kids behind Bars**  
INGOs should get together to start an International Working Group on Children Behind Bars (IWCBH), consisting of both academics and activists, for the launch of a global campaign focused on monitoring.

The most relevant international NGOs can be divided into the following 3 groups (taking into account that more organisations could be mentioned here):

1. Human Rights Organisations (e.g. Amnesty International, Human Rights Watch and the International Commission of Jurists).
2. Children's Rights Organisations (e.g. Defence for Children International, International Catholic Child Bureau, the International Bureau on Children's Rights, Plan International, Save the Children and Terre des Hommes,).
3. Criminal Justice Organisations (e.g. Penal Reform International, Restorative Justice lobby, Quakers, Groups of Judges and the World Society of Victimology).

### **6.1.3. National Governments**

The main tasks of national governments are:

- 11. To reduce the number of detained children**  
In national policy, governments should focus on the reduction of the number of children deprived of their liberty within the country.
- 12. To focus on and to invest in prevention**  
They should focus on prevention of crime and assistance to youth at risk and their families.
- 13. To use alternatives**  
The focus should be on using alternatives, such as mediation and community work, as much as possible. Deprivation of liberty should be used only as a measure of last resort.
- 14. To improve conditions in institutions**  
They should see to it that the conditions within institutions for youngsters are in line with the CRC and the Havana Rules, including aspects such as housing, hygiene, health care, access to education and other activities, contacts and protection from cruel treatment.
- 15. To develop a National Action Plan**  
They should develop a National Action Plan on Children behind Bars in order to get responsible and comprehensive responses on the issue of child criminality and sanctions.
- 16. To install a National Board to monitor the situation of children deprived of their liberty**  
They should install a National Board to develop and implement such an action plan and to ensure data collection and training. This board can also be used for the inspection and monitoring of the implementation of national standards.

#### **17. To focus on international cooperation**

The governments should also focus on cooperation and shared international solidarity and responsibility.

#### **6.1.4. National Non Governmental Organisations**

The main activities of national NGOs, such as children's rights, human rights and victims' rights organisations, should be:

##### **18. To set up a national campaign**

The national NGOs should set up a campaign and lobby nationally to reach the 4 goals mentioned above: reduction, prevention, alternatives, improving conditions.

##### **19. To monitor the government**

They should monitor the progress made by national governments on these 4 main goals and on the implementation of recommendations 11-17.

##### **20. To work together at regional level**

The NGOs should work together at the regional level by forming coalitions. These coalitions can improve expertise and lobby by organising conferences and expert meetings.

#### **6.1.5. Local Governments**

Tasks of the local governments, such as provinces and municipalities, are:

##### **21. To monitor the situation in youth prisons**

The local governments should monitor and supervise the youth prisons and other (closed) institutions by establishing an independent monitoring and complaint commission for each facility.

##### **22. To launch a Local Action Plan on Kids behind Bars**

They should launch a Local Action Plan that concentrates on prevention and alternatives in relation to youth criminality, including developing activities and care for youth at risk.

#### **6.1.6. Local Non Governmental Organisations**

The main tasks for local NGOs should be:

##### **23. To participate in a Local Action Plan**

They should participate in a Local Action Plan to be set up by the local governments.

##### **24. To work with youth at risk**

Local NGOs should deliver services to youth at risk and to community work in relation to prevention of youth delinquency.

##### **25. To support children in closed institutions**

Local NGOs could set up support groups to assist children in closed institutions, to pay them visits on a regular basis, to provide them with (extra) food, books, toys, drugs, clothes and whatever else is needed, and to arrange professional legal aid.

#### **6.1.7. Researchers and trainers**

Other actors involved in the combat to get children out of prisons and to improve their conditions are academics and practitioners such as police, prison staff and social workers.

The tasks for these actors are:

## **26. To continue research on detained children and alternatives**

Academics should focus on additional research on the situation of kids behind bars in countries, regions and worldwide, but also on prevention and alternatives. By conducting follow up research and cooperation among universities data collection in this area can improve.

## **27. To initiate ongoing training**

Ongoing training and courses for practitioners should be given and monitored. The people working directly with the youngsters, from the police to social workers and prisons staff, need to know about international standards, and the ways to work best with these children.

## **6.2. A global campaign**

Investment in children-in-conflict-with-the-law in the community is better than their incarceration for both the society and the child. Children and youth are held behind bars because governments have not planned the programmes and facilities that would manage them constructively in the community or in their families. It is a shocking statistic that at the start of the new millennium over one million children and youth were being held behind bars in police cells, pre-trial detention centres, prisons and other closed institutions. The conditions in which they are held are often inconsistent with widely accepted international norms, and are degrading, overcrowded, unjustified and dangerous.

The short-term protection to society from holding children and youth behind bars can be achieved in more humane and affordable ways by investing in programmes known to reduce crime in the community by managing and developing young persons. Furthermore, these investments provide long-term benefits to the young persons and society, instead of long-term costs to victims and the public purse.

Recent declarations and reports by, for example, government commissions, the CICIP, the WHO and the UNHCHR confirm that funds used to detain children and youth even in abject conditions could be used more humanely and effectively to manage the children and most youth in their families or communities.

The idea to hold a global campaign to convey this message, and with the ultimate aim of having fewer kids, in better conditions, behind bars, was initially launched at the Expert Meeting that was held by the coordinators of this research project in February 2002 in Amsterdam. Under the motto “less crime through better conditions for kids”, the campaign’s main elements would be as follows:

- *proposed aim:*  
reduce the number of children deprived of their liberty with 25% in the coming 5 years and with 50% in the coming 10 years.
- *proposed strategy:*  
advocacy for the full implementation of all provisions of the CRC and other related international norms and standards, and aimed at making the deprivation of liberty of children a measure of last resort by developing and/or strengthening programmes that manage youth in conflict with the law in the community and families instead of abandoning them to police cells, pre-trial detention and prisons.
- *proposed targets:*
  1. to develop a sound international knowledge base on children deprived of their liberty;
  2. no children under 15 should be placed in prison;
  3. the construction of any additional detention or prison capacity for youth should be abandoned and avoided;
  4. alternatives to deprivation of liberty, and community and family programmes to manage youth and to prevent crime should be developed and/or strengthened;
  5. gate keeping and monitoring mechanisms should be developed and/or strengthened, in particular to prevent: children under 15 from being held behind bars; youth being detained without trial for longer than international norms allow; and youth being detained in institutions where international norms dictate that the bed or cell capacity would be exceeded;

6. legal defence mechanisms should be developed and/or strengthened, in particular with regard to the pre-trial period.

In the light of the analysis in this report, these proposals were subsequently further developed. It was agreed that an international alliance of NGOs should be established that will support and participate in the campaign (e.g. Amnesty International, Defence for Children International, Human Rights Watch, International Commission of Jurists) with as title: “No Kids behind Bars! A global campaign on justice for children in conflict with the law”.



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# Annexes

## 1. Convention on the Rights of the Child

### Preamble

*The States Parties to the present Convention,*

**Considering** that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

**Bearing in mind** that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

**Recognizing** that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

**Recalling** that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

**Convinced** that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

**Recognizing** that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

**Considering** that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

**Bearing in mind** that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

**Bearing in mind** that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

**Recalling** the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

**Recognizing** that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

**Taking due account** of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

**Recognizing** the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

**Have agreed** as follows:

### Part I

#### Article 1.

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

#### Article 2.

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal

guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

*Article 3.*

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

*Article 4.*

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

*Article 5.*

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

*Article 6.*

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

*Article 7.*

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

*Article 8.*

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

*Article 9.*

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

*Article 10.*

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph I. States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

*Article 11.*

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

*Article 12.*

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

*Article 13.*

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others; or
  - b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

*Article 14.*

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

*Article 15.*

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

*Article 16.*

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

*Article 17.*

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- a) encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- b) encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- c) encourage the production and dissemination of children's books;
- d) encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- e) encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

*Article 18.*

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

*Article 19.*

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

*Article 20.*

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

*Article 21.*

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- b) recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c) ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d) take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- e) promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

*Article 22.*

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent inter-governmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

*Article 23.*

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

*Article 24.*

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure

- that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
    - a) to diminish infant and child mortality;
    - b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
    - c) to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
    - d) to ensure appropriate pre-natal and post-natal health care for mothers;
    - e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
    - f) to develop preventive health care, guidance for parents and family planning education and services.
  3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
  4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

*Article 25.*

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

*Article 26.*

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

*Article 27.*

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

*Article 28.*

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - a) make primary education compulsory and available free to all;
  - b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - c) make higher education accessible to all on the basis of capacity by every appropriate means;
  - d) make educational and vocational information and guidance available and accessible to all children;
  - e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

*Article 29.*

1. States Parties agree that the education of the child shall be directed to:
  - a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own;
  - d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - e) the development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

*Article 30.*

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

*Article 31.*

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

*Article 32.*

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - a) provide for a minimum age or minimum ages for admission to employment;
  - b) provide for appropriate regulation of the hours and conditions of employment;
  - c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

*Article 33.*

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

*Article 34.*

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- b) the exploitative use of children in prostitution or other unlawful sexual practices;
- c) the exploitative use of children in pornographic performances and materials.

*Article 35.*

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

*Article 36.*

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

*Article 37.*

States Parties shall ensure that:

- a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b) no child shall be deprived of his or her liberty unlawfully or arbitrarily. 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;
- c) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

*Article 38.*

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

*Article 39.*

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

*Article 40.*

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:



- a) no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
- b) every child alleged as or accused of having infringed the penal law has at least the following guarantees:
  - i) to be presumed innocent until proven guilty according to law;
  - ii) to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
  - iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
  - iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
  - v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
  - vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;
  - vii) to have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
  - a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

*Article 41.*

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- a) the law of a State Party; or
- b) international law in force for that State.

**Part II**

*Article 42.*

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

*Article 43.*

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

*Article 44.*

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
  - a) within two years of the entry into force of the Convention for the State Party concerned;
  - b) thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

*Article 45.*

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- a) the specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and

- other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- b) the Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
  - c) the Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
  - d) the Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### **Part III**

#### *Article 46.*

The present Convention shall be open for signature by all States.

#### *Article 47.*

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### *Article 48.*

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 49.*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

#### *Article 50.*

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

#### *Article 51.*

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52.

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53.

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54.

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

*In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.*

## **2. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)**

**Resolution 45/113, 14 December 1990, 68th plenary session**

*The General Assembly,*

***Bearing in mind*** the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, as well as other international instruments relating to the protection of the rights and well-being of young persons,

***Bearing in mind*** also the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

***Bearing in mind further*** the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly by its resolution 43/173 of 9 December 1988 and contained in the annex thereto,

***Recalling*** the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), ***Recalling also*** resolution 21 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenses, in which the Congress called for the development of rules for the protection of juveniles deprived of their liberty,

***Recalling further*** that the Economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986, requested the Secretary-General to report on progress achieved in the development of the rules to the Committee on Crime Prevention and Control at its tenth session and requested the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the proposed rules with a view to their adoption,

***Alarmed*** at the conditions and circumstances under which juveniles are being deprived of their liberty world wide, Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights,

***Concerned*** that many systems do not differentiate between adults and juveniles at various stages of the administration of justice and that juveniles are therefore being held in gaols and facilities with adults.

1. Affirms that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;
2. Recognizes that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and wellbeing should be guaranteed during and after the period when they are deprived of their liberty;
3. Notes with appreciation the valuable work of the Secretariat and the collaboration which has been established between the Secretariat and experts, practitioners, intergovernmental organizations, the non-governmental community, particularly Amnesty International, Defence for Children International and Rädde Barnen International (Swedish Save the Children Federation), and scientific institutions concerned with the rights of children and juvenile justice in the development of the United Nations draft Rules for the Protection of Juveniles Deprived of their Liberty;
4. Adopts the United Nations Rules for the Protection of Juveniles Deprived of their Liberty contained in the annex to the present resolution;

5. Calls upon the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;
6. Invites Member States to adapt, wherever necessary, their national legislation, policies and practices, particularly in the training of all categories of juvenile justice personnel, to the spirit of the Rules, and to bring them to the attention of relevant authorities and the public in general;
7. Also invites member States to inform the Secretary-General of their efforts to apply the Rules in law, policy and practice and to report regularly to the Committee on Crime Prevention and Control on the results achieved in their implementation;
8. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Rules in all of the official languages of the United Nations;
9. Requests the Secretary-General to conduct comparative research, pursue the requisite collaboration and devise strategies to deal with the different categories of serious and persistent young offenders, and to prepare a policy-oriented report thereon for submission to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;
10. Also requests the Secretary-General and urges Member States to allocate the necessary resources to ensure the successful application and implementation of the Rules, in particular in the areas of recruitment, training and exchange of all categories of juvenile justice personnel;
11. Urges all relevant bodies of the United Nations system, in particular the United Nations Children's Fund, the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders and all concerned intergovernmental and non-governmental organizations, to collaborate with the Secretary-General and to take the necessary measures to ensure a concerted and sustained effort within their respective fields of technical competence to promote the application of the Rules;
12. Invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument, with a view to promoting the application of its provisions;
13. Requests the Ninth Congress to review the progress made on the promotion and application of the Rules and on the recommendations contained in the present resolution, under a separate agenda item on juvenile justice.

#### **Text of the annex**

##### **I. Fundamental perspectives**

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.
9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards: recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.
10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

## **II. Scope and application of the Rules**

11. For the purposes of the Rules, the following definitions should apply:
  - a) a juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;
  - b) the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.
12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.
13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.
14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.
15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.
16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

## **III. Juveniles under arrest or awaiting trial**

17. Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.
18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:
  - a) juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available; and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
  - b) juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
  - c) juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

#### **IV. The management of juvenile facilities**

##### **A. Records**

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.
20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

##### **B. Admission, registration, movement and transfer**

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:
  - a) information on the identity of the juvenile;
  - b) the fact of and reasons for commitment and the authority there for;
  - c) the day and hour of admission, transfer and release;
  - d) details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
  - e) details of known physical and mental health problems, including drug and alcohol abuse.
22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.
23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.
24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.
25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.
26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

##### **C. Classification and placement**

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.
28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.
30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

*D. Physical environment and accommodation*

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.
32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.
33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.
34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.
35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.
36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.
37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

*E. Education, vocational training and work*

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.
39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.
40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.



41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.
42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.
43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.
44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.
45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.
46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

*F. Recreation*

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

*G. Religion*

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

*H. Medical care*

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.
50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.
51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.
52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should

report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.
54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.
55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

*I. Notification of illness, injury and death*

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.
57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.
58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

*J. Contacts with the wider community*

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.
60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.
61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.
62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

*K. Limitations of physical restraint and the use of force*

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.
64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to

in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

*L. Disciplinary procedures*

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.
67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.
68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:
- a) conduct constituting a disciplinary offence;
  - b) type and duration of disciplinary sanctions that may be inflicted;
  - c) the authority competent to impose such sanctions;
  - d) the authority competent to consider appeals.
69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.
70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.
71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

*M. Inspection and complaints*

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.
73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.
74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.
75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.
76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.
78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

*N. Return to the community*

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.
80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

**V. Personnel**

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.
82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.
83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.
84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.
85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.
86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.
87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:
  - a) no member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;
  - b) all personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;
  - c) all personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;
  - d) all personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

- e) all personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;
- f) all personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.