

Juvenile Justice

Modern Concepts
of Working with Children
in Conflict with the Law



Save the Children UK

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PREFACE

Since 1998 Save the Children UK has been implementing different projects in the field of juvenile justice in Bosnia and Herzegovina. From the direct work with children in conflict with the law, through researches, police trainings and preparation of the strategic documents - all of these activities are aimed to improving the position of a child who came in conflict with the law, or is at risk to, but in the same time toward improvements in the work of different institutions within juvenile justice system.

Through different joint activities and meetings with experts of different profiles working in this field, the need was recognised for transferring modern approaches in working with juvenile offenders, based on the international standards, to the professionals in Bosnia and Herzegovina . With an aim of informing as large number of relevant stakeholders as possible, Save the Children UK organised the training-seminar on juvenile justice in October 2003, where some modern concepts of work in the field of juvenile justice were presented. This publication includes, besides those concepts that have been presented in the training, some other examples of modern approaches and models of working in juvenile justice.

We hope that professionals, dedicated to work with children in conflict with the law, and policy makers who are also amongst the recipients of this publication, will receive useful material that would be consulted in everyday work, but also in situations where they want to initiate substantial systemic interventions

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INTRODUCTION

This publication is intended primarily for a field-based practitioner working to improve the system for the administration of juvenile justice in any country. The purpose of the publication is to provide practitioners with concrete guidance in developing effective programmes in the field of juvenile justice.

Save the Children UK works on juvenile justice issues in 15 countries worldwide. This publication examines and documents models of good practice from Save the Children's expertise in juvenile justice work and includes examples of good practice in juvenile justice work by other agencies. The publication has been developed field staff and others (both inside and outside of Save the Children UK) who are interested and involved in juvenile justice work.

In order to bring about change to juvenile justice systems, practitioners must first have an understanding of the overall aims and objectives of the juvenile justice system in their country, as well as of the international framework for the administration of juvenile justice. You can then begin to address the issues and areas for intervention. This publication outlines the key areas for intervention.

Practitioners need to focus on five key issues:

- Offending behaviour, its causes and how it can be prevented
- The legal changes needed to ensure that anti-social behaviour is dealt with by social agencies rather than the criminal justice system in order to limit the process of criminalisation
- The protection of children who do come into conflict with the law and measures to reduce re-offending
- Child participation and gender awareness in programmes to reform the juvenile justice system
- Improving the understanding of the general public regarding young offenders and increasing commitment towards finding longer term solutions.

Structure of the publication

Part 1 asks 'What is children's justice?'. Chapter 1 looks at definitions and problems, as well as links between children's justice and wider development issues. Chapter 2 looks at the international rules and guidelines that form the framework for children's justice.

Part 2 is about setting up and running a children's justice project. It begins by looking at how to stop abuses and violations of children's rights. Of particular concern is the abuse of children and violations of rights that occur when children first come into contact with the criminal justice system. Chapters 3, 4 and 5 look at three key interventions are discussed, with specific focus on the role of NGOs:

- Research and data collection. Up-to-date information enables NGOs to:
- identify key areas for intervention
- influence public opinion and media with evidenced-based information
- ensure gender-issues are properly addressed

- ensure that children's views are taken into consideration in programme development and encourage the participation of children in discussions relating to reform of juvenile justice systems.

Eliminating status offences and increasing the age of criminal responsibility. This can significantly reduce the number of children deemed to be criminally liable. A programme of research, advocacy and training and some limited legal reform are all means by which effective intervention can be carried out with regards to this issue.

Promoting the use of alternatives to custody, including the use of bail (pre-trial); refraining from police custody as a pre-sentence measure; foster care; close supervision and diversion programmes.

Chapters 6, 7 and 8 look at what action NGOs need to undertake to bring about systems change:

Training programmes for all personnel working directly with children in conflict with the law such as police, lawyers, judges and prison personnel

Working to bring about the introduction of structures that will promote children's rights - children's units within police forces, juvenile courts, legal aid, and the separation of children from adults in custody

Promoting the role of social welfare agencies in dealing with children who come into conflict with the law

Law reform: this is a longer-term intervention and not one that NGOs should necessarily take up themselves until they are well established and recognised in the field.

Children's justice practitioners should not limit their work to children already in conflict with the law. Prevention work is a vital component of children's justice work. Chapters 9 and 10 look at the role of NGOs in building constituencies, and how they should approach this work:

- **Working with communities**, schools, parents, etc, with a view to building long-term prevention programmes
- **Bringing the key-players together** through inter-agency coordination and training programmes
- **Creating networks and alliances** with key relevant international, regional and national stakeholders.

PART I: WHAT IS CHILDREN'S JUSTICE?

Chapter 1 - What is children's justice

Children in conflict with the law

Every day thousands of children around the world get caught up in adult formal justice systems. Children are arrested and detained by police, tried by magistrates, and sent to institutions, including prisons, under systems of justice which in many cases are set up for adults. Although there are explicit international guidelines on the proper administration of juvenile justice, and on community-based conflict resolution and rehabilitation of child offenders, children's rights and special needs are being ignored. These children are alleged to have come into conflict with the law of the land; however, no allowances are made for the fact that it is often the law that is in conflict with their survival behaviour and the reality of their lives.

Large numbers of children in conflict with the law are socio-economic victims, denied their rights to education, health, shelter, care and protection. Many of them have had little or no access to education; many are working children. Some children have left their homes and taken to the streets to escape from violence and abuse at the hands of their families. Some are forced to make a living on the streets, in order to survive. Others have been abandoned by their families and left to fend for themselves and sometimes for younger siblings. These children, who are abandoned and destitute, are also at high risk of sexual exploitation, trafficking and becoming involved in substance abuse and the drug trade through peer influence or the influence of adult criminals.

For children in conflict with the law, the processes of arrest, trial and custody destroy their childhood as a result of being denied their right to, for example, family life, education, care, protection and play. Many of them have little chance of rehabilitation and reintegration into society: discrimination against children who have been in conflict with the law, together with deprivation and poverty, limit their opportunities for developing into active and contributing adult citizens.

The problems faced by children in conflict with the law was one of the priority areas for action set out by Kofi Annan, United Nations Secretary-General, in the document *We the Children: End-decade review of the World Summit for Children*, in 2001. He identified the following priority actions for the future:

- Special efforts should be made to prevent juvenile delinquency through effective educational opportunities, stable family environments and community-based programmes that respond to the special concerns of children and offer appropriate guidance and counselling to them and their families.
- Legislation should be advanced to ensure that children are only deprived of their liberty as a last resort and for the shortest period possible. A minimum age of criminal responsibility should be established and due process ensured for all children involved with the justice system.
- Alternative structures should be developed to deal with children without resorting to judicial proceedings, always providing that children's rights are respected and that restorative justice systems are encouraged so as to promote community involvement in victim-offender reconciliation.
- Existing international standards should be publicised through awareness-raising and information campaigns, as well as through training of law-enforcement officials, prosecutors, judges, lawyers and social workers.

What is children's justice?

Children's justice, (or juvenile justice as it is often called - the two phrases will be used interchangeably throughout this publication)¹, is about not only the treatment of children in conflict with the law², but also about the root causes of offending behaviour and measures to prevent such behaviour. Work in the field of children's justice therefore has two major strands: prevention and protection.

Prevention

This work aims to ensure that children do not come into conflict with the law in the first place and therefore do not come into contact with the formal criminal justice system. The causes of children offending are wide ranging and complex, and include poverty, broken homes, lack of education and employment opportunities, peer pressure and lack of parental guidance. These causes need to be tackled with a range of social and economic interventions, including programmes for education, poverty reduction, skills development, parent counselling and job creation.

Protection

At the same time, measures are needed to protect children who are already in conflict with the law, in order to deter them from reoffending and to promote their rehabilitation and smooth their reintegration back into society. Programmes and projects that focus on protection generally include one or more of the following features:

- advocating for law reform, to ensure that national legislation conforms with international standards and guidelines on juvenile justice
- training, education and awareness programmes on juvenile justice issues for key members of government, criminal justice agencies and civil society
- diversion projects that aim to keep children away from the formal criminal justice system by resolving conflicts within the community
- advocating for strict implementation of international and, where relevant, national standards for the treatment of children who come into contact with the criminal justice system in order to ensure proper treatment, protection and preparation for reintegration back into society.

Children's justice work

The goal of children's justice work is the establishment of a fair and humane system of justice for children which:

- is based on the rights of the child
- applies the principles of restorative justice (looking to restore the balance of a situation disturbed by crime or conflict rather than simply meting out punishment for an offence committed - see Chapter 5 for more details)
- puts the best interests of the child first
- focuses on prevention as a primary objective
- makes custody a sanction of last resort and for the shortest possible period of time while taking into account the effects on the victim and community.

How a justice system fails young people: an example³

Two boys, aged 18, from Khujand in Tajikistan, were sentenced to prison in November 2000 for minor stealing offences - one for 11 years, the other for 21 years. Both boys were from very poor backgrounds. The first boy was released after eight months in prison on grounds of ill health (he suffers from a respiratory condition obtained as a result of a beating received while in pre-trial detention). The second boy stayed in prison for two years five months. Since their release the two boys have been supported by a local NGO.

The boys' description of their experiences demonstrates the failure of the justice system to protect their rights at many different points:

- The boys had been living in poverty and resorted to theft to supplement their income.
- The boys, who lacked parental supervision, dropped out of the education system and into patterns of criminal behaviour.
- The police colluded with local criminals, turning a blind eye if allowed to have a share of the proceeds.
- The police were denied a share of the stolen goods, and as a result the boys were arrested and sent to pre-trial detention centres (isolation units).
- Conditions in pre-trial detention are bad (with the district units worse than units in the cities), with overcrowding, lack of any activities, mixing of men and boys and minor and serious offenders, no family or civil society access with infrequent visits by lawyers and investigators.
- Ill treatment of inmates in pre-trial units is common (including beating of boys).
- There were long delays in the court proceedings, even after sentence, because there was no transport to take boys to the prison in Dushanbe.
- The sentencing regime is harsh, with long prison sentences given out for small offences, and no consideration given to the circumstances in which the crime was committed, the treatment meted out during the investigation process, or the amount of time those on trial have already spent in the isolation cells during pre-trial detention.
- Punishments and beatings are carried out on a regular basis by prison officials.
- Prison provides little rehabilitative care, education is not taken seriously, and no effective vocational training is provided.
- No post-release support was provided by the government to the boys. On the contrary, the boys are placed on a list that ensures they are visited by the police and are subject to arbitrary arrest should any incident occur in the neighbourhood.
- The only way of getting off this list is to secure a job and obtain a recommendation letter from the employer and to take this to the police and get them to strike the name off the blacklist.
- There is no government support to help with training and no job search schemes.
- There is a lack of education schemes (eg, evening school for young workers) that might allow the boys to pick up the threads of education, combining this with vocational training and a working life.

Children's justice in South East Asia: A call to action

In 2002 an advocacy document for children's justice in South East Asia was developed by Save the Children UK, UNICEF and other NGOs working in Cambodia, China, Laos, Philippines and Vietnam.

In the document Save the Children calls for action in the following areas:

- Better information and data collection: accurate data on young offenders that is disaggregated, analysed and accessible.
- Better use of diversion: alternative options need to be available, such as diversion into mediation or other forms of restorative justice, as well as cautions, warnings or referral to programmes, that are grounded in legislation or guidelines and training for police. For serious offences that must be heard in court, children should be provided with legal representation as well as provided with support.
- Keep children out of custody: there should be limitations on the time in which a child can be held in pre-trial custody can be placed in legislation. Non-custodial sentences before and after trial are generally much more effective in reducing re-offending than custody.
- Decriminalise status offences: the removal of status offences from legislation can significantly reduce the number of children who currently come into conflict with the law.
- Bail: there should be a presumption that bail will be granted and financial sureties should not be required.
- The age of criminal responsibility: countries should establish "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law", UNCRC, art. 40, 3(a). At the same time, a child under the age of criminal responsibility should not be vulnerable to unregulated administrative action and deprivation of liberty.
- Prevention Much greater priority should be given to prevention programmes that tackle the causes of children's offending behaviour and target those children who are most at risk of coming into conflict with the law.
- Public Support Public awareness about the rights of children, the importance of fair and effective methods for dealing with child offenders and their links with reduction in crime should be promoted. Negative public attitudes can influence the effectiveness of community-based measures and inhibit officials from exercising their discretion to caution or release children on bail.
- Learning about good practice The West does not always set a good example for treatment of children in conflict with the law (for example, the excessive use of custody). The positive developments in community-based restorative justice are often from the developing world

How can the call to action be addressed?

1. Legal reform and implementation in line with international guidelines

Governments should review their legislation to ensure that it respects children's rights, international standards and reflects best practice:

- status offences should be decriminalised
- the age of criminal responsibility should be reviewed

Legislation should:

- emphasise the use of diversionary programmes
- emphasise the limited use of custody
- ensure the protection of children from harm within the system.

Governments should also ensure that international standards are incorporated into policies and practices. For example, government officials must know the provisions of the law and how to apply it. Those in contact with young offenders need training on how to interact with them, on diversionary measures and on how and when to use them.

2. Improved co-ordination

Developing an effective system of children's justice requires the involvement of a range of stakeholders at all levels of government and the community.

Often an important step can be to set up a national level co-ordination body, with key stakeholders represented and with clear roles and responsibilities. This body will:

- support the development of coherent strategies across sectors
- introduce evidence-based best practice
- identify changes that are needed to laws and government policy.

3. Restorative justice and diversionary practices

All those with responsibility for children's justice should commit themselves to the development of systems that are fair and based on the principles of restorative justice. These systems should ensure that:

- children participate fully
- restitution is offered to the victim
- the child has the opportunity to acknowledge the harm that he or she has caused
- a sense of community is restored.

Diversionary measures should be commensurate with the offence and take into consideration the child's age and individual circumstances, the child's willingness to cooperate, the impact of the crime on victim and community, any previous offence and opportunity for diversion, and the availability and strength of family and community support.

What is a juvenile justice system?

There are many aspects of a juvenile justice system: the people involved in it, the way they act, the procedures, the physical and other facilities. For example, it is about the manner in which police arrest or interrogate children; the attitude of lawyers and prosecutors; the way that judges make decisions about guilt or sentencing; handling by prison staff; the living, educational, recreational and safety conditions in detention facilities; and programmes for rehabilitation and reintegration.⁴

As stated earlier, many children who come into conflict with the law are treated as adult criminals, in justice systems that are abusive and that deny children their basic human rights. This failure of the justice system to address the special needs of children places young people at risk and creates problems when they re-enter society as young adults. It is not enough to merely try to reform a system that was designed for adults. Fundamental shifts in policy and practice are needed to ensure that the protection of children's rights is given priority in the design of a juvenile justice system, and that the system operates so that the best interests of the child are always taken into account. Each component of a juvenile justice system should, in its facilities and its mode of functioning, protect the rights and welfare of children (Abramson, 2001). There are international rules and guidelines on values and practices, such as those regarding the banning of capital punishment, protecting a child's privacy in court proceedings, and keeping children separate from adult detainees.

An objective of a juvenile justice system should be the healthy development of the child. The police, the courts and the other pillars of justice need to vary their approach depending on the age and maturity of the individual child; this kind of attention to developmental differences between children does not happen in a system that is constructed to handle adult offenders. Attention also must be given to gender issues, and to special needs of minority, indigenous or ethnic groups. Any necessary legislative provision should be made to ensure that these issues are taken into account.

Children's justice in a wider context

There is a tendency for children's justice work to focus on just two areas: inhumane treatment of children and the formal administration of justice. These issues are looked at in subsequent chapters of this publication. However, for children's justice work to be genuinely effective, we need to adopt a holistic approach that takes into account wider social, economic and political dimensions.

Justice and development

There is an emerging consensus that reducing poverty is virtually impossible without some elements of justice reform. For example, the UK's Department for International Development (DfID) argues that access to justice is a basic requirement for a country's development and as important for poverty reduction as is the provision of basic services, such as health and education (DfID, 2000).

The introduction of restorative justice principles (see Chapter 5 for more details) and schemes to divert children away from the formal criminal justice system contribute to crime prevention. Applying the principles of inclusiveness, restitution, restoring the balance within a community, and assisting and supporting the child to change their behaviour not only enhance the child's worth in a community, but also help to build community capabilities and resources. When a community goes through the processes involved in, first, acknowledging the specific issues surrounding children in conflict with the law and, second, developing community support groups and systems for diversion and mediation, it becomes better able

to understand the needs of vulnerable children. When attention is paid not only to the offence, but also to the cause of the offending behaviour, patterns will emerge that will help the community to identify at-risk children and families and to give them appropriate support.

Many agencies and individuals active in the children's justice field focus their attention on protecting the rights of children who are already in the system. While this focus is clearly of vital importance, there is also a need to adopt a wider perspective by linking the issue of justice to that of development. One way of doing this is to pay greater attention to prevention and rehabilitation programmes.

Justice and vulnerable/marginalised groups of children

Among children held in custody by the police or in detention institutions and prisons, poor and marginalised children are significantly over-represented. Impoverished children, and children who are marginalised because they are from indigenous or ethnic minorities, have little chance of gaining proper access to justice, as they are unable to afford lawyers and bail, and are alienated from mainstream social services.

Much juvenile crime is committed as a means of getting an income: for example, theft, burglary, mugging and drug-dealing, as well as prostitution. If prevention and reintegration programmes are to be effective, they must address the problems that prevent teenaged boys and girls from earning money by legitimate means. These problems that face young offenders or young people who are at risk of offending are not sufficiently taken into account in national economic development plans. 'Juvenile justice' is too often seen as simply the administration of justice to minors who have broken the law, unconnected to the larger problems of social justice, such as poverty and discrimination.

Marginalised groups are the least able to influence reform at any level of government and society - and when tensions exist between social groups, they are especially vulnerable to abuse of power by individuals, whether these be police officers, staff in institutions, judges, or elected officials. Therefore, an important part of prevention work in the children's justice field is encouraging states to genuinely commit themselves to tackling the social injustices faced by poor and marginalised groups.

Justice and education

Education is vital to the rehabilitation and reintegration of young offenders and to their healthy development, and also to prevention work. A holistic approach to children's justice work is needed so that children's needs and rights are all taken into account, including those regarding their education and training.

The right to education of children in conflict with the law

Article 28 of the United Nations Convention on the Rights of the Child (UNCRC) defines education as a right of all children, and requires that primary education be compulsory and available free to all. Secondary education should be made available for all, with financial assistance if necessary. Therefore the UNCRC, properly interpreted, safeguards the right to education of incarcerated juveniles. Their right to education, vocational training and work is more specifically set out in the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL). (See chapter 2 for a more detailed discussion of the UNCRC and children's justice.) Articles 38-46 of the JDL Rules stipulate that a young person 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 into society'. Moreover, 'such education should be provided outside the detention facility, in community schools wherever possible.' The

The links between social factors and juvenile offending in Peru

A good example of the interplay between social factors is found in a study conducted in Peru in the 1990s by Dwight Ordonez. He found that children and young people turned to street life, and then to crime, as a result mainly of family problems, such as when a teenager's role and status in the family changes after a parent's remarriage. He also found street living and crime to be 'gender biased', with up to 94 per cent being teenaged boys. The boys earned money through gang violence, which they spent mostly on drugs, a habit acquired only after they had turned to the streets. Dr Ordonez also found that school had a preventive role, and that education, vocational training, and income-generation assistance were important for rehabilitation and reintegration.

Source: Ordonez, 1999

Rules state that juveniles above school age should be not only permitted but stimulated to receive further education; that diplomas awarded to them should not refer to the place where they studied; and that detention facilities should have an adequate and appropriate library.

The JDL Rules, stressing the need to reintegrate young people into society, state that 'every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment' and, as far as possible, to select the vocational training themselves; they should also have the opportunity to undertake paid labour within a local community.

According to international agreements and instruments (see box above), young people who are in prison should receive a full programme of education, sports, vocational training and other purposeful activities, which take into account the age, gender and developmental stage of the individual child. This programme should be free of gender stereotyping; female juvenile prisoners are all too often offered courses in sewing or handicrafts and not given access to more formal types of education which may be available to their male counterparts.

In addition, the importance of programmes that prepare young people for their release and help them to adjust to life after prison cannot be overstated. Research has shown that there is a high rate of recidivism among juveniles who have not had access to regular long-term support after their release from prison. Resocialisation can begin when the young offender is still in

detention, and when they are released they should receive appropriate after-care to assist them through the process of rehabilitation. After-care services, where they exist, are generally of a very practical nature and involve guidance in finding a meaningful occupation - whether studying or working - and housing. They can also provide individual counselling, family counselling, educational courses and social skills courses, or therapeutic programmes to treat drug and alcohol addiction. In more developed social welfare systems, after-care and rehabilitation services are provided mainly by NGOs, with funding from government. NGOs can offer programmes flexible enough to meet the needs of individual children or specific groups of children, and by setting an example can often help to bring about good practice among official service providers and influence government policy.

Justice and post-conflict situations

Setting up a proper system for the administration of juvenile justice assumes particular significance in post-conflict situations. Many countries, such as Afghanistan, Rwanda, Sierra Leone and Bosnia and Herzegovina, have been struggling in recent years to rebuild societal structures, including the justice system, that were destroyed during serious civil conflict. A study carried out by UNICEF's International Child Development Centre (ICDC) highlights the problems that make it especially difficult for countries trying to recover from conflict to comply with international standards for juvenile justice (Hoffman, 2002). In many cases, prior to the conflict there was no juvenile justice system at all, or if there was, it did not conform to international standards. At any rate, in post-conflict situations there

are usually no specialised facilities such as juvenile courts and separate detention facilities, and even when they do exist they are located only in the capital or major cities. There is also a complete lack of judicial and other personnel, such as social workers and probation officers, trained in children's justice matters, and no provision for legal aid or public defence lawyers, particularly in rural areas. It is already difficult for a justice system to start functioning again after the upheavals of a serious conflict, and it is likely that the personnel will be newly appointed, most of them probably without experience of children's justice matters. Above all, child-centred legislation is often not regarded as a priority, and may at times be actively opposed.

Conflicts and their consequences can lead to an increase in the overall number of juvenile offenders and in children becoming involved in more serious crime. Sometimes they commit crimes as members of youth gangs, and sometimes they get caught up with adult criminals and organised crime groups that make use of children. Frequently, crime is a means of survival for street children who have been separated from their families during a conflict. Furthermore, in post-conflict societies, the use of violence is common, and an accepted way of solving problems. In addition to poverty and unemployment, another serious consequence of conflict is the breakdown of traditional family structures and community support, with many children becoming heads of households.

In countries trying to recover from violent upheavals, a child coming into conflict with the law is usually arrested and detained. Children are detained pre-trial, after trial as a sentence, but also sometimes, detained without trial. Furthermore, deprivation of liberty is justified as a means of protection. There is widespread opinion among judicial personnel that the detention of children is a good preventive measure and therefore a better solution than sending the child back to his or her family.

The creation of appropriate alternatives to detention, both in law and practice, is one of the major prerequisites for a proper system of juvenile justice. But even when the law provides for positive sentencing options such as community work or probation, and embraces the principle that detention should be a measure of last resort, children are often sent to prison because no alternative facilities exist.

Conditions of detention for children in post-conflict societies are such that young offenders are usually not separated from adults or, at best, they are separated just by a fence. Other problems include serious overcrowding in cells, and very limited educational and recreational activities.

Justice and street children

Street-living and street-working children face two particular threats in relation to children's justice: they are more likely than most children to come into (actual or perceived) conflict with the law in the first place and at the same time, once within the system, they are less able to defend themselves against violation of their rights.⁵ Street children usually come from the poorest sectors of society and often from indigenous minority and/or low-caste groups, and these factors add up to a pattern of multiple labels that have serious implications for their access to justice and their treatment in the courts and in prison.

Street children are victims in societies that criminalise poverty with harsh sentences for petty (often 'survival') theft and for breach of amorphous 'vagrancy' laws. They are at the mercy of state authorities, which may well have an interest in locking away such visible reminders of a state's failure to provide for one of its most vulnerable groups of citizens.

Moreover, street children are particularly vulnerable to extreme violations of human rights. There is

evidence emerging from various countries of street children regularly being rounded up by police or being targets of extrajudicial killings. Although these examples are extreme, for some street children they represent the reality of their lives, and are the result of poverty, inequality and injustice.

There are overlapping issues concerning this area of children's justice - the arrest of street children by the police, the conditions and treatment of children in detention, and laws that allow street children to be prosecuted - which need to be addressed by the following research and advocacy initiatives:

Research

- analysis of the overlap between laws affecting street children and the criminal code
- analysis of these laws to ensure that their provisions are met by any agency working with street children.

Advocacy

- engaging with the police in order to explain the provisions in the law as well as seeking their help in rehabilitating children in conflict with the law
- extending this work to the prosecutor's office with a view to eventually gaining its support for introducing community based mediation schemes including, where appropriate, a pre-trial community service scheme
- engaging with relevant civil society groups to explain how this scheme would work and what needs to be done, in terms of referrals, contracts, placement and supervision.

Justice and the drug-crime cycle

For more than two decades, researchers, health workers, and children's justice programme administrators have been aware of the link between drug use (including alcohol use) and juvenile crime. In many communities, the majority of juveniles currently entering the justice system are drug users. Other research indicates that juvenile drug use leads to recurring and violent delinquency that continues well into adulthood. Juvenile drug use is also strongly related to poor health, deteriorating family relationships, worsening school performance, and other social and psychological problems. The drug-crime link does not mean that drug use necessarily leads to criminal activity (or vice versa). However, research indicates that a relatively small group of serious and violent juvenile offenders who are also serious drug users accounts for a disproportionate amount of all serious crimes committed by juveniles (US Department of Justice, 2001).

An assessment of children involved in the drug trade in the Philippines found that 'a comparison of children who were involved in the drug trade and those who were not, shows that gender, family conditions, a family's financial situation, schooling and peers are factors that affect whether children enter the drug trade or not' (Lepiten, 2002). Looking at children who lived in communities where drug-trading was present but who were not involved in the trade, the assessment showed that 'being a girl and having a family - especially a stable and harmonious one - helped them resist being part of the trade. Another factor was that they were relatively better off than children involved in the drug trade and did not have to support themselves or augment family income. They were also not influenced by peers because most of them did not belong to gangs.'

In some countries younger children are often coerced into becoming involved in drug use,

particularly impoverished or destitute street-living children. These children become street pedlars or commit petty crimes, working for adult criminals, who keep them drug-dependent to ensure their continued compliance. The drug dependence often begins with the use of inhalants and can lead to other forms of substance abuse. If these children are apprehended by police they are likely to be entering a justice system that is unable to meet even their basic needs, let alone address their drug dependency problems.

Any attempt to break the juvenile drug-crime cycle must recognise and address the underlying reasons for criminal and drug-using behaviour among children and adolescents. A collaborative approach to dealing with the problem of substance abuse must be developed within the broad juvenile justice system, and could cover treatment, enforcement of treatment plans and engaging the juvenile offender's family. This collaboration will be effective only if it has wide support: from judges, probation or parole officers, law enforcement and health service officials, and the community.

1 Although used interchangeably throughout the text, it is worth mentioning here that the phrase 'juvenile justice' tends to connote the system of justice in place for children alleged to have committed some criminal act, whereas children's justice can be seen as more broadly defining the spheres of protection and promotion of children's right to justice more generally.

2 Roy, N. 'Justice Denied: The treatment of children in conflict with the law', Save the Children UK Juvenile Justice Global Review, Final Report, December 2001 (internal document)

3 Taken from an internal report by a consultant reviewing Save the Children UK's juvenile justice programme in Tajikistan in February 2002.

4. The Beijing Rules address several of the overlapping systems, eg, the police ('Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to... promote the well-being of the juvenile and avoid harm...', rule 10.3); detention facilities ('While in custody, juveniles shall receive care, protection and all necessary individual assistance...', rule 13.5); and the courts ('The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding...', rule 14.2).

5. See Consortium for Street Children, Juvenile Justice Project, www.streetchildren.org.uk

This chapter presents the key international rules and guidelines that provide the framework for the proper administration of juvenile justice and the mechanisms for enforcing them. It then looks at the wide gap that exists in many countries between this framework and the actual situation on the ground. Familiarity with these key international rules and guidelines is crucial for practitioners dealing with the issue of children's justice in that it will help them strategise interventions much more effectively. The instruments highlighted in this chapter can be used in many different ways including:

- as a measure /evaluative tool to look at national legislation
- as an advocacy tool in showing shortcomings of national legislation in developing new laws or policies.

United Nations Convention on the Rights of the Child (UNCRC)

Adopted in 1989, the UNCRC provides a wide-ranging framework for the protection of children's rights and, more importantly, constitutes a comprehensive listing of the legally binding obligations towards children that countries are required to implement. Articles 37 and 40 of the UNCRC deal specifically with the administration of juvenile justice; however it should be stressed that a number of other important Articles of the CRC are very relevant to any discussion regarding the issue of children's justice including: Article 2 (non-discrimination), Article 3 (best interests of the child), Article 9 (separation from parents), Article 19 (protection from abuse and neglect), Article 23 (the rights of disabled children), Article 28 (education), Article 31 (leisure, recreation and cultural activities) and Article 39 (rehabilitative care).

UNCRC Article 37 deals with the issue of torture and deprivation of liberty and provides among other things that: '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.' The Article further states that 'every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person' and goes on to say that 'every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so....'

UNCRC Article 40 more specifically covers the rights of all children alleged as, accused of, or recognised as having infringed the penal law. Thus it covers treatment of the child from the moment an allegation is made, through investigation, arrest, charge, any pre-trial period, trial and sentence. The article requires states parties to promote a distinctive system of juvenile justice with specific positive rather than punitive aims. Article 40 details a list of minimum guarantees for the child and it requires states parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings and to provide a variety of alternative dispositions to institutional care.

See appendix II for the full text of article 40 of the UNCRC

International instruments

In addition to the UNCRC, and supplementing and elaborating on the provisions of its Article 40, there are in place a number of international rules and guidelines (which are recommendatory and non-binding) which, taken together, constitute a comprehensive framework for the care, protection and treatment of children coming into conflict with or at risk of coming into conflict with the law. These include the following:

UN Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules' (1985)

The Beijing Rules provide guidance to states on protecting children's rights and respecting their needs when developing separate and specialised systems of juvenile justice. They were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and child development approach.

See Appendix III for the full text of the Beijing Rules.

UN Guidelines for the Prevention of Juvenile Delinquency: the 'Riyadh Guidelines' (1990)

The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration. Prevention is seen as not merely a matter of tackling negative situations, but rather a means of promoting welfare and well-being. More particularly, countries are recommended to develop community-based interventions and programmes, to assist in the prevention of children coming into conflict with the law and to recognise that depriving children of their liberty should be utilised only as a means of last resort.

The Riyadh Guidelines recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused. It advocates a multidisciplinary and intersectoral approach to the prevention of children coming into conflict with the law and recognises children to be full participants in society.

See Appendix IV for the full text of the Riyadh Guidelines.

UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)

These rules, known as JDLs, set out standards applicable when a juvenile (any person under the age of 18) is confined to any institution/facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the juvenile is deemed 'at risk') by order of any judicial, administrative or other public authority. In addition, these rules include principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasising that deprivation of liberty must be a means of last resort, for the shortest possible period of time, and limited to exceptional cases. The JDLs serve as an internationally accepted framework intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of juveniles and ensuring the dignity and welfare of the children is upheld while in custody.

See Appendix V for the full text of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

The three sets of rules discussed in the box above can be seen as guidance for a three-stage process: firstly, social policies to be applied to prevent and protect young people from offending (the Riyadh Guidelines); secondly, establishing a progressive justice system for young people in conflict with the law (the Beijing Rules); and finally, safeguarding fundamental rights and establishing measures for ensuring the dignity and welfare of children and young people deprived of their liberty, whether in prison or other institutions (the JDL Rules).

Other international instruments

Two other international documents worth mentioning here are:

- Standard Minimum Rules for the Treatment of Prisoners (1955), which first established the principle of separation of young people from adults in custodial facilities
- UN Minimum Rules for Non-Custodial Measures: the 'Tokyo Rules' (1990), which are intended to promote 'greater community involvement in the management of criminal justice, specifically in the treatment of offenders' and to 'promote among offenders a sense of responsibility towards society'. The rules cover pre-trial, diversion, sentencing and post-trial issues.

Finally, the entire framework for the protection of children's rights should be viewed in the wider context of human rights protection as embodied in the Universal Declaration of Human Rights (UDHR) of 1950 and the protection framework established subsequently by the UN.

In particular, attention should be paid to the principles stated in the International Covenant on Civil and Political Rights (1966), which prohibits the death penalty for crimes committed when under the age of 18 (Article 6.5) and states specifically that in 'the case of juvenile persons, the [court] procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation' (Article 14.4).

Mechanisms for monitoring and enforcement

Committee on the Rights of the Child

In addition to the comprehensive sets of rules and guidelines, an elaborate system for monitoring and enforcement has been put in place at the international level. The UNCRC provided for the establishment of the Committee on the Rights of the Child to monitor countries' compliance with the articles of the Convention.

UN Resolution 1997/30 - Administration of juvenile justice

This UN Resolution (also known as the Vienna Guidelines) provides an overview of information received from governments about how juvenile justice is administered in their countries and in particular about their involvement in drawing up national programmes of action to promote the effective application of international rules and standards in juvenile justice. The document contains as an annex a draft programme of action on children in the criminal justice system, as elaborated by a meeting of experts held in Vienna in February 1997. This draft programme of action provides a comprehensive set of measures that need to be implemented in order to establish a properly functioning system of juvenile justice administration.

The Committee on the Rights of the Child is the body that monitors how well states are meeting their obligations under the Convention on the Rights of the Child. When a country ratifies the Convention, it assumes a legal obligation to implement the rights recognised in the treaty. But signing up is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. So the country incurs an additional obligation to submit regular reports to the Committee on how the rights are being implemented. This system of human rights monitoring is common to all UN human rights treaties.

The Committee is composed of ten independent experts elected by states parties and it makes its assessments on the basis of five-yearly reports submitted by governments, and on other information made available by reliable sources. With regard to implementation of Article 40, the Committee has prepared extensive guidelines to help governments in reporting on progress in establishing a system of juvenile justice administration that protects the rights and best interests of the child.

NGO alternative reports submitted to the Committee on the Rights of the Child

In many countries a national coalition of NGOs has been formed in order to draft an alternative report to that submitted by the government to the Committee on the Rights of the Child (Allen, 1999). The possibility of drawing up an alternative report represents a unique opportunity for NGOs to raise their concerns and recommendations at international level, within the UN system.

How the Committee operates

In reporting to the Committee the government concerned is required to state what systems are in place for the proper administration of juvenile justice in the country. The NGO alternative report is submitted independently to the Committee. On the basis of these and other inputs the Committee then makes its assessment, setting out its comments and concerns in what are known as its Concluding Observations. These are followed by a set of Recommendations to the government regarding necessary improvements to the country's juvenile justice system, with suggestions as to where the government can seek assistance.

The usual recommendation from the Committee is that the state party seek assistance from the International Co-ordination Panel on Technical Assistance in Juvenile Justice. The panel was established following the adoption of ECOSOC Resolution 1997/30 (the Vienna Guidelines), which recommended strengthening the co-ordination of juvenile justice activities at the international level.

The purpose of the panel is to assist states to comply fully with the UNCRC with regard to the rights of the child when in conflict with the law. Members of the panel include: representatives of the Committee on the Rights of the Child; the Office of the United Nations High Commissioner for Human Rights; the Centre for International Crime Prevention (now known as the Crime Programme of the UN Office on Drugs and Crime); UNICEF; the United Nations Development Programme; and other relevant UN organisations and specialised agencies, as well as other interested intergovernmental, regional and non-governmental organisations, such as the International Network on Juvenile Justice (INJJ). (See below for further discussion of these panel members.)

The work of some of the individual agencies comprising the Panel is described in more detail below. The work done by the Panel and its members, together with the system of monitoring

Tajikistan and the UN Committee on the Rights of the Child

Background

The Government of Tajikistan ratified the UNCRC on 26 October 1993 and submitted its initial report on 16 October 2000. The main government department dealing with children's matters is the Juvenile Affairs Commission - a governmental body, operating at the regional and local level as well as at the level of central government. It deals with issues such as the prevention of juvenile crime, and the detention and placing under supervision of juveniles. It takes decisions and refers them to the courts or to other institutions. The various functions of the Juvenile Affairs Commission are gradually being extended and transferred to the National Council on the Rights of the Child, a body established in 2001 following the discussion of the Government's report by the Committee in Geneva.

Main points of the Government's report to the UN Committee on the Rights of the Child

- There are no juvenile courts in Tajikistan, but ordinary courts dealing with juvenile criminal cases takes into account the particular legal provisions applying to criminals under the age of 18.
- In criminal proceedings concerning juveniles, the psychological profile, in particular the degree of maturity, of the accused is taken into consideration.
- According to the Code of Criminal Procedure, special attention must be given to a child's age, family circumstances and living conditions.
- Children under the age of 16 accused of an offence are allowed to be helped by a teacher.
- Juveniles detained while awaiting trial, which is an exceptional measure applied only for serious offences, are separated from adult prisoners and the conditions of their detention are monitored on a daily basis.
- Visiting and correspondence rights are granted to the child's parents or guardian and monitoring by a teacher or psychologist is also permitted.
- Efforts are made to guarantee the child's right to education. However, due to a lack of resources, it is difficult to meet all the needs of detained children and to satisfy fully the relevant international standards.
- With regard to prevention, measures are being taken with a view to helping the children most likely to turn to crime.
- With the stabilisation of the situation in Tajikistan, a fall in the number of offences committed by juveniles had also been detected over the few months leading up to the Government's report.
- The age of criminal responsibility for general offences is set at 16 years, while for serious/very serious offences it is 14 years.

Laws relating to children

A number of legislative texts, including the Family Code, the Civil Code, the Penal Code and the Employment Code, provide for the opinion of the child to be taken into account. The Family Code stipulates that children aged 10 or above must be consulted over any issue which concerns them; where there is a difference of opinion between a child and his parents, the child can ask for a court to decide.

Working adolescents continuing their studies without interruption from work are provided with additional benefits and concessions. Advanced pupils are granted an additional day of paid leave per week to attend lessons, as well as from 8 to 20 days to take entrance examinations or graduation examinations.

In drafting the Code, account was taken of the provisions developed by judicial and procurator practice and by the practice of the guardianship authorities and the civil registry offices. A draft Rights of the Child Act was under consideration at time of the report.

Concerns of the UN Committee on the Rights of the Child and NGOs

In its Concluding Observations on the Government of Tajikistan's Report, the Committee on the Rights of the Child states its concern regarding the 'poor quality of the administration of justice for juvenile offenders and the lack of a juvenile justice system'. Recommendations made by the Committee include the following:

- The State Party should take all measures to fully integrate into its legislation and practice the provisions of the Convention, in particular Articles 37, 40 and 39, as well as other relevant international standards in this area.
- Facilities and programmes for the physical and psychological recovery and social reintegration of juveniles should be developed.
- The State Party should seek assistance from, inter alia, the Office of the UN High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the Co-ordination Panel on Juvenile Justice.

More detailed concerns are noted in the NGO Supplementary Report submitted to the Committee on the Rights of the Child in June 2000. Wide-ranging recommendations made in this report include the following:

- initiate programmes for the social re-integration of juvenile offenders who have been imprisoned or otherwise assigned to state care
- create a system of juvenile justice that would effectively combine the interests of children and the state
- train social workers and integrate their professional competencies in the juvenile justice system
- train judges and lawyers specialising in juvenile justice
- train the Ministry of Internal Affairs investigators in the issues surrounding juvenile justice.

Other relevant UN bodies and mechanisms

In addition to the Committee on the Rights of the Child and the NGOs that present alternative reports to the Committee, there are several UN bodies and mechanisms concerned with human rights and criminal justice matters in general, including those relating to juveniles. The most important of these are briefly described below.

Office of the UN High Commissioner for Human Rights (OHCHR) and the Commission on Human Rights (CHR)

The post of High Commissioner for Human Rights was established by the UN General Assembly in 1993. Since that time the OHCHR has become an important focal point for a wide range of human rights activities within the UN system generally. Of direct relevance from a children's justice perspective is the fact that the OHCHR services the Committee on the Rights of the Child described above. In addition the OHCHR services and supports the key human rights organs within the UN system including the Commission on Human Rights (CHR), which is composed of 53 member states elected by the Economic and Social Council, and meets every year in regular session for six weeks during March/April in Geneva. It is assisted in its work by the Sub-Commission on the Promotion and Protection of Human Rights, a number of working groups and a network of individual experts, representatives and rapporteurs mandated to report to it on specific issues. CHR procedures and mechanisms are mandated to examine, monitor and publicly report either on human rights situations in specific countries or territories (known as country mechanisms or mandates) or on major phenomena of human rights violations worldwide (known as thematic mechanisms or mandates).

United Nations Development Programme (UNDP)/United Nations Children's Fund (UNICEF)

Both UNDP and UNICEF play important roles in supporting the promotion of children's justice policies and projects around the world. Both agencies are members of the International Co-ordination Panel (see above) and in addition support a range of initiatives in different parts of the world. UNDP country offices collaborate with governments to support juvenile justice initiatives. For example, in Lithuania, UNDP assisted the Government in creating a coherent criminal juvenile justice strategy, based on respect for human rights and emphasising rehabilitation of juvenile offenders.

Created by the UN General Assembly in 1946 to help children in Europe after the Second World War, UNICEF became a permanent part of the United Nations system in 1953. Working with governments, NGOs, other UN agencies and private-sector partners, UNICEF's task is to protect children and their rights by providing services and supplies and by helping shape policy agendas and budgets in the best interests of children. UNICEF has helped draft the Implementation Guidelines relating to the UNCRC Article 40 and has supported various research and practical projects to help establish good practice in the field of children's justice. In addition, the main research arm of UNICEF, the Innocenti Research Centre undertakes original research to improve international understanding of issues relating to children's rights including in the area of children's justice.

UN Commission on Crime Prevention and Criminal Justice and Crime Congresses

The 40-member UN Commission on Crime Prevention and Criminal Justice is the principal policy-recommending body of the UN in the field of crime prevention and criminal justice,

and develops, monitors and reviews the Crime Programme of the UN Office on Drugs and Crime (see below). It is also the preparatory body for the quinquennial UN Congresses on the Prevention of Crime and the Treatment of Offenders. The Commission meets annually in Vienna and formulates draft resolutions for action by the UN's Economic and Social Council (ECOSOC). The UN Congresses on the Prevention of Crime and the Treatment of Offenders are convened every five years by ECOSOC. There have been ten Congresses to date (starting from 1955); the tenth was held in Vienna, Austria in April 2000.

UN Office on Drugs and Crime (UNODC) and its

Crime Programme (formerly the Centre for International Crime Prevention - CICIP)

UNODC was established in 1997 and is a global leader in the fight against illicit drugs and international crime. UNODC has its headquarters in Vienna, Austria, and consists of two main programmes: the Drug Programme and the Crime Programme. The Crime Programme is the UN office responsible for crime prevention, criminal justice and criminal law reform. Originally called the Centre for International Crime Prevention (CICIP) at the time it was established in 1997, it was subsequently renamed the UNODC Crime Programme in October 2002. It services the Commission meetings and the Congresses, carries out tasks on behalf of the Commission, and co-ordinates UN activities within the Commission's field of competence. In addition, the UNODC Crime Programme promotes research and studies new and emerging forms of crime in cooperation with the United Nations Interregional Crime and Justice Research Institute (UNICRI) and maintains the Internet-based United Nations Crime and Justice Information Network (UNCJIN), a substantial database of www links to criminal justice related sites (see below).

UN Crime and Justice Information Network (UNCJIN)

UNCJIN is an international network consisting of the Crime Programme of the UNODC and a number of interregional and regional institutes around the world, as well as specialised centres. The Network has been developed in response to the international community's request for assistance in this field. Its components provide a variety of technical assistance services within the framework of the UN Crime Prevention and Criminal Justice Programme, including advisory services, the exchange of information, research, training and public education.

Each of these bodies carries out research, training, field activities, technical co-operation and other projects, as well as provides facilities for the exchange and dissemination of information of relevance to crime prevention and criminal justice policy makers and administrators, at the international, regional and national level. Frequently, the services of these bodies are also solicited by local and city governments in areas such as urban criminality.

The key UN Institutes and affiliates which, along with the Crime Programme of UNODC, make up the membership of the UNCJIN include:

- UN Interregional Crime and Justice Research Institute, UNICRI, in Turin (Italy)
- UN Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, UNAFEI, in Tokyo (Japan)

- UN Latin American Institute for the Prevention of Crime and the Treatment of Offenders, INALUD, San Jose (Costa Rica)
- UN African Institute for the Prevention of Crime and the Treatment of Offenders, UNAFRI, Kampala (Uganda)
- European Institute for Crime Prevention and Control (affiliated with the UN), HEUNI, Helsinki (Finland).

International Network on Juvenile Justice (INJJ)

As already mentioned above, the INJJ is a member of the International Co-ordination Panel and is an international network of non-governmental organisations working on issues relating to juvenile justice. The INJJ was established in January 1977, and brings together NGOs, academic institutions and individual experts active in the field of juvenile justice throughout the world. The network is co-ordinated from the International Secretariat of the non-governmental organisation Defence for Children International (DCI) in Geneva and serves as a clearing house for the activities of over 200 international and national NGOs working in the area of juvenile justice.⁶

The reality for children in conflict with the law

Despite the elaborate international framework that exists for juvenile justice, the fact remains that there is a big gap between this and the real situation on the ground. In many countries there is inadequate legislation, and even where an appropriate legal framework exists, it is not properly implemented. Too many children come into contact with the formal criminal justice system unnecessarily and, once within the system, they are badly treated. There is insufficient use of alternatives; community-based measures are not well known and not promoted.

Although it has been more than a decade since the UNCRC came into force, the administration of juvenile justice around the world is far from satisfactory. Juvenile justice remains a neglected issue both in terms of governments' reporting of the situation in their countries and, more crucially, in terms of the reality on the ground.

An analysis of government reports to the Committee on the Rights of the Child concluded: 'Juvenile justice is the unwanted child in the UN system' (Abramson, 2001). Various reasons are given in this publication as to why governments are not doing enough in this area or why they find it difficult to implement the UNCRC with regard to young people in conflict with the law. They include:

- the unpopularity of juvenile justice as an issue (public and political perception of children in conflict with the law as 'criminals' and therefore deserving punishment, not sympathy)
- the fact that the administration of juvenile justice involves a number of overlapping systems, so that reform is not a simple matter, because it requires a holistic approach
- over-reliance on exposing weaknesses relating to juvenile justice, focusing on the abuse

of rights within the system, and relative neglect of the more positive development aspects, which are crucial for promoting juvenile justice, including greater involvement of communities, investment in vocational and skills based education programmes

- lack of knowledge about alternatives, lack of resources, and higher priority being given to other issues, such as education, health, etc, which are perceived as being more important.

Any interventions aimed at improving the functioning of juvenile justice systems must take into account this wide gap between, on the one hand, an elaborate international framework of rules and guidelines and, on the other, the real situation on the ground, which is that implementation is all too often completely inadequate.

Chapter 3- Research and data collection and analysis

Introduction

One of the main problems for children's justice work is the lack of adequate data about children who are already in the justice system and - even more importantly - children who are at risk of coming into conflict with the law. Research and data collection and analysis therefore must be a key element in the development of children's justice programmes.

The role of research in children's justice work

Lack of adequate data

Practitioners starting to plan a children's justice project frequently find, for example:

- There is no data on the number or type of offences committed by children.
- No reliable figures exist for the numbers of children in prison.
- No figures exist for the numbers going through the justice system.
- There has been no proper research on issues such as recidivism rates.

Acquiring the necessary information about children and the justice system is often the first step in designing any intervention relating to children's justice projects. The section on 'Planning a Research Project' later in this chapter looks more closely at what needs to be done to go about gathering such information, including the design of terms of reference for such research (situation analysis, baselines studies, etc).

This information is needed as a starting point for a project but it is also essential for practitioners to have a sound understanding of the specific context in which they are working. They must be aware of particular issues that have implications for children's justice in, for example, countries in transition, countries experiencing conflict or in a post-conflict situation, or Muslim countries with Sharia law. Also, whether the judicial system is based on common or on statute law will affect the way juvenile justice is applied.

Monitoring and evaluation

Having acquired adequate information about the country's existing juvenile justice system, the next step is to start the project design process by putting in place a framework for monitoring and evaluating the impact of the project so as to draw proper conclusions regarding its successes and failures. The importance of monitoring and evaluation cannot be stressed enough and it should be noted here that extensive guidelines for child rights based and advocacy oriented programming can be found in the Save the Children guide to monitoring and evaluation, Toolkits (Gosling, 2003).

Influencing public opinion

The unpopularity of juvenile justice as an issue makes it even more important to carry out research and collect relevant data. The general view of children in conflict with the law tends to be that they are

Using research to advocate on national legislation in the Philippines

A consolidated study of children in conflict with the law in the Philippines in 2003 found that over 90 per cent of all those arrested and brought to the family courts were first offenders. In the case of 22 Manila family courts it was 99 per cent.

The research study was the most extensive and comprehensive undertaken in the Philippines, drawing on three separate studies by Save the Children UK in the urban areas of Metro Manila, Cebu and Davao (covering the three main island groups in the Philippines). The research has proved an important advocacy tool to support the Children's Justice Bill in the Philippines.

criminals, and deserve punishment rather than sympathy. In countries where juvenile crime (or crime in general) has increased and has become (or is perceived to have become) more violent, society becomes more concerned about victims' rights and community safety. Any move to reform juvenile justice systems by adopting principles of restorative justice and seeking to follow international guidelines on reform is often seen as being soft on crime and criminals.

In many cases the rise in crime affects not just the wealthy minority, but all social classes. In reaction to this there is emotive media reporting and calls for punitive responses, resulting in the introduction of severe law and order policies. Moreover, many organisations and individuals involved in children's justice work subsequently face increased scrutiny, a state of affairs aptly summed up in the following statement:

'Whereas these groups were previously regarded as the defenders of the rights of ordinary citizens, they suddenly find themselves accused of defending criminals who are abusing law-abiding people.'⁷

One of the greatest challenges for children's justice work, therefore, is how to change the general public's negative view of children in conflict with the law. The fuller picture is rarely seen: that these children are in need of understanding and assistance, and are often themselves victims of violence and social injustice. Children such as these, if given help, can go on to lead constructive lives.

Under the UNCRC all children, including offenders, have a right to education and to humane treatment, and those who come into conflict with the law have a right to due process of law, and to rehabilitation and reintegration. However, the lack of sympathetic understanding and public support means that juvenile justice reform and thus respect for these rights is difficult to achieve. For one thing, because of this absence of public interest, there is no political support for allocating funds for the proper administration of juvenile justice.

In order to tackle this problem of public perception and the consequent adoption of hard-line policies by governments, proper research must be carried out and the findings presented to policy-makers, politicians, the media and the general public. The research should keep in mind the following points:

- the existence of the international framework for the administration of juvenile justice
- the importance of distinguishing between serious and petty crimes
- the importance of developing alternatives to give children who do come into conflict with the law a chance to engage in constructive reparation rather than be simply locked away the fact that locking up is not the only punishment and that not all offences committed by children are criminal acts.

Victim support work is also an important approach in improving public perceptions of children's justice programmes.

International guidelines on research and policy development

Carrying out proper research is the necessary first step in the process of developing a well-informed children's justice policy and then building and constantly improving a juvenile justice system. The relationship between research and policy is especially important in

children's justice. Given the rapid and often fundamental changes in the lifestyles of the young, and the advent of new forms of juvenile crime, the responses of society and the judiciary to juvenile crime and delinquency quickly become outmoded and inadequate. The relevant international guidelines are Article 30 of the Beijing Rules and Articles 60-66 of Riyadh Guidelines (see full text in Appendices III and IV). In addition a number of the UN agencies involved in the field of children's justice carry out specialist research on issues and subjects relating to children's justice.

Planning research projects

Key issues

Given the importance of research, data collection and analysis, and monitoring and evaluation, what key issues need to be taken into consideration when planning children's justice programmes and projects?

Rule 30 of the Beijing Rules (see Appendix III) establishes standards for integrating research into the process of formulating and applying policy on juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures, and for planning within the broader context of overall development objectives. Constant appraisal of the needs of juveniles, as well as of the trends and problems of delinquency, is essential. In this context, responsible agencies should arrange for research to be carried out by independent individuals and organisations. It is very important to obtain and to take into account the views of young people themselves, and not only those who come into contact with the system.

The need for an effective and equitable system of delivering services in a juvenile justice system must be emphasised when a policy on children's justice is being planned. With this in view, the policy should provide for comprehensive and regular assessment of the wide-ranging needs and problems of juveniles, and for identification of clear-cut priorities. It should allow for existing resources, including alternatives to custodial sentences, and community support, to be used in a co-ordinated manner.

The Riyadh Guidelines (Articles 61 and 62, see Appendix IV) stress that "the exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels", and further that "Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened". The Guidelines further state that agencies involved in children's justice projects should "play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation", and such research and "should serve as a source of reliable information on effective modalities for delinquency prevention".

Terms of reference

One of the most important interventions by Save the Children in the last few years has been to design and carry out situation analyses, working closely with international agencies such

as UNICEF. These studies provide the information base that a government needs when it wants to develop a children's justice programme, with the co-operation of international agencies and civil society groups.

Two examples of research design are given below. The first is a situation analysis conducted in Bosnia (2002-03) and the second is of a study conducted in Uganda in the late 1990s. Supported by UNICEF, both studies' main aim was to gather information to enable an effective programme for children's justice to be put in place. The Uganda study led to a comprehensive children's justice programme being implemented. In Bosnia and Herzegovina too a comprehensive programme was put in place upon completion of the study.

Examples of research design

Terms of reference for a situation analysis of the children's justice system in Bosnia and Herzegovina

The children's justice system in Bosnia and Herzegovina

Government services in the juvenile justice sector are largely a legacy of the system in place in the former Yugoslavia, severely under-resourced and not compliant with international rights instruments. Rehabilitation and reintegration services are virtually non-existent. Furthermore, children's justice has had little attention from the international community in the past, with only a few agencies working consistently in this sector, and activities have tended to be concentrated in specific locations.

Background to the study

The situation analysis was undertaken by Save the Children UK, supported by UNICEF. The objective of this situation analysis was to:

- outline the current situation regarding legislation, policy and practice
- highlight gaps
- note existing initiatives by governmental, intergovernmental and non-governmental agencies
- recommend priority areas for future attention and action.

Information to be collected

The status of the Bosnia and Herzegovina legislation related to juvenile justice

- within the B-H context
- status of criminal codes and criminal procedure codes and other relevant legislation
- other existing policy documents: police guidelines, codes of conduct
- current initiatives/law reform underway or planned

- conformity of Bosnian legislation to international standards given in main international documents regulating the juvenile justice
- the international legislation context - binding and non-binding instruments (ie, conventions, rules and guidelines)

Bosnia-Herzegovina legislation provisions in conformity and non-conformity with international instruments

- knowledge within the juvenile justice actors and gaps.
- Juvenile justice policy: the roles of different state bodies in the administration of the juvenile justice system
- the process, respective roles and responsibilities of governmental bodies (police, court, prison, etc), and specific issues of concern
- routine data-gathering, monitoring and analysis arrangements
- co-ordination between agencies and overlapping
- resource allocation
- identified gaps and issues of concern

Practice

- children in conflict with the law (available data as to who they are and who is at risk, reasons/offences bringing children into conflict with the law, numbers involved, differing situation for boys and girls, children in prisons, those imprisoned with mothers, etc)
- current practice in Bosnia and Herzegovina
- Services in use and available (prevention programmes, social services, rehabilitative opportunities, correctional facilities, prisons, alternative measures in place)
- activities of governmental agencies - actual and planned
- activities of inter-governmental/non-governmental agencies, actual and planned.

Conclusions and recommendations

- discrepancies between legislation, policy and practice
- recommended priority areas to be addressed
- recommended areas for future study.

Terms of reference for a situation analysis of the juvenile justice system in Uganda

Uganda submitted its initial report to the Committee on the Rights of the Child on the implementation of the UNCRC in September 1997. One of the Committee's recommendations was that the state pay particular attention to the organisation of training programmes on the relevant international standards for all professionals involved with the juvenile justice system. In light of this recommendation, a situation analysis of the juvenile justice system was initiated, led Save the Children UK, with funding support from UNICEF.

Terms of reference for the situation analysis

- Examine the statistical breakdown of cases handled and action taken by gender and age of the plaintiff/complainant and defendant.
- Review cases from a gender and child rights perspective and compile case studies that could provide solid background for discussion and planning.
- Study and throw light on myths and realities of the juvenile justice system.
- Examine the roles, capability and capacity of key actors in the juvenile justice system, including probation and welfare officers.
- Examine the capability and capacity of the community juvenile justice system (ie, local council courts).
- Study how often courts hear children's cases and the decisions they make.
- Examine how cases proceed and move forward, and identify bottlenecks and gaps.
- Assess the extent to which children's cases reach higher courts and what decisions are made.
- Examine the status of institutional provisions with regard to:
 - How equipped they are for pre-trial care and handling children in need of special protection measures
 - rehabilitation and follow-up support
 - basic services such as medical care, counselling, education
 - adherence to procedures and provisions of the Children Statute
 - legal representation.
- Study interventions in light of the provisions of the Children Statute and the principle of best interest of the child.

Both examples highlight certain key issues that should be taken into account in the design of terms of reference for a research study project:

- The study should aim to review not only the existing situation in the country but also international good practice, in the area of legal framework and specific legislation, in that of government policies and, in concrete terms, of actual practice.
- Attention should be given to community-based conflict-resolution and rehabilitation mechanisms. Describing examples of good practice internationally (to illustrate what works and what does not) will be very helpful when it comes to the actual implementation of the study's recommendations.
- Strengths/weaknesses of support structures for children in conflict with the law should also be looked at (the role of social workers, probation, counselling, mediation etc).
- The issue of public perceptions of crime and of the interests of victims must be covered by the study.

Special issues

Gender

In general it would be true to say that far fewer girls go through the criminal justice system anywhere in the world, and the types of offence they commit appear less grave than those committed by boys. Girls who do come into conflict with the law experience the system differently from boys. The differences place a particular obligation on practitioners to ensure that service delivery does not discriminate against the female minority and that the particular needs of girls are not overlooked.

The ways in which girls experience the juvenile justice system differently from their male counterparts include the following:

- girls are less likely to be processed through the youth justice system
- once caught within it, they appear to be treated differentially at every stage
- girls are less likely to be prosecuted, to receive a community penalty or to be given a custodial sentence than boys.

However, it is not clear to what extent these differences derive from more lenient treatment, from a lack of facilities available for female offenders, or from the divergent patterns of offending behaviour displayed by boys and girls.

Implications for research and data collection

Researchers need to find out more about girls in conflict with the law, for example:

- Extent of offending by girls. How many girls were cautioned or convicted for indictable offences in the period in question?
- Patterns of offending and recidivism. What are the sorts of offending behaviour most prevalent amongst girls and the rates of reoffending for girls specifically?
- Experience of the justice system and patterns of sentencing. Girls are considerably less likely to be prosecuted than boys. There is however a variety of possible reasons for this, relating to, for example, the gravity of offence, the existence of previous convictions and whether the young person admitted the offence when at the police station.
- Resources necessary for providing non-custodial options for girls in conflict with the law. Facilities for a full range of community penalties should be available to girls in the local area, including community punishment orders and attendance centre orders (see Chapter 5 for more details).

Children's participation

The real life experiences of children who have been through the justice system provide valuable insights into what needs to be done to reform these systems. Some times it may be difficult to talk to children who are within the system either because of lack of official co-operation or the reluctance of the children themselves. However it is always possible and certainly desirable to consult widely with children who have been through the criminal justice system and have been subsequently released.

Interviews with children about their experiences within the justice system often demonstrate graphically the vicious cycle of youth offending, arrest, trial, imprisonment, release and recidivism. If the root causes of poverty and exclusion have not been addressed then a child is likely to return to criminal activities. Moreover, the experience of prison often makes a

young person a better criminal, rather than reforming their behaviour.

However, children should not be seen only as victims caught in the process; they need to be seen equally as participants in the process of change. The underlying theme of Save the Children's child rights programming is children at the centre of development as citizens with rights. In practice, it means developing approaches that ensure that children are consulted and that they have an input, even in complex policy debates such as that on children's justice. The example below illustrates how this can be achieved.

Example: A Save the Children initiative with street children in Bangladesh

The aim of this research (was to discover and document the views and experiences of children who had been either in jail or virtually incarcerated in state shelter homes (street children in Bangladesh often get arrested and sent to prison and/or are held in protective custody in what are known as 'shelter homes' but which are really prisons for all practical purposes).

It was based on the participation of 14 street children who, over a two-year period, took part in a consultation process among themselves, with other children and with NGOs. Information was gathered from children, and subsequently discussed in depth, through a range of initiatives:

- *A video was made, looking at the experiences of three children from the group.*
- *Research was carried out on the numbers and condition of children held in Dhaka Central Jail, a correctional centre and state and private shelters.*
- *Research was carried out into the abuse of children in protective custody.*
- *A workshop on children's justice issues, using the findings of the research and the video, was held with representatives of government organisations, NGOs, the media, etc.*
- *A workshop involving 120 children from different social backgrounds was held to discuss 'State violence against children'.*
- *A list of recommendations came out of the children's discussions at this workshop, and were directed at a wide range of audiences: parents, government departments, the police, the courts, jail authorities, NGOs, the media, politicians, and other children*
- *Following the workshop, a booklet was produced for the UNCRC Committee meeting on 'State violence against children' in Geneva in September 2000.*

'Every child in conflict with the law has a right to legal assistance and a prompt and fair trial, as well as treatment which promotes their sense of dignity and worth. Laws, procedures and institutions must specifically take the child's age into account and establish an age below which a child cannot be presumed to have the capacity to infringe the penal law. Whenever appropriate, measures should be taken for dealing with children without resorting to judicial proceedings, provided that human rights are respected. Care, guidance and supervision orders, as well as counselling, probation, foster care, education and training, should be available as alternatives to institutional care.'

Source: Amnesty International, 1995

7. Source: 'Crime, public order and human rights, June 2002', a project designed by the International Council on Human Rights Policy.

Introduction

Legislation provides the framework for practice in juvenile justice. However, in many countries the legal framework does not reflect international standards. These countries need to review their existing legislation and bring it in line with the UNCRC and international standards. The complex requirements of a well-functioning system for the administration of juvenile justice are set out in the UNCRC (Articles 37 and 40) and several related international documents. The main features of the international model can be summarised:

- protecting the rights of the child in cases where custody, as a last option, is used
- ensuring that the child's best interests are promoted in criminal justice proceedings
- comprehensive legislation incorporating, where relevant, restorative justice principles
- setting up community-based conflict-resolution and rehabilitation mechanisms.

This chapter looks at the importance of law reform, and at the need for proper safeguards to be built into the legal framework to ensure that a system of juvenile justice administration conforms to international standards and guidelines. It sets out some key issues to be taken into consideration in planning a process of law reform; looks at the example of successful law reform in Uganda; and discusses two issues in particular - the age of criminal responsibility and status offences - that are relatively easy to take on board for advocacy purposes in the short term.

International guidelines on legislation

Article 4 of the UNCRC requires states to undertake all legislative, administrative and other measures for the implementation of the rights recognised in the Convention. In its 41 Articles, the UNCRC sets out the standards and provisions that it expects ratifying states parties to meet and safeguard. It also makes clear in Article 41 that any provisions in state or international law that promote the fuller realisation of children's rights should take precedence. There is no ambiguity, therefore, about the main principles on which domestic legislation should be drawn up in order to conform to the UNCRC and other international instruments. Article 40 of the UNCRC clearly sets out children's right to justice (see appendix II).

The UNCRC, however, does not specify the structures by which states are to ensure that these rights are upheld. These are a matter for each state to decide, and the types of structures established will have a great influence on how well children's rights are protected. Major decisions must be taken on how the principles of the UNCRC are to be administered in the best interest of the child, and the success of any reform will depend on whether the basic concepts of the UNCRC have been fully understood, the system has been set up to be effective and culturally appropriate, and relevant personnel should have received proper training.

Decisions on how to implement the principles of the UNCRC need to be taken at national level. Questions such as the following will be raised:

- How best in this society, and through which channels, can children be diverted from the

court system and assisted appropriately?

- What systems need to be set up to divert children from custody?
- Where diversion from court is not possible, are there local traditional structures for the administration of justice for less serious offences? If so, what needs to be put in place to ensure that these structures act in accordance with the UNCRC?
- If local traditional systems are used, how are they integrated with the centralised magisterial system?
- How can the centralised system of justice be made more child-sensitive and less adversarial?

The The United Nations Convention on the Rights of the Child Implementation Handbook prepared by UNICEF (1998) presents a set of questions which need to be addressed by any country and government before embarking on a process of legal reform. However, the actual decision to engage in such a process is much more complex. A number of issues need to be taken into consideration; some of them are outlined in this chapter. Dealing with these issues will have a major impact on existing juvenile justice structures, and in the course of addressing them, ownership of the reform process, and commitment to it, are established.

Issues to consider before undertaking legal reform

National commitment for real change

A country setting out to revise its laws needs a broad-based commitment to achieving the desired end result. If revision comes about primarily through external pressure, there is unlikely to be the necessary body of people willing to undertake the harder task of implementation, even if legislation reaches the statute books. The process of building up a broad-based commitment for reform is therefore of enormous importance.

Public debate and education

It is essential that the debate about new legislation is extended to the general public at community level, as well as to professionals in social welfare, the police, the judiciary, national and international NGOs and donors. Professional and other influential groups in society, who may be disinclined to support change, are a particularly important target.

Without this broad debate, there is the risk that legislation will be passed but not implemented. Customary forms of justice which do not meet national or international standards but which are strongly supported by the community may be reinforced if the new legislation is perceived as a 'top-down' change in which there is no sense of ownership at community level. For example, in South Africa corporal punishment was abolished in the constitution, but it is still widely practised in schools, and parents consider it to be a useful disciplinary measure.

Promoting changes in attitude involves listening to the public as well as transmitting new ideas. Work should begin at village, district or ward level with a discussion of the meaning of

the child's well-being and best interests. This is an immense task and requires, in addition to public debate, work through the media and training of the people responsible for implementing the changes. In a number of countries, decentralisation has created new opportunities for local initiatives of this kind. The Ugandan example, described later in this chapter, shows that attitudinal change is possible, particularly if serious efforts are made to find out how local communities perceive children's rights before work begins on legislative revision.

Translating principles into national legislation

The UNCRC is the framework that should underpin any revision of laws concerning children, but many of its principles need to be further defined when translated into national legislation. For example, the Convention stresses the importance of a minimum age of criminal responsibility, but does not define what it should be. The review of legislation must take into account the more detailed recommendations set out in such international instruments as the Beijing Rules, Riyadh Guidelines and the JDL Rules (see chapter 2), written to reflect the principles of the UNCRC.

After studying these international instruments, states should draw up a set of guiding principles for each area of law being reviewed: for example, children's justice, child protection and foster care, childcare, maintenance and custody, child labour, adoption. The legislation should then be revised according to these detailed principles. A method similar to this was used when the England and Wales Children Act 1989 was drawn up, and it was also followed in the Uganda Child Law Review (Wadri, 1998).

On specific topics - for example, the minimum age of criminal responsibility (ACR) - a review of the situation internationally can be useful. (The review conducted by the Uganda Child Law Review Committee showed that the ACR varied widely, with a number of countries choosing 14 years or even older as the minimum.) Setting a high ACR, while not a guarantee of better treatment of children, does have the effect of forcing the state to look for alternatives to the formal criminal justice system for dealing with children below the minimum age. The issue of ACR and its reform is discussed in more detail later in this chapter.

Guiding principles should also be applied in order to abolish status offences. This will ensure that mechanisms other than the formal criminal justice system are used to deal with situations that arise as a result of socio-economic problems such as homelessness, street living, etc., and that therefore the best interests of the child are served. The South Africa Child Justice Bill in 2001 explicitly abolished status offences but India, during the drafting of the Juvenile Justice (Care and Protection of Children) Act 2000 (which came into force from April 2001), failed to take the opportunity to do so.

A comprehensive approach for effective law reform

Trying to bring about reform of legislation in the area of children's justice is challenging. There is likely to be a lack of reliable data; reform of legal systems is complex and time-consuming; strong opposition to reform can be expected from a variety of quarters. A planned and strategic approach to legal reform is therefore needed. For example, it will be necessary to research the present legal situation; draw up change objectives; look for individuals and bodies

to build alliances with; identify opponents and ways of dealing with them.

Research

Legislative reform should not be undertaken without adequate knowledge of the current situation of the children which it is intended to protect and without children's views being heard. It is particularly important to know how children are currently perceived within society in general, and at village and district levels. This may involve commissioning specific pieces of research into areas such as traditional justice and attitudes towards traditional justice practices. Research can also reveal weaknesses in the existing administration of juvenile justice - for example, in areas such as record-keeping, handling of statistics, budget allocation, and written procedures - thus highlighting the significance of good governance as an aspect of upholding children's rights.

Legislation

There are two crucial issues to be considered when assessing the value of a proposed new piece of legislation concerning the administration of juvenile justice. First, the conceptual framework; in other words the extent to which values of restorative justice, the best interests of the child, and the participation of children are taken into account. Second, the actual process of drafting the document: who is consulted, what inputs are sought, how much attention is given to international good practice, etc.

Major revision of any one area of the law relating to children tends to have a domino effect: other pieces of legislation will in turn have to be made consistent with it. The most obvious instance of this is in the area of child protection and alternative care. For example, where there is a minimum age of criminal responsibility, appropriate provision must be made for children below this age, who will require places of safety and alternative care. If no such facilities exist, it may be hard for those advocating a higher age of criminal responsibility to convince the government of their case. The rights of children will be undermined if there are conflicting principles guiding juvenile justice on the one hand and child protection and alternative care on the other. Therefore, it seems sensible for both areas of the law to be revised at the same time.

It may also be appropriate to revise other laws relating to children; for example, those concerning the definition of parentage, decisions concerning custody and maintenance, the age for marriage, the law of inheritance, child labour and child protection. Ideally, all laws concerning children should be brought together; when legislation is fragmented, children can fall through the gaps created because some of the laws do not consider all the circumstances when juvenile justice principles may apply.

It is important to ensure that any new or revised legislation takes account of and, if relevant, directly supports, principles of prevention as well as of protection in the administration of juvenile justice.

Three points in particular need to be considered when very comprehensive revisions are undertaken:

- If proposals in one area are very controversial, this may delay or jeopardise the passing of a bill.

- The broader the scope of a bill, the more experts are needed and the more complex and lengthy the processes of organising, drafting, presenting and implementing become. This will mean higher costs and a greater likelihood of personnel changes in the review body and within support structures set up to facilitate the process.
- If a piece of legislation is too wide-ranging, people may be unclear about the proposed changes and the principles behind them, or may not have enough time to discuss them adequately. It will need a high degree of skill to present the proposals successfully.

A 'quick fix' to achieve a limited objective

In some circumstances a 'quick fix' approach to changing the law may be appropriate. For example, in Uganda an amendment to the Local Government Act designated the vice-chairman on all local councils, from village to ward level, to take on the role of Secretary for Children, with responsibility for their rights and welfare. Certain laws also give ministers the right to draw up new rules or regulations to be added to existing legislation. If the Cabinet approves them, they can be gazetted without submission to parliament. The rules governing the approval of, and minimum standards for, children's homes in Uganda became law in this way (Wadri, 1998).

Even when certain amendments and additions to existing legislation are possible, consultation is necessary before the changes are introduced. Moreover, advocacy and training will still be needed for implementation of the changes, because although it may be possible to change laws quite quickly, putting the changes into practice requires time, resources and continuing dialogue with practitioners at every level.

Major revision of the law is likely to take up to five years, from initial consultation and drafting to final submission to parliament. Therefore, it is essential to be sure right from the outset that what is being proposed is really going to benefit children and is likely to justify the investment by producing significant improvements in their lives.

Resistance to change

Resistance to change can be expected from many quarters - civil, religious, political and traditional. Moreover, one cannot assume that because revisions in child law concern the social sector, they will be welcomed by police, probation and social work staff. The opposite may well be the case, as law reform will probably force them to change their ways of working, and it could also result in the reallocation of resources or the closure of institutions with vested financial interests. Change can also run counter to currently held values and attitudes about children in conflict with the law, which are perpetuated within communities and societies by governments taking a hard line on crime and/or by the Church taking a moralistic stance against crime. A concerted effort (and training) will be needed to explain the changes to police and social services staff and win them over.

Legislative change must be achievable in practice

Child law reform is complex, time-consuming and costly but, if it is done well, the benefits to children and their communities can be far-reaching. The process may itself generate a new consensus on the rights and responsibilities of all parties involved, and help to create the environment for change that the new law will require.

Several countries have in recent years gone down the path of carrying out law reform with a view to bringing national legislation in line with international standards and guidelines. Most recently and successfully, the South African Government has enacted legislation that includes wide-ranging provisions for safeguarding children's rights. Further details for setting up juvenile courts as outlined in the South Africa Bill are given in Chapter 7.

Process of law reform: examples of good practice

The example of the Uganda Children Statute 1996 should be mentioned here. Save the Children UK played a considerable role in the development of this legislation. The Ugandan experience provides a good example of how law reform can advance the process of setting up a proper system of administration of juvenile justice, even though it creates new problems as it develops (see the example below).

With regards to the issue of bringing about law reform and legislative change in general it is worth mentioning here that there are two possible ways of going about this. One is as set out in the example from Uganda (and also carried out in other countries such as England & Wales) where the legislation is written first and used as a basis for introducing and implementing reforms. The alternative way is through evidence-based practice, which involves pilot projects being set up to see what works well and then legislating on results of what works in practice; this has been done in a number of countries including Lao PDR, China and to some extent in the Philippines.

Example: Law reform in Uganda

Background

Before Uganda's Children Statute 1996 was enacted, juvenile justice was based on colonial ideas developed during the 1950s and 1960s. It was based on the concept of punishment, regardless of the child's age, development, or environment. As a result, the welfare needs of children charged with an offence were neglected.

The juvenile justice system was characterised by: inconsistency in the definition of a 'child' in law; the absence of children's courts in many districts; excessive use of remand in custody; low age of criminal responsibility; stringent bail conditions; long periods of detention without regard for the nature of the alleged offence; lengthy trials.

The role of Save the Children UK

Save the Children UK worked closely with the government of Uganda to introduce reforms in the juvenile justice system, that it would bring it into line with the standards laid down by the UNCRC and the African Charter on the Rights and Welfare of the Child, both of which Uganda ratified in the 1990s. Save the Children UK funded a national committee which drew up proposals for new legislation. Together with other NGOs, UNICEF and government bodies, it then lobbied for the Statute to be enacted.

The reforms

- The minimum age of criminal responsibility has been raised from 7 to 12 years.
- Specialised family and children's courts have been established throughout the country. They operate in an informal setting and are not open to the public, but parents/guardians are present wherever possible.
- Local committee courts (village courts) have been given jurisdiction over cases involving children charged with minor crimes such as affray, theft, and criminal trespass. ■■
- The trial process is to be speeded up. Trials for minor offences must be completed within three months of the plea being taken, and for serious crimes the time limit is 12 months. The maximum time a child can be remanded in custody is six months.
- Sentencing policy is to place emphasis on community options. Detention or custodial sentences should be used only as a last resort and shall be for a maximum of three months for a child under 16 years, and of 12 months for young person over 16. The formal courts are encouraged to use alternative options that allow the child to remain with his or her family. Village courts can issue orders for compensation, restitution, apology, etc.
- Bail conditions have been relaxed, so that a promise by the child, parent or guardian that the child will return to court when required is regarded as sufficient surety.
- The principle of diversion is reflected in the preference for community options. Informal resolution of conflict at the village level diverts children from the criminal justice system.
- The offence of 'being idle and disorderly' has been decriminalised. Children charged with this offence used to account for over half of those sent to remand homes, especially in the capital city.

How the reforms are working

The Children Statute has been in force since 1996. While it is too early to make a comprehensive assessment of the impact of the Children's Statute, there are some positive indications, including:

- There is general support from top government officials, despite the structural difficulties and financial constraints relating to implementation of the reforms.
- Family and children courts have been gazetted and now exist throughout the country. The rules for the conduct of these courts have been enacted and made available to all the courts and probation and welfare officers.
- Court users' groups have been established in some districts leading to improved co-ordination, communication and co-operation among the principle actors in the criminal justice system. This in turn has had an impact in terms of speedy trials, reduced congestion in places of custody, and a reduction in the numbers of children held on remand.
- Training courses planned for all judicial officers, police and probation /welfare officers to ensure that they understand the new laws. Where training courses have been implemented results can be observed already in terms of positive attitudes to change and a willingness to implement aspects of good practice.
- Attempts are being made to recruit probation /welfare officers in some districts where they do not already exist

- Places of remand (temporary shelters, etc) are being established in some districts to avoid children having to be moved long distances from one area to another in search of remand homes.
- A legal aid clinic has opened at the Law Development Centre in the capital, Kampala. The clinic provides legal aid services to juveniles, as well as adults charged with minor offences.
- Training guides have been prepared to help understand the Children's Statute. A simplified version of the Statute in English and translations into six major local languages mean that the law can be read and understood by a large part of the population.

The future

In order to help ensure that implementation of the reforms continues steadily and effectively, several agencies in Uganda working on children's justice issues, will:

- research and document the actual implementation of the reforms in three pilot districts
- promote the development of effective community responses and document immediate issues (reactions/concerns of community members) in relation to the reforms
- promote the establishment of a senior-level juvenile justice committee to look into what is happening in various sectors at national level, and ensure that the committee's findings are acted upon, in policy and practice
- lobby and advocate at national and district level
- involve civil society and other NGOs in the implementation of the reforms.

Status offences

In many countries, certain acts constitute as offences when committed by children, but are not considered offences when perpetrated by adults. In other words, the conflict with the law stems from the status of the offender as a child, rather than from the nature of the act itself.

'Street children' are indeed particularly vulnerable in this regard, and are often apprehended by the police, on an individual ad hoc basis or as part of a deliberate strategy that may or may not be sanctioned by domestic law. This practice has been documented worldwide, in countries as far apart as Bangladesh and Peru.

Legislation specifically targeting juveniles in this way is increasingly contested as discriminatory and as unnecessarily 'criminalising' the acts and young people involved. The UNCRC does not explicitly mention the issue, although its provisions clearly militate against the application of repressive measures in such cases. The non-binding Riyadh Guidelines, however, state without hesitation that 'legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person'.⁸

Table: Official age of criminal responsibility in countries round the world*

8	9	10	11	12	13	14	15	16	17	18
Australia: Tasmania	Australia: ACT	Ethiopia Iraq	Australia: Mos t states	Turkey	Canada	Algeria	Armenia	Czech Republic	Argentina	Colombia
Bangladesh	Kenya	Malta	Fiji		Dominican Republic	Benin	Austria	Denmark	Andorra	Ecuador
Barbados	Saint Kitts and Nevis	Oman	Nepal		Greece	Bosnia & Herzegovin a	Azerbaijan	Finland	Belarus	Guinea
Belize	Saint Vincent & the Grenadines	Philippin es	New Zealand		Guatemala	Burkina Faso	Bulgaria	Lao PDR	Belgium	Venezuela
Egypt			Saudi Arabia		Honduras	Burundi	DPR of Korea	Norway	Bolivia	
Gambia			Sierra Leone		Israel	Central African Rep.	Georgia	Peru	Cape Verde	
Ghana	Sri Lanka		Suriname		Jamaica	Chad	Germany	Slovakia	Chile	
Grenada	UK: Scotland		UK (Isle of Man)		Morocco	Comoros	Hungary	Sudan	Cuba	
India			UK (O. T.)		Netherlands	Djibouti	Japan	Sweden	DR of the Congo	
Ireland			Vanuatu		Netherlands Antilles	Gabon	Kyrgyzstan		Guinea-Bissau	
Jordan					Peru	Croatia	Latvia		Micronesia - Fed States	
Kuwait					Spain	Italy	Liechtenstein		Mozambique	
Lebanon					Uganda	Mali	Lithuania		Portugal	
Lesotho						Monaco	Mauritius		Portugal	
Libyan Arab Jamahiriva						Nicaragua	Paraguay			
Malawi						Niger	Rep. of Moldova			
Maldives						Romania	Russian Federation			
Myanmar						Serbia & Monten.	Rwanda			
Namibia						Slovenia	Slovenia			
Nigeria						Togo	Viet Nam			
Qatar						Tunisia	FYR Macedonia			
Pakistan						Uzbekistan				
South Africa										
Sudan										
Switzerland										
Syria										
Thailand										
Trinidad and Tobago										
Uganda										
United Arab Emirates										
Yemen										
Zimbabwe										

*Countries with no stated minimum age include: Bahrain, Cambodia, Luxembourg, Mauritania, Mexico, Poland and Togo.

Sources: UNICEF and Melchiorre (2002)

Age of criminal responsibility

Another crucial issue that has to be addressed in the process of seeking law reform is that of raising the age of criminal responsibility (ACR). Various policy guidelines have referred to it but there have been no international campaigns or advocacy efforts to raise the age. If such a global campaign were launched it could potentially free thousands of children from the criminal justice system.

ACR refers to the minimum age below which children are presumed not to have the capacity to infringe the penal law. There is no clear international standard regarding the age at which criminal responsibility can be reasonably imputed to a juvenile, and there is a wide variation in minimum ACR levels around the world, as can be seen in the table in the table on the next page, which shows the range to be from 8 to 18 years. However, it is worth mentioning that the Committee on the Rights of the Child constantly emphasises the desirability of setting the minimum age as high as possible. It has in particular criticised countries where the age is set at 10 or below.

The international position with regard to the establishment of a minimum ACR is outlined below:

International guidelines on the minimum age of criminal responsibility

- The Guidelines for Periodic Reports of the Committee on the Rights of the Child ask, in Article 1 (definition of a child), for information on the minimum legal age of criminal responsibility that is defined in legislation (para. 24).
- In Article 40 the Guidelines request information on 'the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law'.
- The Beijing Rules state, in Rule 4: 'In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low a level, bearing in mind the facts of emotional, mental and intellectual maturity.'
- The commentary to Rule 4 states: 'The minimum ACR differs widely, owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc). Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.'

However, the level at which the ACR is set is in no way an automatic indication of the way a child is dealt with after committing an offence. Neither does it necessarily reflect the

perspective - repressive or rehabilitative - of the authorities in a country. Thus in Scotland, where the age is among the lowest (8 years), the progressive 'children's hearing' system in fact avoids contact with the formal justice system for children under 16 - and even for many 16- and 17-year-olds - for all but the most serious offences, and is solidly oriented towards non-custodial solutions.

Save the Children's current policy on the issue of status offences and ACR clearly states that '...it is SC policy... to support measures that decriminalise the behaviour of children, abolish status offences (eg, vagrancy, or being beyond parental control) and increase the age of criminal responsibility.' This provides a strong starting point for global advocacy interventions and the policy should be promoted in relevant international, regional and national forums with a view to improving the systems of juvenile justice administration. (See Appendix VIII for the full text of Save the Children's juvenile justice policy.)

Laws relating to mothers in prison

Women in prison who have children represent a special case that needs to be addressed. This is a complex issue and there is no internationally accepted best practice regarding the question of whether or not children should be kept in detention with their mothers. There are various strands to the argument. On the one hand children need to be with their mothers in the formative years, on the other hand prison provides possibly the worst environment for a young child to grow up in. A recent Indian Supreme Court judgment has brought to prominence the plight of such children and the conditions under which they are living. The Supreme Court has asked that conditions be considerably improved and that every effort be made to ensure that the best interests of the child are protected (Roy, 2002).

Best practice in this field ranges widely from country to country; but the Indian Supreme Court's intervention has brought the problem in India into the limelight. As with all matters relating to the administration of juvenile justice, the best interests of the child should be respected first and foremost. This can be achieved by a flexible approach to the upper age limit for a child remaining with their mother; ensuring proper conditions (including education) while the child is staying with the mother' and allowing the child free access to relatives and friends in the outside world.

Introduction

The process of going through the formal criminal justice system can be deeply disturbing for children. The UNCRC and other key international rules and guidelines which provide the framework for the proper administration of juvenile justice state that every effort should be made to keep young people out of this system and to make use of alternatives wherever possible.

Once a young person has been branded a criminal by going through the formal justice process, they are more likely to remain criminals. Young people who are diverted away from the criminal justice system have a much lower re-offending rate, and this is particularly the case with first-time offenders (Justice, 2000).

This chapter introduces the concept of diversion; looks at relevant international guidelines and the underlying principles (including that of restorative justice); explores diversion measures; outlines issues that need to be taken into account when planning a pilot project in this area; and describes examples of existing good practice in the field of diversion, including Save the Children pilot projects in Kenya.

International guidelines

When children are alleged to have infringed penal law, or are accused of or recognised as having infringed penal law, the importance of diversion (ie, dealing with them outside the formal justice system) is clearly highlighted in international guidelines.

UNCRC Article 40.3 (c) calls for, 'whenever appropriate and desirable, measures for dealing with such children without resort to judicial proceedings, provided that human rights and legal safeguards are fully respected'.

A more elaborate discussion of the importance of diversion is to be found in the Beijing Rules (Section 11), which state:

- Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority.
- The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.
- Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.
- In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Restorative justice

Mainstream criminal justice systems are based on the idea of retribution: that is, punishment for an offence committed. Restorative justice on the other hand emphasises the importance of restoring the balance of a situation disturbed by crime or conflict and making good the harm caused to the individuals concerned.

The four guiding principles are:

- repairing the harm done and restoring the balance within community and society
- restitution for the victim
- ensuring that the offender understands and is willing to take responsibility for his or her actions
- helping to change and improve future behaviour of the offender concerned.

Restorative justice is not a new idea. It was part of many early legal traditions, including that of Roman law. In England it formed the basis of Anglo-Saxon law before the Normans arrived. In addition, many traditional systems of justice, such as those practised by the Maori people of New Zealand, native North Americans and several rural societies in parts of Africa and Asia, also incorporate the basic principles of restorative justice.⁹

An overview of the differences between restorative and retributive justice is given in the following table.

Retributive justice	Restorative justice
Crime defined as violation of the law of the state	Crime defined as violation of the rights of one person by another
Focus on establishing blame, on guilt, on the past (did they do it?)	Focus on problem-solving, on liabilities and obligations in future (what should be done?)
Adversarial relationships and process	Dialogue and negotiation
Imposition of pain to punish and deter/prevent	Restitution as a means of restoring both parties: reconciliation/ restoration as goal
One social injury replaced by another	Focus on repair of social injury
Responsibility for action directed from state to offender:- victim ignored- offender passive	Victim's and offender's roles recognised in both problem and solution:- victim's rights/needs recognised - offender encouraged to take responsibility
Offender accountability defined as taking punishment	Offender accountability defined as understanding impact of action and helping decide how to make things right
Response focused on offender's past behaviour	Response focused on harmful consequences of offender's behaviour

Restorative justice in South Africa

Restorative justice is not new to South Africa. Although many may not be familiar with the term, the majority of South Africans recognise the concept.

South Africa's Truth and Reconciliation Commission may be described as an exercise in restorative justice on a massive scale. Long before the Truth and Reconciliation Commission, however, and long before apartheid and colonisation, restorative justice was known and understood by people living in South Africa. Reconciliation, restoration and harmony lie at the heart of African adjudication. The central purpose of a customary law court was to acknowledge that a wrong had been done and to determine what amends should be made. Community-based justice of this restorative nature was not particular to Africa, and a trend has been developing in a number of former colonies where indigenous people are living, to return to restorative justice models.¹⁰

Restorative justice in practice: village mediation in Laos

In 1997 the Laos Government made it a national policy that every village should have a village mediation unit. The Government also set out how mediation units should be organised and who should be members.

Cases covering children are heard at village level by the juvenile mediation unit (JMU). In Vieng May village in north Laos, the JMU consists of the village chief (chair), a person from the Laos National Front for Reconstruction (LNFR), one from the Lao Women's Union (LWU), one from the Youth Union, two elders from the village, plus the victim, the offender and his or her parents.

The following transcript is from a mock JMU session, based on an actual case that occurred in 2002. It concerned the theft of four ducks and four chickens by a 17-year-old-boy from a woman.

The case proceedings

The chair opens the proceedings by introducing everyone there.

Chair (addressing the boy): You are accused of stealing four ducks and four chickens from this woman. Did you do it?

Boy: I didn't do anything.

Victim: I have evidence. I can get a security man to arrest you. Are you not afraid of that?

Boy: I did it and shared them with my friends.

Chair: How many were they?

Boy: Four or five people.

Chair: Who ordered you to steal the ducks and the chickens?

Boy: I didn't go alone.

Source: Graef (2000)

Chair: Now the boy admits that he has done this how do you want him to compensate you?

Victim: I want Kip 200,000 (US\$ 20).

Chair: Are you able to pay?

Mother: No, I am not able to. I did not order my son to steal so I shouldn't have to pay compensation.

Victim: I understand that your son is under your responsibility.

Mother: I don't have 200,000 kip so I can't pay compensation.

Chair: How much compensation can you pay?

Mother: I am too poor. I can pay kip 50,000.

Chair (to victim): Are you agreed to 50,000 kip?

Victim: It's impossible as I could have got 200,000 kip for them. I spent a lot of time raising my ducks and chickens.

Chair: Can the elders and the members from the LNFR and LWU help move this forward?

Mother: As a mother I thought my son was going to school every day. I am poor. I can't follow my son everywhere he goes.

LNFR member: From listening to the discussion I see that at first the boy didn't disclose his guilt but then after pressure admitted he had done it. It seems that he does not tell the truth. The victim spent a lot of time to raise her ducks and chickens but you took them in only a few minutes. You must think of all that time it took her to rear them and all the harm you have done. We have only a limited time. Can the mother increase the money to the victim a bit?

Mother: Can you please reduce the compensation to kip 100,000 as we are too poor to pay it all back.

LNFR member: Do you agree?

Victim: I request kip 150,000 and kip 5,000 for the mediation fee.

Mother: I beg you. My son says he is guilty please accept kip 100,000 and the fee of kip 5,000.

Victim: That's not acceptable. If I settle for that it gives a bad example to others.

Chair: We are living in the same community. Can you not compromise between yourselves and help each other reach a settlement over the money? The child has admitted to doing wrong so we also need to teach the boy as much as possible.

Elder: I am an old man and have lived here in this town for a long time. We need to say to the mother you must be responsible for your son. She has not raised her son in an appropriate way. The victim does not want to lose anything. I think this case can be

ended in our session and need not go to the police. We should find a middle way. Our community lives in harmony and we must find an appropriate way to help each other.

Victim: Yes, I understand this is his first offence. Because of what the older people are saying I accept 100,000 kip and that you pay the 5,000 kip fee. I don't want this to happen again. If he does it again he will have to pay double.

LNFR member: Now how do you feel? We are talking here only as a civil case. We want to keep its resolution in our community. I agree that if you re-offend we can't guarantee to hold this type of session for you again.

Mother: I promise I will look after my son and take more time to be with him. I hope it will not happen again.

LNFR member: So we have to put down our plan of what you have to do.

LWU member: As the LWU representative I would like to ask you to leave your dispute here and to go from here as friends. I would ask the mother to pay more attention to her son so he can become a better member of our community. He has brought a bad image to your family and we don't want that.

Chair: I want to say something to the victim. I beg you to leave everything here and not to disclose anything that has happened here to those outside. Also do not say anything to the community about this boy doing this theft. Do this in the interests of the child.

A plan for the settlement is drawn up and signed by the victim, the mother of the offender, the offender and the Chair.

Alternative arrangements

Compensation is normally given in money but it can be agreed for an offender to do some work as restitution. In cases where there is no settlement either because the damage was denied or the defendant could not pay then a document is signed to say that no settlement could be reached and the matter goes to the District Court.

If the family cannot pay the kip 5,000 (50 cents) consultation fee to the JMU or VMU then the case does not go ahead, no matter how poor the person involved.

If the damage or offence was committed in different village from the one where the defendant lives, the case is held in the village where it occurred. The village chief from the defendant's village and his or her family are asked to attend.

Diversion measures

There are numerous kinds of diversion measures, applicable at various points during the process of helping children who have come into conflict with the law. Among the most common are:

- cautions
- mediation programmes

- victim-offender mediation and reconciliation programmes
- family group conferencing
- pre-trial community service.

Although the various agencies within the criminal justice system can play an important role in diverting young people away from the system, mainly by referring cases for inclusion in diversion schemes, in most cases it is community groups, NGOs, mediators, counsellors and other people working in the field of social welfare who actually run the schemes.

Cautions

One of the simplest examples of diversion is that of the police caution. This means that police are empowered to warn young offenders or those at risk of offending of the consequences of breaking the law. The aim is to discourage young people from offending without taking them through the formal criminal justice system. Cautions are usually used for minor offences such as petty theft, shoplifting and truancy.

Cautions are commonly used around the world. In Australia, for example, a scheme called 'warning on the run' was introduced in 1984 with two major objectives: to divert early and less serious offenders who otherwise would have gone to court; and to allow the court to concentrate its resources on more recidivist or serious cases, or cases where the facts were disputed. It gives a police officer the discretionary power, on discovering a child committing a 'trivial' offence, to take no formal action but instead to issue a 'warning'; and record the particulars of the child and the offence in their notebook. The matter is dispensed with at this point. No centralised record is made of this encounter.

It is important to note that the issue of cautions need not necessarily be limited to the police. For example, Australia also has the Young Offenders Act (1998), which allows for respected members within the community to issue cautions to young people.

Mediation

Mediation is a way of resolving a dispute in which an impartial third party - the mediator - helps the people involved to reach an agreement.¹¹ The parties in dispute (not the mediator) decide the terms of any settlement. Mediators do not take sides, make judgements or give guidance. Mediation is, therefore, different from processes such as advocacy, counselling, arbitration, and advice-giving. The mediator is responsible solely for developing interaction (and building consensus) between the parties.

Mediation is a problem-solving procedure and is essentially about finding a solution that satisfies everyone. The process of mediation treats both parties equally. Both parties must therefore have a desire to resolve the problem in hand. Mediation can be carried out face to face or via a go-between (shuttle mediation). At the end of the process the parties very often agree on a settlement that is not legally binding, but if they wish, it can be made so.

Mediators come from a wide variety of backgrounds; what their profession is does not

matter, but their skills as a mediator do. However, it is important to note that mediation should be provided by people who are properly trained in the process and who continually work to develop their skills through experience and ongoing training.

Main principles of mediation

- Both parties must agree to the mediation taking place.
- The mediator must be impartial - that is, he or she must have no stake in the outcome of the process or any connection with a disputing party.
- A mediator does not negotiate with or advise parties but enables them to communicate with one another.
- All parties must agree with the final outcome, and the parties in dispute remain in control of the terms of settlement.
- Mediators must respect the confidentiality of the process unless the parties concerned give joint consent for making details public.

Benefits of mediation

Mediation helps people to rebuild relationships - unlike the legal process which often ends with hostility still existing between the parties. It allows them to reach a practical solution which, if possible, will benefit all sides, and is generally regarded as a quicker and more cost-effective process than going to court. Mediation can also be an excellent tool for preventing problems from escalating or recurring.

There are many kinds of mediation that can be used in institutions and in the community to solve problems through a restorative approach. They include, for example, peer mediation in schools, family mediation for problems regarding children affected by divorce, and neighbour mediation. For the purposes of this publication, victim-offender mediation and reconciliation programmes are particularly relevant.

Victim-offender mediation programmes

Victim-offender mediation is used within the context of criminal justice, and can take place at any point during the process, from the arrest of an offender to before their release from prison. In the UK, victim-offender mediation has been practised successfully for over 15 years in a wide range of cases, from petty to very serious, and is increasingly being used with young first- or second-time offenders. Some people are initially hesitant to use it for serious offences; however, it is important to understand its purpose, which is to be not simply an alternative to sentencing but a way of assisting victims to deal with the great anger or hurt they experience as a result of the crime and to avoid becoming bitter and resentful. This type of mediation can help not just victims, but also offenders and the wider community to cope with the psychological impact of crime, in a way that the formal criminal justice system does not.

How does it work?

Victim-offender mediation begins with the mediator visiting both parties and assessing the situation. Mediation can take place only when the offender has admitted responsibility for an act and, of course, when the victim is willing to take part. A trained mediator (or mediators) will explore with both parties whether they are interested in communicating with each other. Victim-offender mediation can be carried out either directly (face-to-face) or indirectly ('shuttle mediation', where messages are exchanged between victim and offender, either as verbal messages relayed by the mediator, or as letters). Face-to-face mediation can follow a specific model or it can be more flexible, allowing parties to guide the discussion. At the end of a meeting (or indirect discussion), parties often draw up some type of agreement.

This kind of mediation has been applied in several countries as a means of conflict resolution. One such example is in Austria, where a system of out-of-court settlement for adolescents grew out of discussions on the lack of adequate alternatives for dealing with juveniles caught up in the criminal justice system, and was subsequently formalised in the Act of Juvenile Court of 1988. More than half the cases handled under this system relate to offences against property, such as damage, theft, burglary, and unauthorised use of vehicles. Since the introduction of out-of-court settlements, thousands of cases have been dealt with by this method.

One of the scheme's main objectives is to allow adolescents to understand the consequences of their actions. In most instances, and especially in the case of offences such as damage to property, the victim is seeking not to impair the offender's future life chances, but to obtain compensation for their own loss. Young offenders have shown themselves to be very creative in finding adequate forms of compensation. For example, a group of adolescents who set a playground table on fire built a new table as compensation instead of paying for the repair. Studies have shown that most victims find this form of compensation satisfactory. With regard to offences involving physical injuries, a mediation session is arranged between the relevant parties, offering the opportunity for honest discussion to try to understand what provoked the aggressive behaviour and the consequences of such behaviour. Results of the out-of-court settlement scheme have shown that 90 per cent of cases assigned to out-of-court settlement can be resolved successfully, without any need for criminal procedure.

Victim-offender reconciliation programmes (VORPs)

Real reconciliation between an offender and their victim is unlikely to be achieved. Many programmes therefore use the term victim-offender mediation instead, focusing on the process rather than the hoped-for outcome. Others retain the word reconciliation in their title, on the grounds that reconciliation is not just one of the goals of VORP but is its primary goal. It can be argued that this is the only way that a programme can retain its focus on the importance of interpersonal relationships and on the underlying idea of 'making things right'.

Key characteristics

Referrals. Although referrals may be made before a young person actually enters the criminal

justice process, many VORPs are designed to receive most referrals from the criminal justice system, especially the courts and the probation service. Referrals from the courts and probation service are more likely in countries with a well-developed criminal justice system, but this can also happen in urban situations in developing countries. Even when a referral to a VORP is made after the young offender has already become involved in the courts or the probation service, the important thing is that they are diverted away from any further involvement in the court system.

The VORP process should be much more discretionary in the case of young offenders than for adults, and a referral can be made as soon as a case is referred to the probation department by the police or by a member of the community. (In England and Wales, a number of programmes have been designed to take young offender referrals directly from the police, in order to immediately divert them from the system.)

Mediators. A VORP is usually a low-budget programme with minimal staff. It relies primarily on interested, trained community volunteers to handle cases. But this is not simply to save money: the fact that mediators are community volunteers rather than criminal justice professionals is crucial. Both victims and offenders frequently say they appreciate the fact that the mediator is doing this willingly and without pay. Because of their volunteer status, they may be better able to balance the interests of both parties. Moreover, a volunteer more clearly represents the community in this dispute resolution process.

It is considered more important for VORP mediators to be good at working with people than for them to be trained in highly specialised mediation techniques, and they are drawn from a wide range of people in the community. The function of the mediator is to act as a 'third party' who facilitates interaction between the parties and advocates on behalf of both. She or he provides a setting where creative problem-solving can take place, sets the tone and regulates the process in a non-coercive manner and avoids taking sides. While monitoring the interaction, the mediator does not closely direct the exchange or impose a solution on the parties, since this is not an arbitration process where people in dispute present their cases to a third person who then imposes a settlement.

Case criteria. The VORP process can be applied to most cases and has been used successfully with both young offenders and adults. Property crimes such as burglary tend to be the most frequently referred cases, but the approach has also been used with assault and similar offences. Generally, for a case to be suitable for VORP there needs to be something to be negotiated or feelings to be dealt with. Both parties must agree to proceed, and in a constructive manner. The offender must also admit to having committed the offence.

Settlements. The minimum outcome aimed at in a VORP encounter is a written restitution agreement. Agreements may be in the form of a contract (written or oral, perhaps witnessed by community elders and signed by both parties for restitution to the victim (made with either money or work), a contract governing how the two parties will behave towards each other or, occasionally, an agreement for restitution to be made to the community as a whole. Past experience indicates that most VORP encounters do result in an agreement in one or other of these forms. However, there is the general expectation that there will also be increased understanding of each other and even some degree of reconciliation. Either the referring agency or the community elders may be responsible for enforcing of the restitution agreement. Either way, VORP monitors the contract and seeks to find solutions when agreements break down.

Programme goals. The process can have several positive outcomes, including: rehabilitation of offenders, assistance to victims, empowerment of the community, reduction in incarceration, and restitution to victims. Realistically, however, it may perhaps be better to view reconciliation and hostility as being at opposite ends of a scale rather than as either/or states. At the beginning, victim and offender are usually very much towards the hostility end of this scale. The normal criminal justice procedure will not improve that situation; indeed, it may drive victim and offender further towards the hostility end. If, through the VORP process, people can be helped to move any distance toward the reconciliation end, some good has been accomplished.

The VORP process

The process of VORP is carried out in four steps, outlined below.¹²

Step 1. The process begins with a referral to VORP. Referrals can come from a variety of sources, including the victim or offender themselves or from community representatives, and in some countries they can also be made by a probation officer or a court, using a special referral form provided by the VORP.

The VORP co-ordinator first records the referral and screens the case for appropriateness, then passes it to a volunteer, who may come from the community in which both the offender and the victim live. The co-ordinator continues to keep abreast of the case, providing advice or answers to questions that the volunteer may have, but at this point the case is basically in the hands of the volunteer.

Step 2. The volunteer contacts and meets with offender and victim separately. In some programmes, victim and offender are contacted by a member of staff before the volunteer gets involved. This provides an opportunity to secure an initial agreement from victim and offender to at least meet the volunteer mediator before the case is actually assigned. The volunteer mediator then meets the victim and offender individually to explain the programme to them, to determine their interest in proceeding, to explore the losses suffered by the victim, and to listen to the participants' own versions of, and feelings about, the case. These sessions also serve as another opportunity for screening out inappropriate cases.

Step 3. When all parties have been contacted and have agreed to meet, the actual meeting is led by the volunteer mediator. Meetings can be held in a neutral place such as the VORP office or a school or place of worship (church, mosque, temple), depending on participants' preferences. There are three agenda items for this meeting:

- review of facts
- expression of feelings
- discussion of an agreement.

Care is taken to give all parties an opportunity to relate their version of what happened, ask questions that are on their minds and express their feelings. Finally, the parties discuss and then draw up and sign an agreement on restitution, behaviour or other form of settlement. If no agreement can be reached, parties are informed of the remaining options (for example, filing a claim in court or returning the matter to the criminal justice system).

What should happen at a VORP meeting

Recognising the injustice/violation. The offence is discussed - for example, what did the offender

do and how did the victim experience it? Facts and feelings are both important here.

Restoring the equity as far as possible. Recognising that there is no way to undo the offence that has already happened, what positive steps can the offender take to 'make things as right as possible now'? Restitution is one such act of restoration.

Making clear agreements for the future. For the victim, it is important to know whether the offender intends to 'do it again'. Also, how are they going to relate to each other in the future? They may not have known each other before, or they may have had a long relationship. In either case agreements need to be made about the future. These cannot be 'empty' agreements but must be followed up and carried out.

To be satisfactory, a VORP meeting must address all three of these components. Studies have shown that most cases that reach the meeting stage usually result in an agreement.

Step 4. As soon after the meeting as possible, the mediator prepares a narrative report and an evaluation. All papers are returned to the VORP office, where the co-ordinator records necessary information and sends copies of the narrative report and the restitution contract to the referring agency, which is usually responsible for overseeing fulfilment of the settlement. Depending on the programme, where monetary restitution has been agreed, either VORP or the referring agency will actually collect and distribute the money.

If problems arise regarding fulfilment of the agreement, either the co-ordinator or mediator helps to find solutions or, if necessary, re-negotiates the agreement. A few programmes have arranged a follow-up victim-offender meeting after an agreement has been fulfilled, as a way of putting an end to the events. The VORP experience has been that, unlike many other restitution programmes, restitution contracts are usually fulfilled; the figure is usually above 80 or even 90 per cent.

Family group conferencing

Family group conferences can be used as a diversion measure for young offenders. Essentially, this measure involves a co-ordinator facilitating a meeting attended by the offender and all the people who are significant in their life - members of the immediate and/or extended family, caregivers and/or supporters, friends, teachers, etc - and by the victim and/or their supporters (usually a member or members of their family), a youth advocate, and a police representative. This group, despite being made up of parties usually assumed to be adversaries, is expected to reach consensus on the case's entire outcome, not just a restitution agreement. Families play an integral part in the whole decision-making process. At the meeting the incident is discussed and a decision is made about how the conflict will be resolved. There is quite a wide range of possible outcomes, to allow for cultural appropriateness. The reparation could involve an apology to the victim, work in the community or for the victim, restitution (in the form of money or goods), a donation to charity, or whatever the families think is appropriate.

This distinct feature of involving families gives the greatest chance for the young offender to be reintegrated into the community. The young person will perhaps feel more ashamed of their misbehaviour because it is being discussed in the presence of their family, but at the

same time they may also benefit from having the family's support. During the meeting, family members will often talk about their dismay and anger at the offender's behaviour yet also speak of the young person's essential worth.

Family group conferences are regarded, in New Zealand especially, as a very successful means of diverting young people away from the formal justice system (Skelton, A, 1999, Zehr, H.) In fact, they are central to decision-making for all moderately serious and serious offences (excepting murder and manslaughter) in New Zealand. Eighteen per cent of all offences known to the police and attributed to juveniles were dealt with through family group conferences in 1998/99. This means that about 5,000 family group conferences are held each year. The initiative followed reform of the country's youth justice system, which was felt to be ineffective and discriminatory. The first meaningful effort towards reform came from Maori people who were unhappy about the way the justice system dealt with their children. A new law, the Children, Young Persons and their Families Act, 1989, dramatically changed the whole juvenile justice system in New Zealand. It sets out the objectives and principles to govern state intervention with regard both to children and young people who are abused or neglected, and to those who commit offences. The primary aim is to involve communities directly in the decision-making process through negotiated, restorative resolution. The Act diverts all juvenile cases, except those involving a very serious crime such as murder, away from the police and court system to family group conferences. The new system recognises the need to be culturally sensitive and appropriate; encourages families to be involved in all the decision-making processes concerning their children; gives young people themselves a say in how their offending should be responded to; gives victims a voice in negotiations over possible penalties for juvenile offenders; and encourages decision-making by consensus.

Main characteristics of family group conferences

Who is involved?

Family group conferences are made up of the young person who has committed the offence, members of his or her family and whoever the family invites, the victim(s) or their representative, a support person for the victim(s), a representative of the police and the mediator or manager of the process (sometimes called youth justice co-ordinators). Sometimes a social worker and/or a lawyer is present.

Aims

The main goal of a conference is to formulate a plan about how best to deal with the offending. There are three main steps in this process:

- ascertaining whether or not the young person admits the offence
- information-sharing among all parties at the conference about the nature of the offence, the effects of the offence on the victims, the reasons for the offending, any prior offending by the young person, and so on
- deciding the outcome or recommendation.

Process

Family group conferences usually take place in a relatively informal setting, such as specially designated rooms in the relevant government department or in a community centre and occasionally in the home of the offender's family. In some cases, the meeting may start with a prayer or a blessing, depending on the customs of those involved. The co-ordinator then welcomes the participants, introduces them and describes the purposes of the meeting. Usually, the police representative then reads out a summary of the offence. The young person is asked whether he or she agrees with the summary, and any variation between this and their own version of the event is noted. If the young person does not admit the offence, the meeting cannot proceed, and the police may consider referring the case to the relevant judicial body (Youth Court, etc) for a hearing. However, if the young person does admit the offence, the victim, or a spokesperson for the victim, is then usually asked to describe what the offences meant for them. This is followed by a general discussion of the offence and the circumstances in which it occurred. Sometimes, at this point the young person and his or her family express their remorse for what has happened and make an apology to the victim, but more often this happens at a later stage - or in some cases, not at all. Once everybody has discussed the offence, the effect it had, and options for making good the damage, the professionals and the victim leave the young offender and family to talk in private about recommendation they wish to make for repairing the damage and preventing reoffending. This can take as little as half an hour or much longer. When the family are ready, the meeting is reconvened. Sometimes this is the point at which the young person and the family apologise to the victim. A spokesperson for the family outlines what they propose and all discuss the proposal. Once there is agreement among all present, the details are formally recorded and the conference concludes, sometimes with a shared meal, or else tea or coffee are served.

Roles

Professionals are expected to play a low-key role in the family group conference. The co-ordinator's task is to ensure that everyone understands what needs to be done, that all the relevant issues are aired and that the emotional aspect is managed as constructively as possible. The role of the police is usually limited to describing the offence, and possibly its impact on the victim. The police may also voice their concerns if the proposals for reparation seem either inadequate or excessive. A youth advocate's main role is to advise on legal issues and to protect the young person's rights; they may also express an opinion about the proposed penalties if these seem excessive. The social worker, if present, will normally only provide background information on the young person and support them and their family in their plans for the future. Practice can vary considerably, however. Conferences are intended to be flexible and responsive to the needs of all those involved.

Outcomes

Provided the plans have been agreed by all those attending the family group conference and, in cases where the referral has come from the Youth Court, that they are accepted by the judge, they become binding on all those involved. The plans are meant to take into account

the views of the victim or victims, to make the young person accountable for his or her offending, and to prevent reoffending by enhancing the well-being of the offender or strengthening the family.

Essential features of family group conferences

Involving young people and their families. Bringing victims and offenders together for a family group conference is a constructive process for most families. Through conferencing, the family is not only enabled but is expected to participate in the discussions about the offence and to play a pivotal role in arriving at decisions about their child, without incurring any increased stigma or blame. In this way, 'making parents responsible' is given a positive meaning.

Involving victims. Past experience has shown that victims involved in conferencing often find it a positive experience, as it provides them with a voice in determining appropriate outcomes. In meeting the offender and the offender's family face-to-face they can assess their attitude, understand more easily why the offence occurred and assess the likelihood of it recurring.

Practicalities. All participants should be briefed about what to expect at a conference. It is also important that victims be consulted at all stages, even with regard to the proposed time and venue of conferences. When victims have expressed themselves dissatisfied with the process, this has been due largely to promised arrangements falling through or to the fact that they were simply never informed about the eventual outcome of the family group conference. Finally, mediation training for the facilitator is also crucial to the success of family group conferences.

Pre-trial community service

Pre-trial community service, in essence, requires the young offender to commit himself or herself to serving the community for a recommended number of hours instead of going to court.¹³ This involves placing the young offender in suitable community service settings, depending on what skills they can offer. When the service has been satisfactorily completed, the charge is usually withdrawn, and so the young offender has been diverted away from the criminal justice system. Below is an illustration of how pre-trial community service works.

Steps and overall process

Criteria

In order to be considered suitable for pre-trial community service, a case should usually meet the following criteria:

- fairly minor offence
- prosecution wants to withdraw case as it is a minor offence and would be expensive and

time- consuming to prosecute but does not want the accused to walk away without the offence being acknowledged

- it is in the best interest of society and the offender that he or she not be convicted
- the accused accepts his or her guilt, and shows remorse and responsibility
- the accused is a first-time offender (although even recidivists can be accepted on the programme)
- the accused is aged 14 years or over
- the accused has skills which can be put to good use in the community
- the accused has a fairly stable lifestyle, for example, is contactable at an address (work or home)
- the community service can serve some purpose of reparation and victim-healing
- the accused is not dependent on alcohol or drugs
- the accused has good mental health and does not have any personality disorders
- the offender is not violent in nature.

Referral procedure

The procedure starts with the prosecutor withdrawing the charge on the condition that the accused performs community service. It is imperative that the accused admits to being guilty of the charges - otherwise pre-trial community service is not suitable and the case should proceed to court. The prosecutor then gives the responsible government department or NGO relevant information about the offender. Details should include the name, address, telephone number at home and work, details of parents, charge and description of offence, court case number, name and particulars of the victim if there is one, and any other special comments or points of concern. The accused is usually instructed by the prosecutor to contact the department or NGO within one week to make an appointment for an assessment interview.

Assessment interview

This is to determine the young person's suitability for community service. Topics covered during the interview generally include:

- biographical information
- what happened at the crime
- why was the crime committed
- the offender's willingness to perform community service and their understanding of the need to take responsibility for the offence they have committed
- the offender's interests, hobbies and skills
- the available time the offender has to perform community service

- support structures
- physical health
- emotional state of mind
- substance abuse
- the offender's contact with the police
- the offender's contact with the criminal justice system.

At the end of the assessment, the interviewer should be able to form an overall picture of the offender's personality and socio-economic circumstances, and therefore decide whether they are suitable for community service.

Hours served and contract

If the young person is deemed suitable, a community service placement is selected for them. A contract is then drawn up, clearly setting out the rules:

- The server will perform x number of hours of service at a specified placement. (There are no definite rules on how many hours are to be served for specific types of offence but, on average, a pre-trial young offender will perform between 30 and 50 hours of service.)
- The service will start on a certain date and has to be completed by a certain date.
- Should the offender fail to comply with the conditions of the contract, the case will be referred back to the prosecutor for further action, in other words, to continue with the prosecution.

Placements

The young offender is then taken to the placement by a staff member to be introduced to the supervisor and to sign the contract. The contract is signed in triplicate by the young person, the supervisor at the placement and the NGO or other agency staff member responsible for the case. Each signatory receives a copy. The placement is also supplied with time sheets to record the hours worked by the young offender. The time sheets, which are the only valid records of service performed, are returned to the responsible agency every month until the service is completed. Completion of service is reported to the prosecutor and the case is closed. Any non-profit organisation, agency or institution that delivers a service to the community can be considered as a possible placement for pre-trial community service, for example:

- homes or hospitals for people with physical or mental disabilities
- public general hospitals
- libraries
- municipalities
- children's homes

- homes for the elderly
- police stations.

It is important to note that young offenders performing community service should not be used as free labour to replace potential paid employees. Care must be taken also to ensure that a young person already working very long hours is not given a work programme that he or she has no chance of completing. They should also not be used to serve needs of individuals, except in exceptional cases such as the needs of victims.

Outcomes

A review of pre-trial community service has shown that, in South Africa, for example, nearly 95 per cent of all the young offenders involved in these schemes comply with their contracts. Reasons for this successful outcome include not prescribing too many hours' service, and the personalised attention given to offenders. Attempts are also made to accommodate the young person's preferences and skills as far as possible.

Issues and concerns

The idea of diversion and the philosophy of restorative justice that underlie the various alternatives such as mediation and cautioning are obviously very attractive, but some important issues must be kept in mind by anyone thinking of implementing a diversion project. They include:

- Due process - guarantees such as presumption of innocence, right to legal representation, procedure of establishing whether the offence was committed as charged, that are provided in a court of law - is not available in alternative systems set up outside formal justice system.
- While promoting the principles behind community-based and informal/traditional justice systems, it is essential to remember that such systems can be much more punitive than formal courts of law.
- The functioning of all alternative measures is dependent on the young offender admitting to being guilty. This can lead to undue pressure being exerted on young people to admit guilt in order to avoid the formal justice system.
- The question of how to deal with serious crime (murder, rape, etc) must be carefully addressed.

As mentioned above, a feature of most alternative measures is that they can work only if the young person admits the offence. If he or she denies the alleged act, a court of law is the only forum in which the case should be heard and debated. Moreover, where the charge is denied (especially in the case of serious offences), at the very least a judicial review is required to uncover the truth, which is why alternatives invariably deal with only minor offences. Therefore, it is important to note that, in view of these limiting circumstances, alternative systems are not meant to replace the formal court system entirely.

How to plan a diversion pilot project

Taking into account the issues and concerns discussed above, it is imperative that anyone planning a diversion pilot project understands and adopts the following principles:

- Access to the formal system remains an option before, during and after the process of diversion.
- Any rulings/hearings/decisions emerging from the system of diversion must conform with international and national human rights standards.
- No pressure must be put on young people to admit to guilt in order to get them to participate in the diversion process.
- Serious crimes such as rape and murder must be dealt with in accordance with formal procedures (where these conform to international guidelines).

Phases of diversion project

Phase 1: Research and situation analysis

- Identify a location where the project can be piloted. It is important to note that the smallest administrative unit where a diversion project could feasibly take place would be at village and/or district level.
- Undertake an analysis of legislation relevant to a diversion project. Is new legislation needed, or could provisions within existing legislation be used to support such a project?
- Ensure there is a process of consultation involving especially children but also key actors within the criminal justice system, as well as community groups, etc.

Phase 2: Drafting a diversion project proposal

- Prepare a short advocacy document outlining the aims of the project and its benefits. The issues covered by the document should include the role of the NGO and its partners, the role of the Government including relevant ministries, and any national bodies responsible for dealing with children's issues, as well as the role of local government bodies and structures, the police, schools and parents.
- The document should outline reasons why a particular district has been chosen for the pilot project (highlight relevant issues, for example, high-risk area with large proportion of dysfunctional families, large numbers of street children, high drop-out rates from schools, urban poverty).
- Finally there should be a statement of the current system for dealing with children in conflict with the law (for example, children are held initially in police custody and thereafter in pre-trial detention centres, then they are tried in court and sent to prison). Explain that the aim of this project is to keep children within the community, and close to their family.

Phase 3: Involving the stake-holders

- Obtain clearance from the highest level of authority responsible for dealing with children's affairs in the country: request permission to do a pilot project and seek the support of national and local structures and the involvement of representatives from different ministries in designing the programme.

- Host a seminar with the Government to launch the project and also to identify the core members of the group who will be responsible for designing the detailed plans of the project. Involve key government ministries including interior, education and justice, the police, local district officials, and representatives from local community structures as well as NGO partners and UNICEF.
- Support the work of the design group by providing examples of best practice and organising an intensive workshop on diversion, with the participation of relevant regional and international experts, with training materials designed specifically for the workshop.

Phase 4: Implementation

- Obtain final approval for the design, once finalised, from highest levels of Government.
- Provide training at local level, and get local community involved through awareness-raising programmes, including the publication and distribution of posters, leaflets and a handbook, and invite heads of local institutions such as schools etc to be partners in the project.
- Contact local youth facilities that could be suitable for rehabilitating young offenders, promote their use for this purpose and encourage the introduction of appropriate training courses.

Once the necessary groundwork has been done and permission obtained, work can start on setting up a diversion project. An example of a diversion project, carried out by Save the Children UK's Kenya programme, is described below.

Case study: Save the Children UK pilot diversion project in Kenya

Background

Most of the children in the juvenile justice system in Kenya have been arrested by the police for being on the streets, even though they have committed no crime. Instead, they are charged with being in need of care and protection. They spend long periods of detention in police cells before they are taken to court, where they are treated the same as offenders, and are usually referred to approved schools. Most children in conflict with the law have no access to legal representation.

Save the Children carried out studies and consultation with stakeholders, culminating in a workshop at which the framework was developed for a project to divert children away from the juvenile justice system.

What the project does

It was agreed to set up teams in three pilot districts to carry out diversionary measures for children in conflict with the law, including special children's desks at police stations for filtering child welfare cases. The District Diversion Core Teams (DDCTs) are made up of staff from children's services, Save the Children, the police, probation and after-care services and NGOs active in the field of children's justice. A National Diversion Core Team oversees the work of the district teams and makes recommendations on policy changes.

Challenges

There have been a number of challenges to the project, including: lack of trust between government and NGOs; lack of an effective, centralised information management system in the juvenile justice system; the absence of policy on the administration of juvenile justice and the lack of any clear policy or legislation on diversion; a heavy reliance on institutional care for children who cannot immediately be returned to their families, and scant resources available for the development of community-based care.

- Child-friendly rooms have been set up at the pilot project police stations, where police officers are usually not in uniform. Children's cases are being handled appropriately, and there are attempts to base decisions on each child's individual circumstances.
- Between April 2001 and August 2002, the DDCTs teams handled a total of 592 children who had come through the pilot police stations. Of these, about 65 per cent were successfully reintegrated into their communities.
- There have been some improvements in data management in the selected police stations, including the introduction of diversion registers.
- There is more collaboration and networking, with attempts to create links with the local councils, and the legal and business communities. There is also greater participation in the diversion process by government departments, NGOs, legal networks, community-based organisations, and community and local authority leaders.
- There has been an increase in child participation, with 500 children having been involved in diversion meetings where some had an opportunity to express their views
- The principle of using custody only as a last resort is being implemented in the pilot areas.

Lessons learned

The DDCTs, in their efforts to involve the wider community, significantly increased the number of NGOs involved in the process. This was done without ensuring that these organisations fully understood the principles of diversion and the objectives of the project. As a result, some misconceptions arose, one of them being that the project was concerned only with returning children to their families or communities and that no intervention would be undertaken where the home environment was not conducive to reunification. Efforts are now being made to ensure strictly defined and managed partnership arrangements.

It became clear at an early stage that NGOs would be willing to co-operate only if they felt they were equal partners in the process. This led to the formation of interagency diversion core teams at both district and national level, comprising representatives of both government agencies and NGOs, to oversee the development and management of project activities and have equal control of finances.

Although the project has been very successful to date, one of the major problems still to be addressed is the fact that temporary care homes are full, and there is a scarcity of alternative places where children can be held while investigations are under way.

Providing non-custodial options for girls in conflict with the law

Facilities for a full range of community penalties should be available to girls in the local area, including community punishment orders and attendance centre orders. This might involve:

- ensuring that provision is in place to avoid the necessity of placing single girls alone with a group of boys
- developing attendance centres for girls where these do not exist

- arranging group work on offending behaviour specifically created for girls, where the existing groups are male dominated
- providing childcare facilities where these are needed.

Furthermore, the fact that relatively small numbers of girls are held in prison service accommodation presents a particular problem since it is not viable for most prison services to provide specific units for females. As aptly summed up by a British NGO The Howard League:

'Prisons are ill equipped to deal with young women who are damaged and who display extremely challenging and difficult behaviour. The numbers of juvenile girls within the system are small and as a result they are simply tacked onto the rest of the system with little recognition that their needs are different and separate from older women. It also means that they attract fewer resources...'

Practice that aims to prevent offending will need to reflect, and build on, the fact that boys and girls appear to make the transition to adulthood at different rates and with different degrees of success. There may be a case for developing gender-specific interventions for girls who are subject to forms of statutory supervision. These interventions would pay particular attention to:

- promoting the constructive use of networks of support
- targeting practical, educational and health needs
- ensuring that staff are skilled in engaging with sensitive emotional issues.

Victim support

As discussed in Chapter 3, society is increasingly concerned about community safety and victims' rights, especially where juvenile crime has become more frequent and more violent. Although most victims do not suffer long-term serious harm, at the time of the incident they may experience very strong emotions of shock, anger, worry and fear. These effects of crime can be as severe for victims of theft as for victims of more serious crimes and many victims require practical and emotional support in the aftermath of crime. Thus while acknowledging that children in conflict with the law need protection, as discussed in all the preceding chapters, we must not ignore the needs of victims of crime.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The Declaration, adopted by the UN General Assembly in Resolution 40/34 of 29 November 1985, states:

- Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
- Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
- Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
- Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

- In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted.

Much can be done to reduce unnecessary distress, suffering and financial loss of victims of crime. In most countries, there are victim support services that provide practical and emotional support. For example, in the UK, these services are provided through a network of local initiatives across the country. Staff and volunteers are trained to provide emotional support, information and practical help to people who have suffered the effects of crime ranging from burglary to the murder of a relative.

General features of victim support services

Services to victims, witnesses and others affected by crime should be:

- open to all and reflect fully the diversity of the communities in the respective neighbourhoods
- free of charge to people affected by crime
- confidential in nature and private to the individual
- accessible and consistent in delivery.

Services of practical and emotional support can be provided through:

- home visits where this is appropriate to the individual
- office-based support including drop in and appointments
- court support before, during and after going to court
- telephone support.

Types of services include the provision of information and guidance regarding:

- replacing personal documents
- criminal injuries compensation
- basic crime prevention, protection and security
- the aftermath of murder
- attendance at identification parades
- going to court and appeal court hearings
- prisoner release
- housing
- criminal justice services and access to legal advice
- other specialist victim services.

Effective victim support services

To be effective, victim support services must take into account three crucial factors:

Awareness of victim support services. People affected by crime need to be aware of the existence and type of victim support services available and how to get access to them. If information about the services is made widely available, it is more likely that victims will report crime to the police.

Referrals from other agencies. All too often people who become victims of crime fail to report the crime because of their own previous negative experience of the criminal justice system or because of the way they themselves have been treated by official bodies or the staff of those bodies. Many agencies, including the police, social work, housing, education and health services, as well as voluntary organisations, routinely come into contact with people affected by crime who could benefit from victim support services. There is great scope for referrals to be made by these agencies, so it is important that they are made aware of the victim support services available and the potential benefits to their client group, through the development of links, partnerships, and joint policy on referrals.

Special needs of victims. It should be remembered that a victim's subsequent recovery will depend not only on the availability of victim support services, but also on a great number of other factors - not least, the individual's personality, life experiences, and the reactions of others. For example, a recent study in South Africa¹⁴ showed that there were significant differences in the type of support needed by victims according to their ethnic group, with black African victims most likely to request emotional support, followed by better policing, while white victims were more likely than any other group to want advice, information and counselling. Asian victims, on the other hand, were more likely than others to express a need for effective policing and the least likely to ask for emotional support. Therefore, victim support services should be designed so as to take into account the victims' special needs and should fully reflect the diversity of the community.

9. For further discussion on traditional and informal justice systems, and on relevant challenges and problems, see Thacker (1998).

10. Taken from a paper by Ann Skelton, 'Juvenile justice reform: children's rights and responsibilities versus crime control' presented at a seminar on 'Children's Rights in a Transitional Society', Centre for Child Law, University of Pretoria, 30 October 1998.

11. This section on mediation is taken from 'Mediation programmes in the UK', www.mediationuk.org.uk

12. Sources: Save the Children Sweden Radda Barnen, 'Juvenile justice manual' (internal document) and 'Mediating the Victim/Offender Conflict', a factsheet prepared by the Mennonite Central Committee.

13. Source: National Institute for Crime Prevention and the Rehabilitation of Offenders (1994)

14. See 'Perceptions of victim support' (chapter 10) in Monograph No. 58, Reducing Crime in Durban: A victim survey and safer city strategy.

Introduction

Police are usually the first point of contact within the formal criminal justice system for children coming into conflict with the law. The action taken by the arresting police officer and any other police officers involved has the potential to change the child's life in a positive direction, but this will depend on the attitudes, beliefs, knowledge, skills and resources of the officers handling the case. Moreover, it is not uncommon for a member of the local community to apprehend or arrest a child and then insist on the police taking punitive action against them. It is in these situations where police will need to have the necessary knowledge and skills to negotiate and mediate in order to ensure that the child's rights are upheld and that opportunities for diversion or non-custodial options are explored.

The examples in Uganda and Vietnam at the end of this chapter highlight the importance of working closely with police at both the level of policy-makers and that of the community. In addition, developing the level of trust required to achieve significant change takes years and is founded on evidence from successful pilot projects.

International guidelines

The Beijing Rules explicitly deal with contacts between children and the police:

'contacts between law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case' (10.3); and go on to talk about specialisation within the police force:

'in order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose' (12).

Ways to work with the police

When thinking about working with the police, there are several key points that need to be addressed:

- Appropriate legislation ideally needs to be put in place to give police the authority to divert children away from the formal criminal justice system. Formal legislation and properly developed policy will give the police the necessary mandate to help children in conflict with the law.
- Awareness has to be created among police personnel of their role and responsibilities in dealing with children, taking into account special issues such as gender. For example, although women police officers are often assigned to cases where women and children are victims of violence, they are not specifically chosen to deal with children in conflict with the law, who are generally seen as criminals, and not as children.
- Training needs to be provided to ensure that police are familiar with the UNCRC, international standards, national legislation, police policy and the divergence between

policy and actual practice on the ground, so that they are properly equipped with the knowledge and understanding to deal appropriately with children in conflict with the law.

Thus when determining the appropriate approach for working with the police, it is important to take into account the key elements detailed above, as well as external factors such as stakeholders and changes in the general environment.

The next section describes some examples of Save the Children projects working in partnership with the police.

Save the Children projects in partnership with the police

Uganda

In Uganda, where Save the Children UK has been active for many years, it worked closely with the Government, providing funding and technical guidance to a national committee, the Child Law Review Committee, which was responsible for formulating proposals for legislation resulting in the drafting and eventual adoption of the Uganda Children Statute 1996 (see Chapter 7). The Statute provides a legal framework for care and protection of children in Uganda. Of particular importance is the fact that Save the Children UK worked with the Ugandan Government right from the beginning of their process of drafting the Uganda Children Statute 1996, and therefore was able to play a part in introducing appropriate legislation giving police proper authority to divert children away from the formal criminal justice system.

Guidelines for the police were drawn up to help implementation of the Uganda Children Statute 1996. The guidelines give details on the power given to the police by the Statute to caution offenders.

The guidelines were drawn up with Save the Children UK's support. In drafting the guidelines it is worth noting that:

- the police were involved in drafting
- the process was supported at the highest levels of the police force and from within the Government;
- there was a high level of commitment at all levels of police administration to ensuring the guidelines were made known throughout the police force.

Training to familiarise officers with the contents of the guidelines was carried out and the guidelines were published in a handy pocket sized booklet to make them easy to distribute in large number and to carry around easily.

Working with the police in Ethiopia

Ten child protection units (CPUs) have been set up in Addis Ababa, staffed with police officers and social workers trained in child rights and child protection. This has partly come out of discussions with Save the Children Sweden's partner organisation, Forum on Street Children Ethiopia (FSCE). A coordinating office has also been established, headed by a police officer. FSCE has assigned a legal adviser, psychologist social worker and other support staff to this office. The coordinating office also keeps a database of all children reported to police stations.

Children apprehended by the police or child victims of crime are referred to CPUs where conditions are better than in police stations (though not ideal). The functioning of the CPUs helped to ensure that the treatment of children is in accordance with the criminal procedures of Ethiopia: children in CPUs appear before the juvenile court within 48 hours, and have the possibility of release on bail and referral to a community-based correction programme (see below). The units are currently in the process of being incorporated into the formal police structure.

The community-based correction programme has been developed by FSCE to provide comprehensive support to children who have committed petty offences. Social work plays an important role in the programme. Counselling and educational support is given to children who did not start formal schooling or who dropped out. In both projects, social work paves the way for methods and structures that can eventually be used in diversion.

FSCE and the local police have also undertaken media work to raise the profile of child protection and children's rights, and to bring specific incidences of child abuse in families to the attention of the public.

Vietnam

In Vietnam, Save the Children (Sweden) was approached by the Vietnamese Committee for Protection and Care of Children and the Ministry of Justice for technical assistance to develop the capacity of staff in various relevant agencies (police, prosecutors, judges and officials of mass organisations). This entailed providing training programmes for the police to ensure their familiarity with the UNCRC, international standards, national legislation, and divergence between police policy and actual practice on the ground.

Working with police in Vietnam

Background

'Diversion' in the Vietnamese context is interpreted as a specific strategy for crime prevention, allowing the police to divert young offenders from the court system instead of charging them. Other prevention work by the police includes a combination of public education about problems of safety, victimisation and crime, and providing an early detection/warning system about emerging problems.

The criminal age of responsibility in Vietnam is 14 years. The Vietnamese police have applied diversionary measures for children, mostly aged 16 years and below, who have committed less serious offences and/or are first-time offenders. The measures they make use of include:

- mediation: police and the families of the offender and the victim are involved in the mediation
- formal caution: for children who are first-time offenders
- fine: in the case of children who re-offend a second time, parents or guardians are fined, but not more than 50,000 Vietnamese New Đông (equivalent to US\$3.5).

Save the Children (Sweden) working with Vietnamese government and police

Save the Children (Sweden) has had a working partnership with the Police Academy since 1997 and with the General Police Department since 1999. The project was aimed at developing the capacity of police officers at the national and provincial levels. The outcomes of the training programme were as follows:

- 1,500 police officers were trained in UNCRC and juvenile justice standards.
- The Police Academy has developed a specialised training manual. Twenty lecturers at the Academy were trained in participatory methods for teaching the subjects.
- The juvenile justice training has been institutionalised into the existing curriculum for all police students, as well as tailored for working police officers in their in-service training.
- A partnership has been established between the police and Save the Children (Sweden), based on frequent discussion and co-operation.
- Save the Children (Sweden) and the police agreed to come together to strengthen the capacity development of police officers and to develop a pilot community-based project in Hanoi.

Introduction

The process of arrest, trial and sentencing can be immensely frightening and damaging for a child. International rules and guidelines promote and outline alternatives to intimidating formal court procedures, including the use of diversion (see Chapter 5). However, where cases involving young offenders do come to trial, the court system needs procedures that protect the best interests of the child. For example:

- informing parents and family at point of first contact with the formal system
- ensuring regular and free access to legal aid and legal representation
- ensuring that children are supported throughout their court attendance by an appropriately trained and impartial person
- ensuring that language used in court is understandable to the child judicial hearings which include specially trained lawyers and judges.

The court should be able to turn to a range of legislated options that are in the best interests of the child. It should also be able to use bail and/or some other measure in order to ensure children are not remanded in custody.

What makes a court system child-friendly?

International guidelines

Although there is no international standard explicitly requiring the establishment of a separate set of courts for children, there is nonetheless an implicit presumption that youth offenders should be dealt with differently from adults, in an understanding environment, and in compliance with the current norms regarding the well-being of the child. The four General Principles of the UNCRC (survival and development; participation; best interest of the child; non-discrimination) should be complied with throughout the juvenile justice system, including during court proceedings. The UNCRC and Beijing Rules provide various special safeguards and procedures to be followed when dealing with children in the context of the formal criminal justice system, including the injunction that:

'States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law... ' (Art. 40.3).

The Beijing Rules, in the section on Adjudication and Disposition, state:

'Where the case of a juvenile has not been diverted, she/he shall be dealt with by the competent authority according to the principles of a fair and just trial' (Rule 14.1).

'The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding... ' (Rule 14.2).

Setting up Children's Courts

One practical way of ensuring that children are protected during the trial process is through the use of separate juvenile courts. The 2001 Child Justice Bill in South Africa elaborates in detail the various requirements of a Child Justice Court.

This South African legislation displays good forethought in its prescriptions for dealing with children in conflict with the law. However, it is important to be aware of the gap that frequently exists between policy (legislation) and actual practice on the ground. For example, in Uganda, one of the articles of the Uganda Children Statute 1996 stipulates that children's cases tried by magistrates' courts and other higher courts should send cases back to the Family and Children Court (FCC) for sentencing. The well-intentioned principle underlying these provisions was based on the belief that the FCC would be more sensitive to the needs and circumstances of the children. However, a situation analysis conducted by Save the Children UK and UNICEF (2000) established that judges and magistrates find these provisions unnecessarily cumbersome. They assert that they are sensitive to the needs and circumstances of the children brought before them and therefore there is no need for the zigzag procedure provided for by the Statute. Therefore, cases are hardly ever, if at all, sent back to FCC for sentencing. This emphasises the need to be aware of the realities of implementing good juvenile justice practice, even where sound legislation exists.

Alternative sentencing options

Introduction

There is a range of non-custodial community-based sentences that can be applied to children who come into conflict with the law. They include supervision orders (with or without requirements); probation orders; combination orders (combining community service and probation orders); community treatment orders; community service orders, and attendance centre orders. These are discussed in detail in this section.

International guidelines

International guidelines require that a range of non-custodial sentencing options be present in the statute books and used by the judiciary to ensure the proper administration of juvenile justice in any country. They stress the importance of using deprivation of liberty as a measure of last resort and for the shortest possible period of time.

The Beijing Rules specify a number of non-custodial sentencing options, including, in Section 18:

- care, guidance and supervision orders
- probation services
- community service orders
- financial penalties, compensations and restitution

- intermediate treatment and other treatment orders
- orders to participate in group counselling and similar activities
- orders concerning foster care
- other relevant orders.

The Beijing Rules stress that 'no juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary'.

Examples of good practice

As is clear from international guidelines, there are many non-custodial sentencing options and it is worth looking more closely at the following options and examples of good practice

Non-custodial sentencing options

Bail: either conditional or unconditional

Example of good practice: Process of bail for young offenders in the UK

Probation order: a non-custodial sentence aiming to help young offenders

Example of good practice: Probation service in the UK (see below)

Community service order: requires the young offender to work or perform some service in the community as a means of punishment or restitution

Example of good practice: Community service orders in Zimbabwe (see below)

Attendance centres: young offenders are required to attend under supervision

Example of good practice: Attendance centre orders in Barbados (see below)

Bail

Bail is the act of handing over a prisoner into someone's custody in exchange for security. In some cases the release will be temporary and the security will be required to guarantee the prisoner's appearance in court at a later date. The security may be a personal guarantee given by the parents or someone willing to take responsibility for child or young person, or it may be in the form of an amount of money. Bail may be granted with conditions attached; for example, the young person has to report regularly to police or has to reside at a particular address, or other conditions, appropriate for the particular young person and their family, may be specified. Release on own recognizance (ROR) can be an effective tool for the police, prosecutor's office and the court as it relies on the child and often does not involve money, but rather some form of surety and/or guarantee from parents/guardians. Using an alternative to money is important, given that in most countries the majority of children in custody are from poor families.

Probation and supervision

The probation service can play a key role in influencing the sentencing procedure. It is often

part of the job of probation officers to explore the causes of offending behaviour, and in doing this, they tend to try to find the 'positive' side of each offender and advocate for a non-custodial sentence, where possible. Probation officers are usually qualified social workers who specialise in working with offenders who are 'on probation'. In countries with a well-established probation service, probation officers see offenders in their office on a regular basis, they run groups (see below) and are also stationed in prisons, giving social welfare support to prisoners and their families. Sometimes probation officers can work directly with inmates on their offending behaviour, its causes and how changes can be made. They may also be involved in helping offenders with problems concerning, for example, housing, school attendance, work, drug/alcohol/solvent abuse, and mental health. The frequency of contact with the probation officer will vary according to the needs of the young person - it could be every day, once a week or once a fortnight. The interval between meetings usually gets longer as the probation period nears its end, and eventually the probation officer is just making contact with the offender to check that everything is

Probation service in the UK

The National Probation Service for UK is a law enforcement agency which delivers community punishment, supervises offenders within terms set by courts and the parole board, and works with offenders to reduce their re-offending and to protect the public. The service deals with offenders from the age of 16. Its role includes:

- protecting the public
- reducing re-offending
- the proper punishment of offenders in the community
- ensuring offenders' awareness of the effects of crime on the victims of crime and the public
- rehabilitation of offenders.

Probation officers participate in various offending behaviour groups such as:

- alcohol and drug education
- anger management
- general offending behaviour assessment
- cognitive behaviour
- sex offender treatment programmes.

They usually attend meetings of prison policy committees on, for example:

- race relations
- suicide awareness
- HIV/AIDS
- drugs strategy
- health and safety.

'alright'.¹⁵ An outline description of the UK's probation service is presented below.

Probation services are run in different ways in different countries. In the UK, for example, the service is seen as the bedrock of the criminal justice sentencing system: preparing reports, working with offenders on their offending behaviour through for example running offending behaviour groups on issues such as alcohol and drug education etc and operating care procedures in prisons. However, in countries with no established probation service, some fundamental questions need to be asked in relation to the role of supervision services:

- What is the role of supervision officers in the country?
- Does the supervision service prepare reports on individual young offenders from the lowest to the highest levels of the court system?
- If not, could it be enabled to do so, through the training of probation workers?
- Does the supervision service work individually with young offenders?
- Does the supervision service offer group work with young offenders?
- If not, are the necessary resources available for it to start this kind of work?
- Does the supervision service offer welfare support to young offenders in prisons/institutions?
- What training do supervision officers receive at present, or what training must they have received in order to become supervision officers?

The introduction of probation work can have a major impact on the criminal justice system but it requires: the assistance of experts, knowledge from countries with probation services already set up, funding for establishing the new service, and the assurance that there will be an ongoing allocation of financial resources. It is a major step and, as such, needs careful exploration. Nevertheless, probation services should not be seen as something that only developed countries can afford. As outlined in the Beijing Rules, a probation service is a fundamental requirement for a humane system of juvenile justice administration. The fact that an effective probation service is possible in a developing country is demonstrated by the situation in Kenya. The legal framework for the Kenya probation service is provided by the Probation of Offenders Act dating back to 1943 and revised in 1981. The Act can serve as a useful model of legislation for countries considering setting up a probation service. Furthermore, it is worth exploring the possibility of South-South exchanges for countries considering the possible involvement of probation officers (ie, the secondment of probation officers from a developing country to another).

Community service orders

Community service orders require offenders to work or perform some service to the community as a means of punishment or restitution. The aim is to reintegrate the young offender into the community first of all through the discipline of positive and demanding unpaid work that provides reparation to the community, by making good the damage the offending has caused. This can be an effective way of bringing home to the young offender that their behaviour is unacceptable. Furthermore, community service shows the offender that the community is affected by criminality, and at the same time the community can see that offenders can make a constructive rather than a destructive contribution to society.

Another positive feature of community service as an alternative to a custodial sentence is that it allows juveniles to remain with their families, whereas if they were in prison they would risk learning from more experienced offenders. It also avoids interrupting the child's attendance at school. In Zimbabwe, for example, community service has proved to be cheaper than custody and has helped some young people into employment.

It is important to note that the success of community service orders depends very much on the type of work or service undertaken. The more closely the work relates to the community the greater the likelihood of a positive outcome, particularly if the work is part of a programme of restitution to the victim. If the work carried out benefits an individual or a group of people, and the young offender can see the benefit at first hand, the effects of the community service order are much more likely to be positive. In too many cases, however, the order involves working in an environment that is removed from the offender's immediate world, and the result can be a feeling of alienation from society.

Thus the success of community service depends on:

- the promotion of community service as a real alternative to custodial sentences (this does not mean using it simply for lesser offences, but for the type of offence for which a young person would normally be sent to prison or an institution)
- meaningful programmes in which young people feel involved and can see the benefits of their work
- programmes that concentrate on restitution to the victims through work or services.

Community service orders are widely used around the world. One country where they have

Community service in Zimbabwe

Aims and objectives

Community service was introduced in Zimbabwe to save petty offenders from having to serve prison sentences, and to avoid petty first offenders coming into contact with hardened criminals. It also offers petty offenders the chance to reform and, if they are employed, to keep their jobs. The cost to the state is much lower than the cost of keeping an offender in prison (Z\$190 a month, against Z\$560).

Community service is available to those who have committed crimes punishable by sentences of 12 months or less. However, it is not available for serious offences such as murder, rape and armed robbery.

Community service for children

In Zimbabwe, children below the age of 18 are minors. The following factors are taken into account when community service is imposed on children:

- Community service should be considered only when other non-custodial sentences are inappropriate and the child would otherwise be sentenced to a prison term.
- Children below 14 years can be prosecuted only with the Attorney-General's consent.
- Care should be taken to avoid sentencing young children to community service. The child's attendance at school is taken into account. If the child is attending school, weekend community service is appropriate.
- Attention must be paid to the distance between the child's home and the place where community service is carried out.
- The privacy of the child and family must be protected. Publicity should be avoided.
- The work to be performed should be appropriate to the child's physical condition.

been used for young offenders specifically is Zimbabwe.

In the year ended October 1996, a total of 603 juvenile offenders (460 male, 143 female) were placed on community service.

Society's attitude to community service

When community service was first introduced in the early 1990s, the general public was cautious about the implications of this type of sentence. Public institutions, such as hospitals, clinics and residential schools, were hesitant to accept offenders on community service, and those that did treated them with suspicion. However, since the mid-1990s the concept of community service has gradually become acceptable to the public. Many institutions and organisations now ask for offenders to be placed with them, and sometimes keep them on as employees when they have completed their community service. General public acceptance of the programme was achieved by:

- careful selection by the courts of offenders to be placed on community service
- organisation of workshops to explain to community leaders and heads of institutions how the programme works
- constant communication between provincial community service officers, community leaders and institutions
- spreading information via the media and through the personal experience of offenders, their families, friends, neighbours and community.

Major challenges and constraints

Community service has now been made available to offenders who cannot pay fines. This will increase the number of offenders placed on community service and could cause problems if institutions and organisations became flooded with offenders on placement. Efforts will be made to increase the number of institutions and organisations prepared to accept offenders for community service.

Attendance centre orders

An attendance centre is a place at which young offenders are required to attend and are provided (under supervision) with appropriate occupational activities and programmes and/or instruction in compliance with orders made by the court. Attendance centre orders, which are generally made by the court, deprive the child of leisure time and therefore are applied at weekends, especially if the child is attending school. They are normally used for repeat offenders or as an alternative to custody for a serious crime. The rules, regulations and management of attendance centres are usually the responsibility of the relevant government department. One example of attendance centre orders used

Attendance centre orders in Barbados

The Penal Reform Act of 1998 provides for the imposition of an attendance centre order. This is a non-custodial order which is usually available for children aged 10-18 (in some cases also for young adults up to the age of 21). It is generally applicable when the offender has been previously sentenced either to imprisonment, or to detention at a reform school. The offender attends the centre for a minimum of 12 hours, and a maximum of 36 - or 24 if they are under the age of 16.

as a non-custodial sentence can be found in the Caribbean region.

There are procedures in place for determining how the attendance order is to be fulfilled and for varying an attendance order. If an order is breached, by the offender either failing to attend or contravening the centre's rules, the Court may take one of the following actions:

- warn the offender about future conduct and reinforce the order
- impose a fine in addition to the order
- revoke the order and impose a different sentence. In some cases, this could mean a custodial sentence if the young person is aged over 15. This should only be used as a last resort, and in the most serious circumstances.

Conclusion

It is clear that custody does not always meet the special needs of children in terms of care and protection; instead, it usually isolates them from their family and the community. Institutionalisation in itself has very negative effects on the psychological development of children and those who are detained in prisons are vulnerable to abuse and ill-treatment at the hands of other prisoners or prison officials. The prison environment is not conducive to rehabilitation and it is also well known that young offenders learn to commit worse crimes while in custody and are more likely to re-offend as adults. It is thus imperative that community-based alternatives to custodial sentences need to be developed and legislated for by national governments to ensure that a range of options are available for the courts when dealing with children in conflict with the law.

Introduction

The use of custodial sentences, for all but the most serious offences, is widely seen as extremely damaging for children. However, the fact remains that children continue to be locked away in prisons, correction houses, disciplinary centres, rehabilitation centres and other institutional forms of deprivation of liberty.

The treatment of children detained in custodial institutions remains a massive problem. Several studies (see, for example, the reports prepared by Amnesty International and Human Rights Watch have reported that children are most vulnerable to abusive and cruel treatment while in custody, whether pre-trial (in police detention centres, for example) or post-trial (in prisons and other institutions). Detained children are often denied contact with their parent and denied access to legal services or advice, and are usually not given any information about the allegations against them. Furthermore, some of these children may have even been coerced into making a statement or pleading guilty to crimes that they did not commit. Children, particularly girls, are also extremely vulnerable to sexual harassment or sexual abuse during arrest and interrogation. There is, therefore, an urgent need not only to protect children in custody but, in particular, to look for alternatives to custody for children in conflict with the law.

This chapter examines in detail the issues relating to the protection of children in custody.

International guidelines

International guidelines, especially the UN Rules for the Protection of Juveniles Deprived of Their Liberty (the JDL Rules), are very clear on the need to protect children held in custody. The JDL Rules accept that deprivation of liberty may be required for young offenders in certain cases, but they lay down the conditions under which sentences of this nature are to be served. The main points covered by international rules and guidelines (which are discussed in detail below) include the following:

- Custody of children should be for the shortest possible time and as a measure of last resort.
- Children in custody should be separated from adults, and girls separated from boys.
- Provisions must be made for the health, hygiene and learning needs of children in custody.
- Children in custody are to have regular access to parents, family, and lawyers.
- Children in custody are to be provided with post-custody reintegration and rehabilitation support.

The Standard Minimum Rules for the Treatment of Prisoners 1955 (SMT)

The Standard Minimum Rules for the Treatment of Prisoners, approved by the 1955 UN Congress on the Prevention of Crime and the Treatment of Offenders in Geneva, were the

first set of international standards to establish the principle of separation of young people from adults in custodial facilities:

'Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions' (SMT, 85 §2C).

The UN Convention on the Rights of the Child (UNCRC)

The UN Convention on the Rights of the Child (UNCRC), adopted in 1990, provides a wide-ranging framework for the protection of children's rights. Article 37 deals specifically with the issue of the administration of juvenile justice, as first set out in the Beijing Rules:

States Parties shall ensure that:

- (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.

The Beijing Rules: United Nations Minimum Rules for the Administration of Juvenile Justice (1985)

Point 13: Detention pending trial

- 13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.
- 13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
- 13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.
- 13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.

The form of assistance needed will vary according to the young detainee's sex and their particular circumstances: female and male juveniles will require different types of support, and special assistance will be needed for young people who are, for example, drug addicts, alcoholics, mentally ill, or suffering from the trauma of arrest. Some young detainees may have specific physical or psychological characteristics that make it desirable to keep them separate while in detention pending trial, so as to

avoid the risk of victimisation and to make it easier to give them appropriate assistance.

Point 19.1: The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period

Point 19 aims at restricting institutionalisation, in terms of how often it should be used (only as a 'last resort') and of the length of sentences ('minimum necessary period'). It reflects one of the basic guiding principles of Resolution 4 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, states that if a young person must be institutionalised, the loss of liberty should be limited to the shortest possible period of time, with appropriate arrangements for the confinement of a juvenile that take into account the differences in kinds of offenders, offences and institutions. 'Open' rather than 'closed' institutions are to be preferred. Furthermore, facilities provided by the institution should be of a correctional or educational nature rather than typical of those provided in prisons.

Point 26: Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs)

A fundamental requirement under the JDLs is that children be held separately from adults. This is to protect them from exploitation and abuse and from the negative influence of adult offenders. It is also to ensure that there are specific facilities for the detention of children, which cater for their special needs while safeguarding their fundamental rights and which provide measures for their re-integration into society. The three main issues covered in the JDLs are summarised below.

Material and other conditions of detention

The main problem areas with regard to conditions of detention are:

- lack of information concerning the rules in force and the rights of detainees
- insufficient space in sleeping and living quarters
- inadequate clothing and protection from the cold
- insufficient and/or poor quality food, served at unreasonable times

- poor sanitary and washing facilities, with no privacy
- difficulty in getting access to medical and dental treatment
- poor or non-existent educational and vocational training opportunities
- little or no contact with the outside world
- poor supervision - badly trained, poorly remunerated and de-motivated staff
- exposure to exploitation, abuse and violence at the hands of adult prisoners.

The special situation of girls in detention

Because there are relatively few female offenders compared with males, specialised custodial facilities for women are very rare, which often results in girls being held in places far away from their family and with held with adult women. In general, girls are more likely than boys to be deprived of educational opportunities when detained and are more likely to be exploited, largely because of gender stereotyping. As in the case of incarcerated women in general, the special hygiene needs of girls are notoriously being overlooked.

Disciplinary measures

The JDLs prohibit a wide range of punishments in respect of juvenile detainees. Among these are:

- corporal punishment
- placement in a dark cell
- closed or solitary confinement
- reduction of diet
- restriction or denial of contact with family members
- a requirement to work.

Rules that are regularly breached

Although there are clear international rules on the protection of children detained in custody, they are often breached in practice. For example, guidelines suggest that children should be presented before a magistrate or judge within 48 hours of being arrested, but this time limit is often ignored. Furthermore, international rules are clear that, after being presented before a judicial authority, children should be released on bail until the case is heard. With regard to detention pending trial, the Beijing Rules state very clearly, in Rule 13: 'Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.' However, children are being held in custody without their cases even being filed in court. Finally, international guidelines specify a range of non-custodial sentencing options to be used post-trial to ensure that children are given custodial sentences only as a measure of last resort. Again, these guidelines are breached in practice on a regular basis.

Children in custody: the situation in England and Wales

The problems associated with custodial sentences for young offenders are clearly illustrated in the youth justice situation in England and Wales (Goldson and Peters, 2001). Even though the Government has created 155 multi-disciplinary Youth Offending Teams in England and Wales and

the Youth Justice Board has invested £85 million in developing practical responses to children in conflict with the law, more children and young people are detained in custody in England and Wales than almost any other country in Western Europe. Moreover, the age of criminal responsibility, at 10 years, is lower than in almost every other country in Western Europe.

Children in custody in England and Wales

Prison population growth.

Since the early 1990s, the number of young people in prison has continued to rise. The number of young people aged between 15 and 17 in prison almost doubled between 1993 and 1998. During the same period, the number of 15-17-year-old boys, as a proportion of the total population sentenced to custody, more than doubled, while the number of girls almost trebled. In March 2000, the number of children and young people serving sentences in prisons in England and Wales was 1,708, not including those on remand.

Locking up children damages them.

Feltham, the largest juvenile detention centre in Western Europe, was described by the prison inspectorate in 2000 as 'rotten to the core' and 'unacceptable in a civilised country'. The report referred to the 'disgraceful and appalling conditions' that the 922 children and young people had to endure. More than 50 per cent of young prisoners on remand and 30 per cent of sentenced young offenders have a diagnosable mental disorder. Imprisonment fails to address the problems that contribute to young people's offending - such as chaotic home lives, disrupted schooling, unemployment, poverty and health problems, often related to alcohol and drug misuse - and may even compound them.

Locking up children is expensive.

It costs £25,000 a year to keep an adult in prison, and significantly more for a juvenile. The cost of keeping a young person in a secure training centre is up to £150,000 a year, not including capital costs. Releasing a young person on bail conditions is much cheaper: bail support schemes run by The Children's Society cost £240 a week per child.

Locking up children is not effective in preventing reoffending.

Studies published in 2000 showed that 88 per cent of 14-16-year-olds released from prison were reconvicted within two years, and 67 per cent of young people released from secure training centres re-offended within 20 weeks. By contrast, in 1999, 70 per cent of young people completed The Children's Society's bail support programme in Manchester without breaching the conditions.

Failing international standards.

England and Wales fall short of standards outlined in the UN Convention on the Rights of the Child, including:

- the duty of governments to use detention or imprisonment as a measure of last resort and for the shortest appropriate time (Art. 37[b])
- the duty of governments to consider the best interests of the child (Art. 3)

- the rights of children to protection from all forms of violence, abuse and neglect (Art. 19)
- the rights of the child not to be subjected to cruel, inhuman or degrading treatment (Art. 37 [a])
- the rights of the child to the highest attainable standard of health (Art. 24)
- the duty of governments to provide alternatives to institutional care (Art. 40 Š4Ć).

Racial make-up of children being locked up.

Children from minority ethnic groups are over-represented at every level of the youth justice system. It is no surprise that, according to research by The Children's Society, young black people are about six times more likely than other young people to be locked up in prison and that, for example, in 1999 they accounted for 16.2 per cent of all children and young people held on remand in Doncaster, and 31.6 per cent of the total in Feltham.

Alternatives to custody.

In 1997 the Chief Inspector of Social Services, Sir William Utting, described the continued use of prison custody of remanded children as a 'serious failure of public policy which should be put right as quickly as possible'. In the Safeguards Review, published by the Department of Health, he said: 'Prison is no place for children, especially for unconvicted children. It is almost impossible to meet the continuing ordinary needs of children there.' Alternatives to custody, properly run, give young people an opportunity to atone for any crimes by working within the community. For the small number of young people who are considered too much a risk to themselves or others, secure children's homes can protect the public safety and provide the resources and support that these young people need.

Source: Goldson and Peters (2001)

Practical action to help children in custody

What practical steps can be taken towards protecting children held in custody, and towards reducing the widespread use of custodial sentences for children? Various types of interventions and practical action are discussed below, together with some examples of good practice.

Research and situation analysis

The aim of research in this context is to find out about the numbers of children in detention and the conditions in which they are held. Given that this is an area that may be regarded as sensitive and controversial, the research should be conducted, if possible, jointly with the relevant government departments, and preferably should involve the public prosecutor's office.

In many countries, when children first come into conflict with the law they are usually arrested by the police and held in custody in police cells. The length of time a child is held will depend on how long it takes to investigate the case. Children are often held for periods of time stretching from days to months. During this time, they are allegedly:

- held alongside adults
- not given access to family and relatives
- in most instances not visited by anyone except the investigator - and even then, rarely
- visited by a lawyer only a day or so before the case comes up for hearing.

Conditions in the cells are also known to be bad, with overcrowding and poor hygiene. The treatment of children ranges from indifferent to bad, and no activities or programmes of any kind are available for them.

The first practical step to be taken before there can be any reform of the judicial system is to initiate a research and situation analysis project. The purpose of this is to find out more about the existing system and then to prepare a set of recommendations for reform, to be presented to the Government for further consideration and action. As far as possible, the following points should be covered:

- current legislation and its implementation in practice
- number of children in pre-trial detention
- conditions in pre-trial detention
- the issue of access by lawyers, families and civil society groups to pre-trial detention institutions
- treatment of children by the police during pre-trial detention.

Recommendations from the study should be tabled at a round-table policy seminar on juvenile justice, to be jointly organised by the Government and international agencies such as UNICEF. The involvement of relevant government departments and of other agencies will increase the probability of the recommendations being successfully implemented.

UK Board of Visitors (BoV)

In the UK, prison visitors provide an effective mechanism for civil society intervention with regard to the conditions of young people in custody. Establishing a Board of Visitors (BoV) for every prison establishment in the UK is required under the UK Prison Act 1952 (section 6[2]). Each BoV is made up of volunteers, and the main function of Prison Visitors is to ensure that the basic human rights of people in custody are protected.

There is a specific checklist of things that Prison Visitors look at during their visits, and a structured format for the reports that they submit. The checklist is comprehensive and covers important issues such as medical facilities for inmates, reformation and rehabilitation programmes, condition of prisoners in solitary confinement, children of women prisoners, and provision of legal services to the prisoners. Prison Visitors have to go through the checklist thoroughly, and ask specific questions for each category of items on the list. There are special checklists regarding particular categories of prisoners, including the one below which was developed to help Prison Visitors to look out for important points while examining and reporting on the conditions of children in detention, thereby

protecting the children's rights while in custody.

BoV checklist on conditions for children in detention

- Are juveniles and young offenders housed in separate accommodation?
- Do they all have sentence plans and do they know who their personal officer or caseworker is?
- Are they receiving visits from family, partner or children? If geographically isolated, is there extra support available?
- Are those of school age receiving the required statutory education/training?
- Are there facilities for young people to prepare course work for GCSE and A level exams?
- Are arrangements made, prior to transfer to other establishments, for the continuation of this work?
- Are all inmates offered the required level of physical exercise?
- Are courses on behaviour modification available?
- Is there an anti-bullying policy and strategy? How often is it applied and how is it monitored?
- Is there a 'Listener Scheme' or something similar in place for vulnerable inmates?
- How do segregated inmates pass their time? Do they have access to games, books, etc?
- What is done to prepare young people as they approach the age of 18 for a move to a Young Offender Institution or to prepare those approaching 21 for a move to an adult prison?
- Do staff receive specific training for dealing with young people, eg, courses on 'Nature of Adolescence', etc?
- Do the probation or youth justice workers ensure that the young people have somewhere to go when they are released?

Programme to reduce the number of children in custody

In situations where children are known to be detained in detrimental conditions, a crucial element of any programme to help these children must be awareness-raising and advocacy activities. For example, in Bangladesh, there is a worrying trend of incarcerating children in adult prisons, and at the same time there is a general lack of awareness of the damage this can cause children. Thus one important part of Save the Children UK's youth justice work in Bangladesh is helping to develop an advocacy model that will draw attention to the plight of children held in adult prisons that can be replicated in other countries where the same problem exists. Although the work in Bangladesh is still relatively new, there are encouraging signs that the approach is effectively tackling the problem.

Save the Children UK Project for reducing numbers of children in prisons in Bangladesh

Despite clear legislation being in place, prison conditions in Bangladesh are very poor. Children continue to be held in adult prisons, and only very limited work has been done on issues relating to prison reform. As civil society groups have very little access to prisons, there are few campaigns focusing on prison and penal reform.

Key elements of Save the Children UK's project

Save the Children's project for reducing the number of children in prisons in Bangladesh consists of the following elements:

- Carrying out a situation analysis, including analysis of the following documents: the Government's submissions to the UN Committee for the Rights of the Child and the Committee's concluding observations; any relevant studies undertaken by UNICEF, other UN bodies and civil society groups; information from government criminal justice agencies.
- Research and documentation, providing facts and figures and indicating the key advocacy action points.
- Listening to children's voices.
- Building alliances and creating a network on children in prison, consisting of NGOs, individuals and other civil society groups.
- Taking action. For example, the project has ensured the transfer of 30 children from Dhaka central jail to the remand home.
- Replicating the project. To do this, the project has contacted relevant civil society groups in other districts of the country; set up committees to monitor the situation in those districts; lobbied central government about children in custody in those districts.

Future challenges

The lack of alternatives to custody remains a problem; for example, there are only two remand homes in Bangladesh. Current efforts to reduce the number of children in prison need to be reinforced by a programme aimed at developing alternatives, which would include assessing current sentencing options and drafting new legislation if needed; training programmes for magistrates emphasising the importance of non-custodial sentences; and promoting community-based alternative care for children in conflict with the law.

Rehabilitation programmes

Due to a lack of resources and expertise, children held in custody in most developing countries are usually not provided with any effective rehabilitation and re-integration programmes. This necessarily contributes to the high re-offending rate. For example, in the Republic of Tajikistan, children released from detention centres for juveniles frequently re-offend as there are very few effective rehabilitation and re-integration programmes. The example described below is of a project supported by Save the Children UK in Tajikistan that works with children while they are in detention centres as well as after their release, in order to try to address this situation.

Support to children released from prison, Tajikistan

The project attempts to assist young offenders' re-integration through the following activities:

- vocational training for children
- discussing with parents issues concerning re-integration
- speaking with local government representatives to discuss shelter and employment issues.

A recent evaluation of the project found that the post-release support being provided to the children has helped to prevent re-offending.

In addition, Save the Children UK Tajikistan's future work aims to:

- train community groups to take on tasks such as mentoring to support children after release
- raise awareness within communities of the issues relating to children in conflict with the law.

Conclusion

In summary, prison is no place for children, because it:

- places children at high risk of abuse and ill-treatment
- serves as a school for crime
- is a poor environment for rehabilitation
- does not deter children from re-offending
- does not meet the special developmental needs of children.

Children who come into conflict with the law must be treated differently from adults and given opportunities for rehabilitation and re-integration into their communities. The rehabilitation of young offenders should thus be seen as a priority in any criminal justice system.

Introduction

Children's justice work is not just about addressing problems within the criminal justice system and making it less damaging to children; it is also about reducing offending by young people. Children's justice practitioners should therefore not limit the scope of their work by focusing only on children already in conflict with the law. Prevention work should be a key part of any children's justice programme.

In essence, this prevention work aims to ensure that children do not come into conflict with the law in the first place. This means examining the root causes of children's offending, which are varied and often complex. They include poverty, broken homes, lack of education and employment opportunities, peer pressure, and lack of parental guidance. These problems have to be dealt with through social and economic interventions aimed at different levels of society - programmes for improving and extending education, poverty reduction, skills development, parental counselling and job creation, and so on. Prevention programmes might include work with the media (to influence public opinion), work in schools and with parents, and victim support schemes.

International guidelines

The Riyadh Guidelines cover measures to prevent juvenile offending on a number of levels, notably:

- primary prevention, ie, general measures to promote social justice and equal opportunity, which thus tackle perceived root causes of offending such as poverty and other forms of marginalisation
- secondary prevention, ie, measures to assist children who are identified as being more particularly at risk, such as those whose parents are themselves in special difficulty or are not caring appropriately for them
- tertiary prevention, involving schemes to avoid unnecessary contact with the formal justice system and other measures to prevent re-offending.¹⁶

Rule 1.3 of the Beijing Rules notes the need for 'positive measures that involve the full mobilisation of all possible resources, including the family, volunteers and community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law..'

Likewise, ECOSOC Resolution 1989/66 makes explicit reference to one facet of this reality when it requests the Secretary General... to ensure effective programme interlinkages within the United Nations system between juvenile justice, within the framework of the Beijing Rules, and situations of "social risk", especially youthful drug abuse, child abuse, child sale and trafficking, child prostitution and street children'.

The UNCRC does not explicitly mention preventive action, but many see implementation of the Convention as a whole as being the best and most fundamental manner in which to

approach prevention. Indeed, the Riyadh Guidelines echo many of the rights set out in the Convention as basic components of primary and secondary prevention and, perhaps to a lesser extent, of prevention at the tertiary level.

Prevention programmes

Prevention programmes work at different levels, from that of national crime prevention strategies to the local level, where prevention work involves working with the community, for example, with schools and parents in the areas of education and skills development. The initial phase of prevention work in children's justice programmes usually involves setting up a research project to investigate links between youth crime and factors such as poverty. The summary below gives provides a guide to implementing a strategy to prevent and reduce juvenile crime.

Essential features of a crime prevention and reduction strategy¹⁷

Step 1: Conduct a study to analyse the causes of offending

This entails making a targeted analysis of young offenders' backgrounds and examining the factors behind their offending behaviour. These could include:

- poverty - survival/equity issues
- discrimination against people from minority, disadvantaged, vulnerable and marginalised groups in the country
- perceived threats - street children, migrants
- adolescence - testing the limits of the system
- lack of education
- lack of health, substance abuse and sexual/reproductive health education
- lack of recreation facilities
- poor parenting, dysfunctional families, domestic violence and substance abuse
- no awareness of children's rights
- lack of life opportunities, leading to sense of hopelessness, alienation and 'couldn't care less' attitudes.

Step 2: Plan appropriate action for children and with children themselves

- promoting crime prevention work in schools, for example, through role play and citizenship classes on life/social skills, the law and children's rights, and examining causes of offending in schools such as peer pressure and substance abuse. This work can be done through adult community facilitators and child advocates
- encouraging criminal justice officials to see youth crime prevention as part of their role - for example, judges in England and Wales have been asked to visit schools
- children's involvement in decision-making - at family, school, community, national and international level - and children as peer educators
- better livelihoods - income-generating activities for children at risk of coming into conflict with the law.

Changing the institutional environment

- family responsibilities for children, and parenting skills, eg, communication not corporal punishment
- better family support services
- community conflict resolution by mediation, particularly in schools - for example, in connection with bullying
- councils in schools, communities, local government
- ombudspersons for children at all levels
- promotion of and analysis of a 'Children's Budget', and examining the impact on children of government (national and local) decisions regarding expenditure for children's welfare
- governments and institutions accepting their responsibilities under the UNCRC, and seeking children's views in all areas concerning them
- establishing a National Commission/Council for Children.

Changing the physical environment

Measures to reduce the opportunities for children to commit offences or to come into contact with adult offenders might include:

- establishment of safe spaces for children to play in to reduce the risk of coming into contact with drug users
- use of locks, lighting, CCTV, car alarms, and other security precautions as deterrents, making it more difficult to commit theft or burglary.

Decriminalising certain offences

- certain behaviour offences
- status offences
- raising the age of criminal responsibility.

Examples of good practice

A specific example of good practice is the work done in the UK by the National Association for the Care and Rehabilitation of Offenders (NACRO). NACRO attempts to make society safer by finding practical ways of reducing crime, and working to give ex-offenders, disadvantaged people and deprived communities the help they need to build a better future.

NACRO and youth crime*

Forty per cent of crimes such as theft, burglary, robbery and violence are committed by young people. Youth crime and fear of youth crime make many people's lives a misery, particularly in disadvantaged areas with a high crime rate. NACRO develops imaginative ways of preventing young people from getting involved in crime and of dealing with young offenders. Its current work includes:

- supporting bail projects across England and Wales to ensure that, wherever possible, young people can be safely remanded in the community instead of in prison
- researching the use of custodial sentences across the country to identify geographical

variations, in order to promote consistent good practice

- producing briefing packs for magistrates about youth offending teams
- providing support services to drugs and alcohol schemes across the country
- working in partnership with youth offending teams throughout Inner London to promote good practice, develop policy and ensure consistency.

NACRO's work in the area of prevention includes:

- youth activity projects
- school exclusion projects
- young offenders projects.

Youth activity projects. NACRO runs constructive activities for young people in disadvantaged areas, such as inner city housing estates, where there are few facilities for them. Activities include football, music, painting and drama and outdoor activities such as cycling and climbing. Most of the youth activity projects incorporate elements from other programmes that make awards for achievement. Engaging young people's interest and nurturing their talents often prevents them from wasting their lives in criminal activity.

School exclusion projects. Large numbers of children truant from school each year of whom many are both temporarily and permanently excluded. These children are far more likely to get involved in crime than those who attend school regularly.

NACRO works with schools and local education authorities to provide alternative learning opportunities for young people who have been excluded from school. Where possible it aims to get children back into mainstream education or into further training or employment.

Projects for young offenders. Locking up young criminals is often seen as the solution to youth crime. In fact, most young people sent to prison go on to commit more crimes when they are released. NACRO runs community-based projects to stop young people committing crime by tackling the causes of their offending. This may include getting them on to drugs treatment programmes or anger management courses, helping them into training or employment, or getting offenders to offer some form of reparation or apology to their victim.

* Source: www.nacro.org.uk

The youth gang phenomenon in Latin America

Latin America, in particular Colombia and some countries of Central America, has one of the highest homicide rates in the world; and within this environment of social violence, many young people become both victims of crime and offenders. The increase in gang violence¹⁸ in Central America has been given a high political profile. Unfortunately, instead of shedding light on the problem, this has led to widespread public hostility towards youth gangs. As a consequence, there have been calls in some countries of Central America to limit or repeal the UN CRC, to reduce the age of criminal liability, and to return to compulsory military service, the death penalty and states of emergency. Initiatives designed to prevent juvenile crime therefore have had little or no budgetary support. This means that even more young people are at risk of becoming criminals, ensuring the continuation of the vicious circle of violence in the region. In view of this situation, Save the Children UK's children's justice work in the Caribbean and Central American Region (CARICA) has largely focused on gang prevention.¹⁹ Although in theory being a gang member does not necessarily mean that one is a lawbreaker, it has been demonstrated that in the specific case of Central America, belonging to a gang puts a child at higher risk of coming into conflict with the law or becoming a victim of gang violence. Working to moderate violent attitudes in the gangs, and to prevent young people from joining gangs in the first place, or encouraging them to leave, is an attempt to reduce the incidence of youth crime, while at the same time protecting the victims of gang violence, many of whom live in the poor neighbourhoods of Central American cities. Save the Children UK's juvenile justice strategy in CARICA is illustrated by its work in Honduras, as described below.

Save the Children UK prevention strategy in Honduras

The overall strategy is to influence public policy-makers to increase the use of preventive programmes, which are currently missing from the Honduran juvenile justice system. Save the Children UK started implementing its strategy with the simultaneous application of three measures:

- research to demystify widespread beliefs about gangs, and to disseminate the results from the research widely
- raising awareness among decision-makers to encourage them to introduce new legislation designed to tackle the root causes of gang violence
- promoting good practice in crime-prevention initiatives through support for a community-based intervention model with the participation of young people.

As a result of this work, Save the Children was able to work with the Government, other NGOs and organisations on a national action plan to address the issue of youth gangs. This led to a new law on the prevention, rehabilitation and social reintegration of people in gangs. The new law includes many progressive provisions, including:

- gang members to be seen as subjects for rehabilitation
- a co-ordinated national action plan
- local responsibility for creating and funding prevention programmes, and for involving the community
- the establishment of support services for parents
- protection for young people who wish to leave gangs but where this would place them in danger
- the integration of young gang members into existing social services to avoid further stigmatising them
- participation of young people and NGOs in the administration of the national action plan.

Conclusion

It is widely recognised that law alone cannot be the only prevention strategy. This means that prevention elements need to be built into the broader juvenile justice system that includes public policies, national action plans, budgets, institutional framework, and social support, thereby broadening and complementing the mechanisms for the administration of juvenile justice.

16. Innocenti Digest 3: Juvenile Justice, UNICEF International Child Development Centre, Florence, Italy

17. Based on a presentation made at the Children's Justice Workshop in Laos by John Parry-Williams, Asia Social Protection Adviser, Save the Children UK.

18. It is important to bear in mind that a large percentage of children in conflict with the law do not necessarily belong to a youth gang but invariably are caught up in its consequences.

19. A thorough analysis of the gangs was carried out in order for a prevention programme to be designed. This analysis, 'Prevention of Youth Gangs', by T A Mencia, was produced by Save the Children UK as an internal document.

CHAPTER 10: INTER-AGENCY CO-OPERATION, CO-ORDINATION AND TRAINING

Introduction

The successful implementation of children's justice programmes requires co-operation and co-ordination between the various government bodies involved in the criminal justice system and other agencies, institutions and individuals working to help children in conflict with the law. Training programmes are also essential, to ensure that personnel are properly equipped to work with these children.

Inter-agency co-operation and co-ordination

Children's justice programmes involve a wide range of people from various institutions, government departments and the society, including:

- police
- judiciary
- prison officials
- civil society groups and the community, including parents, school and the peers of children in conflict with the law
- social welfare personnel
- staff of relevant UN and other international agencies
- children in conflict with the law.

The planning of these programmes therefore requires a multi-disciplinary approach. It is advisable that an opportunity be given at the outset, perhaps through a conference or forum, for important stakeholders in the justice system - such as senior officials from the police, judicial and penitentiary systems and social services - to discuss a national strategy for improving the juvenile justice system and to propose a national plan of action to address current problems within the system.

International guidelines

International guidelines emphasise the importance of inter-ministerial and inter-departmental co-operation in enhancing the administration of juvenile justice as well as in improving the quality of institutional treatment of children in conflict with the law.

The Beijing Rules

26: Objectives of institutional treatment

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Tokyo Rules

22: Linkages with relevant agencies and activities

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment

of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

Riyadh Guidelines

60. Efforts should be made and appropriate mechanisms established to promote, on both a multi-disciplinary and an intra-disciplinary basis, interaction and co-ordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

Establishing a juvenile justice forum in Uzbekistan

In Uzbekistan a juvenile justice forum was established in August 2001. The membership mainly comprised representatives of international agencies, together with a few from NGOs. For the work to have any effect in practice, it was obviously essential that important stakeholders in relevant government agencies became more involved in the Forum. To help facilitate this process, in mid-2002 Save the Children UK, collaborating with UNICEF and in consultation with all those involved in the Forum's work, drafted a project proposal which resulted in the organisation of a National Juvenile Justice Seminar in November 2002.

The project, initiated with funding from UNICEF, sought to develop the work of the Forum in a number of directions, including:

- planning and implementing a regular series of meetings of the Forum
- preparing a national juvenile justice seminar to raise the profile of the juvenile justice agenda
- ensuring that information about juvenile justice activities is regularly circulated
- putting together an advocacy document, using the reports and documents already published by the Government and NGOs, to present the current situation and explain the urgent need to address the problems of the country's juvenile justice system.

Examples of good practice

Conferences and forums are a way of publicising a new children's justice initiative while providing a platform for senior officials of relevant inter-departmental agencies to discuss the mechanics and implications of such an initiative. For example, the Juvenile Justice Forum in Namibia brings together, on a regular basis, representatives of several ministries (Youth and Sports, Justice, Education, Health and Social Services, etc), the Department of Prisons, the Namibian Police, the judiciary, local NGOs and UNICEF, to debate overall policy questions and raise questions about specific situations and problems. With decision-makers and other stakeholders present, the forum also enables obstacles to be identified, possible solutions to be suggested and, most importantly, responsibilities to be assigned. The forum can also discuss opportunities for co-operation or the draft texts of proposed legislation and policy documents. The joint participation of government and civil society can result in the creation of a constructive and realistic framework from which to develop a coherent response to children's justice issues.

Initiating inter-agency co-operation and collaboration for the successful implementation of a children's justice programme requires effort, time and pre-planning. For example, in South Africa, an effort was made in the past, through new legislation, to improve the way in which children in conflict with the law were treated during the pre-trial period. Attempts to put this legislation into practice failed, however, because of a lack of inter-sectoral planning and co-operation. For this reason, an implementation strategy was drawn up for the South Africa Child Justice Bill (see Chapter 7) that included an estimate of the additional resources and facilities that would be required, and set out the responsibilities of key departments and the co-ordinated action to be undertaken by them. On the basis of this framework, each department then developed its own implementation plan for the Child Justice Bill, taking into account budgetary implications.

Another example of an inter-agency approach to implementing a children's justice programme is seen in Save the Children UK's children's justice programme in Uganda. This programme, described below, sets up inter-agency projects with a view to diverting children away from the criminal justice system and promotes the use of community-based conflict resolution and rehabilitation systems. The work involves a number of international agencies, including Save the Children UK, in close co-operation with local civil society groups and with the full support of the Ugandan Government.

Inter-agency approach to setting up a diversion project in Uganda

A district-level committee was formed, comprising representatives of all the key criminal justice agencies, including the police, judiciary, prison service and social welfare departments (children's department as well as probation and after-care services). The committee then invited interested members of civil society groups and representatives of international agencies present in the district to join the committee and participate in its work. The ideal chair of a committee formed for this type of project is the person most able to drive change forward - in some cases this will be for example, the district magistrate, in others it will be the representative of one of the welfare departments.

Working methods, funding issues and the setting of realistic targets must be carefully thought out and discussed. Once agreement has been reached on these matters, the committee can begin its work.

Work carried out by the committee in Uganda included the introduction of:

- specific measures for training and awareness-raising among the criminal justice agencies to ensure proper treatment of children by police, appropriate sentencing by magistrates and the separation of children from adults in custody by prison officials
- diversion mechanisms involving the use of civil society resources as well as the co-operation of the personnel of the criminal justice agencies
- education and awareness-raising within the community to highlight the new approach and ways of working, with the aim of ensuring that children at risk are dealt with by the community as far as possible; that support is provided for resolving conflicts locally; and that children can be rehabilitated using community resources.

Training

Introduction

Training is vital to bringing about changes to criminal justice systems. The setting up of a child-friendly justice system requires that personnel working within the justice system be knowledgeable about international standards and guidelines and about how these international standards are to be applied locally. They need to know their own national policies and how to put these into practice.

International guidelines

UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)

16. Staff training

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to co-operate in and co-ordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

Beijing Rules, Section VI: Research, Policy Development and Co-ordination

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

Rules for the Protection of Juveniles Deprived of their Liberty (JDLs - 1990)

V. Personnel

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.

UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

Examples of good practice

A training programme can be an opportunity for each profession to explain to the others the constraints and opportunities conferred on it by the country's laws and procedures and also to express possible frustrations with, or inadequacies in, the existing system.

Interdisciplinary training courses, Terre des Hommes*

Terre des Hommes (TdH) runs inter-disciplinary training courses for children's justice personnel. It recommends that anyone planning to run training courses for professionals working in this area should consider the following:

- Where possible, training courses should include a visit to prisons or other institutions where young offenders are detained.
- Where possible, an entire day of the training course should be spent in a prison. This also gives prison officers and managers the opportunity to discuss issues with course participants.
- Trainers should make regular follow-up visits to prisons, along with government officials, local NGOs and UNICEF. These visits may also provide an opportunity to monitor the treatment of children in detention.
- Training programmes should be designed to be multidisciplinary, so that people from different professional backgrounds come together - including frontline workers such as the police, social welfare workers and prison staff, as well as government officials and other policy-makers.
- Prison staff may have only very basic initial qualifications and it is important to highlight the need to offer them training in the rights of young offenders.

Conclusion

A juvenile justice system will function better if all parties concerned gather together, interact and exchange ideas on the possibilities and constraints (legal or material) of their role in the administration of juvenile justice. Relevant children's justice personnel should also be trained within each of their roles to better work with children in conflict with the law.

Convention on the Rights of the Child - Unofficial Summary

Preamble

The preamble recalls the basic principles of the United Nations and specific provisions of certain relevant human rights treaties and proclamations. It reaffirms the fact that children, because of their vulnerability, need special care and protection, and it places special emphasis on the primary caring and protective responsibility of the family. It also reaffirms the need for legal and other protection of the child before and after birth, the importance of respect for cultural values of the child's community, and the vital role of international cooperation in securing children's rights

Article 1 - Definition of a Child

A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.

Article 2 - Non-discrimination

All rights apply to all children without exception. It is the State's obligation to protect children from any form of discrimination and to take positive action to promote their rights.

Article 3 - Best interests of the child

All actions concerning the child shall take full account of his or her best interests. The State shall provide the child with adequate care when parents, or others charged with that responsibility, fail to do so.

Article 4 - Implementation of rights

The State must do all it can to implement the rights contained in the Convention.

Article 5 - Parental guidance on the child's evolving capacities

The State must respect the rights and responsibilities of parents and the extended family to provide guidance for the child which is appropriate to her or his evolving capacities.

Article 6 - Survival and development

Every child has the inherent right to life, and the State has an obligation to ensure the child's survival and development.

Article 7 - Name and nationality

The child has the right to a name at birth. The child also has the right to acquire a nationality and, as far as possible, to know his or her parents and be cared for by them.

Article 8 - Preservation of identity

The State has an obligation to protect, and if necessary, re-establish basic aspects of the child's identity. This includes name, nationality, and family ties.

Article 9 - Separation from parents

The child has a right to live with his or her parents unless this is deemed incompatible with the child's best interests. The child also has the right to maintain contact with both parents if separated from one or both.

Article 10 - Family reunification

Children and their parents have the right to leave any country and to enter their own for purposes of reunion or the maintenance of the child-parent relationship.

Article 11 - Illicit transfer and non-return

The State has an obligation to prevent and remedy the kidnapping or retention of children abroad by a parent or third party.

Article 12 - The child's opinion

The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child.

Article 13 - Freedom of expression

The child has the right to express his or her views, obtain information, and make ideas or information known, regardless of frontiers.

Article 14 - Freedom of thought, conscience and religion

The State shall respect the child's right to freedom of thought, conscience, and religion, subject to appropriate parental guidance.

Article 15 - Freedom of association

Children have a right to meet with others, and to join or form associations.

Article 16 - Protection of privacy

Children have the right to protection from interference with privacy, family, home, and correspondence, and from libel or slander.

Article 17 - Access to appropriate information

The State shall ensure the accessibility to children of information and material from a diversity of sources, and it shall encourage the mass media to disseminate information which is of social and cultural benefit to the child, and take steps to protect him or her from harmful materials.

Article 18 - Parental responsibilities

Parents have joint primary responsibility for raising the child, and the State shall support them in this. The State shall provide appropriate assistance to parents in child-raising.

Article 19 - Protection from abuse and neglect

The State shall protect the child from all forms of maltreatment by parents or other responsible for the care of the child and establish appropriate social programmes for the prevention of abuse and the treatment of victims.

Article 20 - Protection of a child without family

The State is obliged to provide special protection for a child deprived of the family environment and to ensure that appropriate alternative family care or institutional placement is available in such cases. Efforts to meet this obligation shall pay due regard to the child's cultural background.

Article 21 - Adoption

In countries where adoption is recognized and/or allowed, it shall only be carried out in the best interests of the child, and then only with the authorization of competent authorities, and safeguards for the child.

Article 22 - Refugee children

Special protection shall be granted to a refugee child or to a child seeking refugee status. It is the State's obligation to co-operate with competent organizations which provide such protection and assistance.

Article 23 - Disabled Children

A disabled child has the right to special care, education, and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.

Article 24 - Health and health services

The child has a right to the highest standard of health and medical care attainable. States shall place special emphasis on the provision of primary and preventive health care, public health education, and the reduction of infant mortality. They shall encourage international cooperation in this regard and strive to see that no child is deprived of access to effective health services.

Article 25 - Periodic review of placement

A child who is placed by the State for reasons of care, protection, or treatment is entitled to have that placement evaluated regularly.

Article 26 - Social security

The child has the right to benefit from social security including social insurance.

Article 27 - Standard of living

Every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral, and social development. Parents have the primary responsibility to ensure that the child has an adequate standard of living. The State's duty is to ensure that this responsibility can be fulfilled, and is. State responsibility can include material assistance to parents and their children.

Article 28 - Education

The child has a right to education, and the State's duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child, and to make higher education available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity. The State shall be consistent with the child's rights and dignity. The State shall engage in international cooperation to implement this right.

Article 29 - Aims of education

Education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent. Education shall prepare the child for an active adult life in a

free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.

Article 30 - Children of minorities or indigenous populations

Children of minority communities and indigenous populations have the right to enjoy their own culture and to practise their own religion and language.

Article 31 - Leisure, recreation, and cultural activities

The child has the right to leisure, play, and participation in cultural and artistic activities.

Article 32 - Child labour

The child has the right to be protected from work that threatens his or her health, education, or development. The State shall set minimum ages for employment and regulate working conditions.

Article 33 - Drug abuse

Children have the right to protection from the use of narcotic and psychotropic drugs, and from being involved in their production or distribution.

Article 34 - Sexual exploitation

The State shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography.

Article 35 - Sale, trafficking and abduction

It is the State's obligation to make every effort to prevent the sale, trafficking, and abduction of children.

Article 36 - Other forms of exploitation

The child has the right to protection from all forms of exploitation prejudicial to any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.

Article 37 - Torture and deprivation of liberty

No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest, or deprivation of liberty. Both capital punishment and life imprisonment without the possibility for release are prohibited for offenses committed by persons below 18 years. Any child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. A child who is detained shall have legal and other assistance as well as contact with the family.

Article 38 - Armed conflicts

States Parties shall take all feasible measures to ensure that children under 15 years of age have no direct part in hostilities. No child below 15 shall be recruited into the armed forces. States shall also ensure the protection and care of children who are affected by armed conflict as described in relevant international law.

Article 39 - Rehabilitative care

The State has an obligation to ensure that child victims of armed conflicts, torture,

maltreatment, or exploitation receive appropriate treatment for their recovery and social reintegration.

Article 40 - Administration of juvenile justice

A child in conflict with the law has the right to treatment which promotes the child's sense of dignity and worth, takes the child's age into account, and aims at his or her defense. Judicial proceedings and institutional placements shall be avoided wherever possible.

Article 41 - Respect for higher standards

Wherever standards set in applicable national and international law relevant to the rights of the child are higher than those in this Convention, the higher standards shall always apply.

Article 42 - Implementation and entry into force

The provision of articles 42-54 notably foresee: (i) the State's obligation to make the rights contained in this Convention widely known to both adults and children. (ii) the setting up of a Committee on the Rights of the Child composed of ten experts, which will consider reports that States Parties to the Convention are to submit two years after ratification and every five years thereafter. The Convention enters into force - and the Committee would therefore be set up - once 20 countries have ratified it. (iii) States Parties are to make their reports widely available to the general public. (iv) The Committee may propose that special studies be undertaken on specific issues relating to the rights of the child, and may make its evaluation known to each State Party concerned as well as to the UN General Assembly. (v) In order to "foster the effective implementation of the Convention and to encourage international co-operation", the specialized agencies in the UN - such as the International Labour Organisation (ILO), World Health Organization (WHO) and United Nations Educational, Scientific, and Cultural Organization (UNESCO) - and UNICEF would be able to attend the meetings of the Committee. Together with any other body recognized as 'competent', including non-governmental organizations (NGOs) in consultative status with the UN and UN organs such as the United Nations High Commissioner for Refugees (UNHCR), they can submit pertinent information to the Committee and be asked to advise on the optimal implementation of the Convention.

APPENDIX 2

Article 40, UN Convention on the Rights of the Child

1. States Parties recognise the right of every child alleged as, accused of, or recognised 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 recognised 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 recognised 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.

UN Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules'

Adopted by General Assembly resolution 40/33 of 29 November 1985

PART ONE

General principles

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the needs of society;

(c) To implement the following rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

- (a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);
- (b) Juvenile welfare and care proceedings (rule 3.2);
- (c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm

caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and

just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights. Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle (The general contents of rule 8 are further specified in rule 2 1.).

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards-such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application (See also rule 27.).

PART TWO

Investigation and prosecution

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In

many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

12. Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile. Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

PART THREE

Adjudication and disposition

14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he

shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
 - (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
 - (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
 - (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.
- 17.2 Capital punishment shall not be imposed for any crime committed by juveniles.
- 17.3 Juveniles shall not be subject to corporal punishment.
- 17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- (a) Rehabilitation versus just desert;
- (b) Assistance versus repression and punishment;
- (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- (d) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult

cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entire l y, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in

some regions; in those regions measures requiring less staff may be tried or developed. The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort,") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include among others, researchers.

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

PART FOUR

Non-institutional treatment

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'execution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

PART FIVE

Institutional treatment

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts. as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions. Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1 or with some other authority. In view of this, it is adequate to refer here to the "appropriate," rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision

by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

PART SIX

Research, planning, policy formulation and evaluation

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

UN Guidelines for the Prevention of Juvenile Delinquency: the 'Riyadh Guidelines'

Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.
2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.
3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.
4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.
 5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:
 - (a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;
 - (b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;
 - (c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;
 - (d) Safeguarding the well-being, development, rights and interests of all young persons;
 - (e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;
 - (f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.
6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of Government and include the following:

- (a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;
- (b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
- (c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;
- (d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- (e) Methods for effectively reducing the opportunity to commit delinquent acts;
- (f) Community involvement through a wide range of services and programmes;
- (g) Close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;
- (h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;
- (i) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children,

governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

- (c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;
 - (d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;
 - (e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;
 - (f) Provision of information and guidance regarding vocational training, employment opportunities and career development;
 - (g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;
 - (h) Avoidance of harsh disciplinary measures, particularly corporal punishment.
22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.
 23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.
 24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.
 25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.
 26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.
 27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.
 28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.
 29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups.
 30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".
 31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young

persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. RESEARCH, POLICY DEVELOPMENT AND CO-ORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

APPENDIX 5

UN Rules for the Protection of Juveniles Deprived of their Liberty

Adopted by General Assembly resolution 45/113 of 14 December 1990

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 therefor;

(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 testers 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.

UN Resolution 1997/30 - Administration of juvenile justice

Administration of juvenile justice

Economic and Social Council resolution 1997/30

The Economic and Social Council,

Recalling General Assembly resolution 50/181 of 22 December 1995 on human rights in the administration of justice, Commission on Human Rights resolutions 1996/85 of 24 April 1996 1/ and 1997/44 of 11 April 1997, 2/ on the rights of the child, and resolution 7 of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 3/ Recalling also its resolution 1996/13 of 23 July 1996 on the administration of juvenile justice,

Recalling further Commission on Human Rights resolution 1996/32 of 19 April 1996 on human rights in the administration of justice, in particular with regard to children and juveniles in detention, 1/

Welcoming the fact that the Committee on the Rights of the Child attaches particular importance to the question of the administration of juvenile justice and that it has made concrete recommendations concerning the improvement of juvenile justice systems, through action by the Secretariat and other relevant United Nations entities, including the provision of advisory services and technical cooperation,

Noting the importance of advisory services and technical cooperation programmes for assisting States in implementing such recommendations,

Expressing its appreciation to the Government of Austria for having hosted an expert group meeting at Vienna from 23 to 25 February 1997 on the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice,

Recognizing the need to further strengthen international cooperation and technical assistance in the field of juvenile justice,

1. Welcomes the Guidelines for Action on Children in the Criminal Justice System, annexed to the present resolution, which were elaborated by the expert group meeting on the elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice held at Vienna from 23 to 25 February 1997 in response to Economic and Social Council resolution 1996/13 and amended by the Commission on Crime Prevention and Criminal Justice at its sixth session, and invites all parties concerned to make use of the Guidelines in the implementation of the provisions of the Convention on the Rights of the Child 4/ with regard to juvenile justice;

2. Encourages Member States to make use of the technical assistance offered through United Nations programmes, including in particular the United

Nations Crime Prevention and Criminal Justice Programme, in order to strengthen national capacities and infrastructures in the field of juvenile justice, with a view to fully implementing the provisions of the Convention on the Rights of the Child relating to juvenile justice, as well as making effective use and application of the United Nations standards and norms in juvenile justice;

3. Invites the Crime Prevention and Criminal Justice Division of the Secretariat, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund and other relevant United Nations bodies and programmes to give favourable consideration to requests of Member States for technical assistance in the field of juvenile justice;

4. Calls on Member States to contribute financial and other resources to project activities designed to assist in the use of the Guidelines for Action;

5. Invites the Secretary-General to strengthen the system-wide coordination of activities in the field of juvenile justice, including the prevention of juvenile delinquency, particularly with regard to research, dissemination of information, training and the effective use and application of existing standards and norms, as well as the implementation of technical assistance projects;

6. Also invites the Secretary-General to consider establishing a coordination panel on technical advice and assistance in juvenile justice, subject to the availability of regular budget or extrabudgetary funds, as recommended in the Guidelines for Action, which could be convened at least annually with a view to coordinating such international activities in the field of juvenile justice and could consist of representatives of the Committee on the Rights of the Child, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights and the Crime Prevention and Criminal Justice Division of the Secretariat, together with representatives of the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, the United Nations Children's Fund, the United Nations Development Programme and other relevant United Nations organizations and specialized agencies, as well as of other interested intergovernmental, regional and non-governmental organizations, including international networks concerned with juvenile justice issues and academic institutions involved in the provision of technical advice and assistance;

7. Invites the Secretary-General to undertake, subject to the availability of regular budget or extrabudgetary funds and in cooperation with interested Governments, needs assessment missions on the basis of recommendations made by the Committee on the Rights of the Child, with a view to reforming or improving the juvenile justice systems of requesting States, through joint initiatives involving, as required, the Crime Prevention and Criminal Justice Division, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Development Programme, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the World Bank and other

international and regional financial institutions and organizations, as well as non-governmental organizations and academic institutions, including existing international networks concerned with juvenile justice issues, taking into account the advice of any panel established pursuant to paragraph 6 above;

8. Requests those organizations, subject to the availability of regular budget or extrabudgetary funds, as well as interested Governments, to offer assistance through short-, medium- and long-term projects to those States parties to the Convention on the Rights of the Child which the Committee on the Rights of the Child considers to be in need of improvement in their juvenile justice systems and recommends that such projects be undertaken in the context of the report of the States parties concerned on the implementation of the Convention, in accordance with article 44 of the Convention;

9. Invites the governing bodies of the organizations referred to in paragraph 7 above to include in their programme activities a component on juvenile justice, with a view to ensuring the implementation of the present resolution;

10. Requests the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice on the implementation of the present resolution on a biennial basis.

Guidelines for Action on Children in the Criminal Justice System

1. Pursuant to Economic and Social Council resolution 1996/13 of 23 July 1996, the present Guidelines for Action on Children in the Criminal Justice System were developed at an expert group meeting held at Vienna from 23 to 25 February 1997 with the financial support of the Government of Austria. In developing the Guidelines for Action, the experts took into account the views expressed and the information submitted by Governments.

2. Twenty-nine experts from eleven States in different regions, representatives of the Centre for Human Rights of the Secretariat, the United Nations Children's Fund and the Committee on the Rights of the Child, as well as observers for non-governmental organizations concerned with juvenile justice, participated in the meeting.

3. The Guidelines for Action are addressed to the Secretary-General and relevant United Nations agencies and programmes, States parties to the Convention on the Rights of the Child, 5/ as regards its implementation, as well as Member States as regards the use and application of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 6/ the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) 7/ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 8/ hereinafter together referred to as United Nations standards and norms in juvenile justice.

I. AIMS, OBJECTIVES AND BASIC CONSIDERATIONS

4. The aims of the Guidelines for Action are to provide a framework to achieve the following objectives:

- (a) To implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; 9/
- (b) To facilitate the provision of assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments.

5. In order to ensure effective use of the Guidelines for Action, improved cooperation between Governments, relevant entities of the United Nations system, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society is essential.

6. The Guidelines for Action should be based on the principle that the responsibility to implement the Convention clearly rests with the States parties thereto.

7. The basis for the use of the Guidelines for Action should be the recommendations of the Committee on the Rights of the Child.

8. In the use of the Guidelines for Action at both the international and national levels, consideration should be given to the following:

- (a) Respect for human dignity, compatible with the four general principles underlying the Convention, namely: non-discrimination, including gender-sensitivity; upholding the best interests of the child; the right to life, survival and development; and respect for the views of the child;
- (b) A rights-based orientation;
- (c) A holistic approach to implementation through maximization of resources and efforts;
- (d) The integration of services on an interdisciplinary basis;
- (e) Participation of children and concerned sectors of society;
- (f) Empowerment of partners through a developmental process;
- (g) Sustainability without continuing dependency on external bodies;
- (h) Equitable application and accessibility to those in greatest need;
- (i) Accountability and transparency of operations;
- (j) Proactive responses based on effective preventive and remedial measures.

9. Adequate resources (human, organizational, technological, financial and information) should be allocated and utilized efficiently at all levels (international, regional, national, provincial and local) and in collaboration with relevant partners, including Governments, United Nations entities, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society, as well as other partners.

II. PLANS FOR THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD, THE PURSUIT OF ITS GOALS AND THE USE AND APPLICATION OF INTERNATIONAL STANDARDS AND NORMS IN JUVENILE JUSTICE

A. Measures of general application

10. The importance of a comprehensive and consistent national approach in the area of juvenile justice should be recognized, with respect for the interdependence and indivisibility of all rights of the child.

11. Measures relating to policy, decision-making, leadership and reform should be taken, with the goal of ensuring that:

(a) The principles and provisions of the Convention on the Rights of the Child and the United Nations standards and norms in juvenile justice are fully reflected in national and local legislation policy and practice, in particular by establishing a child-oriented juvenile justice system that guarantees the rights of children, prevents the violation of the rights of children, promotes children's sense of dignity and worth, and fully respects their age, stage of development and their right to participate meaningfully in, and contribute to, society;

(b) The relevant contents of the above-mentioned instruments are made widely known to children in language accessible to children. In addition, if necessary, procedures should be established to ensure that each and every child is provided with the relevant information on his or her rights set out in those instruments, at least from his or her first contact with the criminal justice system, and is reminded of his or her obligation to obey the law;

(c) The public's and the media's understanding of the spirit, aims and principles of justice centred on the child is promoted in accordance with the United Nations standards and norms in juvenile justice.

B. Specific targets

12. States should ensure the effectiveness of their birth registration programmes. In those instances where the age of the child involved in the justice system is unknown, measures should be taken to ensure that the true age of a child is ascertained by independent and objective assessment.

13. Notwithstanding the age of criminal responsibility, civil majority and the age of consent as defined by national legislation, States should ensure that children benefit from all their rights, as guaranteed to them by international law, specifically in this context those set forth in articles 3, 37 and 40 of the Convention.

14. Particular attention should be given to the following points:

(a) There should be a comprehensive child-centred juvenile justice process;

(b) Independent expert or other types of panels should review existing and proposed juvenile justice laws and their impact on children;

(c) No child who is under the legal age of criminal responsibility should be subject to

criminal charges;

(d) States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate. Wherever necessary, national legislative and other measures should be considered to accord all the rights of and protection for the child, where the child is brought before a court other than a juvenile court, in accordance with articles 3, 37 and 40 of the Convention.

15. A review of existing procedures should be undertaken and, where possible, diversion or other alternative initiatives to the classical criminal justice systems should be developed to avoid recourse to the criminal justice systems for young persons accused of an offence. Appropriate steps should be taken to make available throughout the State a broad range of alternative and educative measures at the pre-arrest, pre-trial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of child offenders. Whenever appropriate, mechanisms for the informal resolution of disputes in cases involving a child offender should be utilized, including mediation and restorative justice practices, particularly processes involving victims. In the various measures to be adopted, the family should be involved, to the extent that it operates in favour of the good of the child offender. States should ensure that alternative measures comply with the Convention, the United Nations standards and norms in juvenile justice, as well as other existing standards and norms in crime prevention and criminal justice, such as the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 10/ with special regard to ensuring respect for due process rules in applying such measures and for the principle of minimum intervention.

16. Priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, such as interpretation services, and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice.

17. Appropriate action should be ensured to alleviate the problem of children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children of minorities, immigrants and indigenous peoples and other vulnerable groups of children.

18. The placement of children in closed institutions should be reduced. Such placement of children should only take place in accordance with the provisions of article 37 (b) of the Convention and as a matter of last resort and for the shortest period of time. Corporal punishment in the child justice and welfare systems should be prohibited.

19. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty and article 37 (d) of the Convention also apply to any public or private setting from which the child cannot leave at will, by order of any judicial, administrative or other public authority.

20. In order to maintain a link between the detained child and his or her family and

community, and to facilitate his or her social reintegration, it is important to ensure easy access by relatives and persons who have a legitimate interest in the child to institutions where children are deprived of their liberty, unless the best interests of the child would suggest otherwise.

21. An independent body to monitor and report regularly on conditions in custodial facilities should be established, if necessary. Monitoring should take place within the framework of the United Nations standards and norms in juvenile justice, in particular the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. States should permit children to communicate freely and confidentially with the monitoring bodies.

22. States should consider positively requests from concerned humanitarian, human rights and other organizations for access to custodial facilities, where appropriate.

23. In relation to children in the criminal justice system, due account should be taken of concerns raised by intergovernmental and non-governmental organizations and other interested parties, in particular systemic issues, including inappropriate admissions and lengthy delays that have an impact on children deprived of their liberty.

24. All persons having contact with, or being responsible for, children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention and other United Nations standards and norms in juvenile justice as an integral part of their training programmes. Such persons include police and other law enforcement officials; judges and magistrates, prosecutors, lawyers and administrators; prison officers and other professionals working in institutions where children are deprived of their liberty; and health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice.

25. In the light of existing international standards, States should establish mechanisms to ensure a prompt, thorough and impartial investigation into allegations against officials of deliberate violation of the fundamental rights and freedoms of children. States should equally ensure that those found responsible are duly sanctioned.

C. Measures to be taken at the international level

26. Juvenile justice should be given due attention internationally, regionally and nationally, including within the framework of the United Nations system-wide action.

27. There is an urgent need for close cooperation between all bodies in this field, in particular, the Crime Prevention and Criminal Justice Division of the Secretariat, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High

Commissioner for Refugees, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the International

Labour Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization. In addition, the World Bank and other international and regional financial institutions and organizations, as well as non-governmental organizations and academic institutions, are invited to support the provision of advisory services and technical assistance in the field of juvenile justice. Cooperation should therefore be strengthened, in particular with regard to research, dissemination of information, training, implementation and monitoring of the Convention on the Rights of the Child and the use and application of existing standards, as well as with regard to the provision of technical advice and assistance programmes, for example by making use of existing international networks on juvenile justice.

28. The effective implementation of the Convention on the Rights of the Child, as well as the use and application of international standards through technical cooperation and advisory service programmes, should be ensured by giving particular attention to the following aspects related to protecting and promoting human rights of children in detention, strengthening the rule of law and improving the administration of the juvenile justice system:

- (a) Assistance in legal reform;
- (b) Strengthening national capacities and infrastructures;
- (c) Training programmes for police and other law enforcement officials, judges and magistrates, prosecutors, lawyers, administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice;
- (d) Preparation of training manuals;
- (e) Preparation of information and education material to inform children about their rights in juvenile justice;
- (f) Assistance with the development of information and management systems.

29. Close cooperation should be maintained between the Crime Prevention and Criminal Justice Division and the Department of Peacekeeping Operations of the Secretariat in view of the relevance of the protection of children's rights in peacekeeping operations, including the problems of children and youth as victims and perpetrators of crime in peace-building and post-conflict or other emerging situations.

D. Mechanisms for the implementation of technical advice and assistance projects

30. In accordance with articles 43, 44 and 45 of the Convention, the Committee on the Rights of the Child reviews the reports of States parties on the implementation of the Convention. According to article 44 of the Convention, these reports should indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Convention.

31. States parties to the Convention are invited to provide in their initial and periodic reports comprehensive information, data and indicators on the implementation of the provisions of the Convention and on the use and application of the United Nations standards and norms in juvenile justice. 11/

32. As a result of the process of examining the progress made by States parties in fulfilling

their obligations under the Convention, the Committee may make suggestions and general recommendations to the State party to ensure full compliance with the Convention (in accordance with article 45 (d) of the Convention). In order to foster the effective implementation of the Convention and to encourage international cooperation in the area of juvenile justice, the Committee transmits, as it may consider appropriate, to 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 advisory services and technical assistance, together with observations and suggestions of the Committee, if any, on those requests or indications (in accordance with article 45 (b) of the Convention).

33. Accordingly, should a State party report and the review process by the Committee reveal any necessity to initiate reform in the area of juvenile justice, including through assistance by the United Nations technical advice and assistance programmes or those of the specialized agencies, the State party may request such assistance, including assistance from the Crime Prevention and Criminal Justice Division, the Centre for Human Rights and the United Nations Children's Fund.

34. In order to provide adequate assistance in response to those requests, a coordination panel on technical advice and assistance in juvenile justice should be established, to be convened at least annually by the Secretary-General. The panel will consist of representatives of the Division, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network and other relevant United Nations entities, as well as other interested intergovernmental, regional and non-governmental organizations, including international networks on juvenile justice and academic institutions involved in the provision of technical advice and assistance, in accordance with paragraph 39 below.

35. Prior to the first meeting of the coordination panel, a strategy should be elaborated for addressing the issue of how to activate further international cooperation in the field of juvenile justice. The coordination panel should also facilitate the identification of common problems, the compilation of examples of good practice and the analysis of shared experiences and needs, which in turn would lead to a more strategic approach to needs assessment and to effective proposals for action. Such a compilation would allow for concerted advisory services and technical assistance in juvenile justice, including an early agreement with the Government requesting such assistance, as well as with all other partners having the capacity and competence to implement the various segments of a country project, thus ensuring the most effective and problem-oriented action. This compilation should be developed continuously in close cooperation with all parties involved. It will take into account the possible introduction of diversion programmes and measures to improve the administration of juvenile justice, to reduce the use of remand homes and pre-trial detention, to improve the treatment of children deprived of their liberty and to create effective reintegration and recovery programmes.

36. Emphasis should be placed on formulating comprehensive prevention plans, as called for

in the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). 12/ Projects should focus on strategies to socialize and integrate all children and young persons successfully, in particular through the family, the community, peer groups, schools, vocational training and the world of work. These projects should pay particular attention to children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children of minorities, immigrants and indigenous peoples and other vulnerable groups of children. In particular, the placement of these children in institutions should be proscribed as much as possible. Measures of social protection should be developed in order to limit the risks of criminalization for these children.

37. The strategy will also set out a coordinated process for the delivery of international advisory services and technical assistance to States parties to the Convention, on the basis of joint missions to be undertaken, whenever appropriate, by staff of the different organizations and agencies involved, with a view to devising longer term technical assistance projects.

38. Important actors in the delivery of advisory services and technical assistance programmes at the country level are the United Nations resident coordinators, with significant roles to be played by the field offices of the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund and the United Nations Development Programme. The vital nature of the integration of juvenile justice technical cooperation in country planning and programming, including through the United Nations country strategy note, is emphasized.

39. Resources must be mobilized for both the coordinating mechanism of the coordination panel and regional and country projects formulated to improve observance of the Convention. Resources for those purposes (see paragraphs 34 to 38 above) will come either from regular budgets or from extrabudgetary resources. Most of the resources for specific projects will have to be mobilized from external sources.

40. The coordination panel may wish to encourage, and in fact be the vehicle for, a coordinated approach to resource mobilization in this area. Such resource mobilization should be on the basis of a common strategy as contained in a programme document drawn up in support of a global programme in this area. All interested United Nations bodies and agencies as well as non-governmental organizations that have a demonstrated capacity to deliver technical cooperation services in this area should be invited to participate in such a process.

E. Further considerations for the implementation of country projects

41. One of the obvious tenets in juvenile delinquency prevention and juvenile justice is that long-term change is brought about not only when symptoms are treated but also when root causes are addressed. For example, excessive use of juvenile detention will be dealt with adequately only by applying a comprehensive approach, which involves both organizational

and managerial structures at all levels of investigation, prosecution and the judiciary, as well as the penitentiary system. This requires communication, inter alia, with and among police, prosecutors, judges and magistrates, authorities of local communities, administration authorities and with the relevant authorities of detention centres. In addition, it requires the will and ability to cooperate closely with each other.

42. To prevent further overreliance on criminal justice measures to deal with children's behaviour, efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes. To establish and apply such programmes, it is necessary to foster close cooperation between the child justice sectors, different services in charge of law enforcement, social welfare and education sectors.

III. PLANS CONCERNED WITH CHILD VICTIMS AND WITNESSES

43. In accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 13/ States should undertake to ensure that child victims and witnesses are provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance. If applicable, measures should be taken to prevent the settling of penal matters through compensation outside the justice system, when doing so is not in the best interests of the child.

44. Police, lawyers, the judiciary and other court personnel should receive training in dealing with cases where children are victims. States should consider establishing, if they have not yet done so, specialized offices and units to deal with cases involving offences against children. States should establish, as appropriate, a code of practice for proper management of cases involving child victims.

45. Child victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.

46. Child victims should have access to assistance that meets their needs, such as advocacy, protection, economic assistance, counselling, health and social services, social reintegration and physical and psychological recovery services. Special assistance should be given to those children who are disabled or ill. Emphasis should be placed upon family- and community-based rehabilitation rather than institutionalization.

47. Judicial and administrative mechanisms should be established and strengthened where necessary to enable child victims to obtain redress through formal or informal procedures that are prompt, fair and accessible. Child victims and/or their legal representatives should be informed accordingly.

48. Access should be allowed to fair and adequate compensation for all child victims of

violations of human rights, specifically torture and other cruel, inhuman or degrading treatment or punishment, including rape and sexual abuse, unlawful or arbitrary deprivation of liberty, unjustifiable detention and miscarriage of justice. Necessary legal representation to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary, should be available.

49. Child witnesses need assistance in the judicial and administrative processes. States should review, evaluate and improve, as necessary, the situation for children as witnesses of crime in their evidential and procedural law to ensure that the rights of children are fully protected. In accordance with the different law traditions, practices and legal framework, direct contact should be avoided between the child victim and the offender during the process of investigation and prosecution as well as during trial hearings as much as possible. The identification of the child victim in the media should be prohibited, where necessary to protect the privacy of the child. Where prohibition is contrary to the fundamental legal principles of Member States, such identification should be discouraged.

50. States should consider, if necessary, amendments of their penal procedural codes to allow for, inter alia, videotaping of the child's testimony and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates should apply more child-friendly practices, for example, in police operations and interviews of child witnesses.

51. The responsiveness of judicial and administrative processes to the needs of child victims and witnesses should be facilitated by:

- (a) Informing child victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved;
- (b) Encouraging the development of child witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal process;
- (c) Allowing the views and concerns of child victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and in accordance with the relevant national criminal justice system;
- (d) Taking measures to minimize delays in the criminal justice process, protecting the privacy of child victims and witnesses and, when necessary, ensuring their safety from intimidation and retaliation.

52. Children displaced illegally or wrongfully retained across borders are as a general principle to be returned to the country of origin. Due attention should be paid to their safety, and they should be treated humanely and receive necessary assistance, pending their return. They should be returned promptly to ensure compliance with the Convention on the Rights of the Child. Where the Hague Convention on the Civil Aspects of International Child Abduction of 1980^{14/} or the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993, approved by the Hague Conference

on Private International Law, the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of the Child are applicable, the provisions of these conventions with regard to the return of the child should be promptly applied. Upon the return of the child, the country of origin should treat the child with respect, in accordance with international principles of human rights, and offer adequate family-based rehabilitation measures.

53. The United Nations Crime Prevention and Criminal Justice Programme, including the institutes comprising the Programme network, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the United Nations Educational, Scientific and Cultural Organization, the World Bank and interested non-governmental organizations should assist Member States, at their request, within the overall appropriations of the United Nations budgets or from extrabudgetary resources, in developing multidisciplinary training, education and information activities for law enforcement and other criminal justice personnel, including police officers, prosecutors, judges and magistrates.

APPENDIX 7

UN Minimum Rules for Non-Custodial Measures: the 'Tokyo Rules'

Adopted by General Assembly resolution 45/110 of 14 December 1990

I. GENERAL PRINCIPLES

1. Fundamental aims

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

2. The scope of non-custodial measures

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards

depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

3. Legal safeguards

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

4. Saving clause

4.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

II. PRE-TRIAL STAGE

5. Pre-trial dispositions

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the

offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable noncustodial measures, as appropriate.

6. Avoidance of pre-trial detention

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

III. TRIAL AND SENTENCING STAGE

7. Social inquiry reports

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a range of noncustodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

IV. POST-SENTENCING STAGE

9. Post-sentencing dispositions

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

- (a) Furlough and half-way houses;
- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

10. Supervision

10.1 The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

11. Duration

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

12. Conditions

12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and of increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall

receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

13. Treatment process

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

14. Discipline and breach of conditions

14.1 A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

VI. STAFF

15. Recruitment

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and,

whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

16. Staff training

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

17. Public participation

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18. Public understanding and cooperation

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote noncustodial measures.

18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

19. Volunteers

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other

appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

20. Research and planning

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policy-makers should be carried out on a regular basis. 20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

21. Policy formulation and programme development

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively .

21.3 Periodic reviews should be concluded to assess the objectives, functioning and effectiveness of non-custodial measures.

22. Linkages with relevant agencies and activities

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for noncustodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

23. International cooperation

23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.

Save the Children policy on justice for children

Justice is a crucial, although often neglected area of social policy for SCF. It encompasses basic rights issues, which are often linked to problems of social exclusion and marginalisation, as well as crime and the way that society and the state respond to children who are in conflict with the law. This policy is therefore concerned with juvenile justice and related questions of deviance, social control and service provision.

Problems facing the reform of the juvenile justice sector are numerous and complex. With rapid urbanisation, changing employment patterns, and a growing international trade in narcotics, youth crime has become a contentious issue at a global level. Governments, civil society, the media, and victims of crime all have concerns and frequently seek remedies that are at odds with the Convention on the Rights of the Child (CRC). However, investment in new approaches is rarely a priority, when set against macro economic concerns and the political sensitivity of any questions relating to crime and public order.

SCF has worked on child law reform in a number of countries, and many of its programmes focus on groups of children who often come into conflict with the law, (and may be criminalised under local legal systems): notably street children, children involved in exploitative/high risk labour and child soldiers. This has included advice and support to probation services, reform of justice systems, research led by children who have experienced the justice system and training of police, magistrates and others involved in the legal process.

However, the challenge of achieving sustainable change throughout the justice system, where there are severe budgetary constraints, weak judicial systems, and little awareness of children's rights, are immense. This SCF policy is primarily concerned with issues of protection and rights for children who become involved with criminal justice systems. The overriding problem is that most of these systems are grounded in concepts of retribution and deterrence, rather than prevention, protection and the child's best interests, as embodied in the CRC.

Juvenile Justice: the problems

Although there is no simple equation linking poverty and crime, close correlations between juvenile crime and poverty, unemployment, urbanisation and poor housing have been widely observed. Targeted investment in jobs and human development is unquestionably needed to mitigate the conditions that lead to crime.

While many families have benefited from expanding market economies and have enjoyed new levels of wealth, the effect of globalisation and market liberalisation has generally been to increase the gap between rich and poor, and to introduce new insecurities for all age groups. The pressures on the family are observed in family breakdown, growing numbers of children working and living on the streets, and an increasing involvement of young people in crime.

For many children this situation is made worse by criminal justice systems that seek to keep

children off the streets, labelling them as 'delinquents' or vagrants. In these circumstances, the symptoms of poverty such as begging or homelessness are treated as criminal offences and children summarily placed in re-education centres or remand homes. Finally, the breakdown of civil order and situations of armed conflict where there is no system of justice, creates special problems for children. It increases their access to weapons, the risk of abduction or enticement into military service, and exposure to violent summary justice. In these situations there is little or no protection.

Among the specific problems for children identified through SCF's work in this sector are:

- an inappropriate legal framework, that does not meet the standards of international law
- non - implementation of legislation that is appropriate and beneficial
- children locked up in adult prisons and/or with adults in police cells
- children subjected to violence and abuse while being detained
- inappropriate use of custody
- complex court procedures and no access to defence counsel
- insufficient use of bail and bail support programmes
- long delays between arrest, remand and trial due to neglect and inertia
- dominance in some countries of unregulated and sometimes brutal traditional systems
- insufficient use of alternatives to custody
- severed contacts with parents and relatives

The guiding principles

1) SCF supports activities for preventing and reducing children's involvement in crime, that are based on social development, human resource development and the reform of criminal justice systems. In addition to this, children themselves can play a crucial role the reduction of crime, both through the empowerment of child victims of crime, and the participation of juvenile offenders in schemes of restorative justice.

2) SCF recognises the value and importance of the CRC in providing principles of equity, non-discrimination and justice for children. However, in situations of armed conflict, SCF calls for greater protection in International Law for children as victims and perpetrators of violence.

3) SCF supports the implementation of the International Rules and Guidelines developed on Juvenile Justice:

- UN Standard Minimum Rules for the Administration of Juvenile Justice - the Beijing Rules
- UN Guidelines for the Prevention of Juvenile Delinquency - the Riyadh Guidelines
- UN Minimum Rules for Non-Custodial Measures - the Tokyo Rules
- UN Rules for the Protection of Juveniles Deprived of their Liberty

4) Within the framework of the CRC and SCF's global programme strategy, it is SCF

policy to support juvenile justice work according to the following principles:

- Children's rights, needs and interests should be the benchmark against which all policy and programme policy decisions are judged.
- Many aspects of policy work that relate to juvenile justice require a statutory framework. It is SCF policy to support changes in national legislation where there is clear indication that changes can be implemented, and/or that the existence of an agreed benchmark will influence change in the long term.
- Juvenile Justice interventions should normally be within the financial and institutional capacity of local communities or national/local government to sustain.
- It is SCF policy to collaborate with strategically selected partners (eg government, parliamentary lobby groups, UN bodies, local NGOs, international NGOs, donors and professional bodies) in its efforts to promote change for children through juvenile justice work.

5) SCF believes that, wherever possible, children should be kept out of the justice system. It is SCF policy:

- to support programmes that divert children from the criminal justice system
- to support measures that decriminalise the behaviour of children, abolish status offences (eg vagrancy, or being beyond parental control), and increase the age of criminal responsibility
- to support procedures for children within the justice system that are appropriate to their age and level of understanding
- to promote the reintegration of children who have been in prison/secure units or re-education centres
- to challenge and speak out against injustice, violence and abuse inflicted on children during the criminal justice process
- to promote the understanding within communities of the negative impact of custody and the detention of children

6) SCF believes that custody should be used as a last resort and for the shortest possible time. It is therefore SCF policy

- to support appropriate, community based sentencing and restorative justice
- to promote government policies that minimise and regulate the use of custody
- to promote research at country level, on the impact of different custodial and non custodial strategies.
- to challenge inappropriate donor interventions eg building residential institutions or custody units
- to ensure that others interested in children's issues, including the media, are kept accurately and regularly informed of any abuse of children's rights occurring in custodial settings.

Since one of the main objectives of SCF's work in juvenile justice is to promote non custodial, community based responses, SCF will only support work in prisons and reformatories where this is part of a wider policy dialogue . Any work in custodial institutions should promote constructive, educational activities that conform to the CRC and international standards.

7) It is SCF's policy to promote research and interventions:

- that increase the organisation's knowledge of informal systems of justice which through negotiation, reconciliation, and restoration have been effective in providing justice for children in urban and rural societies
 - that provide information on juvenile justice at a local level with regard to the use of custody and punishments given to children
 - that reflect children's own experience and involve children in the design and implementation of research
 - that show the impact on re-offending of different types of sentencing in developing countries
 - that provide analysis of interventions promoting reconciliation and justice for children involved in conflicts
 - that increase SCF's knowledge of crime and systems of justice across a range of legal systems in all regions
- 8) SCF recognises that child law reform is not an end in itself. It is SCF policy
- To support and promote measures to implement new laws through training, awareness raising and capacity building at all levels and across all sectors
 - To support and promote monitoring, research and evaluation of the impact of child law reform
- 9) SCF deplores the criminalisation of children who are exploited for commercial sex
- 10) SCF is opposed to corporal punishment in all circumstances

REFERENCES

- Abramson, B.** Juvenile Justice: The 'unwanted child' of state responsibilities, International Network on Juvenile Justice, Defence for Children International.
- Allen, D.** (1999) Networking in the NGO Community, International Interdisciplinary Course on Children's Rights, University of Ghent, available from: www.crin.org/docs/resources/treaties/CRC.25/Annex-VI-CRIN.htm
- Goldson, B. and Peters, E.** (2001) Tough Justice: Responding to children in trouble, The Children's Society.
- Gosling, L. with Edwards, M** (2003) Toolkits: A Practical guide to planning, monitoring, evaluation and impact assessment, Save the Children UK.
- Hoffmann, M.** (2002) Juvenile Justice in Post-Conflict Situations: A huge challenge, Juvenile Justice Project, Consortium for Street Children.
- Lepiten, M.** (2002) A Rapid Assessment: Children's involvement in the production, sale and trafficking of drugs in Cebu city, International Programme on the Elimination of Child Labour, International Labour Organization.
- Melchiorre, A.** (2002) At What Age?...: ...Are school children employed, married and taken to court?, Right to Education.
- Ordonez, D.** (1999) 'Family structure problems, child mistreatment, street children and drug use: a community-based approach', in Prevention of Street Migration, Consortium for Street Children UK, University of Cork, Ireland.
- Roy, N.** (2002) 'India's juvenile justice laws', in Children in Globalising India, Centre for Child Rights, New Delhi.
- Skelton, A.** (1999) 'Juvenile justice reform: children's rights and responsibilities versus crime control', in J Davel (ed) Children's Rights in a Traditional Society, Protea publishing, South Africa.
- Thacker, R.** (1998) 'Traditional justice systems', in C Petty and M Brown (eds) Justice for Children: Challenges for policy and practice in sub-Saharan Africa, Save the Children UK.
- Wadri, K** (1998) 'Introducing child rights through law reform in Uganda', in C Petty and M Brown (eds) Justice for Children: Challenges for policy and practice in sub-Saharan Africa, Save the Children UK.
- Amnesty International (1995) Childhood Stolen: Grave human rights violations against children, British Section, Amnesty International.
- Department for International Development** (1999-2000) Justice and Poverty Reduction: Safety, security and access to justice for all, Department for International Development, UK.

Justice (2000) Restoring Youth Justice: New directions in domestic and international law and practice, Justice, UK.

National Institute for Crime Prevention and the Rehabilitation of Offenders (1994) Diversions: An introduction to diversion from the criminal justice system, National Institute for Crime Prevention and the Rehabilitation of Offenders, South Africa.

National Probation Service (2001) Handbook for Probation Board Members, 3rd edition, National Probation Service, UK.

UNICEF (1995) The United Nations Convention on the Rights of the Child Implementation Handbook, UNICEF.

UNICEF (1995) Innocenti Digest 3: Juvenile Justice, UNICEF International Child Development Centre, Florence, Italy.

UNICEF and Save the Children (2000) Juvenile Justice in Uganda: A situation analysis.

UNICEF and Save the Children UK (2003) Young People in Conflict with the Law - a Review of Practice and Legislation in BiH in relation to International Standards

US Department of Justice (2001) Breaking the Juvenile Drug-Crime Cycle: A guide for practitioners and policymakers, National Institute of Justice, Office of Justice Programmes, US Department of Justice.

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