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INTERNATIONAL INSTRUMENTS IN THE FIELD OF JUVENILE JUSTICE

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I. INTRODUCTION — WHAT ARE INTERNATIONAL INSTRUMENTS?

International instruments in the field of juvenile justice aim to realize the best ways to protect the rights of the juvenile (child). Those which provide a comprehensive framework of juvenile justice are as follows.

The Convention on the Rights of the Child (General Assembly resolution 44/25), to which 191 States have become parties, is the principal binding treaty that sets out all the rights to which Governments have agreed that children are entitled. Three additional sets of rules adopted by the global community provide greater detail on the dally operation of juvenile justice. Those rules are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112, annex). Those rules, together with the Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex) and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex.)

II. A BRIEF HISTORY OF INTERNATIONAL INSTRUMENTS ON CHILDREN

A. Early Development of International Instruments on Children

The development of international instruments (laws) focusing on children reflect the evolution in the concept of childhood which has occurred since the beginning of the twentieth century. The earliest instruments focused on the protection of children but provided only piecemeal protection from specific forms of economic and sexual exploitation. In 1919 the International Labor Conference adopted the Minimum Age Convention followed two years later by the adoption by the League of Nations of the International Convention for the Suppression of Traffic in Women and Children 1921.

The 1924 Geneva Declaration was entitled the 'Rights of the Child.' It is principally concerned with the provision of children's economic, social and psychological needs. Hence the language is more appropriate to the field of child welfare. The 1924 Declaration of the Rights of the Child reflects the then unquestioned assumption that Children could and should rely upon the exclusive protection of adults to ensure the exercise of their rights. This assumption persisted and is reflected in the Declaration of the Rights of the Child 1959 as well as in many of the public and private international law treaties adopted in the 1900's and in the first half of the 1970's.

B. Alteration of Point of View - Children as Objects and not Subjects of Rights

In reality, children continued to be perceived as the objects and not the subjects of international law long after adults had been accorded subject status. Article 24 of the International Covenant on Civil and Political Rights 1966, the article focusing exclusively on children, and the other child provisions of the Covenant concentrate on the protection of children rather than the means by which they could become more autonomous. Until 1979 the child's perspective is either absent or assumed to be coterminous with that of adults.

C. Recent Trend of International Instruments - a Child Rights Perspective

Although many United Nations proclaimed international years have passed without much achievement, the proclamation of 1979 as the International Year of the Child, in retrospect, appeared to act as a catalyst for the international community to begin examining the international laws on children from a child rights perspective. The emergence of this new approach began cautiously. Both at a regional level with the adoption of the European Convention on the Legal Status of Children born out of Wedlock 1975 and the Declaration on the Rights and Welfare of the African Child 1979 and at a global level with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) 1985.

The pace began to gather momentum as the United Nations came closer to concluding its drafting of the Convention on the Rights of the Child 1989 in which children for the first time were acknowledged by the international community as holders of a specific body of identifiable rights. Not only in the more traditional areas of prevention, protection and provision rights but also acknowledging their participation rights.

The drafting of the Convention on the Rights of the Child and the speed by which the treaty entered into force led to the international community examining the international laws on children/ juveniles from a child rights perspective. From the early 1980's re-evaluation occurred in a number of specific areas including juvenile justice. Standards were raised in the child protection, provision and prevention areas.

D. Re-evaluation in the Juvenile Justice Field

(1) Movement of Re-evaluation

A re-evaluation occurred in the juvenile justice field as follows. Provisions on juvenile justice are absent from both the 1924 and the 1959 Declarations of the Rights of the Child. It was not until the adoption of the International Covenant on Civil and Political Rights in 1966 that provisions regulating the administration of juvenile justice were enshrined in a global treaty.

These provisions, although useful, are limited in their focus concentrating on the separation of juveniles and adults and providing that trial procedures for juveniles should take account of the age of the juvenile and the desirability of promoting rehabilitation.

Similarly the European Convention on Human Rights incorporates the exception to the open justice principle, later reiterated in the International Covenant, allowing juvenile proceedings to be held in camera and article 5 of the European Convention allows states parties to detain 'minors' for the purposes of educational supervision.

(2) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)

As states began to establish their own juvenile justice systems, the need became apparent during the 1980's for an international coherent framework within which states would be able to operate their systems of juvenile justice. In 1985, the General Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice known as the Beijing Rules which provide a model for states of a humane response to juveniles who may find themselves in conflict with the law. Some of the Rules have been incorporated into the Convention on the Rights of the Child. Hence the duty on states parties to establish a minimum age for criminal responsibility has been strengthened by virtue of being enshrined in article 40(3)(a) of the Convention.

(3) The Convention on the Rights of the Child

States are also beginning to accept limitations placed on their discretion in both the use and the length of time for which children can be deprived of their liberty in comparison to adults children are even more 'highly vulnerable to abuse, victimization and the violation of their rights'. These limitations are found in article 37(a) and (b) of the Convention on the Rights of the Child and emphasize that the detention or imprisonment of children should only be as a measure of last resort and only for the shortest appropriate period of time. In addition states parties are prohibited from imposing life imprisonment without the possibility of release.

(4) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Despite the provisions of the Convention, there still remained a paucity of detailed international law protecting the rights of children deprived of their liberty. In 1981 the British Section of Amnesty International produced draft rules for the protection of children deprived of their liberty and enlisted the willing support of other non-governmental organizations in lobbying for their adoption by the international community. The initiative of the non-governmental organizations resulted in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty which set out a detailed code on the management and conditions of all forms of institutions, penal and otherwise, in which children are deprived of their liberty. Their drafting and subsequent adoption provided the Secretary-General of the United Nations with a legislative framework within which he was able to appoint a Special Rapporteur on the application of international standards concerning the human rights of detained juveniles.

(5) The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)

States are also beginning to accept guidance on preventive policies which seek to prevent children coming into conflict with the law. As well as being an unusual area for international law to enter, it is a field fraught with hidden dangers. There is the risk that the aims of prevention could be abused and the wafer-thin line dividing prevention and indoctrination be crossed. These risks are enhanced by the lack of a commonly accepted precise meaning of the term 'delinquency'. The United Nations Guidelines for the Prevention of Juvenile Delinquency otherwise known as the Riyadh Guidelines aims at protecting those who are abandoned, neglected, abused or who live in marginal circumstances. The Guidelines focus on early protection and preventive intervention paying particular attention to children in situations of 'social risk'. Together the Riyadh Rules, the Beijing Rules and the Deprivation of Liberty Rules form a triptych on which is sketched a coherent and humane approach to child justice.

III. THE PRINCIPAL JUVENILE JUSTICE INSTRUMENTS

1. Convention on the Rights of the Child

(1) Main Four Principles of the Convention

The Convention on the Rights of the Child entered into force on 2 September 1990. Its provisions bind One hundred and ninety-one States, which means that States parties are committed to adopting all necessary measures to ensure that children enjoy all the rights set forth in the Convention. States are required to harmonize their national laws, procedures and policies with the provisions of the Convention.

The Convention protects the civil, political, economic, social and cultural rights of the child in peace and armed conflict. Although the Convention is lengthy, the rights enshrined in it may, for convenience, be divided into four principal approaches (also referred to as the "four Ps"), as follows:

(1) the participation of children in decisions affecting their own destiny;

(2) the protection of children against discrimination and all forms of neglect and exploitation;

(3) the prevention of harm to children;

(4) the provision of assistance for their basic needs.

The breakdown of the Convention in this way is useful, since, in addition to making the treaty easy to explain and digest for both children and adults, a duty expressly placed upon Governments by the Convention, the four specified areas involve the four principal complementary approaches to children's rights, namely, participation, protection, prevention and provision. Those four approaches apply equally to juvenile justice. It is not a question of prevention or protection or participation or provision: all are equally necessary when applied appropriately.

(2) A Holistic Approach

The Convention on the Rights of the Child enshrines the full range of civil, political, economic, social and cultural rights. It stresses a holistic approach to children's rights. All rights are indivisible and related, and this has important implications for juvenile justice, as it implies that all rights must be considered for children in the criminal justice system, from their right to freedom of expression to their right to the highest attainable standard of health.

(3) Five Major Goals of the Convention

An analysis of the Convention reveals that it achieves five goals.

(a) It creates new rights for children under international law where no such rights existed, including the right of the child to preserve his or her identity and the right of indigenous children to practice their own culture (articles 8 and 30).

(b) Secondly, the Convention enshrines in a global treaty rights that, until the adoption of the Convention, had only been acknowledged or refined in case law under regional human rights treaties, for example, the right of a child to be heard either directly or indirectly in any judicial or administrative proceedings affecting that child, and to have those views taken into account (article 12).

(c) Thirdly, the Convention creates in areas of concern binding standards that, until the entry into force of the Convention, were only non-binding recommendations. They include safeguards in adoption procedures and recognition of the rights of mentally and physically disabled children (articles 21 and 23).

(d) Fourthly, the Convention enshrines umbrella principles that apply to all children in relation to the exercise of all their rights. Areas covered by the principles include the best interests of the child, the evolving capacities of the child, the right of children to participate in decisions and non-discrimination. Those areas are explained under umbrella principles (see section C below).

(e) Fifthly, the Convention also contains specific articles on juvenile justice, including articles 37, 39 and 40.

(4) Rights against Inhuman or Degrading Treatment and Punishment

Article 37 of the Convention specifies that children are not to be subject to torture or other cruel, inhuman or degrading treatment and punishment. The death penalty and life imprisonment for children without the possibility of release is prohibited.

Children should not be unlawfully or arbitrarily deprived of their liberty. If in custody, children are to be separated from adults, unless it is considered in the child's best interest not to do so. All children deprived of their liberty are to be treated with humanity and respect and in a manner that takes into account their needs. Such humanity includes the right to prompt legal and other assistance, such as medical and psychological services.

Article 37 also provides that deprivation of liberty for children can only be used as a measure of last resort and for the shortest appropriate time.

(5) Rights of the Child as a Victim

Article 39 focuses the attention of States on children as victims of crime, an aspect of criminal justice that is often overlooked. Article 39 requires all States parties to take appropriate measures to promote physical and psychological recovery and social reintegration for child victims of abuse, neglect, torture or any other form of cruel, inhuman or degrading treatment or punishment. Such recovery and reintegration ought to occur in an environment which fosters the health, self-respect and dignity of the child.

(6) Rights of Children in Conflict with the Law

Article 40 provides that children in conflict with the law should be treated in a manner which promotes the child's sense of dignity and worth, takes age into account, and aims at the child's assuming a constructive role in society. The article also enshrines the minimum guarantees of due process of law including the presumption of innocence, provision of clear and prompt information about the nature of the charges, availability of legal or other assistance, proceedings conducted without delay, the right to silence, the right to cross-examine witnesses, equality for the witnesses of the defense, the right of appeal and the right of the child to have his or her privacy respected at all stages of the proceedings.

Article 40 also promotes the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as having infringed the penal law. States are also to establish a minimum age below which children should not be presumed criminally responsible. Article 40 further highlights the desirability of diverting children away from formal justice procedures and from institutionalization.

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

(1) Main Characteristics of the Beijing Rules

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4, called for the development of standard minimum rules for the administration of juvenile justice. By its resolution 40/33 of 29 November 1985, the General Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules. The Beijing Rules provide, as intended, a framework within which a national juvenile justice system should operate and a model for States of a fair and humane response to children who may find themselves in conflict with the law.

The Beijing Rules, which are divided into six parts, cover the whole range of the juvenile justice processes, including: general principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment and research and planning; policy formulation; and evaluation.

The Beijing Rules are gender-sensitive and advocate the fair treatment of girls, as research demonstrates that girls are more harshly treated and are more vulnerable to sexual assault in custody by predominately male personnel. The Beijing Rules require gender-specific facilities and services.

The Beijing Rules also call for trained and professional personnel, inter-agency coordination and the use of research as a basis for program development, evaluation policy and decision-making.

It is an oversimplification to conclude that because the Beijing Rules are not a treaty they are as an entire body of rules non-binding per se. Some of the rules have become binding on States parties by being incorporated into the Convention on the Rights of the Child; others can be treated not as establishing new rights but as providing more detail on the contents of existing rights.

(2) Implementation of the Beijing Rules

The General Assembly also seeks to make the Beijing Rules more enforceable by providing mechanisms to advise States on methods of implementation. There is, for example, some scope for monitoring the implementation of the Beijing Rules. States are invited to inform the Secretary-General every five years on the application of the Rules. Under the rules, a State may request the assistance of the Secretary-General in adapting legislation and policies and in the development of alternatives to institutionalization. Such a service was made available because the rules recognize that existing legislation and policies may require review and amendment in light of the standards enshrined in the rules. States are also requested to provide the necessary resources to ensure the successful implementation of the rules, and non-governmental organizations are urged to collaborate to implement the principles.

C. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty

(1) Background of the Rules

The Standard Minimum Rules for the Treatment of Prisoners, held at Geneva in 1955, provide "what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions", as indicated in preliminary observation I of the rules. It is acknowledged, in preliminary observation 5(1), that the rules do not seek to regulate the management of institutions set aside for young persons, although "in general part I would be equally applicable to such institutions".

It became widely recognized after 1955 that there was a need for international rules regulating the deprivation of liberty, since the Standard Minimum Rules for the Treatment of Prisoners were insufficiently child-oriented. The Standard Minimum Rules for the Treatment of Prisoners are based on assumptions which are now considered inappropriate for children. The rules assume that adult institutions are capable of housing a large number of prisoners, while contemporary child justice theory and practice stresses the opposite: the need for small units integrated into the community and simulating family-like living arrangements. The Standard Minimum Rules for the Treatment of Prisoners also contain little guidance as to how the objectives of treatment are to be provided.

The adoption of the Beijing Rules, although aimed at the protection of the rights of children in the administration of justice, were never intended to provide a thorough, systematic and practical approach to the conditions under which children could be deprived of liberty. Because of the paucity of detailed international law protecting the rights of children deprived of their liberty, the British Section of Amnesty International in 1981 produced draft standard minimum rules for the protection of juveniles deprived of their

liberty, and enlisted the support of other non-governmental organizations. Taking as a model their work in the drafting of the Convention on the Rights of the Child, the non-governmental organizations persuaded States to adopt a resolution recommending that the Committee on Crime Prevention and Control develop standard minimum rules for the treatment of juveniles deprived of their liberty, with the intention of having States adopt them at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana in 1990. Subsequently, the United Nations Rules for the Protection of Children Deprived of their Liberty were adopted by the General Assembly, without a vote, by its resolution 45/1 13 of 14 December 1990. Unusually, in that resolution, the Assembly noted with appreciation the work of three non-governmental organizations: Amnesty International, Defense for Children International and Radda Bamen (Swedish Save the Children Federation).

(2) Basic Scope of the Rules

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty apply to all juveniles and children deprived of their liberty in any situation, including child welfare institutions, They set out principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasizing that deprivation of liberty is a means of last resort. The rules specify the conditions under which a child may be detained and which are consistent with respect for the human rights of children. Although the words "minimum standards" do not appear in the title, rule 3 provides that the rules are intended to establish minimum standards.

The rules recognize the negative effects of the deprivation of liberty. They recommend that States should counteract the detrimental effects on children (rule 3), and should recognize that the care of children deprived of their liberty is a "social service of great importance", requiring the fostering of contacts between the child and the community (rule 8).

This rules apply to anyone under the age of 18 (rule 11(a)). They therefore have the advantage of applying to all those under 18 deprived of their liberty, without any reference to national definitions of childhood, and without being dependent upon the jurisdiction of special proceedings.

4. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)

(1) Basic Purpose - the Prevention of Delinquency among Juveniles

The General Assembly, in its resolution 40/35 of 29 November 1985, noted the need to develop national, regional and international strategies for the prevention of delinquency among juveniles. It acknowledged that one of the basic aims of the prevention of juvenile delinquency was to provide assistance and a range of opportunities to meet, in particular, the varying needs of those who are most likely to commit a crime or be exposed to crime. The principal aim of the guidelines is to help socialize and integrate children through the family and through the active involvement and support of the community.

The Assembly also highlighted the need for States to adopt measures aimed at protecting those who are deemed to be at social risk, children who are abandoned, neglected, abused or who live in marginal circumstances.

By its resolution 45/112 of 14 December 1990, the General Assembly adopted the United Nations Guidelines for the Prevention of Juvenile Delinquency, also known as the Riyadh Guidelines. In guideline 8, States are recommended to implement the guidelines in the context of their particular economic, social and cultural conditions.

In contrast to the Beijing Rules, which focus on the protection of children who come into conflict

with the law, the Riyadh Guidelines are concerned with prevention. The guidelines focus on early protection and preventive intervention paying particular attention to children in situations of social risk. The term social risk denotes children "who are demonstrably endangered and in need of non-punitive measures because of the effects of their circumstances and situation on health, safety, education ... as determined by a competent authority", and it is that concept which underpins the guidelines. Social risk can be produced by factors related to possible inherent characteristics of children, such as mental disabilities; by the relationship between the child and the family; and by the socio-economic circumstances in which the child lives. In many cases children at social risk are affected by the interplay of all those factors; the more adverse the factors, the greater the chance that the child will drift towards delinquent activities.

(2) The Focus of Intervention by an approach based on social risk

The guidelines recommend that States pay particular attention to the children and families who are affected by rapid or uneven economic and social change. Such change can disrupt the child-rearing and nurturing capacity of families, and States are recommended to design innovative and socially constructive modes for the integration of such children. In particular, the guidelines recommend that prevention programs should give priority to children who are at risk through being abandoned, neglected, exploited and abused.

The advantage of an approach based on social risk is that it places emphasis on social and personal factors and changes the focus of intervention, previously concerned with defining morality, to directly confronting the issues while allowing society to tolerate a degree of youthful deviance. An approach based on social risk also regards the consequences of economic restructuring programs. The impact of the debt crisis on social policies and community life cannot be underestimated. Its effect on dally life distorts priorities and inhibits development in the area of crime prevention. In the regions of Africa, Asia and the Pacific, juvenile crime and delinquency are primarily urban phenomena. Within Africa, they are often attributed to hunger, poverty, malnutrition and unemployment, which are linked to the marginalization of children in already severely disadvantaged segments of society. According to a study conducted by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, in 18 States of the region, 89 per cent of the cases in the child justice system were characterized by very low family income. All of this, as Viccica observes, has been set against "a general tendency to inflate and overreact to the delinquency 'problem' in order to extend and maintain this net of control".

(3) A Multidisciplinary and Inter-sectoral Approach

The Riyadh Guidelines encourage the development of policies applying to the population as a whole by recommending the development of social welfare programs, particularly in education, labor and health, and encouraging the adoption of specific juvenile justice legislation. They importantly advocate a multidisciplinary and inter-sectoral approach to the prevention of child crime.

(4) An Active Role and Partnership within Society

The Riyadh Guidelines recommend to States that children should have an active role and partnership within society (guideline 3). They recommend that children should be accepted by States as full and equal partners in the integration process, and entitled to participate in crime prevention policies (guideline 9(h)). The participation of children in the formulation and implementation of prevention policies will assist both in making the policies relevant and in reducing the risk of indoctrination.

(5) Preventing the Stigmatization and Marginalization of Children

The guidelines recognize that if a State labels a juvenile as a delinquent or deviant, the labeling can unwittingly contribute to a child's anti-social behavior (guideline 50(f)). Youthful behavior does not always conform to social norms and can often disappear with the transition into adulthood. The guidelines aim at

preventing the stigmatization and marginalization of children whose behavior does not conform to prevailing social norms, not only through the avoidance of labeling, but by recommending a wide range of measures, including recommendations to the media and the abolition of status offences. However, the guidelines also recognize the risk that the identification of a child as being at social risk may become a self-fulfilling form of stigmatization.

(6) Developing Community-Based Interventions and Programs

The underlying principle of the Riyadh Guidelines is that the prevention of juvenile/child crime should utilize both the child's family and the school. States are recommended to develop community-based interventions and programs to assist in the prevention of juvenile/child crime. The intervention of institutions or agencies should only be utilized as a means of last resort.

IV. GUIDELINES FOR ACTION ON JUVENILES IN THE CRIMINAL JUSTICE SYSTEM

A. Importance of the Implementation of International Instruments

There are still many countries which should make efforts to realize and promote the contents of international instruments. The Guidelines for Action on Children in the Criminal Justice System were drafted by an expert group meeting held in Vienna in 1997 in order to assist States in the implementation of the provisions of the Convention on the Rights of the Child, the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Riyadh Guidelines.

The Guidelines for Action stress the importance of the principle of non-discrimination, including gender sensitivity, upholding the best interests of the child, the right to life, survival and development and the duty of States to respect the views of the child. The guidelines also stress the need for partnerships between Governments, United Nations bodies, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society.

These Guidelines for Action also make clear that responsibility for action lies with the States parties to the Convention on the Rights of the Child (guideline 6), the guidelines also emphasize that to ensure effective use of the Guidelines for Action, improved cooperation between Governments, United Nations bodies and members of civil society is essential.

B. Major Area of The Guidelines for Action

The Guidelines for Action are divided into the following areas.

(a) Measures of general application
(b) Specific targets
(c) Measures to be taken at the international level
(d) Mechanisms for the implementation of technical advice and assistance projects
(e) Further considerations for the implementation of country projects
(f) Plans concerned with child victims and witnesses
(g) The importance of a rights-based orientation
(h) A holistic approach to implementation
(i) The integration of services on an interdisciplinary basis
(j) Equitable application and accessibility to those in greatest need
(k) Accountability and transparency of all actions
(l) Proactive responses based on effective preventive and reintegrative measures
(m) Utilization of adequate resources (human, organizational, technological, financial) and information.

V. HOW THE INTERNATIONAL INSTRUMENTS REINFORCE EACH OTHER

A. Links between International Instruments

The links between the United Nations standards and norms in juvenile justice are emphasized in the texts of the instruments themselves. For example, the Riyadh Guidelines refer to the Convention on the Rights of the Child, while the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for Action on Children in the Criminal Justice System refer to all four instruments.

B. Priority of Referring Each International Instrument

All of the instruments dovetail neatly into each other. In broad practical terms, criminal justice personnel should look firstly, to the Convention on the Rights of the Child and then to the Riyadh Guidelines in seeking to prevent children from coming into conflict with the law; Secondly, to the Convention and the Beijing Rules when dealing with children alleged as or accused of having come into conflict with the law; thirdly, to the Convention and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty for dealing with children found to be in breach of the criminal law.

With regard to child victims of crime and child witnesses, criminal justice personnel should look to the Convention on the Rights of the Child, the Guidelines for Action on Children in the Criminal Justice System and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. When considered all together, the instruments allow the most conductive norms to prevail and indicate that there should not be a duality between human rights and juvenile justice.

VI. PRACTICAL APPLICATION OF THE INTERNATIONAL UMBRELLA PRINCIPLES

The practical implications of the major international umbrella principles are outlined below (Appendix A shows full list of international umbrella principles.).

Principle (a). Juvenile justice legislation should apply to all those under the age of 18.

There is an emerging and evolving standard that seeks to provide special protection and assistance and to apply the same juvenile justice principles to all children under the age of 18. The consequence of such a standard is that diversions, special child courts and other specific child-centered procedures would be made available to all children under the age of 18.

Principle (b). Juvenile justice is a part of the national development process of a State and as such should receive sufficient resources to enable juvenile justice to be organized in accordance with international principles.

It is no longer permissible under international law to place juvenile justice at the bottom of the pile of resource allocation. States are under an immediate legal duty to ensure that the civil rights of children in criminal justice proceedings are fully protected, and that can only be done if sufficient resources are allocated, for example, to provide legal assistance for children.

Where children are deprived of their liberty, and therefore of their family, the State is under an additional duty to offer special protection and assistance, and that means allocating sufficient resources to ensure that the conditions of detention meet with international standards.

A well-resourced juvenile justice system operated in accordance with international law should not be

regarded as a drain on national resources. A well-resourced criminal justice system for cases involving juvenile/children is in the interest of the society at large, since it reduces the risk of re-offending.

Principle (c). The principle of non-discrimination and equality is applicable to juvenile justice, and that includes a prohibition on discrimination on account of the child or the family of the child.

The unified approach based on child rights is the evolving normative standard to be applied to those under 18 and is consistent with the principle of non-discrimination. In international law, the definition of child is directly or indirectly related to age. The term juvenile does not necessarily correspond to the concept of child. Because of developments in international law, the time has come to question the rationale behind describing a young person in conflict with the law as a juvenile offender, while a person under 18 in need of State protection is described in terms of child welfare. The only acceptable justification for retaining the distinction between juveniles and children is that juvenility sometimes includes those over the age of 18, and some States wish to extend additional levels of protection to this age group. However, this can be done without retaining two separate terminologies for those under 18. It is as if an inappropriate judgmental layer is added. When adults breach the law, they are simply adult offenders, and when those under 18 offend they should be referred to as child offenders without the need for an additional vocabulary. The distinction is an outmoded one resulting from differences in approaches between the civil and the criminal legal systems.

The principle of equality also requires States to make special child facilities available to girls. In some States, because of a lack of facilities, girls are placed either with adults or in adult places of detention. Gender equality also extends to the age of criminal responsibility. When States, in accordance with international law, set an age of criminal responsibility, it must be the same age for boys as for girls.

The principle of equality also requires States to provide a level of juvenile justice services and personnel in rural areas equal to that which exists in urban areas.

Principle (d). The guiding principle for any policy or action concerning juvenile justice is that the best interests of the child is a paramount consideration.

International human rights law assumes that it is in the best interests of the child if all of the rights set out in the Convention on the Rights of the Child and in the other relevant international instruments are implemented. In assessing the best interests of the child, there are a number of factors to be considered. They vary according to the specific factual situation, but at all times it is necessary to consider the opinions of the child and the child's family, the child's sense of time, the child's need for continuity and the human rights of the child. Specifically, the Committee on the Rights of the Child has called for the adoption of a child-oriented system for child criminal justice that "stresses the need for all actions concerning children to be guided by the best interests of the child as a primary consideration". The Committee has also commented that insufficient attention has been paid to the best interests of the child in relation to detention and institutionalization.

Principle (e). Delay in deciding matters relating to a child is prejudicial to the best interests of the child.

The well-being of a child is consistent with issues being decided at a pace over and above that which is generally applicable to adults. Sufficient resources should be made available to ensure that children from the outset do not suffer "any unnecessary delay" (see rule 20 of the Beijing Rules) and should be brought "as speedily as possible for adjudication" (article 10, para. 2(b), of the International Covenant on Civil and Political Rights).

Principle (f). Every child shall be treated with humanity and with respect for the inherent dignity of the human person, taking into account the age of the child.

Any action, practice or policy that violates this principle breaches international law. It is a broad principle that applies to all aspects of the juvenile justice system, and includes the imposition of any disciplinary measures, any measures that separate children from their families and the setting of the age of criminal responsibility.

Principle (g). At all stages, children should be treated in a manner that facilitates their reintegration into society and they're assuming a constructive role in society.

The concept of reintegration rejects the old assumption that the difficulties faced by children are necessarily individual. Reintegration concerns the social environment and the social relationships of the child. The assumption by children of a constructive role in society and their reintegration imply that children should not be isolated for treatment or stigmatized.

International law emphasizes that it is important for children to maintain frequent child and community contacts to reduce the risks of alienation and reoffending. Children should be assisted within the community to develop a sense of responsibility.

Principle (h). Children are entitled to express their views freely in relation to criminal justice, and the views of the child should be given due weight in accordance with both the age and the maturity of the child.

The right of children to freedom of expression is often overlooked in the juvenile justice process, but children do not lose their right to freedom of expression because they are alleged as, accused of or recognized as having infringed the criminal law.

The child's right to freedom of expression is applicable throughout the entire child justice system. It includes active participation by children in any prevention and reoffending programs and the possibility for children to communicate freely with any inspection, complaints or monitoring body. In that way, society benefits not only from a child-centered criminal justice system, but also from one which is more accountable and effective.

principle (i). Children have the right to seek, receive and impart information concerning the juvenile justice system in a form that is both accessible and appropriate to children.

Information should be available in a form that the child is able to understand, and therefore the child's age and linguistic abilities have to be taken into account. In addition, appropriate information has to be given in cases where children have disabilities or are illiterate. This extends from the provision of information in police stations to the availability of information to children in prison.

Principle (j). Juvenile justice should be organized in a manner consistent with children's rights to privacy, family, home and correspondence.

An essential element of the child's right to privacy is the non-stigmatization or non-labeling of the child. Society also benefits from this right of the child, as the avoidance of stigmatization reduces the risk of reoffending.

The right to family life also reduces the risk of reoffending, as close contact with and involvement of the family from the beginning gives children the necessary support and reduces the risk of feelings of isolation and alienation.

Principle (k). If children are deprived of their family environment, they are entitled to special protection and assistance.

International studies have shown that children who are separated from their families are more vulnerable to abuse and neglect. It is essential to ensure sufficient resources, personnel and accountability to prevent such ill-treatment.

Principle (l). No child shall be subject to torture or to other cruel, inhuman, degrading or harsh treatment or punishment.

Regardless of the reasons, torture and other cruel, inhuman or degrading treatment and punishment are absolutely prohibited. This includes whipping, beating and using force or threats to obtain information. Specific conditions may also amount to prohibited treatment, such as a lack of daylight, overcrowding, lack of food and water and the withholding of appropriate clothing.

Principle (m). At any stage of the juvenile justice process, children should not be unlawfully or arbitrarily deprived of their liberty.

Deprivation of liberty is an internationally broad concept and may include diversionary procedures. No matter how short the period, children cannot be deprived of their liberty unless it is in accordance with the law.

Principle (n). The arrest, imprisonment or detention of children should only be used as a measure of last resort and for the shortest appropriate period of time.

One of the implications of this principle is that alternatives to arrest, such as a summons, may have to be found. The use of ball also has to be carefully considered. Children or their families are often unable to meet ball, and are deprived of their liberty as a consequence of their poverty, not because of any relevant factor in criminal justice.

Principle (o). Parents are to be notified of any arrest, detention, transfer, sickness, injury or death of their child.

There is a strict duty on a State to ensure that notification of arrest, detention. transfer, sickness, injury or death occurs promptly. Such prompt notification is an essential element of an accountable system required by international law.

VII. PREVENTING CHILDREN FROM COMING INTO CONFLICT WITH THE LAW

A. Sources of International Human Rights Law

The principal international instruments providing detailed practical policies on preventing children from coming into conflict with the law are found in the Convention on the Rights of the Child and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines). Under guideline 8 of the latter instrument, States are recommended to implement the guidelines in the context of their particular economic, social and cultural conditions.

The Riyadh Guidelines focus on early protection and preventive intervention. They also pay particular attention to children in situations of social risk. The term “social risk” denotes children who are demonstrably endangered and in need of non-punitive measures because of the effects of their circumstances, including their health and education, Social risk may be produced by factors related to

possible inherent characteristics of children, such as mental disabilities; by the relationship between the child and the family; and by the socio-economic conditions in which the child lives.

The guidelines emphasize that "young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control" (guideline 3 of the Riyadh Guidelines). The guidelines also stress that prevention is far more than simply countering negative situations; it is also necessary to promote the child's rights and well-being.

B. Three Levels of Prevention

The three levels at which intervention can be addressed are primary, secondary and tertiary.

(1) Primary Prevention

Primary prevention concerns the design and implementation of policies and practices aimed at the whole population. These entail the coordinated response of a number of relevant government agencies. The full implementation of the Convention on the Rights of the Child is one method of primary prevention.

(2) Secondary Prevention

Secondary prevention seeks to identify children at risk so that programs may be provided that reduce the risk of offending. The underlying premise of secondary prevention is that specific services targeted at specific children will have a preventive effect.

There are six stages in secondary prevention, as follows:

(a) Identifying the problem. Regular contact between youth workers, teachers, social workers and the police, in conjunction with parents, will identify new crime patterns, frequently before the courts do so and before they are reflected in official crime statistics, such as an increased use of certain narcotic drugs or the prevalence of particular forms of vandalism;

(b) Locating the problem. Much child crime is highly localized. It is therefore possible to circumscribe a specific problem in a particular locality, area or facility;

(c) Identifying the children. From an information base collected in accordance with human rights and data protection principles, a group of children at risk may be identified. Much childhood crime may be attributed to a relatively small proportion of children, and it is important that prevention programs should focus on those children;

(d) Setting the time-frame for action. A well-designed strategy that involves youth workers, religious leaders, social workers and the police needs to be properly coordinated (guideline 9(b) of the Riyadh Guidelines). Clear timeframes for coordination and implementation of the strategy should be established at an early stage;

(e) Monitoring. A monitoring procedure needs to be established at an early stage to ensure that the program is being implemented appropriately;

(f) Follow-up. Follow-up is necessary to ensure that the particular forms of behavior either do not reoccur or do not continue in a modified form.

(3) Tertiary prevention

Tertiary prevention is a term used to describe targeted measures for individual children to reduce recidivism. The approach of the Riyadh Guidelines is based on minimum intervention.

C. International Principles on Preventing Child Crime

The international principles on preventing child crime are as follows.

(a) Intervention is a form of social control. If intervention at any level is needed, it should be the minimum necessary to protect the child.
(b) Intervention should involve the voluntary maximum participation of children at all levels.
(c) Children should be liable only for the same offences as adults (guideline 56 of the Riyadh Guidelines).
(d) Children have the right to respect for family life (article 16 of the Convention on the Rights of the Child).
(e) States are under a duty to support the family (article 19 of the Convention).
(f) Education should be relevant and consistent with the child's dignity and with the ability and potential of the individual child (article 28, para. 2, of the Convention and guideline 31 of the Riyadh Guidelines).
(g) States in seeking to implement the child's right to freedom of expression should encourage the development of guidelines for the protection of children from material injurious to their well-being (article 17(e) of the Convention);
(h) The State is under a duty to provide special protection and assistance for children who live or work on the streets (guidelines 34 and 38 of the Riyadh Guidelines).

VIII. CHILDREN ACCUSED OF INFRINGING THE CRIMINAL LAW

A. Sources of International Human Rights Law

The principal imitational instruments are the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). States members of the Organization of African Unity have also become parties to the African Charter on the Rights and Welfare of the Child.

The African Charter on the Rights and Welfare of the Child is the first regional treaty protecting the civil, political, economic, social and cultural rights of children in peacetime and in armed conflicts. Its provisions on juvenile justice, enshrined in article 17, apply to all children under the age of 18, regardless of the method of trial in peacetime or in armed conflicts.

The Beijing Rules provide guidance to States for the protection of children's rights through the development of a separate and specialized system of child criminal justice. The Beijing Rules were the first international legal instrument to perform that task. Unusually for an imitational instrument, the Beijing Rules are accompanied by a commentary explaining each of the rules. The six parts are as follows: general principles; investigation and prosecution; adjudication and disposition; non-institutional treatment; institutional treatment; and research, planning, policy formulation and evaluation.

The Beijing Rules are applicable to any child who, under the respective national legal system, may be dealt with for an offence in a manner different from that followed in cases involving an adult. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted later, tighten the definition to include all those under the age of 18, thus harmonizing the Beijing Rules with the Convention on the Rights of the Child.

B. Status of the Beijing Rules in International Law

Adopted by a resolution of the General Assembly, the Beijing Rules are not binding per se. However, to assume that the rules are only recommendations would be misguided. Although the Beijing Rules predate the Convention on the Rights of the Child, some of its principles, such as the desirability of diversions and the establishment of authorities and agencies specifically applicable to children, have been incorporated into the Convention, and therefore have become immediately binding. It is also necessary to consider whether any of the rules enhance an aspect of a binding treaty right. If it does, then this also transforms a non-binding rule into a binding duty on a State.

C. Diversions

(1) Purpose

Diversions are designed to remove children away from the formal criminal justice proceedings and direct them towards community support, both formal and informal. This practice, as noted in the commentary to the Beijing Rules, hinders the negative effects of subsequent proceedings.

Diversions can only be used where children admit to an offence or are found guilty of an offence. At no stage should children be pressured either into an admission of guilt or into accepting diversions. Diversionary measures can be used at two stages: at the outset to provide an alternative to judicial proceedings; and/or at a later stage as an alternative to institutionalization (article 40, paras. 3(b) and 4, of the Convention).

According to the Guidelines for Action on Children in the Criminal Justice System, a review of existing procedures should be undertaken and, where possible, diversions should be undertaken (guideline for action 15). Appropriate steps should be taken to make available a broad range of alternative measures at the pre-arrest, pre-trial, trial and post-trial stage. Whenever appropriate, mechanisms for the informal resolution of disputes should be utilized. In the various measures to be adopted, the family should be involved to the extent such involvement is beneficial to the child (guideline for action 15). States should ensure that the alternative measures comply with the human rights of the child.

(2) The fundamental principles of diversion

(a) Diversionary procedures may only be used in a manner consistent with the human rights of children (article 40, para. 3(b), of the Convention).
(b) Children should be dealt with in a manner appropriate to their well-being and proportionate to their circumstances and their offence (article 40, para. 4, of the Convention).
(c) A variety of dispositions should be made available as alternatives to institutional care (article 40, para. 4, of the Convention).

D. Retributive Justice and Victim's of Crime

(1) The Idea of Retributive Justice

Retributive justice asks the question: How do we punish the offender? Restorative justice asks: How do we restore the well-being of the child, the victim and the community?

There are different models of conferencing operating in different jurisdictions. Conferences have been referred to as family group conferences, family conferences, effective cautioning conferences, community accountability conferences and diversionary conferences. Restorative justice in the form of community conferencing allows for the participation of the child and stresses the centrality of the family, the victim and the community.

The New Zealand model of conferencing was strongly influenced by traditional Maori concepts of conflict resolution and is used for all medium-serious and serious offending except murder and manslaughter. It operates on two levels: first as an alternative to court process; and secondly as a mechanism for making recommendations to judges before sentencing.

Conferences are generally made up of children who have committed the offence, members of the child's family and whoever the family invites, the victims, their support person, a police representative and the mediator of the process. In some jurisdictions, a lawyer and/or a social worker is present.

(2) The Aim of the Conference

The aim of the conference is to formulate a plan on how to deal with the offending. This has the following three main aspects:

(a) Ascertaining whether or not the child admits the offence. Conferences can only proceed where the child admits the offence;

(b) Information-sharing among all the parties at the conference about the nature of the offence, the effects of the violence on the victims, the reasons for the offending and any prior offending by the child;

(c) Deciding the outcome or recommendation. In some jurisdictions, the family and those invited by the family are entitled to deliberate in private during the conference and then make proposals to the conference as a whole.

(3) Practice of the Conference

The eventual sanction is usually agreed to by all the parties and is meant to take into account the views of the victims and the need to make the child accountable for his or her offending. In some jurisdictions, there is no limit placed on the sanctions, as long as they are agreed to by all the parties. Sanctions can include an apology, community work, reparation or involvement in some program. In other jurisdictions, strict limits are placed on the sanctions to ensure that children are not worse off than they would have been had the case gone to a court.

Conferences may take longer to reach decisions than courts. There are differences in the way the conferences are organized. In some jurisdictions conferencing is managed by the police, in some by the courts, in some by social welfare and voluntary organizations. Conferences, however, share a number of common features, in particular the following: (a) Involving those most affected by the offending, specifically the offender, the family of the offender and the victim; (b) Decision-making by agreement; (c) The comparative informality of the process; (d) The use of a facilitator; (e) Holding the offender accountable for his or her actions; co Making amends to the victim by seeking to heal the damage caused.

(4) Role of Family

Through conferencing, families are enabled to participate, and this is one of the reasons why families prefer the process of family group conferences to court processes. Research has demonstrated the greater support available to them at conferences in contrast to the stress accompanying a court appearance. As well as feeling more comfortable at family group conferences, families understood more about what had happened and believed them to be a more realistic forum for decision-making. Victims also feel involved by being present.

Conferencing, unlike the majority of court structures, has shown an ability to be responsive to different cultural practices. Cultural practices, however, should only be reflected where they correspond to

the philosophy of juvenile justice. Conferences, therefore, should not be punitive, retributive, gender-discriminatory, patriarchical or hierarchical.

IX. CHILDREN DEPRIVED OF THEIR LIBERTY

A. Sources of international human rights law

The principal international instruments regulating the deprivation of liberty for children are the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the African Charter on the Rights and Welfare of the Child.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty are intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children. They serve as a comprehensive, internationally accepted framework within which States can regulate the deprivation of all those under 18. The rules apply to all those under 18 regardless of the method of trial or hearing (rule 11(a)).

The rules define "deprivation of liberty" as any form of detention or imprisonment or the placement in a public or private custodial setting from which a person under the age of 1 8 is not permitted to leave at will, by order of any judicial, administrative or other public authority (rule 11 (b)). The rules are applicable to all forms of deprivation of liberty in whatever type of institution the deprivation of liberty occurs.

The rules begin with a number of fundamental principles, the first of which states that the juvenile justice system should uphold the rights and safety of children and promote their physical and mental well-being (rule 1). The rules not only apply to child justice institutions, but also to any deprivation of liberty on the basis of a child's health or welfare. They begin from the premise that the care of children deprived of their liberty is a social service of great importance.

A major part of the rules seek to regulate the management of child facilities, including their administration, the physical environment and services that they offer and the regulation of disciplinary procedures (rules 19-80). Compliance with the rules and the Convention on the Rights of the Child is through regular, independent and unannounced inspections (rule 72) and an independent complaints procedure. The rules conclude with provisions on the appointment and training of specialized personnel (rules 81-87).

B. Status of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty per se are in the form of a non-binding recommendation. However, as with many of the Beijing Rules, many of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty have become binding by virtue either of being found in the Convention on the Rights of the Child, or because they are facets of rights enshrined in the Convention.

In addition, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty provide for monitoring. In order to ensure the most effective implementation, States should monitor the application of the rules and should also incorporate the rules into national legislation or, where appropriate, the relevant legislation should be amended. The national legislation should also provide effective remedies for breach of the rules.

C. The Principles Concerning the Deprivation of Liberty of Children

The principles concerning the deprivation of liberty of children are as follows:

(a) Deprivation of liberty should only be used as a measure of last resort, only for the shortest appropriate period of time and in a non-discriminatory manner (articles 2 and 37(b) of the Convention);

(b) Every child deprived of liberty shall have the, right to prompt access to legal and other assistance (article 37(d) of the Convention);

(c) The establishment of small open facilities is encouraged to enable individualized treatment and to avoid the additional negative effects of deprivation of liberty (rule 30 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty);

(d) Deprivation of liberty should only be in facilities that are consistent with respect for the human rights and dignity of the child. Such facilities should guarantee meaningful activities and programs promoting the health, self-respect and sense of responsibility of children (rule 12 of the United Nations Rules);

(e) Deprivation of liberty should be so organized as to respect the child' s right to family life and in keeping with the aim of reintegration (guideline 20 of the Guidelines for Action on Children in the Criminal Justice System and rule 30 of the United Nations Rules);

(f) All children deprived of their liberty should be helped to understand their rights and obligations during detention and be informed of the goals of the care to be provided (rule 25 of the United Nations Rules);

(g) All personnel working with children deprived of their liberty should receive appropriate training (rule 85 of the United Nations Rules);

(h) All children should benefit from arrangements designed to assist them in reintegrating with society (article 40, para. I, of the Convention);

(i) Children deprived of their liberty are entitled to the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (article 24 of the Convention);

(j) The carrying and use of weapons by personnel in facilities where children are detained is prohibited (rule 65 of the United Nations Rules);

(k) The imposition of discipline should be consistent with upholding the dignity of the child (rule 66 of the United Nations Rules);

(l) All personnel working with children should be fully accountable for their actions (rules 72-78 of the United Nations Rules).

X. RECOMMENDATION

A. Establishing the Mechanisms for Effective Implementation of International Instruments

Under the Convention of the Rights of the Child and other important international instruments, a State

may require review and amendment of existing legislation and policies in light of the standards enshrined in these instruments. Realizing effectively the rights of the juvenile/child in the field of juvenile justice which provided in the important international instruments, it is necessary to establish the mechanisms for advising, monitoring and reporting the implementation of these instruments. Under these mechanisms, a State may request the assistance of the Secretary-General and non-governmental organizations in adapting legislation and policies and in the development of alternatives to institutionalization.

B. Introducing Reliable Training System for the Personnel Working for the Juvenile Justice Field

There are various kinds of practical principles and guidelines based on the international instruments. To implement these practical principles and guidelines aimed at a holistic approach, development of systematic and wide range of training system is a keen issue. When developing these training systems, national and local government budgets and various community resources should be provided to them in as a first priority of the government policy.

The International Umbrella Principles

(a) Juvenile justice legislation should apply to all those under the age of 18;

(b) Juvenile justice is a part of the national development process of a State and as such should receive sufficient resources to enable juvenile justice to be organized in accordance with international principles;

(c) The principle of non-discrimination and equality is applicable to juvenile justice, and this includes a prohibition on discrimination on account of the child and the child's family (article 2 of the Convention on the Rights of the Child);

(d) The guiding principle for any policy or action concerning juvenile justice is that the best interests of the child is a paramount consideration (article 3, para. l, of the Convention);

(e) Delay in deciding matters relating to a child is prejudicial to the best interests of the child (article 37(d) and article 40, paras. 2(b)(ii) and 2(b)(iii), of the Convention);

(f) Every child shall be treated with humanity and with respect for the inherent dignity of the human person, taking into account the age of the child (article 37(c) of the Convention);

(g) At all stages, children should be treated in a manner that facilitates their reintegration into society and their assuming a constructive role in society (article 40, para. 1, of the Convention);

(h) Children are entitled to express their views freely in relation to criminal justice, and the views of the child should be given due weight in accordance with both the age and the maturity of the child (articles 12 and 13 of the Convention);

(i) Children have the right to seek, receive and impart information concerning the juvenile justice system in a form that is both accessible and appropriate to children (article 13 of the Convention and guideline 11 (b) of the Guidelines for Action on Children in the Criminal Justice System);

(j) Juvenile justice should be organized in a manner consistent with children's rights to privacy, family, home and correspondence (article 16 of the Convention);

(k) If children are deprived of their family environment they are entitled to special protection and assistance (article 20, para. l, of the Convention);

(l) No child shall be subject to torture or to other cruel, inhuman, degrading or harsh treatment or punishment (article 37 of the Convention and rule 87(a) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty);

(m) At any stage of the juvenile justice process, children should not be unlawfully or arbitrarily deprived of their liberty (article 37(b) of the Convention);

(n) The arrest, imprisonment or detention of children should only be used as a measure of last resort and for the shortest appropriate period of time (article 37(b) of the Convention);

(o) Parents are to be notified of any arrest detention, transfer, sickness, injury or death of their child (article 9, para. 4, of the Convention and rule 56 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty)

Good Practice Guidelines

A. Good Practice Guidelines for Child Justice Personnel, Policy Makers and the Mass Media

1. Police

1. Abandon outdated concepts that juvenile justice is an unimportant part of police work.

2. Enroll in specialized training on the effective and humane care of children accused of coming into conflict with the law.

3. Participate in child educational programs which help prevent child crime and child victimization.

4. Try to get to know the children and their families in your area.

5. Be alert to places and adults presenting real criminal risks and to the presence of children in such places.

6. If children are sighted away from school during school hours, investigate and notify the family and the school authorities.

7. Promptly investigate any evidence of neglect or abuse of children in their homes, communities or police facilities.

8. Meet regularly with social workers and medical personnel to discuss child issues relating to your work.

9. Keep all records of children in separate and secure storage.

10. Report to superiors any information indicating that a colleague is breaching a child's rights.

2. Police Officers in Supervisory Positions

11. Encourage the swapping of information with police forces in other States on alternatives to institutionalization.

12. Encourage the use of a variety of dispositions for alternatives to institutional treatment of children including care, guidance and supervision orders; counseling; probation; foster care; educational and vocational training programs; and other appropriate and proportionate measures.

13. Assist in the development and implementation of community programs for the prevention of child crime.

14. Establish expedited procedures, consistent with their human rights requirements, for bringing detained children before a court.

15. Develop non-stigmatizing strategies for protecting children in especially vulnerable circumstances, such as poverty, homelessness, abusive families or high crime areas.

16. Develop child-friendly interview techniques and procedures.

17. Begin to develop a special unit for child crime and child victimization.

18. Establish independent and impartial child-centered procedures for direct complaints and

communications to be made by children.

3. Child Advocates, Including Lawyers, Paralegals and Social Workers

19. The role of child advocates is to protect the rights of children in a manner which is consistent with the best interests of the child.

20. Child advocates should meet with the child as soon as possible after they have been assigned the case, and should spend sufficient time with the child to fully explain the law, the relevant procedures and the consequences of any decisions taken.

21. Child advocates should discuss matters in a manner appropriate to the child's age and maturity and should avoid jargon and pomposity.

22. Child lawyers representing a child should comply with the rules of professional conduct governing client confidentiality. Where child advocates are not lawyers. Client confidentiality ought to be extended to them.

23. Child advocates should meet with the child on his or her own before a court hearing or a meeting with the police and at each and every stage of the process, whether diversionary or formal trial. Child advocates should check that the child fully understands all the information.

24. Child advocates should be readily available to the child and See and maintain contact with the child as a priority.

25. After consulting with the child and obtaining the child's permission, child advocates should take appropriate steps to consult with the family and with key professionals and agencies so that the child advocate is fully briefed and prepared about the child's current situation.

26. The child advocate should seek the child's views about ball conditions.

27. At no stage in diversions or formal procedures should a child advocate seek to pressurize a child who is maintaining his or her innocence into admitting an offence.

28. In States that have adopted family group conferences, child advocates should play a role in the family group conference that enables the child and the family to be the key decision-makers.

29. In States that have adopted family group conferences, child advocates should withdraw during private family time.

30. Child advocates should attend all court hearings involving the child.

31. Child advocates should prepare the child for the possibility that the child may give evidence and help the child consider what he or she may say.

32. Child advocates should recognize that when children and their families identify with a culture that is different from that of the child advocate, the child advocate should act in a culturally appropriate and sensitive manner.

33. Child advocates should recognize the different roles and responsibilities of other professions in the juvenile justice system and seek to develop a cooperative working relationship with them.

34. Child advocates should have a good working knowledge not only of the domestic legislation, but also

of international human rights law, particularly the Convention on the Rights of the Child and the child justice instruments.

35. Child advocates should undergo ongoing training to improve their skills and to update their knowledge.

4. Judicial Personnel

36. Judicial personnel should be sensitive to the special needs of children as victims of crime and of children as witnesses.

37. Judicial personnel ought to ensure that their courts are child-friendly environments.

38. Judges need to acquire the necessary communication skills for speaking to and involving children. Avoid language that is too complex or questions that are too complicated and open-ended.

39. Judges ought to be familiar with the Convention on the Rights of the Child and the child justice instruments.

5. Institutional Personnel

40. Ensure, unless it is in the best interests of a particular child not to do so, that children are separated from adult detainees.

41. Institutional personnel should ensure that complete and secure records are maintained on the child's identity, reasons for commitment date and time of admission, transfer and release, including details of notification to parents, of the physical or mental condition of the children, and of the identity of the staff responsible for the care of the children.

42. Establish procedures for direct complaints and communications to be made by children to the director of the institution and to judicial authorities and social agencies.

43. Institutional personnel should establish close liaison and cooperation with child justice and other children's organizations and medical and social agencies.

44. Ensure that girls who are deprived of their liberty are not attended and supervised by male officers.

6. Policy Makers, Including Politicians, Civil Servants and Non-Governmental Organizations

45. Policy makers ought to consider child crime prevention strategies in a holistic manner. A holistic approach to child crime prevention includes reviewing national legislation and policies to ensure that they protect children against sexual exploitation and abuse. Policy makers need to consider:
    (a) What structures exist and what functions they perform;
    (b) What are their strengths and weaknesses;
    (c) Whether the structures are available in both urban and rural areas;
    (d) How they operate;
    (e) Whether they can be created where they do not exit.

46. Policy makers ought to consider overcoming a number of obstacles that have been highlighted by child advocates as impeding good practice. These include information tot being readily available, insufficient resources to support diversionary measures, insufficient remuneration for child advocates and not being notified of meetings sufficiently early to meet with children before court appearances.

47. To encourage those wishing to work in juvenile justice, information needs to be made available about selection and appointment of personnel.

48. Establish independent and impartial mechanisms for resolving complaints.

49. Review legislation to ensure that all status offences for children are abolished.

50. Consider methods consistent with the rights of the child to reduce the delays in cases that go to court.

51. Consider measures to make court proceedings more child-friendly.

52. Ensure that child-centered criminal justice is also applicable to witnesses.

53. Policy makers ought to consider that children are also sometimes the victims of crime and that the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is equally applicable to children.

54. Ensure the creation of an independent mechanism. Such as an ombudsman or commission for children, that is able to undertake research and advocate reform of the juvenile justice system. Such a mechanism ought to have unimpeded access to the juvenile justice institutions and their personnel. Sufficient time ought to be created on a regular basis in the national parliament for the reports of this independent mechanism to be properly discussed and considered.

55. Ensure the design and implementation of regular training programs and training manuals on juvenile justice for police and other law enforcement officials, judges and magistrates, prosecutors, lawyers, administrators, prison officers, health personnel, social workers and peacekeepers.

56. Ensure the provision of information to children about their rights in juvenile justice.

57. Ensure that the form and style of legislation on juvenile justice is accessible. Accessibility of legislation is often achieved through a statement of clear principles together with non-technical language.

58. The Committee on the Rights of the Child has expressed its concern to all States parties that have made declarations or reservations to the Convention. Policy makers ought to consider the withdrawal of declarations and reservations to the Convention on lodged by a State.

59. Ensure, after consultation with non-governmental organizations and academics. That sufficient detail is given in the reports on the juvenile justice system submitted by States parties to the Convention on the Rights of the Child to the Committee on the Rights of the Child, and that follow-up is provided to any recommendations by the Committee.

7. Mass Media

60. Ensure that the privacy of children is protected at all stages of the proceedings by ensuring that information leading to the identification of children is not disclosed.

61. Avoid demonizing children and seek balanced reporting so that children are not portrayed only as the perpetrators of crime.

62. Media personnel at all levels should receive training in human rights and the rights of the child so as to ensure that the mass media are more child-oriented.

63. Include information on the existence of services, facilities and opportunities for children in the mass media.

B. Good Practice Guidelines for Conferencing

64. The professionals involved in conferencing should be trained in and committed to the international juvenile justice principles.

65. The child should be encouraged to seek legal advice about the appropriateness of admitting the offence and agreeing to any outcome, but lawyers should generally not speak in conferences.

66. Conferences should be arranged at a time and venue that suits the child his or her family and the victim, rather than the professionals, and that encourages their full participation.

67. The child; his or her family and the victim should be briefed about the conferencing process and the part they will be expected to play.

68. The child and his or her family should be provided in advance of the conference with any information about community resources and community programs that they may need to formulate a plan designed to deal with the offending.

69. Any support people desired by the child, his or her family and the victim should be entitled to attend the conference.

70. The views of the victim should be communicated to the conference participants if the victim chooses not to attend.

71. The child, his or her family and the victim should have the opportunity to speak at the conference.

72. The professionals attending the conference should provide information and support to the parties, but should otherwise adopt a low profile in the process, especially with regard to formulating the outcome or recommendation.

73. The participants should have available to them any information that may be required in order to reach decisions on how best to deal with the offence.

74. The child and his or her family should have private time together to discuss how best to deal with the offence.

75. Outcomes should be reviewed and monitored.

76. The individual or agency responsible for the review or monitoring should be agreed upon at the conference.

C. Good Practice Guidelines for Involving Children in Court Processes

77. Select people with specific qualities, such as an interest in children and a commitment to the international juvenile justice principles and their underlying objectives, to serve as court judges and lawyers representing children.

78. Train judges and lawyers in the principles and objectives underlying the international juvenile justice principles and in communicating and listening to children.

79. Ensure the attendance of support people if desired by children.

80. Inform the child about the process and any part that he or she may play.

81. Clarify the role of lawyers representing children.

82. Consult children about the design of the courtroom, so as to create a courtroom environment in which they may feel comfortable.

D. Good Practice Guidelines for Protecting the Rights of Child Victims and Child Witnesses

83. States should ensure that child victims and witnesses are treated with compassion and respect for their dignity and provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance.

84. Police, lawyers, judges and other court personnel should receive training in dealing with bases where children are victims.

85. Specialized offices and units should be established to deal with cases involving offences against children.

86. A code of practice should be drafted for the proper management of cases involving child victims.

87. Child victims should have access to assistance that meets their needs, such as advocacy, protection, economic assistance, health and social services, and counseling.

88. Recovery services for child victims and witnesses should be family and community-based, without institutionalization.

89. Child victims should have access to fair and adequate compensation for torture or other cruel, inhuman or degrading treatment or punishment, including rape and other forms of sexual abuse, unlawful or arbitrary detention and miscarriages of justice.

90. Child victims should have legal representation and interpretation services.

91. The procedure and evidential requirements surrounding child witnesses should be reviewed to ensure that they are child-oriented and fully respect the rights of the child.

92. In accordance with international human rights law, the privacy of the child victim should be fully respected.

93. Police, prosecutors, judges and magistrates should apply more child-friendly practices, for example, in police operations and interviews of child witnesses.

94. Child victims should be informed of their role, of the. Timing and the progress of the proceedings, and of the disposition of their cases in a manner which the child understands.

95. The development of child witness preparation schemes should be encouraged to familiarize children with criminal justice procedures prior to their giving, evidence.

96. Appropriate assistance should by provide to child victims and witnesses throughout the legal process.

97. On no account should child witnesses be detained in police stations or in any form of detention facility.

PROTECTION OF CHILDREN'S RIGHTS – UNICEF'S APPROACH IN THE ADMINISTRATION OF JUVENILE JUSTICE

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I. INTRODUCTION

This paper[1] represents the current thinking within UNICEF's Child Protection Section on the issue of juvenile justice generally. While it has been prepared for presentation at the seminar being held by the Kenyan Judicial Training Committee and the United Nations Asia and Far East Institute, it does not focus on UNICEF programmes in Kenya.

Juvenile justice is a sphere where, as yet, UNICEF has no formal and explicit policy or strategy, but in which involvement has been growing rapidly and substantially at all levels of the organisation in recent years, especially from a "child protection" perspective.

Most regular UNICEF country programmes work on the basis of different sectors: health, nutrition, water and sanitation, education, child protection, etc. All programmes are, to more or less extent, "cross-cutting" – for example, water and sanitation problems arise in schools, good nutrition requires good hygiene education, etc. Like all other programme sectors, child protection has its own interventions and has many cross-cutting aspects.

While this paper outlines the basic orientation and guidance for UNICEF action on juvenile justice from a child protection standpoint. It is therefore not intended to be a comprehensive policy paper on juvenile justice for UNICEF as a whole, but constitutes the expression of a strategic option only for UNICEF's Child Protection work in this sphere. That is, it only examines programme actions from the child protection perspective and not the perspective of other sectors (health, education etc.) that do also have an important role to play in realising the human rights of children in conflict with the law.

As such, this paper founded more especially on Articles 37 and 40 of the UN Convention on the Rights of the Child (1989) (the CRC), the UN Standard Rules for the Administration of Juvenile Justice (1985) (the Beijing Rules), and the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) (the JDLs).

Juvenile justice is the subject of detailed and comprehensive international standards, both binding and non-binding. These standards cover a vast and complex range of issues – from primary prevention (social policy) through to early intervention, judicial process, conditions of detention and rehabilitation and reintegration – involving a wide range of potential actors.

This document thus recognises that "child protection" is only one of the necessary intervention techniques, whilst reflecting the view that it is the responsibility of those undertaking protection also to ensure the involvement of other sectors (e.g. health and education) where appropriate. It further recognises that UNICEF is not and will not be equipped to tackle all aspects of "protection". In view of this, and in keeping with UNICEF's rights-based approach, it envisages the need to prioritise its actions and interventions in order to "tackle the worst first".

In this regard, there are certain fundamental human rights standards that must be systematically and strongly upheld. At the same time, the most serious world-wide problem from a protection standpoint in the

[1] This paper is largely based on work carried out by the UNICEF Child Protection Section in New York headquarters and at the Innocenti Research Centre in Florence, and adapted for presentation at the joint seminar.

juvenile justice sphere is over-use of detention: pre-trial, as a punishment and as an educational or "welfare/protection" measure.

The paper therefore looks at two implications for UNICEF Child Protection (UNICEF-CP):

i. the need to take a stand on a series of protection rights; and

ii. the need for programmatic goals to be very focussed, based on a coherent and readily understandable approach requiring only limited extra capacity building for staff and having only minor resource implications.

II. PROTECTION RIGHTS THAT UNICEF SHOULD DEFEND AS A PRIORITY

UNICEF, through UNICEF-CP, will make special efforts to prevent and redress violations of the most basic protection rights by taking and making known a systematic and consistent corporate stand to uphold notably:

- the prohibition of the death penalty and of life imprisonment without the possibility of release for all persons found guilty of a crime committed when under the age of 18. (CRC 37.a);

- the prohibition of torture and other forms of cruel, inhuman and degrading treatment or punishment (CRC 37.a), including corporal punishment and other punishments prohibited under the JDLs;

- the prohibition of arbitrary or unlawful detention (CRC 37.b), including: detention without charge or without the child involved having committed, or being suspected of having committed, a criminal offence; pre-trial detention that exceeds the maximum period stipulated under national law; and detention ordered by a non-judicial body without the possibility of judicial review (CRC 37.d);

- the right of juveniles to be detained separately from adults at all stages, unless non-separation is demonstrably in their best interests (e.g. as a family group) (CRC 37.c);

- the right to humane conditions of detention, including maintenance of contact with the family (CRC 37.c and JDLs); and

- the right to due process. (CRC 40.2.b).

III. A FOCUSSED PROGRAMME THAT UNICEF-CHILD PROTECTION PROMOTES

Few aspects of juvenile justice could be classified as "popular" causes. Public anger about crime and ostensibly ineffectual measures taken to combat it, whether or not founded on reliable information, generally leads to enhanced repression rather than increased respect for the spirit and letter of international standards. It is particularly difficult to try to implement a justice policy that has little or no public support. This means that UNICEF-CP has to select a judicious "entry point" where the most support – or least opposition – is seen to exist if it seeks to maximise its impact.

The most auspicious such entry point is clearly children deprived of their liberty. While public concern in this respect may be limited to younger children convicted of petty offences or simply accused of vagrancy, there is widespread agreement among professionals that, quite simply, too many children are

detained for no valid reason connected to the nature of the offence or the danger they might represent to society. There is also widespread agreement that deprivation of liberty is rarely an effective measure in terms of rehabilitation, reintegration and prevention of further offending.

UNICEF's programmatic action from a protection standpoint will therefore focus on tackling over-reliance on deprivation of liberty. In itself and in its ramifications, this issue is moreover constantly highlighted by the Committee on the Rights of the Child when reviewing State Party reports. It undoubtedly constitutes one of the "worst" problems to be tackled.

UNICEF-CP's action will seek to address the following situations in particular:

- children under arrest or detained without charge;
- children detained awaiting trial;
- children sentenced by a court to a period of deprivation of liberty; and
- children detained by virtue of re-educational or "welfare/protection" measures.

UNICEF-CP deems that, over and above advocacy on these issues and the training of concerned personnel, its potentially most successful initiatives to reduce deprivation of liberty for juveniles would seek to:

- keep as many children as possible out of the court system (CRC 40.3.b): this should automatically mean lower numbers in pre-trial detention and receiving custodial sentences; and
- ensure that viable and appropriate alternatives to custodial responses exist (CRC 40.4).

To achieve these ends, UNICEF-CP is therefore committed to three major programmatic thrusts that are coherent, progressive and mutually supportive, as well as reflecting faithfully the line taken by the CRC and other standards:

- supporting diversionary systems and programmes that avoid court appearances and do not involve custodial outcomes;
- promoting responses based on restorative justice that, by definition, again do not involve custodial outcomes; and
- promoting and facilitating other alternatives to deprivation of liberty, whether pending trial or as a penal or educational/welfare response.

A. Diversion

Diversion involves the development of procedures, structures and programmes that enable many - possibly most - offenders to be dealt with by non-judicial bodies instead of the formal court system (CRC 40.3.b).

Diversion is designed to direct children away from judicial proceedings and towards community support, both formal and informal, thereby avoiding the negative effects of implication in such proceedings. The structures involved may vary widely: statutory services, administrative bodies, commissions, NGOs, etc. Their options may also be wide: "life-skills" programmes, community service, apology and reparation, enhanced supervision… and may be of varying duration and intensity.

To ensure that human rights and legal safeguards are fully respected (CRC 40.3.b), diversion procedures must follow four basic ground rules.

- They are to be used only where children admit to an offence and accept a non-judicial hearing. At no stage should children be pressured either into an admission of guilt or into accepting diversions;

- diversion mechanisms and structures must not be mandated to order deprivation of liberty in any form, at least without the possibility of judicial review;

- the case can be referred to a regular court system if no solution acceptable to all can be reached or if the measures at the disposal of the alternative system are not deemed appropriate; and

- the offender always retains the right to a court hearing or judicial review.

Diversionary measures can come into play at any stage from arrest to immediately prior to a foreseen court hearing, either as a generally applicable procedure or on the case-by-case decision of the police, prosecutor, court or similar body. In theory, they can be used for young people committing any kind of offence, though in practice they are rarely used for the most serious crimes or for persistent offenders. In the various measures to be adopted, the family, peers, teachers, etc. should be involved to the extent that this is beneficial for the child.

B Restorative justice

Restorative justice constitutes an approach to offending that corresponds more closely than any other to the aims of juvenile justice set out in the CRC (40.1) and the Beijing Rules (5, 17.1.b and commentary thereto). The South African Child Justice Bill, likely to become law in 2002, states that "Restorative justice means the promotion of reconciliation, restitution and responsibility through the involvement of a child, a child's parent, family members, victims and communities." It is therefore at the opposite end of the spectrum from "retributive justice", founded on punitive responses. It is a form of mediation and conflict resolution which looks on offending principally in terms of the harm it causes to all concerned, the damage it does to relationships, and the requirement that the needs of victims and the community have to be taken into account in addition to those of the offender.

The most significant features of restorative justice are:

- it establishes a direct, concrete and immediate link between the offence and the formal, social reaction;

- it holds the offender fully accountable for his or her actions, helps him or her to understand their implications, and makes him or her responsible for the reparation of the harm caused by the offence; and

- it involves the victims and the community in the decision-making process, thereby ensuring that justice is seen to be done and minimising the likelihood of the offender being further ostracised or marginalised.

Restorative justice can inspire decision-making both within and outside the formal court system, so it is not dependent on the extent to which diversionary structures exist, although the latter are generally better-placed to promote restorative solutions.

C. Alternatives to deprivation of liberty

Using deprivation of liberty as anything other than a last resort and for the shortest possible time is in itself a violation of the CRC (37.b). It also tends to entail or engender violation of a wide range of other rights, including those to protection from torture and maltreatment, separation from adults, contact with family, and access to education and health services.

Deprivation of liberty means placement in any kind of establishment – penal, correctional, educational or protective – from which the child cannot leave at will. It does not only affect children who have been sentenced after being convicted of a more or less serious offence. Throughout the world, it is used excessively in the pre-trial period (including in police lock-ups), which may last many months or even a year or more, and which is moreover notorious for being the phase where respect for rights is most at risk. It is used abusively – often by the police on their own initiative – in regard to vagrant or street children who have committed no criminal offence. And it is used as a so-called welfare or (re-)educational measure, in many instances for indefinite periods and on the decision of an administrative body without there having been a judicial decision or review.

Efforts already made to reduce recourse to custodial sentences, and to improve treatment and conditions in the facilities concerned, have focused notably on training programmes on international standards for judges and correctional personnel. At the same time, appropriate training, however desirable and potentially useful, is not necessarily the determining factor. If few or no alternatives to custody exist in practice, judges will invariably be constrained to use that option, however well trained they are. And if an overloaded court system means that children are held pre-trial for several months, being dealt with by better-trained staff may ease their situation only slightly. In other words, training cannot achieve its true potential impact as long as the context in which it takes place does not, or cannot, change.

There are clear indications that, within current systems, considerable support for change exists amongst professionals concerned. Many directors and staff of custodial facilities express the opinion that many or most of the children in their care should quite simply not be there, and agree that conditions of detention are inappropriate. Many judges complain about the limited range of options available to them at the pre-trial and sentencing stage. Some try to find their own alternatives, with varying degrees of success and not always in a manner that contributes to the essential aims of juvenile justice and the respect for the rights of the child.

UNICEF-CP's task will be to advocate forcefully for less use of custodial "solutions" and to promote the establishment of alternatives (cf. *inter alia*, Beijing, 18.1).

The combined effects of these thrusts should in addition:

- lead to improved conditions – including the possibility of effective separation from adults – for children who are nonetheless deprived of their liberty (pre-trial detention and custodial sentences) because numbers in detention will be reduced;

- reduce the workload of the courts, thereby allowing judges to spend more time examining the needs of individual juveniles appearing before them and/or to pursue specialised training;

- result in financial savings by avoiding costly institutional solutions;

- increase community involvement in measures taken, and thus improve public awareness regarding appropriate responses to juvenile offending;

- increase support and assistance to parents and the child's family environment; and

- foster the social reintegration of the child.

While the above constitutes the core pro-active programme of UNICEF-CP in the sphere of juvenile justice, it is clear that the specificities of country situations may require other, or additional, priorities. The validity of the approach will need to be evaluated after a reasonable trial period.

IV. CONCLUSIONS FOR JUVENILE JUSTICE PROGRAMMES

Ultimately it is a decision for individual UNICEF country offices, in agreement with their host government partners, to determine whether juvenile justice is a child protection programme priority. However, if juvenile justice is a priority, programmes should be:

- constructive;
- incremental;
- stress and build on the qualities and capacities of the children concerned;
- integrated and inclusive; and
- based on and build partnerships with all other actors – children, their families and communities, the judiciary, police and prison officers and government and other political leaders.

Activities, based on the above criteria, could include:

- comprehensive assessment and situation analysis;
- participation in and support to law reform;
- training and capacity building for any or all of the partners mentioned in the preceding paragraph; and
- support for pioneering pilot projects implementing restorative justice, decriminalisation, diversion or alternative sanctions.

JUVENILE JUSTICE REFORM: UGANDA EXPERIENCE

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I. BACKGROUND

In legal provisions concerning Juvenile Justice in Uganda were, before the enactment of the Children Statute, Statute No. 6 of 1996, scattered in various Acts[1]. This made it rather cumbersome and at times difficult for easy reference. Significantly, the laws that continued to apply in juvenile justice were outdated, many remained unamended, notwithstanding the fact that these were copies of the English legislation transplanted almost verbatim during the colonial times. As Dr. Kanyeihamba, Attorney General, aptly put it, "The laws that prevail are outdated and oblivious to the special needs of our children"[2]. The viewpoint which was supported by a cross section of stakeholders was that it was untenable to maintain and enforces laws which were not responsive to the prevailing social situation, laws that were based on English statutes which after all had already been fundamentally amended in the country of their origin.

As early as the late 1960's moves were made to reform the existing relevant laws and come up with among others, a comprehensive and consolidated children and young persons' legislations as was the case in some of the other African countries. In 1973, a draft children and Young Person Bill was elaborated by the Government Ministry responsible for children affairs, in close consultation with the Ministry of Justice. In 1977, the draft Bill was revised following the studies and consultations that had been undertaken. However, the Administration that assumed to reign of the power following the General Elections that were held following the overthrow of the military regime, decided not to proceed with the draft Bill even though the pressures for reform remained strong.

Nonetheless, the momentous accurrencies in the country during the 1980's negatively impacting the child and the youth, gave the impetus for the reform of the law concerning the children. In this regard, it is noteworthy that throughout the 1980's the civil society organisations involved in child care and youth work which historically had been encouraged to assume a leading role in the provision and delivery of services in those sectors stepped up the advocacy for reform of the law relating to children.

In June 1990, the Minister of Relief and Social Rehabilitation, whose portfolio included matters concerning children, appointed a broad-based multi-disciplinary and intersectorial Child Law Review Committee with wide scope terms of reference. The composition of the Committee of 14 members, which was chaired by former judge of the Eastern African Court of Appeal and Uganda Court of Appeal included High Court judges, academic professors of law, psychiatry and sociology, other academics from school law and humanities, legal practitioners, court magistrates, social administration and social workers, social scientists, representatives of non-governmental organisations, court prosecutors, police, military and prisons personnel, individuals working in children institutions, legal drafts people and certain opinion leaders.

II. REVIEW OF THE LAW

The Committee was given powers to determine its work programme and procedures; in addition it was empowered to coopt individuals whose experience was considered of relevancy to the Committee's

[1] These included among others the Penal Code Cap 106 (section 14), Probation Act Cap 109, Approved Schools Act Cap 110, Reformatory Schools, Act Cap 111, the Affiliation of Children Act Cap 217, Magistrate Courts Act, Act No.13 of 1970 (Section 190 and sub-section(3) of section 191), Judicature Act 1967 (section 9) and Resistance Committee) Judicial Powers) Statute 1988, Statute No.1 of 1988.

[2] Dr. G. Kanyeihamba, Attorney General, in his address at the Workshop of the Child Law Review Committee in September 1990, Kampala.

terms of reference.

The Government received a grant from a donor agency that enabled this important exercise to be successfully implemented.

At the outset, the Committee agreed to use Workshops as a major method of executing its work. Accordingly, 8 Workshops were conducted. The first Workshop, which coincided with the inauguration of the Committee work, had the following main objectives:

- To share ideas as to what should be the basic sound social work and legal philosophy underpinning the Committee's work in revising the laws concerning children.

- To set the revision of the laws concerning children in the context of Uganda's socio-economic situation, its current assistance to children, its legal and customary practice.

- To consider the implication of the UN Convention on the Rights of the Child and other UN Rules concerning children, and the draft African Charter on the Rights and Welfare of the Child.

- To consider the experience of other countries in their efforts to give better protection and welfare to the children.

- To consider how best to proceed in involving the government, the public and other organisations in deliberating on these issues in the context of what is 'affordable' and 'achievable'.

The Workshop was facilitated by leading international experts in preparing proposals for and reviewing laws concerning juvenile justice and who had assisted several other countries in similar undertakings. The other 7 Workshops focussed on particular aspects of this exercise, and review of the progress in implementing the exercise, including addressing certain encountered constraints. In all, the participants in those Workshops that were conducted and facilitated by experts included senior government officials, academics and important opinion leaders, members of the Constitutional Commission and the Constituent Assembly. The members of the Review Committee actively participated.

Besides the Workshops, the Committee commissioned a number of field studies in various aspects of Uganda social life. Consultative and focused group discussions were conducted with individuals in different parts of the country. Furthermore, review of accessible literature on the subject was carefully undertaken. Media was very helpful, not only in publicising the work of the Committee, but also in conducting interviews and discussions about the work of the Committee in the press and on radio. The Committee carried out interviews with leading personalities in the country, including Ministers, Members of the National Resistance Council, which at the time constituted the national legislative body, members of the Constituency Assembly (the body then making the new Constitution for the country, which was ultimately promulgated in 1955), top government officials, religious leaders, district and other local authority leaders and leaders of the business community.

In order to ensure complete coverage of all relevant areas, the Committee subdivided itself in task forces to tackle different aspects of the law, but also deliberated a full Committee on very many times.

In the end, the Committee finalised its task, resulting in the Children Bill of 1995, which was considered by the Cabinet and following the established procedures, was tabled and debated in the National Resistance Council (the national legislative body at that time). In April 1996, the Bill was passed and enacted as the Children Stature, Statute No. 6 of 1996. Its objectives are,

"A Statute to reform and consolidate the law relating to children, to provide for the care, protection

and maintenance of children, to provide for local authority support for children, to establish a Family and Children Court to make provision for children charged with offences and for other connected purposes."

Undoubtedly, the enactment of the Statute was a great victory for Uganda.

The Children Statute consists of 11 Parts, 115 sections and 3 schedules. As stated in its objective, the Statute is consolidated law concerning the various aspects of children of which children charged with offences is just one of the aspects. The outline of the Statute is stated below.

Part I includes the Preliminary. Part II is on the Rights of the Child. In this regard, it is noteworthy that the 1995 Uganda Constitution is the foundation for democratic development and individual rights protection in Uganda. However, the Children Statute is the enabling legislation which is necessary to bring those constitutional rights concerning the child as stipulated in Part II of the Statute, down to an enforceable and protectable level. Thus the elaboration of the Rights of the Child in the Statute is important as it concretely set out what the rights mean substantially.

A major step forward is section 3 which provides the definition of child: reading,

"A child is a person below the age of 18 years."

This definition, as the Committee stated in its rationale, provides a uniform age which takes in consideration the development of mental and physical characteristics that define maturity and distinguish the children from the adults.

Part III is on support for Children by local Authority, which are elaborated in 3 sections. Part IV is on Family and Children Court. Section 14 provides for the establishment of the Family and Children Court which, as will be noted later, its criminal jurisdiction is stipulated in section 94. Part V deals with Care and Protection of Children, Part VI focuses on Foster and Care Placements. Part VII is on the important subject matter of Adoption. Part VIII deals with Approved Homes. Part IX dels with Parentage of Children.

Part X dealing with Children Charged with Offences, is the Part that deals in the main with juvenile justice. The sections in this Part are not only in line with the UN Convention of the Right of the Child, importantly, these sections stipulate the set up new systems for dealing with children who come in conflict with the law. The sections in the Part introduce new modes of how children involved in criminal cases are now handled, thereby depicting major changes to the systems that existed before. Thus Family and Children Court earlier referred to as established in section 14 in Part IV, is given under section 94 the original jurisdiction over most crimes of which children may be accused except for petty crimes which are now under the jurisdiction of local council courts. According to the Statute, the crimes committed by children punishable by death or those committed with an adult are under the jurisdiction of the High Court for trial. However, they are returned to the Family and Children Court for the imposition of sentence.

Other important provisions regarding juvenile justice include:

1) The minimum age of criminal responsibility which hitherto had been seven years is now set at 12 years (section 89).

2) Section 90 lays down the procedures relating to the arrest and charge of children. Thus the police are empowered to caution and release a child and also dispose of cases at their discretion which prevent the child from coming into contact with full judicial procedure. Furthermore, the police are required to immediately ensure that the parent or guardian of an accused child is informed, equally so, the leadership of the local community, that is the secretary of children affairs, has to

be informed. In addition, the police are empowered to release an accused child on bond on the child recognisance or on recognisance entered into by the parent or guardian.

3) The other major step forward includes;

ensuring that the child's parents or guardians are involved in the ongoing judicial process (sections 17(d) 90(4);

making the court proceedings informal and child friendly (section 17);

ensuring the child's right to legal representation (section 17(c);

setting the absolute time limits on the duration of criminal cases and the duration of periods during which children may be held on remand pending trial (sections 91, 92, and 100);

protecting the child's right to privacy during court proceedings (section 103);

stating that detention on remand pending trial should only be sued if there is a serious danger to the child (section91);

providing sentencing options pointing out that detention is the option of the last resort (section 95);

prohibiting the use of corporal punishment, limiting the absolute duration of sentence and mandating that children are never held in adult detention facilities (section 95)

Part XI deals with Miscellaneous.

It is therefore very clear that the administration of juvenile justice in Uganda, as stipulated in the Children Statute is in line with the provisions of the UN Convention on the Right of the Child.

III. IMPLEMENTATION OF THE STATUTE

In 1997, the responsible Minister appointed a National Task Force which was in effect an inter-ministerial committee to work out the strategies for the implementation of the new law. The Task Force was under the chairmanship of a judge of the Supreme Court of Uganda and Chairman of Uganda Law Reform Commission.

The Task Force considered and recommended to the responsible Minister the institutional framework for the implementation of the Statute. On 1st August 1997, the Statute was brought into force. To this end the following courses of action have been implemented:

Pamphlets and posters on the Children Rights were immediately produced and widely distributed. In this regard, the press played and continues to play a leading role. At the same time, advocacy material to support the implementation of the Statute were developed, printed and widely distributed.

The Chief Justice gazetted all Magistrate Courts grade 2 to be Family and Children Courts. In order to ensure that all communities are sensitized about the Children Statute, the latter was initially translated in 6 local languages and thereafter it was translated into 4 additional local languages. Furthermore, a simplified version of the Statute was produced, printed and widely distributed.

The guidelines to the police were prepared and have since been put in place by the police. Similarly, the Rules and Regulations for the village Family and Children Courts have been prepared and put in place. The secretaries of children affairs have been created at all levels in the local councils system, to be responsible for children's welfare in their localities.

At the same time, the responsible Ministry has developed training manuals on the Statute which continue to be used in conducting training workshops of concerned personnel and local leadership throughout the country. Similarly, the Ministry has developed training manuals for child care practitioners and training Workshops continued to be implemented.

IV. THE CHALLENGES

The Statute came into force almost four years ago and there are still constraints in actualising and implementing the law. Thus in many districts there are yet to be sitting and functioning Family and Children Courts. In addition, in those districts where the Family and Children Courts are functioning, there is great need to sensitize people about their existence and of their jurisdictional capacity. Furthermore, there are still too few Magistrates Grade II for the functioning Courts. Remand institutions are yet to be established in all districts. In the circumstance and regrettably, child offenders continue to be mixed with adult offenders in prisons, while awaiting trials. The National Rehabilitation Centre is yet to be established as stipulated in the Statute (section 97).

On the whole, the general implementation of the Statute is being constrained by lack of financial and human resources. In fact, the implementation of the Statute has largely depended on donors. Consequently, staffing is problematic and inadequate, especially of the probation and social welfare officers.

Furthermore, planned arrangements for awareness creation, monitoring and evaluation of implementation have not been executed.

V. CONCLUDING REMARKS

Admittedly, by the time the reform of the child law was mandated, it was long overdue, with all the concomitant negative implications with respect to the juvenile justice in Uganda. However, when the critical decision was made, the enabling necessary arrangements had already been made and in place to ensure the effective and efficient implementation of the undertaking. These included among others:

1) The good will of the Executive arm of the Government, including the President. The President of Uganda, who attended the World Summit on the Right of the Child in August, 1990 remained very supportive. Indeed Uganda was among the first Party States to ratify the UN Convention on the Right of the Child.

2) The Review of the Child Law exercise involved active participation of all major actors, particularly the concerned civil society organisations were active joint partners throughout this exercise.

3) All the various Government sectors concerned with the interests of child care and protection were involved. At the same time, opinion leaders at various levels of the society, community leaders at all levels and the media were encouraged to participate.

4) The Child Law Review Committee was multi-disciplinary and inter-sectorial, whose members were individuals with credible professional experience and expertise and with disposition to the rights, care and protection of the children.

5) A donor agency had been identified and this was very critical as the exercise was costly, consequently it needed prior arrangement for adequate funding to ensure effective and efficient progress of the undertaking.

6) A proper plan of action in the implementation of the review was devised and strictly adhered to. The Committee made every effort to ensure the widest collection and expert analyses of the needed data. Consultations were made with cross section of the population. The Workshops facilitated by qualified international and local resource persons were very useful.

As regards the implementation of the law, the financial constraints are hard hitting, but this is not due to low priority rating of the sector rather, this relates to over all weak national economic situation. However, given the determination, total involvement of all concerned and the open and transparent approach that is being applied, there are great hopes that UNICEF, which has all along been supportive and the other donor agencies targeting the sector, will come to the rescue of the Government to effectively implement the law.

Lastly, the Children Statute provided major steps forward towards juvenile justice in Uganda, which are in line with the Convention of the Rights of the Child.

APPROPRIATE RESPONSES FOR CHILDREN IN CONFLICT WITH THE LAW

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I. INTRODUCTION

Save the Children is the longest established and largest international children's charity in the UK. We work in over 70 countries helping children in the world's most impoverished communities, including such communities in the UK itself.

We undertake emergency relief work in parallel to long-term development and prevention work and through working alongside children, their families and communities, we learn from the reality of their lives. Through such learning and experience and building on the expertise gained from our projects around the world, SC UK works to achieve lasting benefits for children within the communities in which they live by influencing policy and practice and advocating for change at local, national and international levels. Fundamentally, SC (UK) aims to make a reality of children's' rights.

II. SOCIAL PROTECTION WORK IN SAVE THE CHILDREN

Migration, increasing urbanisation, widening disparity between the rich and the poor, the HIV/AIDS pandemic, growing consumerism and increasing conflict, have all led to the breakdown of the traditional family and community-based support structures for children across the globe. This has been compounded by inadequate social policies and laws on child care and protection, resulting in an increasing number of children subjected to violence, living in institutions or without the protection of the family or wider community.

Against this bleak back drop, social protection, welfare and inclusion has been identified as one of the six core areas of work in Save the Children's current Programme Strategy and devised to guide and focus all programme work over a four year period. Thus, Save the Children intends to influence social protection policy and practice for the most marginalised children at the local, national and global levels through work with:

- Separated children, especially in conflict and disasters
- Alternatives to institutional care (care and support within the family and community)
- Protection for exploited and excluded children through formal and non-formal systems
- Children in conflict with the law

The range of work carried out by SC (UK) under children in conflict with the law, is reflected by the number of regions and countries in which justice for children forms a major focus of our programmes, including South and Central Asia, the Middle East, the UK and Europe, Africa, the Americas and South East Asia. In each location, there is a wide variation in cultures, values, languages, contexts and justice systems, however, within this presentation, I shall attempt to draw together SC (UK)'s experience, relevant research and some key principles for what works in systems of justice for children.

A. Background

Save the Children (UK) has a firm commitment to the full implementation of the CRC, and in many

countries we assist governments and local partners to develop appropriate responses for children in conflict with the law which serve both the Rights of the Child and the needs of societal justice. For countries, which have ratified the UN Convention on the Rights of the Child and are required to review legislation and practice, Articles 37, and 40 are of particular importance to Juvenile Justice. Article 37, relates to Rehabilitative Care and Article 40 to the Administration of Juvenile Justice.

Although the CRC and other relevant international agreements, set out the values and principles that should underpin Juvenile Justice systems, they do not provide a blueprint for reform or provision, and questions, such as the age a child should be held responsible for criminal actions, need to be resolved in the individual country contexts.

It is, however, useful to summarise the provisions included in the UNCRC and other international agreements and thereby identify the broad parameters for children's justice systems:

- Children should be respected as fully–fledged members of society, with the right to participate in decisions about their own future, including in official proceedings.

- Children have the same rights in all aspects of due process as those accorded to adults, e.g. legal aid

- Children should be diverted from formal systems of justice wherever appropriate and specifically to avoid labeling as criminals

- A variety of non-custodial sentences should be made available, including care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programmes

- Custodial sentences should be used as a last resort, for the shortest times possible and limited only to exceptional cases.

- A set of minimum standards should be maintained for all juveniles in custody.

- Children have a right to be released on bail unless there are specified reasons why bail should not be granted.

- There should be specialist training for personnel involved in the administration of juvenile justice

- States should invest in a comprehensive set of social protection provisions to contribute to preventing juvenile crime. This should include provision for very young children. Provision should involve government agencies and departments, private welfare organizations, communities, religious institutions, etc.

- Capital and corporal punishments should be abolished

- States are obliged to establish a minimum age of criminal responsibility which is not set too low, but reflects the child's capacity to reason and understand their own actions.

Different countries have approached the translation of these provisions into domestic law through various approaches, some have amended existing legislation, some have consolidated and amended a range of legislative provisions and some countries have developed new and comprehensive legislation specifically for children.

However, regardless of the quality and extent of laws existing in the statute book, juvenile justice systems often fail to be implemented into practice. In the context of rapid change and development across

the world, many countries are facing increased urbanization, declining public sector expenditure and a reduction in the numbers of government personnel, which directly impact on the capacity of nations to implement responsive legislation for children. It is therefore vital that in order to implement legislation and systems of Juvenile Justice, which comply with the CRC guidelines, we need to research and analyse the different systems, their inherent value base, their effectiveness and both the short and long term costs.

In such research, it is useful to draw on experience from as many sources as possible, from traditional justice systems which are largely concerned with the restoration of harmony in the community, to approaches in industrialized countries which encompass a range of diverse, and often, contradictory approaches relating to: prevention and rehabilitation, deterrence and retribution, and diversion from court and custody.

B. What Doesn't Work

Despite a general belief to the contrary by some sections of the judiciary, the police and the general public, it is increasingly clear that custodial sentencing does not work in reducing offending. Recent research has shown that rates of re-offending can be reduced but not by punitive methods, or by interventions based on psychotherapeutic or medical models. Re-offending rates can best be reduced by methods which address those factors that have played a causal or contributory role in the offending act, and that would place the offender at risk of re-offending in the future.

Imprisonment is generally assumed to have three main types of outcome: a direct deterrent effect on the individual's worn behavior, a general deterrent effect, and incapacitation of the individual. However, punitive measures have been shown to have a net destructive effect, which serve to primarily worsen rates of recidivism and have done little to arrest the increase in crime. Punishment based programmes such as shock, incarceration, and intense surveillance, on average, have led to a 25% increase in re-offence rates.

C. What works?

Several studies have led to a number of principles in respect of designing effective programmes, which can be applied at all stages of the justice process. These include

- Risk classification – This entails matching offender risk level and degree of service intervention.
- Criminogenic needs – The need to separate the offender's problems or features that contribute to or are supportive of offending from those that are more distantly related or unrelated to it.
- Responsivity – This means that programmes work when there is a systematic matching between style of workers and styles of offenders. The learning styles of most offenders require active participatory methods of working.
- Community base – programmes located in the community on balance yield outcomes that are more effective.
- Treatment modality – findings indicate that more effective programmes were found to be multimodel, i.e. they recognized the variety of the offender's problems.
- Programme integrity – effective programmes are those in which the stated aims are closely linked to the methods being used, and that adequate resources are available to achieve these aims and staff are appropriately trained and supported.

From these studies and key elements defined within the UN CRC, it would seem that both indicate

that children and justice are best served when interventions are understanding of the context of the offending (Diversion from formal judicial systems where appropriate, Article 40, sections 3b), where the process for addressing the offending are participative (The Child's Opinion, Article 12) and response are matched to the nature of a child's problems (Parental, extended family or community guidance and the child's evolving capacities, Article 5) and where there are resources available to ensure the fulfillment of any disposal made (A variety of disposals being available, Article, 40, section 4)

Such parallels in research and principles indicate that community–based responses to juvenile offending can be established not only as being in the best interests of children but potentially the most effective response to juvenile offending. It may be useful to examine some of the informal and formal community-based responses, which have had some success in dealing with juvenile offending:

New Zealand – Family Group Conferencing: This system was developed from traditional Maori culture. Led by a Youth Justice Co-ordinator it involved the offender, and those important to him/her – family, friends and teachers, and their victim and a police representative. The purpose of the Conference is to discuss the alleged offence and to decide how best to respond to it. The young person must accept responsibility for his/her actions and an agreement is reached through consensus decision-making. It may be that the offender has to apologize, to work in the community or undertake some work for the victim to make reparation.

This system has been successful in that in 95% of cases agreement has been reached. The number of young offenders appearing in court dropped from 13,000 a year to 1,800. However, only 49% of the victims expressed satisfaction.

Australia – Family Group Conferencing: the Australian system has had more success with victim satisfaction. It differs from the New Zealand model in that is 'victim centred' rather than being focused on the young offender. Further, it defines 'community' as those involved with the incident rather than those involved with the young person.

Canada – Community Sentencing Circles: Based on Native Canadian approaches, this system emphasizes collective responsibility, consensus decision making and healing relationships. One Judge involved with this process said the results were 'startling'.

Uganda – Village Courts: Village Courts in Uganda are made up of local leaders, community members and one person designated as Secretary for Children's Affairs. As the Court of First Instance, this system offers young offenders diversion from formal judicial proceedings and the opportunity for the alleged offence to be examined in context of the local situation, by friends, neighbors and the victim. The Village Court disposals range from apology, to restitution or fines but not remand or custodial sentencing. This system was seen as appropriate by all sectors of society.

United Kingdom: Restorative Justice was a pilot initiative established by Thames Valley Police which is targeted at young people between the ages of 10 to 17 who were facing cautions for offences. Over a two-year period recidivism within the pilot study group fell dramatically from 30% to 4%.

Although, no one country can provide a model of restorative justice for another, perhaps the New Zealand and Canadian experiences can lead other countries to consider how contextually appropriate initiatives can be developed from within the traditions and values of their own society.

Four critical elements for the development of effective Juvenile Justice programmes can be identified from the above research and experiences, the principles identified from the CRC and international agreements on Juvenile Justice, and SC (UK)'s own experience:

Research and Analysis: is required which acknowledges the views and opinions of children in conflict with the law and those who have been convicted of offences to assess the effectiveness of the processes of interventions. Ways of analyzing the level of services required and the accused potential risk of re-offending need to be established and a balance achieved between the welfare of the child and the needs of justice.

Community – Based Models: Have proved to be both effective in terms of justice and the best interests of the child, and can be responsive to local context and circumstances of the offence. Community-based responses can, in general provide immediate resolution and thus, be more effective in preventing repeat offending. In addition, they support the diversion of children from the formal judicial systems.

A Comprehensive Programme of Provision: In order to provide services which recognize the range of issues involved in child offending a multi-agency and comprehensive programme of response are required. Not all offences are appropriate for resolution at community level. However, within the formal judicial systems, there are opportunities for non-custodial sentencing, such as probation, supervision, fines, community service orders or suspended sentences. However, a variety of programmes and disposals should be designed, appropriated to the age and needs of the differing range of offenders. There is also a need for agencies to establish working links, joint initiatives and policies, through which they can best serve the interests of justice and of child offenders. However, fundamental to any comprehensive programme, are strategies for prevention which include awareness-raising for professional staff and the general public in respect of juvenile offending, community resolutions, non-custodial sentencing and, ultimately, the re-integration of offenders into their communities.

Resourcing: It is critical that if an effective juvenile justice system is to be established, and the Principles of the CRC upheld, investment must be made in the appointment of trained personnel, at local level and within the formal systems, the provision of accessible specialist support, and sufficient resources to fulfill the stated aims of the range of comprehensive programmes.

REVIEW OF JUVENILE JUSTICE IN KENYA

Ms. Joyce MWANGI,
Save the Children (UK), East and Central Africa

In January 2000, the SC (UK) Kenya Programme undertook a review of the situation of children in conflict with the law in Kenya. This review was aimed at providing SC (UK) with information that would ensure effective programme development and implementation. The review involved representatives of all the key government departments and a cross section of NGO's working with children in conflict with the law.

The following section presents the key findings of this review and attempts to relate them to the provisions of the international juvenile justice instruments and the principles of effective programming outlined in previous sections of this document.

I. ISSUES OF CONCERN

A. Differentiation between Social Welfare and Juvenile Justice Issues

There is no clear differentiation between juvenile justice and welfare issues within the current national policies, legislation and practices. As a result, there exists some confusion regarding the definition of justice, crime and welfare issues. Current practices, for example, seem to emphasise the social control of children in need of special protection through the juvenile justice system. In some cases, institutions within the juvenile justice system seem to be viewed as a means to provide a welfare response for children categorised as being in need of care and protection.

The most common example, is when children living and working on the streets are apprehended and detained by law enforcement officials and in the absence of any crime having been committed will often be brought before the courts as being in need of protection and discipline for such status offences as being beyond parental control, truancy and begging. Many such children are either repatriated or, as is often the case, committed to approved schools which are essentially correctional facilities. In some cases, children categorised as being in need of protection and care who for one reason or another cannot receive care within their families or communities will also be committed to approved schools which because they provide education and care are seen as being beneficial to these children.

As a result of these practices, the review by SC estimated that only about 20 per cent of the children within the juvenile justice system had committed (non-status) offences. Of these 20 per cent, only a small fraction had committed relatively serious offences like assault, theft or capital offences like robbery with violence etc. In short, the majority of the children within the juvenile justice system, were probably eligible and would have benefited more from early diversion and community-based care rather than custodial intervention.

Another issue of concern was that institutions in which these children were held did not do enough to ensure the separation of children by age or separate offenders from non-offenders. This raised the risk of abuse and 'contamination' of non-offenders by those more prone to offending behaviour.

B. Community Vs. Institution Based Intervention

The review indicated a high level of reliance on institution based care at the expense of community-

based alternatives for both offenders and non-offenders. Although there are a number of options available to law enforcement officer's including release on bond, bail and caution, these were often not utilised even when the children concerned posed no risk to public safety.

The focus on institutional care was also evident in the resource allocation to key departments with a disproportionate amount being spent on maintaining institutions at the expense of field based services.

The reliance on institutional care is reinforced by the lack of viable examples of community-based alternatives to custodial care.

C. Quality of Services

There is a high level of awareness of the rights of children within the system. The review pointed out that these rights are usually contravenened.

For example,

- Children have the right to protection from unlawful deprivation of liberty, this is contravened when children are detained, for example, for working or living on the streets.

- Children have no access to legal representation, and often cannot fully participate in the proceedings either because they do not understand or are too intimidated by the language or the process.

- Children need to be protected from the risk of abuse. For example, in some areas, children are detained with adults while in police custody; children are not separated by age while non-offenders and offenders are not separated within the various correctional facilities.

- Institutions within the juvenile justice system offer little in the way of rehabilitative services or programmes to respond to the various special social and psychological needs of the children in their care.

- There is need for enough support for the fast and successful reintegration of children into their families and communities once out of the juvenile justice system.

- Children have been facing prolonged periods of stay within the system.

- There is need for institutions to offer adequate basic services for the children in their care including clean and enough water, proper sanitation, the need for recreational facilities as well as quality education/training.

- Not enough effort is invested in ensuring that parents and family members are involved and supportive of children at every stage of the juvenile process.

D. Data Management

There is need to have in place up to date and reliable information on children in conflict with the law (numbers, distribution, causes, number of times within the system). This data should be available especially at national level from a centralised source. Such information is essential for effective administration, strategic planning and resource management.

E. Co-ordination and Collaboration

The review has stressed the need for effective co-ordination and collaboration within and between

key juvenile justice departments and NGO's. There is a need for openness, trust between government and NGO's and clear demarcation of roles and responsibilities.

II. RECOMMENDATONS

In order to address the identified constraints, the SC (UK) review made the following recommendations;

- Care and protection cases should be dealt with by a system that is separate from the juvenile justice system.

- Institutionalisation should be used only as a last resort and diversion strategies including non-custodial sentencing and other forms of community-based rehabilitation should be considered at every stage. Polices and legislation should be developed that support these measures and necessary resources should be allocated to support their implementation.

- Co-ordination within and between key government and NGO stakeholders in the area of juvenile justice should be made more effective. The SC study for example, recommended that a Strategic Alliance on Juvenile Justice be established to bring together key players in government, international and national NGO's and donors working in the area of juvenile justice. In addition to providing a forum for information sharing, this forum would provide for the consolidation of technical and material resources to develop and implement more effective programmes for children in conflict with the law.

- The government should also consider taking their collaboration with NGO's further, and consider taking on a more supervisory role and, for example, sub-contracting and supporting NGO's to develop and implement programmes for children. This model has been found to work very well in other African countries, for example, through the NICRO programme in South Africa.

- Training programmes for all levels of government staff involved in formal processes with children should be developed. Such programmes should include, the provisions of international juvenile justice instruments, effective methods of working with children in need of special protection, restorative justice systems that provide alternatives to the court process, for example, various forms of family/community conferencing,

III. SC (UK) DIVERSION PROJECT

The SC (UK) Kenya Programme, after considering the findings of the review and consulting with key stakeholders in both the government and NGO sector, identified diversion as a priority area of intervention.

SC (UK) has over the past year been working in partnership with the Department of Children's Services, the police and other key government and NGO partners to pilot a diversion framework that targets the large number of non-offenders within the juvenile justice system. The framework seeks to identify and divert these children at the police station, which is the earliest point of contact with the juvenile justice system.

In line with the recommendations of the Review, activities within the Diversion Programme include;

- Co-ordination within and between key government and NGO stakeholders in the area of juvenile Justice

- Diverting Care and Protection Children's Cases from the justice system and re-integrating them with their families or community based systems

- Creating awareness at all levels of society on the need to use non-custodial sentencing and other forms of community based rehabilitation and care where institutionalisation should be used only as a last resort.

- Building the capacity of key government departments, key NGOs and community based systems so that they are capable of dealing with children better.

- In training programmes for personnel involved in formal processes with children.

- Support pioneer diversion projects by partner organisations

This project could, in the long term, improve the administration of juvenile justice by decongesting the system and enable the resources available to focus on developing more effective programmes for the treatment of juvenile offenders.

The experiences of this diversion model could later be expanded to develop strategies targeting minor offenders and eventually develop programmes for non-custodial sentencing for other categories of juvenile offenders.

PUTTING REPAIR BEFORE REVENGE: THE ROLE OF NGO'S IN JUVENILE JUSTICE REFORM

Ms. Evelynn OGWANG
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I. INTRODUCTION

ANPPCAN Kenya is the Kenyan chapter of the Africa-wide child welfare organisation the African Network for the Prevention and Protection against Child Abuse and Neglect. ANPPCAN Kenya is a not-for-profit independent non-governmental organisation supported by donors both inside and outside Kenya. Its overall goal is to improve the welfare of children in Kenya and to enhance opportunities for the development of their full potential by offering services to targeted groups of children and their families. In this presentation, the experiences of ANPPCAN Kenya in the provision of services to children within the juvenile justice system will be referred to from time to time. In the course of the presentation, we will first discuss the categories of NGO' s working in the area of juvenile justice. We will then look at the role of ANPPCAN Kenya in the area of juvenile justice reform. Herein we will highlight the various activities it has undertaken in the past with regard to juvenile justice reform as well as the present ongoing activities in this regard. In the process of giving the presentation we will highlight some of ANPPCAN Kenya's recommendations with regard to areas that require reform in the administration of juvenile justice.

II. THE ROLE OF NGO'S IN JUVENILE JUSTICE REFORM

The various NGO's working in the area of juvenile justice fall broadly into one of the following three groups:-

- NGO's that secure legal protection for the child in the juvenile justice system. When ANPPCAN Kenya Chapter for example watches brief in a matter, or provides Defence Counsels for children in conflict with the law, it oversees the process that a child will go through within the juvenile justice process.

- NGO's concerned with the rehabilitative aspect of children in the juvenile justice system. The role of the first category of NGO's is closely linked to this one for example when ANPPCAN Kenya collaborates with the Don Bosco Rehabilitation Centres on cases concerning child offenders who have been through the juvenile justice process and ordered to report to the probation officers for a certain duration of time.

- NGO's with the physical welfare aspect of children in juvenile justice system in mind. These are the ones that will provide a home for destitute child, consider what the child will eat, and work towards the provision of basic necessities for children.

ANPPCAN Kenya, an NGO that works towards securing legal protection for the child within the juvenile justice system runs 4 key programmes. These include the Child Rights and Legal Education (CRALEP) programme based in Korogocho a slum community on the outskirts of the city of Nairobi, the Child Help Desk, the Information and Documentation programme and the Legal Services Department.

ANPPCAN Kenya's active involvement in the area of juvenile justice started with the study it conducted in 1998 entitled "Children in the Dock – a Situation Analysis of the Juvenile Justice System in Kenya ". The specific objectives of the study were:-

- To determine the average number of cases and the gender ratios of offenders who appeared before the juvenile court.
- To identify the geographical areas where juvenile suspects were arrested.
- To ascertain the kind of offences that juvenile offenders were charged with.
- To establish the average time it took to finalise cases.
- To identify the case disposal methods.

The data collected from the court records was classified and analysed according to the following criteria:

- Nature of charge
- Number of arrests
- Gender of the arrested children
- Police station where the arrested children were held
- Duration of stay in remand (where applicable)
- Case disposal method.

From it's findings, of the 1,864 children who passed through the juvenile court system in 1997, the overwhelming majority (85%) were boys. The most common offense with which children were charged was vagrancy, which accounted for more than 70% of all cases. Three quarters of those charged with vagrancy were boys. A single police station, Central Police Station in downtown Nairobi, accounted for almost half of all the arrests of children in 1997.

The most common disposal method was found to be repatriation to the child's home area. This accounted for 16.8% of the cases that were resolved. Another 14.1% were committed to approved schools, while 8.7% were either acquitted, had their cases withdrawn, or were handed over to guardians. Only 0.6% were fined and 0.9% caned. However, in almost 60% of cases the court records did not indicate what happened to the children. This led ANPPCAN (K) to conclude that most were still in remand at the end of the year.

The duration of stay in remand could not always be determined due to the inadequacy of court records. The initial duration after first appearance in court was usually two weeks, but this was often renewed indefinitely until the case was finalised. There appeared to be no limit on how long a child could be held in remand.

The evidence collected indicated that children in conflict with the law were not provided with any assistance to help them understand the justice system. No legal representation was provided, and for many children there were no parents, guardians, or child-care officers to help. There was evidence that the child-minders, in the form of the police and other administration officers, far from supporting and helping these children, frequently intimidated and manhandled them. For these reasons, children felt helpless and unwanted and came out of the system badly shaken and traumatised.

The main recommendations for improving the administration of juvenile justice that arose from the study were that :-

- Children in the juvenile justice system should not be treated like common criminals. Staff who handle juvenile cases must respect the children's rights, help them get legal and parental assistance, and ensure that the whole process is carried out with the involvement and in the best interests of the children.

- Judgements in cases involving child offenders need to be informed of the social circumstances surrounding the case. Poverty should not be treated as a crime and children should only be deprived of their liberty as a last resort. Cases should take the shortest period possible before resolution.

- A set of guiding principles should be formulated to guide law enforcement personnel in dealing with juvenile cases. These guidelines should be in line with those of the UNCRC, the ACRWC, and the UN Standard Minimum Rules on the Administration of Juvenile Justice (1985) commonly referred to as the Beijing Rules.

- There is an urgent need to improve the methods of documentation of the cases that pass through the juvenile justice system. All the players in the system must make systematic effort to ensure that comprehensive information on cases involving children is recorded and stored properly.

- Children in need of special protection have to be made aware of their rights and how to exercise them. Law enforcement officers working in the area of juvenile justice and the public at large also need to be made aware of children's rights as they come into first contact with the juvenile suspects and need to be sensitive to the rights of the child. Education on children's rights along with training in the best methods of dealing with child offenders should be incorporated in all police training programmes. ANPPCAN Kenya therefore calls upon the Police to work with it so as to have child friendly desks, facilities and officers at the Police Stations and various designated areas where children can easily go to for assistance without fear of being ignored or manhandled.

- Many children end up in the streets, and in conflict with the law, because they are out of school. There is an urgent need to examine the factors that make children drop out of school and deal with them. Primary school education should be made universally free and compulsory.

Based on the findings of the study, ANPPCAN Kenya felt the need to be more actively involved in the process of juvenile justice administration and reform. It first started this by intervention in cases through watching brief in cases where children were victims of abuse and neglect. Later ANPPCAN Kenya proceeded to provide legal aid in cases where children were in conflict with the law to ensure that due process of the law is followed. In undertaking these activities, ANPPCAN Kenya has faced various challenges. Some of these were due to the effect of having multiplicity of laws on children with contradictory standards e.g. the laws concerning the marriage of minors on the one hand and the laws on rape and defilement with the defences availed to the accused, preparing a child who had been a victim of abuse to be psychologically ready to give evidence in court, the strong beliefs amongst various people that the abused, neglected, or other categories of disadvantaged children are other people's or the government's problem and therefore avoiding attending court to give evidence, and the ignorance of majority of the wananchi of the provisions of fundamental laws that concerned their well being as well as that of their children e.g. through failure to register the births of their children, or to have legally recognised marriages.

Based on its experiences in the juvenile justice administration process and in light of the study it had undertaken, ANPPCAN Kenya recommends that NGO's undertake the following roles for effective reform in the administration of Juvenile Justice.

- Undertake child rights training for the different cadres of staff who handle juvenile cases to enable them to respect children's rights and be able to help children to get the legal and parental assistance and ensure that in all actions, the best interests of the child is held paramount. Law enforcement personnel, the judiciary (and officers associated with juvenile court proceedings, children's officers and probation officers), and staff at correctional institutions should be sensitised to the special needs and rights of children.

- Lobby and advocate for the amendment and enactment of laws especially the Children's Bill 2001 and the Constitution of Kenya to ensure that Internationally accepted standards for the treatment of child offenders and the rights of the child as enshrined in the UNCRC (1989) and the ACRWC (1990) are incorporated into our laws. Further, NGO's should undertake simplification and wide dissemination of key legislation and instruments concerning child welfare into indeginous or local languages in a bid to demystify the law and make it widely accessible.

- Maintain detailed records and liase with the Children's Department and the Juvenile Court in order to have a confidential data base of the children who have gone through the Juvenile Justice process and the action undertaken in each specific case for appropriate follow up and recommendations to be given to the court when needed. NGO's should encourage the culture of information sharing.

- Undertake awareness creation activities on the rights and responsibilities of the child as has been ongoing at different levels bearing in mind specific target groups and their special needs to have relevant information.

- Provide direct legal aid services to children who are victims of abuse and neglect or in conflict with the law to supplement government legal service provision.

III. CONCLUSION

ANPPCAN Kenya and indeed the many child focused non-governmental organisations play a crucial role within the process of juvenile justice administration. It must always be remembered that NGO's supplement the government's role. They should not be deemed to run or take over the government's role for example as regards provision of legal aid to children. In playing their roles, NGO's have noted that the current Kenyan juvenile justice system appears to put more emphasis on punishment of the juvenile offender as opposed to correction. For us to effectively reform the present juvenile justice system, there is an urgent need to put repair before revenge and to co-ordinate the activities of the various actors involved in the administration of juvenile justice. This as a matter of necessity will entail all of us overcoming the sense of mistrust that currently exists amongst various actors in the field, sharing information as the need may be, and where necessary also sharing the available, no doubt, scarce resources. It is a task that none of us can achieve single-handedly. It is therefore important for all those involved to realise that through joint effort we can reform the juvenile justice system and NGO's definitely have a key role to play.