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YOUTH JUSTICE IN ACTION

CAMPAIGN REPORT

2006
ACKNOWLEDGEMENTS

This report was written by Rachel Harvey and Amanda Lloyd of the Children’s Legal Centre (UK), and was produced by Y Care International. The Children’s Legal Centre and Y Care International would like to thank the many people who have helped with this report, including staff, partners and young people.

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### BIBLIOGRAPHY
Although Y Care International and YMCAs have been implementing programmes to support young people in conflict with the law for many years, campaigning on youth justice is a relatively new area for Y Care International. In 2004 the charity launched the ‘12 Years Inside’ campaign which focused on the stigmatisation and victimisation of young people in Honduras by new laws designed to stop gang violence and crime. Youth Justice in Action is a development of ‘12 Years Inside’ and the request from Honduras YMCA that Y Care International advocate on youth justice issues. It was also recognised that during Y Care International’s global youth work activities in the UK and Ireland, issues related to gangs and youth justice were consistently raised by young people as matters of injustice about which they wished to campaign.

In May 2005 Y Care International held a two-day consultative planning meeting with young people from YMCAs in the UK and Ireland, Honduras, South Africa and Lebanon to explore what they thought were the main youth justice issues and to determine the shape of the campaign. The participants also gave the campaign its name: ‘Youth Justice in Action’.

The campaign is running simultaneously in seven countries, in which local YMCAs and other partner organisations have identified justice as a major issue impacting upon youth, although it is envisaged that other YMCAs will be able to become involved.

The campaign countries include:

- Honduras
- Ireland
- Nicaragua
- Sierra Leone
- South Africa
- Togo
- UK

Y Care International is the international relief and development agency of the YMCA in the UK and Ireland. It works in partnership with YMCAs throughout the developing world, providing funding and support for development projects that empower young people to lift themselves out of poverty and bring about positive change in their communities.
PURPOSE OF THE REPORT
In order to inform the development of the campaign and its key messages, Y Care International commissioned the Children’s Legal Centre (UK) to produce a report which would:

- set out the international framework for youth justice;
- provide a summary of key youth justice issues around the world, drawing on examples from the campaign countries;
- explore positive international and national initiatives on juvenile justice; and
- provide a set of recommendations for action by State and non-State bodies to improve the situation for young people in conflict with the law.

The report does not provide a detailed analysis of the youth justice systems of the campaign countries. For the second stage of the campaign, with the involvement of young people, national YMCAs will investigate the country situation for young people in conflict with the law. These national reports will be used to adapt general campaign messages to the country specific context in order to reflect the particular difficulties faced by young people in each of the campaign countries.

DEFINING ‘YOUTH JUSTICE’
A widely-held understanding of ‘youth’ groups 15-24-year-olds together (with slight regional and national variations of this age range). The concept of ‘youth’ represents the period in which young people are in transition to adulthood and are establishing themselves to live a fully independent life from their family. During this transition, they have needs and requirements that are distinct from both children and adults.

However, international human rights law does not recognise ‘youth’ as a distinct group but has clearly separated under-18s from over-18s in terms of protection and rights. While the international community has developed a comprehensive set of standards governing the treatment of children and young people (under-18s) in conflict with the law, which promotes a restorative approach based on their welfare, rehabilitation and reintegration, young adults are only protected by the same standards that apply to the adult population, which enshrine due processes, guarantees and the right to be protected from maltreatment. There are no binding international provisions specifically applicable to young adults and consequently there are limited campaign tools to advocate for a less punitive response.

Therefore, for the purposes of this report, ‘youth justice’ refers to the laws, policies and practices applied to under-18s and the key issues affecting these children and young people when they come into conflict with the law.

However, bearing in mind Y Care International’s wider target group, the report also explores the provisions in international human rights law that can be used to advocate for the protection of young adults and provides recommendations for campaigning on justice issues for 18-25-year-olds.

Definitions
For the purposes of this report, the terms ‘young offenders’, ‘children and young people in conflict with the law’, ‘juvenile offenders’, and ‘juvenile delinquents’ will have the same meaning: all persons under the age of 18 years who have infringed the law.

‘Youth justice’, ‘juvenile justice’ and ‘the system for children in conflict with the law’ will all refer to laws, policies and practices that apply to under-18s who have committed a criminal act. These systems are in part or in whole distinct from the criminal justice system and treat children and young people in a different manner from adults.
In many countries around the world, youth has become synonymous with crime and anti-social behaviour. Public fear of spiralling youth crime, despite statistics in many countries that show contrary or less dramatic trends, is fuelled by disproportionate and sensationalist media coverage, leading to demands for the State to crack down on juvenile offending.

Playing populist politics, the response of many States has been ‘zero tolerance’, ‘mano dura’, ‘get tough measures’ to fight the ‘yobs’, ‘juvenile delinquents’, and ‘gangs of marauding youths’. Common elements of zero tolerance campaigns include the increased imposition of custodial sentences, longer terms in detention and treating young people as adults, in an attempt to deter and deal with juvenile offending. Calls to respect the rights of children and young people in conflict with the law and to take a welfare approach are often drowned out in the clamouring for tougher and tougher penalties and accusations of being ‘soft’ on crime.

In responding to public demands to ‘get tough’, politicians often overlook the realities of youth crime. Despite the fact that in many countries the under-18 population exceeds 50%, juvenile offending is usually relatively low and it is adults who are responsible for the greatest proportion of crime. Crimes committed by under-18s average at 5-25% of all crime.

In addition, the majority of young offenders (over 90%) commit non-violent, petty offences, even in countries where violent crime is rising.

In most countries, property offences is the most common category of crime committed by young people (e.g. theft and vandalism), often followed in frequency by substance abuse and so called ‘status offences’. The rate of murders and rapes committed by under-18s is generally relatively low.

Also, it is often ignored that young people are the main victims of youth crime.

Most children and young people will naturally grow out of delinquent behaviour to become law abiding members of society. Four out of five under-18s who offend, only ever commit one offence in their lifetime. It is therefore not in the best interests of the young person or society to drag non-serious juvenile offenders into the criminal justice system and label them as deviant and criminal – an often self fulfilling prophecy.

Using statistics – a note of caution

Although it is possible to plot trends, it is notoriously difficult to accurately compare rates of juvenile offending in different countries. State systems use different crime classifications, data collection methods (self reporting studies, arrest rates, conviction rates etc) and age bands. This is compounded by the haphazard and ineffectual methods of many national data collection and collation systems, which makes the analysis of individual country statistics problematic.

Statistics are also highly vulnerable to manipulation by politicians, the media and advocacy groups.

Statistics should be used responsibly and sourced accurately.

For many under-18s, offending is not about testing the boundaries while growing up. Large numbers of children and young people face situations which place them in conflict with the law for trying to survive – street children and child prostitutes are often criminalised for behaviour that should warrant a child protection response. These young people are frequently caught up in the criminal justice system and locked up in police cells and prisons.

This blurring between child protection and juvenile justice systems is not confined to the most marginalised young people. Justice systems often end up as a dumping ground for cases that should be dealt with by child protection and welfare agencies. In particular, ‘status offences’ – crimes for which children, but not
adults, can be punished such as truancy, loitering, running away from home and being beyond parental control – can be found in many countries’ penal law.

Further, the very inadequacy of child protection systems and children’s services in many countries to adequately assist young people and families who are experiencing difficulties, contributes to offending by young people and their eventual appearance in the juvenile justice system.

RESPONDING TO YOUTH CRIME

It is a common misperception that the implementation of the rights of young offenders hampers the effective operation of the juvenile justice system. The aim of all sides of the youth justice debate, including child rights advocates, is to prevent crime, re-offending, and young people getting involved in more serious offending. The sides diverge on how best to achieve this.

International juvenile justice standards seek to create a framework for the most effective responses to youth crime, which focus on prevention, rehabilitation, reintegration and non-institutionalisation while protecting children’s rights, in order to reduce offending. The standards prohibit and discourage draconian responses, which paradoxically can increase rather than reduce juvenile offending in the long-term.

Negative responses to young offenders

Two extreme punishments that are imposed on juveniles who commit crimes are the death penalty and corporal punishment. International standards prohibiting these punishments and corresponding campaigns have had an impact on reducing their use worldwide.

Death penalty

The death penalty is the ultimate sanction. International standards explicitly prohibit the imposition of the death penalty on under-18s and on anyone who was under 18 at the time that they committed their crime. Over half the countries in the world have now abolished the death penalty in law or practice and the majority of countries prohibit the imposition of the death penalty on under-18 offenders.

Since 1990, eight countries have carried out executions on people who were under 18 at the time of their crime: China, Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, Yemen and USA, which boasted the highest rate of executions of child offenders between 1990 and 2003. However, China, Pakistan and Yemen have now raised the minimum age for executions in law to 18. Significantly, in 2005 the US Supreme Court ruled that the execution of people who were under the age of 18 at the time of their crime was unconstitutional.

In 2005, Iran was the only country which was known to have executed juvenile offenders, including two children who were under 18 when they were hanged. Iran is also the only known country to have executed an under-18 offender this year. On 13 May 2006, a 17-year-old-male was hanged for the rape and murder of a 12-year-old boy. There are reportedly many other child offenders that have been sentenced to death and are awaiting execution.

Corporal punishment

The use of corporal punishment on under-18s is prohibited by the UN Convention on the Rights of the Child 1989 (CRC) which provides that children shall not be subjected to inhuman and degrading punishment. This prohibition extends to any setting including the home and the family, all forms of alternative care, schools and other educational institutions, justice systems – both as a sentence of the courts and as a punishment within penal and other institutions - and the community.

The Committee on the Rights of the Child, the international monitoring body for the CRC, has defined corporal punishment as ‘any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc.’

Predating the adoption of the CRC, the European Court of Human Rights had ruled in 1978 that judicial birching of a juvenile breached Article 3 of the European Convention on Human Rights 1950 (ECHR), which bars ‘inhuman or degrading treatment or punishment’.

Flogging juvenile offenders instead of or in addition to sending children to prison used to be a common punishment. Although corporal punishment is still prevalent in the home, it is a practice that has been disappearing from juvenile justice systems worldwide. The penal laws of most States no longer allow corporal punishment to be inflicted.
Corporal punishment as a judicial sentence

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<tr>
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<tr>
<td>Nicaragua</td>
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<tr>
<td>Sierra Leone</td>
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<tr>
<td>South Africa</td>
<td>✘</td>
</tr>
<tr>
<td>Togo</td>
<td>✘ (prohibited in State law but used in the traditional courts)</td>
</tr>
<tr>
<td>UK</td>
<td>✔</td>
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(Global initiative to end all corporal punishment of children www.endcorporalpunishment.org)

Sierra Leone is the only country of our focus countries that retains the sentence of corporal punishment for under-18 offenders in its domestic law.

Deprivation of liberty

The most common response to juvenile offending is to lock children up. UNICEF estimates that there are over 1 million under-18s deprived of their liberty worldwide, many of whom are detained with adults. Children and young people who are mixed with adults are vulnerable to abuse, violence and criminal contamination.

International standards prohibit the use of deprivation of liberty for all but the most serious young offenders. While young people may be unable to commit crimes when they are in detention centres, there is little evidence to show that detaining young people reduces re-offending or acts as a deterrent. Locking young people up only delays and exacerbates the problem rather than solving it.

In many countries, the conditions in detention centres are extremely poor and characterised by violence and abuse. Young people often receive limited educational and vocational activities and emotional support. On release, a lack of reintegration programmes leaves young people disjointed from their family and social networks and therefore highly vulnerable to re-offending.

Treating children as adults

A draconian policy pursued by a number of States to deal with more serious juvenile offending has been to process young people (usually 16 and 17-year-olds) through the adult criminal courts, so that they are treated as adults and can receive harsher sentences. However, such measures have largely failed to reduce juvenile offending16 and in a number US jurisdictions have actually increased offending.17

Adult criminal justice systems, which traditionally focus on punishment, are ill-equipped to meet the needs of young people or address the root causes of offending and are therefore inappropriate structures to deal with juvenile offenders.

Extrajudicial responses

Children and young people who come into conflict with the law are highly vulnerable to abuse and violence, from police, institutional staff and other prisoners. Violence – whether individual incidents or systematic abuse - to a greater or lesser extent is prevalent in every country.

In Latin America, and Central America in particular, vigilante groups or ‘death squads’ made up of off-duty policemen, members of the public and hired security guards, have been responsible for a campaign of social cleansing, extrajudicially killing thousands of children and young people. These groups are prompted by a lack of faith in the ability of the police and the judiciary to effectively address the violence and criminal offending of young people. These murders have rarely been prosecuted.18

Extrajudicial killings have been most common in countries with high levels of gang violence (e.g. Honduras19) and large numbers of street children, who have borne the brunt of these extreme reactions because of their visibility to members of the public and their lifestyle.

Positive responses to juvenile crime

While a system based on retribution and harsh penalties may dispel fears that the State is being ‘soft’ on criminals, in reality it has little success in preventing further offending, especially among children and young people. Therefore, the international juvenile justice framework takes a welfare approach rather than a justice approach to juvenile offending.
The underlying belief is that children and young people can be influenced positively compared to adults. They are at a stage in their life when they are still developing their values, attitudes and personalities, which can be shaped by rehabilitative and educational measures. Conversely, purely punitive measures that do nothing to address the root causes of offending can stunt this development and their life chances, leading to an escalation in offending.

International standards promote the use of non-residential, community schemes for diversion, pre-trial and sentencing options. If at all possible, young people who commit crimes should not be deprived of their liberty. By remaining at home, young people can maintain their family, social and community networks.

Where it is appropriate to detain young people, institutions should provide adequate conditions, education and vocational training, and be staffed by trained personnel. The emphasis must not be on punishing the child but on rehabilitating them and reintegrating them. Once released, young people need to be supported to make the transition back into society.

Effective child protection systems and children’s services, as well as an inclusive and accessible education system, are vital preventive tools. Tackling root causes such as poverty, social exclusion, and family breakdown contribute to crime prevention.

**STRUCTURE OF THE REPORT**

The report sets out the international framework for juvenile justice, detailing how States should be dealing with children and young people who come into conflict with the law (section 1). However, no State in the world has managed to fully implement these standards, thereby exposing children and young people to mistreatment and abuse. The report explores the most significant violations of the rights of young offenders, drawing from the plethora of poor practice in our seven focus countries, and discusses the reasons why States continue to fail to uphold international standards (section 2).

However, amidst the negative responses to youth crime there have also been a great deal of positive changes and innovative programmes on every continent, even in countries which seem highly punitive at first glance (explored in sections 3 and 4).

The report concludes with a set of recommendations for action by State and non-State actors to improve the implementation of children’s rights within justice systems, focusing on the key issues discussed in section 2.
TACKLING WRONGS, PROTECTING RIGHTS:

INTERNATIONAL FRAMEWORK FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW

SECTION 1
People who come into conflict with the criminal justice system are highly vulnerable to State abuse and maltreatment. Incidents of disappearance, arbitrary killing and detention, detention without trial, torture, inhumane prison conditions and unfair trials are prevalent throughout the world.

From the infancy of the human rights movement, the international community recognised the need to protect people from such State abuses. Over 50 years ago, international law enshrined the right to a fair trial and right to be protected from torture, arbitrary killing and arbitrary detention. Since then the international community has developed a detailed set of standards to implement the rights of those in the criminal justice system and to promote a fair, effective and expeditious process.

**WHAT IS THE INTERNATIONAL JUVENILE JUSTICE FRAMEWORK?**

Recognising the inherent vulnerability of children and young people and that the punitive responses imposed on adult offenders do not serve the best interests of the child or society in the long-term, the international community has created a detailed framework for dealing specifically with children in conflict with the law.

The **UN Convention on the Rights of the Child (CRC)** is the most important children’s human rights treaty. The CRC defines children as all those under the age of 18 years, unless majority is attained earlier.

Articles 37 and 40 CRC enshrine the rights of children who are in conflict with the law:

- **Article 37** protects the rights of children who are arrested, detained and deprived of their liberty.
- **Article 40** provides principles for a child rights compliant juvenile justice system and a set of standards for the protection of children during the trial and sentencing process.

Other relevant articles include:

- **Article 39**, which obliges States to assist child victims of exploitation, abuse and torture to recover and reintegrate into society. The Committee on the Rights of the Child has made it clear that children who have been involved in crime should be considered as victims of exploitation and are entitled to the protection of Article 39.

Articles 2, 3, 6 and 12 CRC are the principles which must be taken into account in the implementation of all the articles of the Convention:

- **Article 2**: non discrimination in the implementation of Convention rights
- **Article 3**: in all actions concerning children, their best interests shall be a primary consideration
- **Article 6**: the right to life, survival and development
- **Article 12**: the right of the child to express his views and have these views taken into consideration in all matters affecting him. In particular, the child shall be given the opportunity to be heard in judicial proceedings

**SUPPORTING STANDARDS**

The CRC is the umbrella under which four other important juvenile justice instruments, referred to as the United Nations Juvenile Justice Standards and Norms, sit:

**UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990)** – detail the proactive approach that States should take to prevent juvenile delinquency, which Guideline 1 states is an essential part of crime prevention in society. The Guidelines emphasise the importance of developing laws, policies and programmes that target key areas of a child’s life – the family, school and the community - in order to prevent juvenile offending.
UN Standard Minimum Rules on the Administration of Juvenile Justice (Beijing Rules, 1985) – predate the CRC and provide the basis for its juvenile justice articles. The Rules focus on the rights of children in conflict with the law, setting out standards for arrest, the trial process and sentencing, as well as the aims of a juvenile justice system.

UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990) – provide a detailed set of standards for the treatment, protection and care of under-18s in detention centres. The Rules do not only apply to prisons, but also apply to places from which the child cannot leave at will, by order of any judicial, administrative or other public authority, whether run by the State or private organisations.

Vienna Guidelines for Action on Children in the Criminal Justice System (1997) – provide a set of guidelines on how to implement the juvenile justice articles in the CRC and the supporting instruments, not only in relation to child offenders, but also to child victims and witnesses. The Guidelines set out priorities for States in developing a child-centred juvenile justice process, including establishing juvenile courts, developing diversion schemes, reducing the number of children in closed detention centres and providing legal assistance to children.

Although these standards are seen as ‘soft law’, because unlike a treaty States do not formally agree to be bound by them, together with the Convention they form a comprehensive set of universal standards and set out desirable practices to be pursued by the world community. The Committee therefore uses the whole framework of standards to evaluate the juvenile justice legislation, policy and practice of States.

Other important standards

In addition to the CRC, there are five main human rights treaties: Convention on the Elimination of Racial Discrimination (CERD) 1965, International Covenant on Civil and Political Rights (ICCPR) 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Convention on the Elimination of Discrimination Against Women (CEDAW) 1979, and Convention Against Torture (CAT) 1984. Just because the international community has developed a child specific human rights treaty (CRC) does not exclude under-18s from the enjoyment of the rights contained in other human rights treaties. In the same way, although the international community has developed child specific standards for children in conflict with the law, it is important that we do not forget that there is a comprehensive set of general standards governing criminal justice systems which can be used to evaluate juvenile justice systems and to strengthen the case for reform. In addition, although international juvenile justice standards are detailed they are not comprehensive and have significant gaps. For example, although enshrined in the ICCPR (Article 14(3)(d), no mention is made in the child specific standards that young people have the right to be provided with free legal representation if they cannot afford to pay.

International Covenant on Civil and Political Rights – provides protection for people who are in the criminal justice system, when they are arrested, tried and sentenced. The ICCPR also explicitly states that juvenile offenders shall be treated in a manner appropriate to their age and should be separated from adults.

In addition to the human rights treaties, in order to protect people who find themselves in conflict with the law, the international community has developed a comprehensive set of standards to regulate the conduct of law enforcement officials, the trial process and the treatment of prisoners.

Among others, standards have been adopted on the:

- treatment of people detained in prisons;
- conduct of law enforcement officials;
- role of the judiciary;
- use of non-custodial measures;
- use of firearms; and
- role of prosecutors.24

While these standards are not binding on States (as States do not ratify them), they do provide clear guidance on how a human rights compliant juvenile justice system should look.

Regional standards

In addition to international standards, regional human rights bodies have developed standards relating to human rights and criminal justice. However, the only region to have a binding child rights treaty is Africa, which adopted the Charter on the Rights and Welfare of the Child in 1990. This Charter contains specific protection for children under the age of 18 years who are in conflict with the law.25
AGE OF CRIMINAL RESPONSIBILITY

The UN Convention on the Rights of the Child states that countries must set an age below which children are presumed not to have the capacity to break the criminal law (i.e. they do not have sufficient understanding of what they are doing) – the age of criminal responsibility (ACR). However, international standards do not specify what the ACR should be, only that the age must not be set too low, bearing in mind the emotional, mental and intellectual maturity of children.

Ages of criminal responsibility vary widely between States. Despite being parties to the CRC, in a small minority of countries an ACR has not been set, which means that in theory even infants can be held criminally responsible (e.g. Guatemala).

Approximately 15 States have set ACRs as young as seven years, including South Africa.

The Committee on the Rights of the Child has continually criticised low ages of criminal responsibility, considering that even 14 years is low, while welcoming a proposal by Nigeria to raise their ACR to 18 years. All of our focus countries have low ages of criminal responsibility.

Another practice that has attracted criticism is the use of tiered ages of criminal responsibility. Often there will be a lower age of criminal responsibility for serious offences, and a higher age for all other offences. This is particularly evident in ex Soviet States; while 16 years is the age for criminal responsibility, 14-year-olds can be prosecuted for serious offences (e.g. Tajikistan, Azerbaijan, Kyrgyzstan). It is illogical that children are deemed to understand what they are doing when they commit serious offences, but not when they commit less serious offences. Either you have the capacity to commit a crime or you do not.

Although the age at which the ACR is set is important, it is more crucial to address what happens to children above and below the age of criminal responsibility. A high age of criminal responsibility is not necessarily a sign that a country has a progressive juvenile justice system. Often children below the age of criminal responsibility will be dealt with by administrative or welfare bodies who have the power to remove children from their families and place them in a closed residential unit.

For this reason, the Beijing Rules emphasise that its standards and protection should not only be applied to juvenile offenders, but also to juveniles who are proceeded against for behaviour that would not be punished if they were an adult (i.e. status offences) and to juveniles dealt with in welfare and care proceedings.

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A CHILD RIGHTS COMPLIANT JUVENILE JUSTICE SYSTEM

In order for States to achieve a child rights compliant juvenile justice system, their systems need to reflect a number of principles enshrined in international standards and ensure and protect children’s rights as they are processed.

PRINCIPLES OF A CHILD RIGHTS COMPLIANT SYSTEM

- The focus of a juvenile justice system must be the well-being of the juvenile and their rehabilitation and reintegration into society.
  - The focus of the juvenile justice system should not be the punishment of the child nor deterring children from committing crimes.
  - Any action taken against the juvenile must be proportionate to both the crime and the child’s circumstances, taking into consideration their age.
  - The best interests of the child must be a primary consideration.

- States need to develop a separate system to deal with under-18 offenders.
  - In order to ensure that the particular and varying needs of children and young people are able to be met by the criminal justice system, separate child specific laws, procedures and sentences need to be developed.
- As a minimum, law enforcement officials that come into contact with young people (police, prosecutors, judges, prison and probation staff etc.) need to be trained in children’s rights and how to appropriately deal with children.
- However, in order to effectively implement these child specific laws and procedures and to ensure that young people are dealt with in the most appropriate way, States need to set up separate and specialist authorities, institutions and units.
- In particular, specialist police units, staffed by trained police officers, should be set up in big towns and cities. Ideally, separate juvenile courts should be established. Where this is not possible, judges specifically trained to deal with young people should be appointed to preside over juvenile cases in the regular courts.

**Non institutionalisation of children is a fundamental juvenile justice standard.**
- Removing a child from their family and placing them in a closed institution must be used as a last resort, and only when children have committed a serious and violent crime.
- States need to set up effective non-residential community programmes, to ensure that wherever possible young offenders can remain with their family.
- When children are detained, it should be for as short a time as possible and linked to their rehabilitation, rather than their punishment. The longer that children are away from their families, communities and societies, the harder it is for them to reintegrate and avoid re-offending.
- Rehabilitation must be the primary purpose of depriving a child of their liberty.

**The juvenile justice system should only be for a small minority of children who have committed crimes and require a justice intervention.**
- International standards remind States that in developing juvenile justice policies and measures, they need to bear in mind that most youthful behaviour which does not comply with social norms is a normal part of growing up.
- Most children will grow out of this behaviour and society does not benefit from sucking these children into the criminal justice system.
- Systems must avoid labelling children as delinquent, as this is often a self fulfilling prophecy.
- The juvenile justice system must not take responsibility for children who should be dealt with by child protection and child welfare systems.

**All children in conflict with the law must be dealt with effectively, fairly and humanely.**
- States must ensure that criminal justice procedures promote the well-being of young people and the importance of processing them as quickly as possible.
- States must ensure that all law enforcement officials are trained in how to deal appropriately with children and young people and that there are effective measures in place to respond to allegations of abuse and maltreatment.

**‘CHARTER’ OF RIGHTS FOR CHILDREN IN CONFLICT WITH THE LAW**

The international framework for juvenile justice sets out the rights of a person under the age of 18 years when they come into conflict with the law.

**When arrested:**

Under international standards, if you are under the age of 18 years and you are arrested, you have the right:

- not to be tortured or subjected to inhuman or degrading treatment;
- to be told why you have been arrested;
- for your parents or legal guardians to be informed that you have been detained as soon as possible after your arrest;
- to the assistance of a lawyer from the time you are arrested, throughout the whole criminal justice process;
- to challenge the fact that you have been detained;
- to be separated from adults and convicted juveniles;
- to be dealt with as quickly as possible; and
- not to be held for long periods of time in pre-trial detention.

**During the trial:**

Under international standards, you have the right to a fair trial. Specifically, you have the right:

- to be tried by an independent, competent and impartial body;
- to have legal representation both in preparing for the trial and during the trial. This has to be provided to you for free if you cannot afford it;
- to be present during the trial;
- not to have to give evidence or confess guilt;
- to cross examine witnesses, or for your lawyer to cross examine them on your behalf;
• to take part in the trial. The authorities need to ensure that you know what is going on and you are able to have your say. This includes providing you with an interpreter if the language of the court is not your mother tongue, and if you have a disability, such as deafness, ensuring that someone is there to interpret for you;
• to have your parents or legal guardians present, unless it is decided that this is not in your best interests;
• not to be sentenced to the death penalty or life imprisonment, or any cruel or inhuman punishment, such as corporal punishment;
• to appeal to a higher body, in order to review the decision or the sentence; and
• to have your privacy respected. This means that the courtroom should not be open to the public. The media must be prohibited from publishing or broadcasting any information that might identify you. This is to prevent labelling and stigmatisation.

In detention centres:

Among other rights, if you are put in a closed detention centre, you have the right:

• to facilities and services that meet the requirements of health and human dignity;
• to be separated from adults;
• to not be subjected to inhuman punishment, e.g. corporal punishment, solitary confinement / isolation, reduction in diet, prohibition on family visits. You must be provided with a copy of the rules and the disciplinary procedures when you first arrive at the institution;
• to education;
• to be given adequate food and clean drinking water;
• to have access to adequate medical care;
• to free time/recreation in the open air every day;
• to have the opportunity to practice your religion;
• to keep in regular contact with your family;
• to have contact with the outside world, including attending schools and vocational training colleges outside the detention centre, where possible;
• to be cared for by staff who are adequately qualified and trained; and
• to complain to an independent outside authority about your treatment and care.

‘YOUTH’ JUSTICE – YOUNG ADULTS IN THE CRIMINAL JUSTICE SYSTEM

DEFINING ‘YOUTH’ AND ‘YOUTH JUSTICE’

Although the Convention on the Rights of the Child sets 18 years as the threshold to adulthood, the international community recognises that in reality young people do not become adults on the day that they turn 18 years old. There is a period of transition into adulthood – youth – which begins before 18 years of age and lasts well into a person’s 20s, when young people are establishing themselves to live a fully independent life from their family. During this period, they have needs and requirements that are distinct from both children and adults. This approach has been widely reflected in UN, regional and State policies and programmes.

However, there is no consensus on the age boundaries of ‘youth’. The UN General Assembly has defined ‘youth’ as comprising 15-24 year-olds – a definition that was created for the International Year of Youth in 1985. However, different European bodies have adopted varying definitions of ‘youth’ – while the European Youth Parliament has set the age band between 16 and 22, the ‘YOUTH programme’ of the European Parliament and the Council of Ministers targets 15-25 years.


However, while our understanding of the term ‘youth’ covers those over, as well as under the age of 18 years, ‘youth justice’, according to international standards, does not cover such a wide age range.

The Convention on the Rights of the Child and the UN Rules for the Protection of Juveniles Deprived of their Liberty only apply to under-18 year-olds. Other international child specific standards, however, state that a juvenile offender is a child or young person who may be dealt with in a different manner from an adult. While this could extend the protection to over-18s, the vast majority of countries have set the age for full penal responsibility (where a person is treated as an adult) at a lower age than 18 years, rather than a higher age.

Many countries deal with 16/17-18-year-old offenders as adults and consequently deny them the additional protection afforded to younger people (e.g. Sierra Leone). The Committee on the Rights of the Child has been heavily critical of such systems and has emphasised that all under-18s must be provided with the protection of the international juvenile justice standards.
PROTECTION FOR OVER-18S

Generally, under international law offenders lose their child specific rights when they turn 18 years old. As the international community has not adopted any binding international standards on the specific treatment and care of young adult offenders, they can only rely on the international standards, guaranteeing protection on arrest, through the trial process and while in detention, that apply to everyone.

However, the international community has encouraged States to take an approach to young adults which is distinct from adults in order to recognise their transition into adulthood and address their particular needs and vulnerability.

In particular, the Beijing Rules specify that efforts shall be made to extend its principles to protect young adult offenders. The age limit for who would be considered a 'young adult' is not specified. Key child specific principles contained in the Beijing Rules that should be applied to young adults include:

- **Principle of proportionality** – all actions taken must be proportionate to the offence. Strictly punitive responses are not appropriate.
- **Diversionary measures** should be utilised wherever appropriate.
- **Deprivation of liberty** shall be used as a last resort pre and post trial.
  - A custodial sentence should only be imposed where the young adult has committed a serious offence involving violence against another person, or when he has persistently committed other serious offences and there is no other appropriate response that will protect the public safety.
  - Suitable alternatives to custody should be available and utilised.
- **The objective of placing young adults in detention centres** should be to provide them with care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
- **Young adults should be separated from adults** to avoid criminal contamination and safeguard their well being.
  - This is particularly significant for young people turning 18 years when they are in detention. They should not be transferred to adult prisons to serve out their remaining sentence because the positive rehabilitative gains that may have been made in the juvenile detention centres will be at risk in a prison environment, where they will be exposed to a negative adult influence. Many States do recognise the vulnerability of this age group and separate 18-21 year olds in young offending institutions (UK) or place them in adult centres that cater for less serious offenders and have less harsh regimes (Honduras).
- **Efforts should be made to provide assistance** such as accommodation, education or vocational training, employment or any other assistance, in order to facilitate the rehabilitative and reintegration process.

However, while the Beijing Rules are considered by the Committee on the Rights of the Child to form part of the binding set of standards for under-18s, there is no such obligation on States to apply the principles for over-18s.

In 1995, the UN World Programme of Action for Youth identified juvenile delinquency as one of the ten priority areas for youth (15-24 years old) and, in order to reduce crime among this age group, proposed national and international action to:

- provide rural areas with adequate socio-economic opportunities and services to discourage young people from migrating to urban areas;
- ensure that youth from poor urban settings have available educational, employment and leisure programmes, particularly during long school holidays;
- initiate programmes aimed at promoting tolerance and better understanding among youth, with a view to eradicating contemporary forms of racism, racial discrimination and xenophobia, and fostering the development of social organisations, particularly through youth associations and community involvement;
- undertake information campaigns, educational and training programmes aimed at sensitising youth to the personally and socially detrimental effects of violence in the family, community and society, and teaching them how to communicate without violence; and
- make rehabilitation programmes and services available to young people who have a criminal history.

Most recently, in 2006, the African Union adopted the Pan-African Youth Charter, which includes a specific provision on criminal justice. States which ratify the Charter will be bound to implement the following article on law enforcement and youth (15-30-year-olds).
Article 21 Law Enforcement

“1. Every young person accused or found guilty of having infringed the penal law shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.
2. States Parties shall in particular:
   a) Ensure that youth who are detained or imprisoned are not subjected to torture, inhumane or degrading treatment or punishment;
   b) Ensure that accused youth, except in exceptional circumstances, shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
   c) House accused and imprisoned juvenile youth separately from adults;
   d) Provide induction programmes for youth that are based on reformation, social rehabilitation and re-integration into family life;
   e) Make provisions for the continued education and skills development of imprisoned young people as part of the restorative justice process.”

While in part this Article merely restates the rights that are applicable to adults, subsections d and e extend the juvenile justice principles of rehabilitation and reintegration to 18-30-year-olds. The adoption of the Pan-African Youth Charter is therefore a limited but significant step forward in plugging the gap that exists in international standards for the provision for young adults in the criminal justice system.

DEVELOPING STANDARDS FOR YOUNG ADULTS

While moves to strengthen the protection for young adults should be welcomed and advocated for, the lumping together of under-18s with over 18s encourages States to deal with this section of society (‘youth’) as a homogenous group. This could undermine the additional protection that young people currently enjoy under the international juvenile justice framework as States suck adolescents into a ‘youth’ criminal justice system which is less able to meet their needs. For example, although England and Wales separates under-21-year-olds from the adult prison population, under-18-year-olds can be placed in these Young Offender Institutions, which have been heavily criticised for their inadequate treatment of young people. Further, the Honduran programme on the prevention, rehabilitation and social reintegration of gang members, which is aimed at 12-27 year-olds, largely fails to address the specific needs of under-18s.
SECTION 2

KEY ISSUES IN THE ADMINISTRATION OF JUVENILE JUSTICE
Children and young people who come into conflict with the law are highly vulnerable to violations of their rights, which can range from a failure to uphold procedural guarantees, such as access to legal representation, to maltreatment and murder.

This section does not attempt to address the full spectrum of violations, but explores a number of key issues which have a significant impact on young people in our focus countries:

- **Blurring the line between child protection and juvenile justice**
  - The first part of this section looks at the grey area between juvenile justice and child protection, focusing on the frequency with which under-18s who are in need of assistance from the child protection and child welfare services are instead dealt with by justice agencies in the campaign countries. This misuse of the juvenile justice system significantly impacts upon some of the most vulnerable groups in society – e.g. street children and young people involved in commercial sexual exploitation, whose survival strategies lead them into conflict with the law.

- **Maltreatment, extra-judicial killings and impunity**
  - The ill-treatment of children and young people by State agents (e.g. the police) is widespread and perpetuated by a culture of impunity in many countries. State tolerated violence is also a characteristic of a number of our focus countries, in which death squads and vigilante groups have been free to mete out ‘justice’ to young offenders and ‘undesirables’ such as street children.

- **The impact of gangs on juvenile justice**
  - The prevalence of gangs has had a significant impact on the development of laws, policies and practices in the juvenile justice systems of a number of our focus countries and has often exacerbated the maltreatment of young people. Instead of addressing the factors that lead to the proliferation of gangs, States have focused their attention on creating draconian laws and policies which have contributed to the marginalisation of young people and hampered their reintegration into society.

- **The overuse of detention**
  - The overuse of deprivation of liberty both prior to trial and as a sentence is common to all the focus countries. This part explores the vulnerabilities of children and young people who are locked up, discusses the international standards that exist for protecting detainees, and examines the effectiveness of using this costly measure in preventing further offending.

- **The role of public perception in shaping juvenile justice systems**
  - The fifth part of this section explores some of the main obstacles that hinder States in implementing the international juvenile justice framework, focusing on the influence that public perception has on the development of laws, policies and practices and the failure of States to challenge misconceptions and promote a child rights compliant system.

**BLURRING THE LINE BETWEEN CHILD PROTECTION AND JUVENILE JUSTICE**

Although the international child rights framework places the responsibility on parents and families for bringing up their children, States have an obligation to assist families in fulfilling their role, through practical and financial support, to ensure that where at all possible children can be cared for by their parents.37

However, if the family cannot or will not adequately meet the needs of the child and, specifically, where the child is being subjected to or is at significant risk of harm, whether that be physical, mental or sexual harm, then the State has a duty to intervene to safeguard the well-being of that child.38 However, a child can only be removed from their family if absolutely necessary and where it is in their best interests.39

Where a child is temporarily or permanently deprived of family care, for whatever reason, the State has to provide that child with special protection, assistance and the care to ensure their well-being.40 The State should endeavour to place these children in a family setting (e.g. fostering, guardianship, adoption).41 Institutionalisation should only be used as a last resort.

The State also has a duty to protect children from all forms of exploitation – economic exploitation, drug taking and producing and trafficking narcotic substances, sexual exploitation, abduction and trafficking.42

However, it is often the very children that States have a duty to protect and provide with care and assistance that end up in the juvenile justice system rather than in the child protection and care systems.
For many children and young people, entering the criminal justice system is a by-product of their socio-economic circumstances and family environment. Instead of being assisted by State agencies to meet their needs and address their difficulties, survival attempts and coping strategies of children and young people are criminalised.

Vulnerable children are frequently dealt with in the same way as juvenile offenders and locked up in juvenile detention centres because of non-existent or inadequate child protection agencies and a lack of alternative residential placements. However, dealing with these children in the juvenile justice system can be a deliberate approach, sanctioned by legislation (which allows penal and administrative sanctions to be imposed), to ensure that children are brought under control for their ‘own good’ and for their own protection.

In many countries, welfare and child protection bodies have quasi-judicial powers, which include the power to deprive children of their liberty when they have committed criminal acts or anti-social behaviour but are under the age of criminal responsibility. In such systems children are often deprived of their liberty without any of the fair process guarantees of a trial, for unspecified or unchallengeable lengths of time.

**STATUS OFFENCES**

A status offence is "any specific behaviour which would not be punishable if committed by an adult". Such offences can range from truanting, loitering and drinking, to exhibiting behavioural problems and being beyond parental control.

Status offences allegedly provide the much needed legal backing for parents, allowing the juvenile justice system to intervene (often at the request of the parents) to provide relief to problems encountered between parents and children.

However, this category of offence actually greatly widens the net of the juvenile justice system, criminalising young people in situations where preventative and family support measures should be used instead of penal measures.

Processing status offences over-burden the juvenile justice system, resulting in the courts and the detention centres having fewer resources to deal with juveniles who require a justice intervention to address their offending.

**STREET CHILDREN**

The treatment of street children – one of the most marginalised and vulnerable groups in society - exemplifies the blurring of the line between juvenile justice and child protection systems in many States.

An investigation into the treatment of street children in Nicaragua found that the majority of young people were picked up on charges of ‘habitual vagrancy’, ‘disrespect to authorities’ and ‘alteration of public order’ such as incidents involving drugs and fighting. Over 20% of the young people interviewed said that when they were arrested the policeman had failed to produce a warrant, court order or give any reason for their action at the time.

Street children frequently come into contact with the law. Activities which characterise their day-to-day life, such as homelessness (vagrancy), begging and loitering are criminalised, which effectively makes their poverty and lack of parental care a crime.

Street children (those living and/or working on the street) also face arrest and detention for eking out a living, as activities such as unlicensed hawking are deemed to be illegal. They are also picked up by the police and prosecuted for petty theft and prostitution, which they have often become involved in to survive, and for substance abuse, which is common among street children as a means of ‘escaping’ from the realities of their life.

Viewed as ‘anti-social’ or criminal elements, or a scourge on a city’s tourist-filled streets and business districts, many police and ordinary citizens simply wish street children would disappear, by whatever means. Rather than being assisted by child protection agencies, these young people are often subjected to harassment and abuse from the police and the public, arbitrarily rounded up and detained and sometimes murdered. (Nicaragua, Honduras)

Detention orders are often described as ‘safe custody’ or ‘protective custody’. However, such detention is rarely ‘safe’ or ‘protective’, because often these placements expose young people to abuse, violence and inhuman conditions.
SEXUAL EXPLOITATION

It is estimated that one million children are forced into child prostitution, trafficked and sold for sexual purposes, or are used in child pornography every year. Extreme poverty is one factor that makes children vulnerable to becoming involved in the sex trade. Families sometimes sell or give away their children. Children are also vulnerable to exploitation if they are on the streets, lack family support and protection, have suffered physical or sexual abuse in their homes, come from families involved in the sex trade, or live near tourist destinations or military bases. Child prostitution is also known to increase in conflict and post conflict countries where UN peace keepers and aid agencies are present (e.g. Sierra Leone).

In many countries, laws outlawing prostitution do not distinguish between children and adults. Children are therefore criminalised and treated as offenders rather than victims and often end up in police cells and detention centres.

Children who have been victims of sexual exploitation, trafficking and sexual abuse can also be detained for their ‘own protection’, especially during investigations. While sometimes young people are held in police cells and detention centres because there are no alternative placements available, at other times it is the result of a deliberate decision not to mix them with the children in care homes. These children are therefore double victims – victims of the abuse they have suffered, and victims of an inadequate child protection infrastructure.

While the State has a duty to intervene to protect all children suffering sexual exploitation and abuse, they must ensure that children are treated as victims rather than offenders. The State also has an obligation to assist children to recover from sexual exploitation in an environment which fosters their self respect and dignity of the child.

SUBSTANCE ABUSE

Substance abuse among children and young people is a widespread problem and makes up a high proportion of criminal offending among under-18s. Drug taking can lead young people to engage in criminal activities such as selling, trafficking drugs or acting as couriers as part of gangs, and to commit crimes such as theft in order to obtain the money that they need to satisfy their addiction.

“Drugs are everywhere. It’s frightening. Drugs are sold in toy stores, video shops, petrol stations and schools.” Children as young as nine years old are in drug rehabilitation programmes in South Africa. As many as one in three young people aged 14-25 are addicted to drugs in some regions. Children mainly smoke marijuana and then move onto harder drugs, while teenagers frequently take ecstasy. Glue sniffing is common among street children.

(Independent Online, 2001)

Alcohol abuse is a problem among young people in a number of countries and is a significant contributory factor to violent youth crimes.

While substance abuse among children and young people must be tackled by the State, criminalisation and detention of young people is often the common but unhelpful response to tackling addiction. Many detention centres are not equipped to address substance addiction. While in some prisons this could be the equivalent of going cold turkey (albeit without any support and with a high risk of relapse when the young person is released), in other institutions soft and hard drugs and alcohol are widely available.

CRIMINAL EXPLOITATION OF CHILDREN

Children are vulnerable to coercion by adults to take part in criminal activities. Such criminal activities range from stealing and housebreaking to the transportation and/or distribution of drugs.

In Nicaragua it is reported that girls are targeted by organised crime rings. The dealers rape the girls in order to impregnate them, then take custody of the baby in order to force the young mothers to sell drugs. The dealers rely on the fact that the girls will not escape without their children.

Poor and marginalised young people, especially street children, are often targeted because they are seen as desperate, easily controlled with the threat of violence and with the promise of ‘protection’ and/or small gifts of food or drugs. They are also expendable – it does not matter if they are arrested or killed.

Young children, especially those below the age of criminal responsibility, are increasingly recruited because they are (theoretically) exempt from prosecution if caught or will be liable to a less harsh punishment. These children are rarely protected from this kind of exploitation or treated as victims by the criminal justice system.
CONCLUSION

A large number of children and young people end up in the juvenile justice system and in detention when they are simply in need of care, protection and direction. There is no doubt that the State needs to intervene to assist these young people, but the juvenile justice system is an inappropriate mechanism to meet their needs.

Further, the Committee on the Rights of the Child has frequently criticised the use of any form of detention for children who have committed no crime but have simply been abandoned or mistreated or are beyond parental control, especially in cases where such detention could take place among convicted offenders.

The Committee does not accept that deprivation of liberty should ever be used for children in need of protection.

ASBOs: criminalising bad behaviour

Legislation in the UK allows for the imposition of Anti-Social Behaviour Orders (ASBOs) on children as young as ten. ASBOs can restrict the movement or behaviour of a person for a minimum of two years. ASBOs have included prohibitions on swearing or using certain words, wearing certain clothes (e.g. hooded tops), and going to specific parts of cities and towns. A 13-year-old boy was infamously served an order banning him from using the word ‘grass’ anywhere in England or Wales for six years and a 15-year-old with Tourettes Syndrome was given an ASBO with a condition that he does not swear in public.

Police forces (including the British Transport Police), local authorities, housing action trusts and registered social landlords can apply to a magistrate for an ASBO to be imposed on an individual deemed guilty of ‘anti-social behaviour’. These are civil orders. This means that the recipient of an ASBO does not receive a criminal record. However, if the person breaches the ASBO, and it is under-18s who are most likely to do this, then they will receive a criminal record and are liable to a custodial sentence for behaviour that in itself is not deemed to be criminal. By 2004, in 46% of cases in which an under-18-year-old had breached an anti-social behaviour order, a custodial placement had been imposed (although only 17% of these cases did not involve a secondary offence). This resulted in a considerable increase in the numbers of children in custody in the UK, contrary to the principle of detention as a last resort.

Children and young people who receive an ASBO or who breach their ASBO can be ‘named and shamed’. This involves the local authority issuing leaflets and newsletters containing photos, name, age, address and description of the young person. The media is also permitted to publish this information. The publication of the young person’s names attracts labelling of young people as deviant and delinquent contrary to international standards and infringes the principle that a young person has the right to privacy.

GETTING AWAY WITH MURDER: MALTREATMENT, EXTRAJUDICIAL KILLINGS AND IMPUNITY

Young people who come into conflict with the law are particularly vulnerable to abuse, especially at the hands of the police and detention centre personnel. Most abuse and violence is inflicted during the interrogation period and during the first 24 hours in detention in police stations and pre-trial detention centres. Girls are especially vulnerable to sexual violence and harassment.

On 15 June 2004, two youths (Marvin Daniel Ortiz (16) and Juan Manuel Aguilar (19)) were tortured and killed in Honduras.

Believing that these boys had stolen two police guns, the police went to Aguilar’s home and entered without a search warrant. They forced his father to reveal where the boys were. Once the police had picked the boys up, under the instruction of the police inspector they were brought to a place known as ‘Rancho El Coco’, violating police procedures. The police inspector arrived with three members of the elite military unit (Cobras), who then allegedly began to torture the boys. Ortiz was beaten and his hands were cut off. He died following massive blood loss. Manuel was beaten, raped and then shot dead. The Special Unit for the Investigation of Child Deaths is investigating the case.

During this period, young people are most likely to be denied access to legal representatives and their families – who are often not told that their child has been arrested or where they are being held - the very people who would be best placed to protect them from these violations.

Detention and maltreatment are sometimes used as a means of intimidating individuals, families and communities, especially in times of civil unrest and internal conflicts, when young people can be subjected to arbitrary arrest, torture, rape and violence. For example, excessive and frequent use of force by police or the military against young people has been observed in the Occupied Palestinian Territories.

However, police also abuse their powers for personal gain. Low paid police officers often supplement their earnings by extorting money from children, with threats or acts of violence, or demand sexual favours in return for not arresting the child. Child prostitutes and girls living and working on the street are particularly vulnerable to sexual exploitation.
Street children are especially easy targets because they are poor, young, often ignorant of their rights, visible and rarely have anyone to advocate for their protection. Seen as vagrant, criminal or ‘dispensable’, street children have been tortured, mutilated and subjected to death threats and extrajudicial execution. Often beatings are not covert - they take place on busy streets in broad daylight, as well as in alleys, deserted areas and in police stations. In Nicaragua, just under half of under-18s who have been detained reported being threatened with guns and being beaten by police at the moment of arrest, usually with a combination of fists and truncheons.

In some communities, the use of a certain level of violence and corporal punishment is accepted and even expected in order to control children and deter them from committing further crimes. For example, in many countries in Africa corporal punishment is permitted in the home and in schools, and the use of physical punishment by the police is a widespread and an accepted method of crime control among young people. Further, corporal punishment is often used as an alternative to proceeding with prosecuting the child and is seen by communities as preferable to having their child sent to a State institution, which could be located far away from where they live.

Violence against young people is not only carried out by State agents (e.g. the police). Vigilante groups, made up of members of the public, have inflicted violence on marginalised groups of society (such as street children and gang members), having lost faith in the State and the justice system to deal effectively with these young people.

Vigilantism is also prevalent in South Africa, with communities taking the punishment of offenders into their own hands. The two most notorious vigilante groups in South Africa are People Against Gangsterism and Drugs (PAGAD) in the Western Cape and Mapogo-a-Mathamaga (commonly referred to as ‘Mapogo’). However, rather than reducing crime, their actions have increased the incidence of violence and the workload of the police through their reprisal attacks on suspected criminals and gang members.

Latin America has witnessed major campaigns of violence against children and young people amid growing public insecurity about crime and youth violence and against the backdrop of zero tolerance campaigns. State agents and members of the public have carried out ‘social cleansing’ of street children and extrajudicial killings of young people. Acts of violence perpetrated against young people have often been met with widespread indifference by the media and the general public with a prevailing feeling that somehow these kids deserved what they got because of the lifestyles that they lead. Few of those responsible have been tracked down and prosecuted.
Second, the State must ensure that all acts of violence and killing are investigated, regardless of whether they are the actions of State agents or private citizens, and where appropriate, prosecuted. Sentences that reflect the seriousness of the offence and act as a deterrent for others must be imposed. The State is also under an obligation to provide adequate compensation to victims and to promote their recovery and reintegartion.72

However, in reality in many countries there is a prevailing culture of impunity allowing law enforcement officials and private citizens to literally get away with murder. Those responsible are not being investigated or prosecuted due not only to ineffectiveness and a lack of resources in the criminal justice system, but also because these acts are tolerated and sometimes even encouraged by the State.

Child victims or witnesses of abuse are often scared to come forward. There can be a fear of reprisals and a lack of faith that the very people who may be responsible for the violence – the police – will take their complaints seriously. Where investigations are carried out, children and young people can be viewed as unreliable witnesses, because they are often high on drugs at the time of the offence, leading to the collapse of the case.72

A study by the National Commission for Human Rights into violent deaths of young people between 1998 and December 2001 found that out of all the victims, only 34% of them had belonged to a gang. In addition, many of the young people being killed who had an association to a gang had gone through or were going through the process of rehabilitation having taken the decision to leave the gang.

Combating impunity?

In 2002, the Special Unit for the Investigation of Child Deaths was established to investigate the large number of unprosecuted extrajudicial killings of children and young people aged under 21. The Unit has had some success in bringing prosecutions. As of June 2004, it had sent 75 cases (involving 116 victims) to the prosecutor’s office, out of which 41 people had been detained, two had been sentenced and one was awaiting trial. By February 2005, the number of people convicted had grown to seven. However, 58% of these prosecutions have been against gang members. The Unit has been heavily criticised for its slow progress, but has been hampered by a lack of resources.

THE IMPACT OF GANGS ON THE JUVENILE JUSTICE SYSTEM

Gangs are a significant problem in a number of the focus countries and their presence has negatively influenced the development of laws, policies and practice relating to children and young people in conflict with the law.

The 1990s saw a huge rise in the number of gang members in Central America. The most prolific gangs – Mara Salvatrucha and Mara 18 – originated in LA, but emerged in Central America in the 90s following the deportation of young gang members from the USA into a situation of rising poverty, rural-urban migration, rapid urbanisation and easy access to the illegal arms in circulation. In Honduras alone it is estimated that there are over 30,000 gang members, with the majority of members being under 18 years old.75 In Nicaragua, where gangs have transformed local communities into quasi war zones through inter-gang wars, it is believed that the gangs (pandillas) are responsible for more than half of all crime.76

Youth gangs are commonly defined as “a self-formed association of peers, united by mutual interests, with identifiable leadership and internal organisation, who act collectively or as individuals to achieve specific purposes, including the conduct of illegal activity and control of a particular territory, facility, or enterprise”.74

Extrajudicial killings in Honduras73

There is an alarmingly high rate of violent child deaths in Honduras. From 1998 to September 2001, well over 2,000 murders of persons under the age of 30 were recorded, out of which 574 were of children aged 12-18 years old. In 54.9% of the cases the perpetrators of the crime have not been identified. However, out of those perpetrators known to the police, 22.7% were ordinary people and 14.1% were gang members. Law enforcement officials made up 4.2% of the perpetrators.

Some of the killings have been attributed to campaigns of social cleansing carried out by vigilante groups, prompted by a lack of faith in the ability of the police and the judiciary to effectively address the violence and criminal offending of young people, and by death squads and other private forces that cooperate with or are tolerated by the Government. In September 2004, there was a spate of collective killings that had the characteristics of executions, including torture, decapitation and planning, leading investigators to believe that death squads are being directed and paid to carry out these murders. However, the investigators have so far been unable to identify the person or group orchestrating these recent killings.

Although often reported in the press, deaths of young people have not been met by the widespread public outrage that they deserve. Many see the deaths as a result of the violent lifestyle that these young people lead, as the perception is that the majority of young people dying are gang members. However,
YOUTH JUSTICE IN ACTION

There is also a prevalence of gangs involved in violence and crime in South Africa. In the Western Cape, it is estimated that over 100,000 people are members of approximately 130 different gangs, which are responsible for 70% of the crime. Recent media stories reported that Cape Town is experiencing a growth in the number of gangs made up of children as young as 13 years old. While in the past young people would join gangs to defend their communities from rival groups, the gangs now tend to be highly organised and are often involved with serious offending, involving drugs, prostitution, muggings, burglaries and car-jacking.

While gangs are undoubtedly a serious problem in Nicaragua, Honduras and South Africa, there are conflicting views about whether youth gangs are a significant problem in Ireland and the UK and the extent to which they have an impact on crime. Some commentators believe that gangs are no more prevalent, prolific, violent or dangerous than in the past and that it is the sensationalist media coverage that has created a public perception that there are ‘marauding gangs of knife-wielding youths’ running amok in towns and cities. While it is acknowledged that some gangs are involved in criminal and violent activity, the activities of many gangs tend to be anti-social rather than criminal, especially in those gangs which have younger members and which are often less structured and less hierarchical. Further, a negative public perception of youth means that many groups of young people, who are merely hanging out together, are labelled as gangs and are viewed with hostility by communities, even though they have not engaged in any illicit activity.

WHY DO YOUNG PEOPLE JOIN GANGS?

Gang members are most likely to join up when they are under the age of 18 years, and boys are more likely to join than girls. Although there are a variety of social, cultural and family related factors which determine their involvement, gangs generally appear in areas of high unemployment, inadequate infrastructure, poor education, high rates of illiteracy and where there is a culture of violence, and attract uneducated, unemployed, marginalised and socially excluded youth.

Some young people are motivated to join gangs by the lack of educational and economic opportunities, while others become gang members for the feelings of hedonism and power, the chance to make money easily and to gain access to drugs. Other individuals join up in search of identity and belonging during transition into adolescence and adulthood, and in post-conflict and transitional societies, as well as for companionship, and as a substitute for a disintegrating family. Gangs can provide a sense of security and pride, and emotional and financial support (as gang members may share resources).

Young people do not necessarily form gangs or join gangs in order to be violent and commit crime. Some gangs start out merely as friends who hang out together. Others join for protection. For children living and working on the street, gangs provide a safeguard from abuse from other gangs, the general public and the police in a society that has failed to provide them with their basic physical and emotional needs. In areas of violent crime and gang activity, where young people are often the victims, it is perceived as much safer to be part of a gang than to be an unprotected target. Being a gang member provides status and social position, warding off possible attacks.

For many young people life in the gangs is dangerous, unpredictable and violent. Initiation rituals can be brutal and some under-18 gang members do become involved in serious crimes including murder. In Central America, the line between organised crime and juvenile gangs has become increasingly blurred. Frequently juvenile gangs are recruited by criminal organisations to carry out illicit activities such as trafficking in drugs and arms. Even where young people have joined gangs for friendship and protection, they risk falling into criminality and violent behaviour.

Once accepted into a gang, it is notoriously difficult to leave. Ex gang members not only lose the protection of their own gang from other gangs, members of the public and the police, but also risk retaliation from their own gang, which can include being killed.

ZERO TOLERANCE – A STATE RESPONSE

The existence of gangs has led to an increase in violence in societies and heightened feelings of public insecurity (often exacerbated by the press), which in turn has prompted a draconian response from many States.

Central America has embraced zero tolerance, ‘Mano Dura’ and ‘Mano Super Dura’ (‘strong hand’) campaigns. Honduras is a prime example of this heavy handed approach. In 2002, President Maduro came into power promising ‘zero-tolerance’ and a war against delinquency. During his Presidency a raft of draconian measures were proposed, including the reintroduction of the death penalty, life imprisonment in isolation and withdrawal from international human rights treaties because they were hindering the administration of justice. Proposals
targeted at under-18s included increasing maximum periods of detention, lowering the age of criminal responsibility, and treating 16-18-year-olds as adults so that they could be detained in adult prisons.

Although none of these proposals became a reality, an amendment to the Criminal Code (Article 332) was adopted in order to allow individuals to be picked up for being members of a gang, regardless of whether they are involved in any illicit activity. This approach ignored the root causes of youth violence and the proliferation of youth gangs, overlooked prevention, rehabilitation and reintegration and failed to provide a long-term solution to the problem.

The new law resulted in mass arrests, during which the police arrested young people merely for having tattoos, exacerbating the overcrowding in the detention centres. Police often failed to respect arrest procedures or the rights of detainees. The incidents of extrajudicial killings and abuse of children and young people also rose.

While crime figures suggest that the State response has been effective in reducing levels of violence and gang activity, at least temporarily while gang members are detained, many NGOs maintain that public insecurity has risen due to the wave of massacres targeting civilians in retaliation at the new laws. Further, organised criminal gangs have suffered little interruption in their activities. The zero tolerance campaign has encouraged communities to reject young gang members. Consequently, when they leave the gang, young people struggle to build a new life, access education and find employment. These young people are also subjected to harassment by the police and vigilante groups who rarely distinguish between current and ex gang members, and are at risk of retaliation from their old gang. These realities discourage young people from abandoning gang life.

Amid growing public fears over gangs of ‘delinquent youth’ in England and Wales, the Government responded by providing police with draconian new powers to ‘disperse’ groups of more than two under-16-year-olds, where they are gathered in areas which have significant and persistent problems of anti-social behaviour. The groups themselves do not have to be doing anything wrong. It is enough that the police have reasonable grounds to believe that any members of the public have been or are likely to be intimidated, harassed, alarmed or distressed as a result of their presence or behaviour.86

The growth of street gangs in Nicaragua87

It is estimated that there are over 100 different gangs operating in Managua, the capital of Nicaragua.86 Membership in these groups has offered many from the poorer communities a way to fit into the new realities of post-conflict Nicaragua. “If home life is tough, children will look outside the home to get the love and support they need.

Look around, you will see all these young kids hanging around the older gang members. They are the role models. Many gang members agree: “Fundamentally we are friends who hang out together…” explains one leader, “We started this gang about five years ago to protect ourselves from other gangs.” Most gangs are male only, and often act as the informal leaders of marginalised communities, while others develop into criminal groups and commit a range of offences from kidnapping to violent armed robberies to pay for deep-rooted drug addictions. Gangs will often clash in the fight for territory, sometimes for a few city blocks or a football field. Their weapons range from primitive sticks and knives and home-made ‘zip’ guns, to AK-47 assault rifles and fragmentation grenades.89

The official response to street gangs in Nicaragua has been a mix of repression and attempts to open a dialogue with gangs and young people. There is an unofficial curfew restricting many parts of Managua at night and 40,000 gang members were arrested in 2001 alone.91 However, in Managua police have also set up ‘prevention committees’ which visit gang members and their families to provide support and encouragement to leave the gangs.

The organisation Ceprev has also worked with more than 3,000 gang members over the past six years in one district of Managua with the aim of improving their relations with their families. Its director, Monica Zalaquett, says: “The problem is not economic poverty, it is the poverty of our family culture - that’s what we have to change.”92 The widespread lack of services is also a contributing factor according to Bruce Harris of Casa Alianza: “For years, the authorities have left young people without hope, without access to school or jobs and the only governmental response to youth dissent has been repression. We have forced the kids to the extremes of society and they have responded with violence. Gangs can no longer be ignored, especially if we want to live in peace.”93

THROWING AWAY THE KEY: THE OVERUSE OF DETENTION

Avoiding the institutionalisation of children is a fundamental principle of international juvenile justice.

Children are negatively affected not only by the loss of their liberty, but also by being separated from their families and from their usual social environment. The impact on children is more acute than on adults...
because they are at an early stage of their development. In addition, institutional settings can have many adverse influences on a child, which cannot be outbalanced by treatment efforts."94

“*The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.*”

(Rule 11(b), UN Rules for the Protection of Juveniles Deprived of their Liberty 1990)

No one, adults or children, should be deprived of their liberty unlawfully (when the law does not give explicit authority to detain for certain behaviour and activities) or arbitrarily (for no good reason). Further, international standards are clear that under-18s must only be deprived of their liberty as a last resort and for the shortest appropriate period.

“**As a last resort**” – According to international standards, a child should not be locked up unless he is guilty of committing a violent offence or has been involved in persistent serious offending. In addition, it must be determined that depriving a child of his liberty is the only way to give him the protection needed and there is no other appropriate response.95

However, the phrase ‘no other appropriate response’ does not refer to where there is an absence of alternative measures but to situations in which other measures would not be suitable or beneficial to the child.

The State has an obligation not only to legislate for alternatives to deprivation of liberty, but also to ensure that these dispositions are available and effective.

In deciding what sentence to impose on a child, the body adjudicating the case (normally the court or the judge) must ensure that the reaction is proportionate not only to the offence that the child has committed, but also to the child’s circumstances and needs, as well as the needs of society.96

To ensure that the judge/court is fully aware of their circumstances and needs, “*the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated*”97: ‘Social inquiry reports’ or pre-sentence reports are seen as indispensable for making a decision about the most appropriate sentence to impose.98

The interests of safeguarding the well-being and future of a young person should always outweigh their punishment and the desire to deter others from committing the same crime. The primary purpose of imposing a custodial sentence must be their rehabilitation.

“**Shortest appropriate period**” – The custodial sentence imposed must be for the shortest appropriate period and must allow the juvenile to be released early where it is considered that he has been rehabilitated. Life imprisonment, lengthy sentences and indeterminate sentences (where no set period of time is specified for the juvenile to spend in the detention centre) are prohibited.

**OVERUSE OF DETENTION WORLDWIDE**

Despite clear international standards prohibiting the deprivation of a child’s liberty except in exceptional circumstances, the overuse of deprivation of liberty is widespread.

It is impossible to accurately state the number of under-18s in detention worldwide. Different countries have different definitions of detention, different methods of collection and collation of data and many countries have ineffectual or nonexistent statistical collection. Therefore data is unreliable and difficult to compare. However, UNICEF has produced a widely quoted estimate that there are currently 1 million children deprived of their liberty around the world. Most of these young people are aged between 14 and 18 years.103

The proportion of under-18s in prison varies hugely from country to country, making up just 0.5% in some countries, while comprising 30% of the total prison population in other States.104

In our focus countries the numbers in detention range from approximately 400 in Honduras105 to 2785 in **England and Wales**106, which is the highest number of under-18s in custody in Europe, apart from the Ukraine.107 The number of young people in prison has gone up 100% since 1993 in England and Wales. This includes an 800% per cent increase over ten years in the number of young people aged 12-14 years in custody and a 400% increase in girls being locked up.108

According to the Home Office this increase was not due to a rise in the number of under-18s appearing before the Courts but because of an increase in the frequency and length of custodial sentences being imposed. In 2004, England and Wales also topped the European league for the number of 18-20-year-olds in prison, totalling 8,514.
Detention for political activity

Children are frequently detained for politically related activities and offences in the Occupied Palestinian Territories.\(^{99}\)

Since the beginning of the second Intifada (Palestinian struggle against the Israeli occupation) in 2000, DCI-Palestine estimates that the Israeli authorities have arrested approximately 4,000 children, many of whom were arbitrarily detained and later released without charge during the periodic mass round up of Palestinian males from 2002. In the first quarter of 2006, 350 children were arrested compared to 700 arrests in the whole of 2005.\(^{100}\)

Children are arrested for minor offences such as throwing stones and violating curfews, as well as more serious offences of throwing Molotov cocktails, attempting to kill and attempting a suicide attack. However, of the children arrested in 2004, 41% were charged with being a member of a banned organisation.\(^{101}\)

DCI-Palestine reports that the process of arrest and detention often violates international standards and children are frequently subject to violence, torture and degrading treatment, especially during interrogation, when stress positions are reported to be commonly used. The recent increase in arrests has also led to overcrowding in detention centres and unsanitary conditions for under-18s.\(^{102}\)

Children are not only detained for committing criminal offences. Under-18s are also detained because their families cannot cope with them, for their own protection (e.g. when they are a witness to a crime or have been abused or neglected), for engaging in political activity, to maintain public order, for status offences, and when they are asylum seekers or illegal immigrants. In many countries, children are also detained with their mothers, when they are sent to prison, especially if they are babies or infants.

There is a widely recorded over-representation of minority groups within detention centres all over the world. Young people with mental health problems, children in the care system and those that are homeless are also more likely to be locked up.

PRE-TRIAL DETENTION

The majority of children deprived of their liberty worldwide have not actually been convicted, but are detained while their cases are being investigated and while they are waiting for their trial.

Arrest and detention in police cells

Under international standards, police must only arrest a child under the age of 18 years as a last resort. If a child is arrested, they must be held for as short a time as possible, which must not exceed a few days. After this time, the child must be brought before a judge (or other authorised person) to decide whether to proceed with the case, to release the child (with or without bail) or detain the child for further investigation or until their trial.

However, despite international standards and national standards, which often require the child to be brought before a judge within 24 or 48 hours, in many countries children languish for long periods of time in police cells.

Police stations and police cells are generally wholly unsuitable for young people. Few are equipped to meet the specific needs of under-18s and most are unsanitary and crowded and lack basic facilities and equipment, such as bedding and washing facilities.

Remand

Detaining a child prior to their trial must also only be used as a last resort.\(^{109}\) Children should only be deprived of their liberty before being convicted in exceptional circumstances and where it is considered that they will flee and not turn up to court, interfere with witnesses and evidence or where there is a serious threat to others.

In 2004, Human Rights Watch estimated that in South Africa there were over 2,000 under-18 year-olds in custody awaiting trial,\(^{110}\) including in police cells and maximum security prisons.

Although legislation prohibits the pre-trial detention of children under the age of 14 years (section 29, Correctional Services Act), between 1998 and 2003 309 children aged 7-13 were placed in pre-trial detention.

Out of those children who had spent time in pre-trial detention, only 74 were given a custodial sentence – less than 25% – when their case came to court.\(^{111}\)

Whenever possible, alternative measures should be in place, such as supervision, so that the child can remain with their family while awaiting their trial.

If children are deprived of their liberty, all relevant bodies must give priority to processing children’s cases to ensure that they spend as little time as possible locked up before their trial.
Around the world, young people are prone to spending lengthy periods of time waiting for their trial date to come up, from a few months to a few years. In some countries over 90% of young people held in detention are awaiting trial. Sometimes national law permits long periods of pre-trial detention. However, young people are also kept waiting in violation of national laws, due to the inefficiency of investigations, the ineffectiveness of courts, the absenteeism of judges and the lack of transport to take the child to court. The Committee on the Rights of the Child has commented that 45 days is an excessively long period for pre-trial detention.113

Interestingly, when these young people do come to trial, the majority are either not given a custodial sentence or are acquitted, which raises serious doubts about the necessity of locking them up in the first place.114 In Togo, young offenders often spend long periods in pre-trial detention. The legal system is slow and under-18s can rarely afford the private legal support that would speed up their case. Young people languish in overcrowded and poorly maintained prisons, which also house adults. The Togo National Press reported in January 2005 that 1,383 people were being held in facilities designed for 500 in one prison. (YMCA Togo, Project Proposal, 2005)

In the focus countries, under international standards, children do not lose their human rights when they are detained. They remain entitled to all the rights under the CRC. In addition, because they are highly vulnerable to abuse, victimisation and the violation of their rights, the international community has developed very detailed standards covering their care and treatment, and the facilities and the services that should be available to them.116

“Every child deprived of liberty shall be treated with humanity and respect for inherent dignity of the human person and in a manner that takes into account the needs of persons of his or her age.”

(Article 37(c) UN Convention on the Rights of the Child)

The appalling conditions in which many children are detained have been well documented by organisations such as Amnesty International, Human Rights Watch and Defence for Children International. Overcrowding is a huge problem, which exacerbates already poor conditions.

These problems are not only confined to developing States, but are also prevalent in industrialised nations. Very few, if any, detention centres around the world fully comply with international standards on conditions, accommodation, education, vocational training, work, recreation, religion, medical care, disciplinary procedures, contact with families and the community, and inspection and complaints.

While some violations of children’s rights in detention are due to a lack of resources, other abuses of children and young people are related to poor training, a lack of monitoring and inspection and a culture of impunity for staff.

Abuse and violence

Violence and sexual abuse of boys and girls is widespread in detention centres, carried out not only by personnel, but also by inmates themselves. It is not just a problem of under-resourced institutions in poor countries, but also prevalent in industrialised nations such as the UK and the USA.

In South Africa, an investigation into the prison systems uncovered extreme acts of violence and abuse, which included the rape of juveniles by prison guards and the selling of juveniles to older prisoners for sex, in

Children in pre-trial detention are entitled to all the same rights as children who are detained following a conviction (discussed below). In addition, untried children must be treated as innocent. They must not be held with convicted children in order to avoid criminal contamination and to ensure that they can be treated differently from convicted juveniles. However, rather than being afforded better treatment than convicted children, young people in pre-trial detention often suffer worse abuses of their rights. They are frequently kept in very poor conditions, lack access to medical facilities and support services and are provided with little or no education or vocational training.

Access to pre-trial detainees is limited due to ongoing investigations, which makes monitoring their situation very difficult.

Extensive use of pre-trial detention is evident in all the focus countries. In Honduras, more than 50% of detainees in the detention centres for boys are awaiting trial (although in the adult prisons this figure is a staggering 76%). Under-18s regularly wait longer than the 30 day limit because of the inadequacies of the investigative body.115
addition to institutionalised corruption and a thriving trade in firearms, drugs and alcohol between guards and prisoners. In one prison the situation was so bad that the investigating commission recommended that 80% of the staff be sacked.117

Gangs, hierarchies and bullying are a common feature of detention centres, in which violence is institutionalised and sometimes permitted or encouraged by staff, who see this internal hierarchy as a way of controlling the prison population and maintaining order. However, violence among the inmates can also get out of control.

Due to the delays within the juvenile justice system in Sierra Leone, children can remain on remand for many months. While awaiting trial, children are held at the Remand Home, an institution which had an appalling track record in its care and treatment of children and a violent regime. The duty officer, in particular, was fond of inflicting severe corporal punishment and torture on children who misbehaved or attempted to escape. Although the Ministry of Social Welfare, Gender and Children’s Affairs was aware of the violence in the Remand Home, no action was taken.

In December 2003, 16-year-old Ibrahim Rogers was sent to the Remand Home after being arrested for riotous conduct and malicious damage. Due to the frequent absenteeism of the magistrate of the juvenile court, his trial date was postponed a number of times. He never came to trial. In February 2004, he died a few hours after being badly beaten by the duty officer as a punishment for trying to escape with two other boys. The duty officer went on the run before any charges could be brought against him.

This murder led to the Ministry replacing all the staff at the Remand Home.

(DCI-Sierra Leone, 2004)

Self harm and suicide are prevalent throughout the world in detention centres, which often fail to adequately monitor young people or provide them with support services. In the UK, between 1998 and 2002 there were 1,111 incidents of self harm by young people in young offender’s institutions,118 while in 2005, the Howard League reported that 29 under-18s in detention centres had taken their own life since 1990.119

Punishments

All detention centres must have clear, written procedures that govern the imposition of disciplinary sanctions. These rules must be provided to every child and young person when they arrive at the institution.

Disciplinary measures constituting cruel, inhuman or degrading treatment, including all forms of corporal punishment and the placement of children in solitary confinement for any length of time, however short, violate international standards.

Despite international standards, both punishments are widely imposed in institutions, even in countries which have outlawed their use.

Institutions are also prohibited from denying children contact with their families and reducing or denying food as a form of punishment.

Use of restraints

International standards prohibit the use of restraints and the use of force unless all other control methods have failed and it is necessary to prevent the child from inflicting injury on themselves or others or to prevent serious destruction to property. The restraints themselves should not cause humiliation or degradation and must be removed as soon as possible. The use of armed force is strictly forbidden, and even the presence of armed personnel within a detention centre holding under-18s is prohibited.

In 2004, a 15-year-old boy died while being restrained by three members of staff in a detention centre in Daventry, England. His death prompted an inquiry into the use of restraints and punishments in juvenile detention centres, which found that physical force and painful physical restraint were commonly used against children in detention centres to control their behaviour. While the inquiry recognised the need for staff to set boundaries for children, who had often come from chaotic and abusive childhoods, Lord Carlile (the author of the report) said: “We found that some of the treatment children in custody experienced would in another setting be considered abusive and could trigger a child protection investigation.”120

The ‘seated double embrace’121 method which led to the death of the 15-year-old has now been prohibited.

The same report uncovered evidence of the frequent and lengthy use of solitary confinement, often for periods of seven days but occasionally for more than 28 days, not only in situations where the young person posed a threat to others, but also as punishment for breaking the rules. Between January 2004 and June 2005 across two young offender institutions, one secure training centre and three local authority secure children’s homes investigated by Lord Carlile, solitary confinement was used 2,329 times.
Detention with adults

Despite international standards which strictly prohibit the mixing of adults and children, countries all over the world continue this practice, often citing a lack of resources and facilities to provide separate units and institutions for children. Children and young people are especially vulnerable to being detained with adults in police cells when they are picked up by the police. Detaining under-18s with adults puts them at heightened risk of violence and sexual abuse as well as criminal contamination. The report ‘Kids Behind Bars: Why we Must Act’ published in 2005 found that children imprisoned with adults are five times more likely to be incarcerated alongside adult prisoners in the prison just outside the capital, and abused by those adult prisoners both physically and sexually. The Inter-American Commission on Human Rights condemned this practice not only for incarcerating children with adults but also for detaining children simply because they had been found living or working on the street rather than for having committed any crime. The Commission recommended the immediate transfer of the children to detention centres appropriate to their status as a minor.

Since this ruling, there has been a concerted effort by the State to ensure that children are not detained with adults in detention centres and while held at police stations. However, anecdotal evidence suggests that this separation is not always observed, especially in police stations outside the main cities, which have not been provided with sufficient resources to be able to implement this segregation.

Detention centres that hold children and adults together rarely have the range of services or staff-inmate ratio that is required to provide a good level of individualised care for children.

Girls in particular, who commit far fewer offences than boys, are in a minority in the prison system and therefore it is common for girls to be placed in detention centres for women. Due to the small number of facilities for women, girls tend to be held at long distances from their families and communities. States cite resource limitations and the impossibility of creating decentralised institutions for such a small number of young people.

In Ireland, young people aged 16 years and above are mixed with young adults up to the age of 21 years old and all grades of offenders in St. Patrick’s Institution. They are locked in their cells for up 20 hours per day and, due to budget cuts, have no vocational training or education tailored to their needs. Young people can also be sent to a prison at the age of 15 if it is decided that they cannot be dealt with in any other institution. However, they will not mix with adult prisoners until they turn 17 years old.

In many countries, mixing of adults and children is explicitly prohibited in national law, but continues in practice. For example, in Nicaragua, despite domestic laws which provide for the separation of adults and children in detention, in reality children are frequently detained with adults. This is because the separate institutions foreseen in the legislation have not yet been set up. Consequently, children are sometimes detained with adults in police stations after their arrest, especially in the more overcrowded police cells in the capital, where it was found that nearly 25% of under-18s were mixed with adults. Following sentencing, children are placed in adult prisons. Although attempts are made to put children in separate barracks, some are placed with more elderly inmates, while girls are often placed in the same cells as women.

In Sierra Leone there is only one detention centre for children and young people (‘Approved School’) and two remand homes — one in the capital (Freetown) and one in Bo. There are no approved schools or remand homes for children in the other provinces. Consequently, children are often detained with adults in very poor conditions. A special commission investigating conditions in the prisons found that most, if not all prisons in the country were holding juveniles, with the central prison in Freetown accommodating about 20 under-18s, all for ‘rebel activities’. None of the prisons had separate juvenile detention facilities.

Failing to rehabilitate and reintegrate

Detaining children is a popular response to juvenile offending. The general public often feel that a harsh custodial sentence will, at the very least, reduce offending as the young criminals cannot commit crime while they are locked up. They also hope that the child’s experience will be so awful that they will be deterred from ever committing another offence.
However, statistics and studies do not bear out these commonly held beliefs. While prison can remove dangerous offenders from society, research by the Home Office in the UK found that a 15% increase in the prison population produces only a 1% reduction in recorded crime as the locked up criminals are simply replaced by other criminals.129

Juvenile offending

In South Africa, on leaving prison most young people aged 12–25 find themselves on the streets. 85% re-offend within six months of their release.130

In England and Wales, in 2003, the overall reconviction rate for juveniles (aged 10–17) was 36.9%, with the majority of young people being reconvicted for theft and handling stolen goods. The reconviction rate for those who had received custodial sentences was 69.4%. The peak age for reconviction was 17 for males and 15 for females. However the overall reconviction rate among females and their reconviction rate following a custodial sentence was significantly lower than the rate for males.131

Many young people do experience appalling conditions, abuse in detention and draconian regimes. There is no evidence that these regimes have acted as a deterrent and reduced recidivism. Locking young people up in such conditions merely delays and sometimes exacerbates the problem, rather than prevents re-offending.

In addition, there is no evidence that custody is more successful in reducing re-offending than community sentences. On the contrary, studies have shown that the re-offending rate from detention centres is either not much different or higher than those for non-custodial programmes.132

According to international standards, the primary purpose of depriving a child of their liberty must be their rehabilitation. Institutions need to work to prepare young people for their release, so that they are willing and able to lead a law-abiding life. The environment in which young people are detained should also respect their dignity and human rights.

However, the majority of institutions do not fully reflect international standards. Conditions are often poor and the facilities and services offered are limited or non-existent. Staff are untrained or poorly trained, or there are too few to carry out any work other than crowd control with the young people. For example, in one of the detention centres in Honduras there were only three welfare staff on duty per shift to monitor and work with more than 80 children, which makes individualised work impossible.

In most countries, States have created big, centralised institutions, which are cheaper to maintain than smaller decentralised institutions. Such centralisation results in children being held far from home, and hampers their contact with their family and the reintegration process. In a study of juveniles in institutions in Eastern Europe, Central Asia and South Caucasus, it was found that a mere 15% of juveniles were incarcerated in institutions close to where their family lived. The situation for girls was found to be particularly bad due to the paucity of institutions for them. Consequently, girls were in institutions located more than 2000km from their families.133

Few institutions adequately prepare young people for release by gradually integrating them back with their families prior to their final release date. The reality is that in many countries the gates of the prison are opened and the young person walks out, sometimes without the identification documents or qualification certificates that they need.

In Honduras, although legislation enshrines the child’s right to gradual and progressive reintegration, in practice support and supervision following release is extremely limited. The regional reintegration programmes that have been established under the Honduran Institute for the Child and the Family (IHNFA) are crippled by under funding, which makes their job almost impossible.

The lack of State services is often compounded by the absence of sufficient community and NGO programmes which support children and young people coming out of institutions.

Without services and facilities being provided in humane conditions and support being available once the young person leaves the detention centre, it is likely that young people will re-offend once released.

The cost of custody

Building and running institutions for young offenders is expensive and the majority of money spent on juvenile justice goes on building and maintaining detention centres. In England, it costs £42,000 per year to detain an under-18-year-old in a Young Offender Institution,134 while building new institutions costs the equivalent of 2 district hospitals or 60 primary schools.135 In South Africa the cost of keeping a child in prison is R97.75 per day (approximately £8.00).136

The cost of non-residential programmes is considerably lower. The average annual unit cost of a prison place in England is more than twelve times as much as the cost of a community
THE ROLE OF PUBLIC PERCEPTION IN SHAPING JUVENILE JUSTICE SYSTEMS

Violations of international juvenile justice standards are widespread. No State has managed to create a fully compliant system for dealing with children and young people in conflict with the law. In campaigning for changes to law, policy and practice it is important to understand the obstacles for States in implementing children’s rights in the criminal justice system.

For many States, creating a child rights compliant system does require an overhaul of legislation, the establishment of separate institutions and bodies (e.g. courts and detention centres) to deal with children, and the training of officials who come into contact with young people who break the law. By 2000, the Committee on the Rights of the Child had recommended that such comprehensive reform should be undertaken by 21 out of the 141 States that it had examined, including Togo. In 2000, the Committee also recommended that Sierra Leone seek to harmonise their domestic legislation, as a whole, with international juvenile justice standards and take measures to apply these standards.

While some States have complained that this reform process is cost heavy, many countries, in particular in Latin America, have taken up the challenge to create child specific legislation and separate juvenile justice systems, including Honduras and Nicaragua. However, as demonstrated by the examples provided in earlier sections, these paper changes have not always been fully translated into practice.

Juvenile justice reform is a significant undertaking, which requires the long-term investment of resources and sustained political commitment. However, it must be remembered that the international juvenile justice framework does not seek to burden States with a costly system, but instead create a cost-effective system that reduces offending. In particular, as we have explored, although establishing and running alternatives to custody seems expensive, these options are less costly than housing children in institutions. Further, where the overall impact is the reduction in crime, the long-term savings to society and the public purse are huge.

THE IMPACT OF PUBLIC OPINION

Juvenile justice reform has been met with little enthusiasm in many States. Often the public believe that juvenile offending is out of control and getting worse and that the criminal justice system is failing to do anything about it. Proposals that seek to implement children’s rights and promote diversion and community alternatives to custody are widely seen as ‘soft’, ineffective and undesirable, while tougher measures are supported as being the best way of dealing with delinquent youth.

Such public opinion is a significant obstacle to the implementation of international juvenile justice standards. States argue that it is difficult to implement reforms (even if they are obliged to do so under international treaties) which are unpopular. In order to come into power or to stay in power, democratically elected governments must have the support of the majority of the electorate. What the public thinks, therefore, has a very big impact on how politicians propose to tackle youth crime.

However, public opinion is plagued by misconceptions and misunderstandings. There are often disparities between the public perception of crime and crime statistics, especially in relation to under-18s. Regardless of any contrary statistics, the public often believe that community sentences are ineffective, that the courts are not punitive enough and that the criminal justice system is unable to control young delinquents and that is why youth crime is out of control.

The opinions of some people are formed in response to their personal experience of crime, especially low level offending and anti-social behaviour in local communities, which will then be extrapolated to shape their views on national crime. However, for the majority of people the media (newspapers and television stations) is the main source of information, or rather misinformation on youth crime and the juvenile justice system.

The media rarely reports justice successes, instead focusing on exposing failures of aspects of the system, and sensationalist reporting of youth crime. The media is also guilty of irresponsible use of crime statistics for maximum headline impact. For example, a 100% rise in murders by children might seem alarming and will be sure to sell papers, but a closer look at the story may well reveal that the rate of murders for the year has risen from 2 to 4, which would not be a cause for panic.
The frequency of coverage of youth crime, coupled with emotive headlines—‘young thugs’, ‘yob culture’, ‘super predators’, also negatively affects public opinion. The more that crime is reported, the more prevalent we think it is (regardless of the true level of offending), the more insecure we feel and the more hostile we feel towards young people. Extensive and sensationalist coverage of individual cases of juvenile offending, especially child murders, can spark media frenzy and affect the public perception of the whole juvenile justice system.

Instead of countering the misperceptions that lead to a distorted image of juvenile crime, politicians pander to public opinion, promising the tough measures that are demanded, regardless of whether these will actually work to reduce offending. Such responses, coupled with inflammatory rhetoric, fuels public fear and insecurity, reinforcing their misconceptions. Election time is a particularly vulnerable period for children’s rights in the juvenile justice system, as political parties attempt to ‘out tough’ each other.

However, public opinion polls, a popular source of information on attitudes to juvenile crime and justice for politicians, and a frequent source of headline grabbing information for the media, are riddled with flaws. Polls often only allow sweeping statements and responses, not permitting an exploration of respondents’ more complex opinions on how society should deal with young offenders, and therefore not truly representing public opinion.

Consequently, political leaders tend to think that the public is more conservative and resistant to progressive initiatives than they actually are. Although the public is generally punitive towards crime, when respondents to polls are provided with more information about offenders and sentencing options, they tend to modify their harshness. In addition, there is a general belief that prison does not work. When provided with information about the benefits and effectiveness of less punitive interventions, those polled respond much more favourably to their use, especially in relation to children and young people. They are particularly supportive of better parenting, more police on the beat, better discipline in schools, constructive activities for young people and the increased use of intensive community sanctions.

Unfortunately, the manner in which public opinion is canvassed and reported means that positive reforms to the national juvenile justice systems are often buried before they have a chance to be born and more punitive systems are developed.
Throughout the ‘90s, stories of younger and younger children committing crime were extensively covered by the media, who criticised a system – the police and the courts – that was powerless to deal with them because they were under the age of criminal responsibility. These children were depicted as remorseless, hardened criminals, with no hope of rehabilitation. In 1993, against this backdrop of growing fear about youth crime, the story broke about the murder of two-year-old James Bulger by two ten-year-old boys.

The subsequent media frenzy deeply affected public opinion not just about the perpetrators of the crime, but also about juvenile criminals and children in general. The media vilified the boys in an excessively sensationalist manner with “undiluted, vitriolic editorialising” and demanded that they ‘rot in jail’. “The ‘demonising’ of [the boys] was so relentless in the British press that one observer was prompted to describe it as, “the kind of outbreak of moral condemnation that is usually reserved for the enemy in times of war”’.

On conviction a national newspaper applied successfully to have the boys’ anonymity lifted. The media proceeded to dissect their backgrounds, trying to discover the reasons for their crime. The media also launched an attack on the criminal justice system, which they declared as too soft, criticising the ‘luxury’ conditions in which the boys were to serve their sentence and demanding tough punishments for boys who, they said, had forfeited their right to be treated as children. The media questioned whether children in general were still innocent and discussed the breakdown of the moral fabric of society. The manner of coverage gave the impression that a large majority of children were delinquent and engaged in criminal and violent acts.

The media also reported extreme public reaction to the murder, which intensified after it was discovered that the killers were not adults but 10-year-old children, including attacks on the children’s homes, which forced their families to relocate – a lynch mob mentality usually reserved for paedophiles.

A media campaign reflecting the public outcry over the ‘lenient’ sentencing of the boys to eight years led the Home Secretary to increase the tariff (minimum sentence) that had been set by the courts to 15 years – a decision that was judged by the European Court of Human Rights as a violation of the boys’ human rights, much to the dismay of the UK press and public.

John Major, the Prime Minister at the time of the murder, said “We must understand a little less and condemn a little more”. Within weeks of the murder the Home Secretary announced proposals to establish new institutions for 12-14-year-old children. Subsequent changes eroded the guarantees previously afforded to juveniles, increased the likelihood of young people being detained and lengthened the sentences that they could receive.

In 1997, in the run up to the general election, parties tried to ‘out tough’ each other on law and order issues, in order to secure the votes of a public worried about crime and satisfy their demands for more punitive action. Juvenile justice had never been such a partisan issue. Labour won the election, with the slogan “tough on crime, tough on the causes of crime”, and subsequently introduced a raft of more punitive crime justice legislation. Law and order has remained high on the agenda ever since. Although the murder of James Bulger was unrepresentative of the overwhelming majority of youth crime, this rare case skewed attitudes of the public to all juvenile delinquents, and prompted the most major shift in youth justice policy of the last century, demonstrating the profound effect that an individual case can have on juvenile justice policies.

Following the end of Apartheid in South Africa, the general attitude towards children and young people was positive, while the public held a low opinion of the criminal justice system, which had been a tool of political oppression under the former regime. An NGO campaign (‘Justice for the children: No child should be caged’), which drew attention to the plight of children in prison with a focus on pre-trial detainees, was well received by the media and the public, who reacted sympathetically and supported calls for reform. The campaign’s demand for urgent action was given credence by the tragic death, in 1992, of 13-year-old Neville Snyman, who was beaten to death by an older cellmate while on pre-trial detention for house breaking. In 1994, NGOs laid out their vision for a child rights compliant juvenile justice system. Despite the fact that South Africa had not yet ratified the CRC, politicians from all the parties came out in support of reforms, especially recommendations to use detention as a last resort, and began a consultative process to develop proposals for reform.

In 2004, an amendment to legislation was unanimously adopted which limited the use of pre-trial detention for young people, leading to 1500 children being released from prison in 2005. However, the Government had not ensured that the necessary systems and alternatives for safeguarding and supervising these children were in place to cope with the number of children suddenly released from detention. The ‘Places of Safety’, in which a number of these children were accommodated, were homes used to accommodate children in the midst of care proceedings. The homes were inappropriate and did not have staff trained to deal with young offenders. Many children absconded, some of whom went on to commit serious and violent offences.

While the public had been initially supportive of the proposal to release children on pre-trial detention, there was a public outcry, following the media reports of crimes that these children had committed while on bail. The media, who had also been supportive of the new initiatives, now enthusiastically reported this public backlash. Instead of depicting these children as ‘poor incarcerated urchins’ as they had done previously, these children were now depicted as ‘teenage thugs’, who were primarily responsible for the rising crime rate. Newspaper headlines screamed: ‘Lock up these wild kids!’, ‘Teen gangs on crime spree!’, ‘Youths run riot!’ and ‘Place of safety – absconder’s paradise’. Politicians responded by
passing another amendment which allowed courts to detain certain children while awaiting trial.

Subsequently child rights compliant reforms were stalled and harsher measures were introduced. This move was “indicative of wavering political will where children’s rights were in conflict with fears about crime”.

Feelings of public security, which had been high in the run up to the elections in 1994, have been replaced by widespread fear of spiralling violent crime. While public perception of the crime wave far outstrips the number of crimes committed in reality, the fact remains that even in terms of officially reported statistics, rates are very high. This climate of fear has hampered progression on the reform of the juvenile justice system.

The Child Justice Bill, which sought to create a separate juvenile justice system that upheld international standards, has not yet been passed ten years after work on drafting the Bill began. Widespread insecurity and a disproportionate focus by the media on youth crime continues to threaten to undermine the Bill’s focus on children’s rights and rehabilitation.
YOUTH JUSTICE IN ACTION
INTERNATIONAL INITIATIVES TO INSTIGATE CHANGE
SECTION 3
A raft of international standards on criminal justice were developed in the 1980s and early 90s, some of which focused specifically on children and young people (CRC-1989, Beijing Rules-1985, Havana Rules-1990, Riyadh Guidelines-1990). Further, in 1997 the international community adopted ECOSOC resolution 1997/30 (Vienna Guidelines for Action on Children in the Criminal Justice System) to guide States in how to implement international standards and how to deal with child victims and witnesses. These standards now make up the international juvenile justice framework.

The most recent addition to these standards are the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime152 which were adopted by the UN in 2005. These guidelines provide a framework on the treatment, care and protection of child victims and witnesses in criminal justice systems. The adoption of these Guidelines was the result of extensive work and campaigning by the International Bureau for Children’s Rights (NGO). The development of these standards marked the first in depth look that the international community had taken for many years at the situation for children in the justice system.153

The development of international standards is a key initiative at the international level to instigate change within States. Treaties and guiding documents demonstrate what is and what is not acceptable practice. Signing up to the treaties places a legal obligation on States to abide by these standards and often is the impetus for States to review and reform their laws, policies and practices. Failure to comply with their obligations can lead to criticism from international monitoring bodies (e.g. Committee on the Rights of the Child) and, for some treaties, formal judgments against the State in international and regional courts (e.g. European Court of Human Rights, Inter-American Court of Human Rights). While enforcement mechanisms are relatively weak, after all you cannot put a State behind bars, international pressure can be very effective in persuading States to comply with their obligations – few States are happy to attract criticism, especially in relation to their children and young people. International standards are also a powerful tool for national NGOs to advocate for positive change.

Over the last decade, juvenile justice has been overshadowed on the international plane by other child rights campaigns, which have sought to set new standards in order to better protect children and young people e.g. the prevention of the recruitment and use of child soldiers, combating the commercial exploitation and trafficking of children and young people, tackling child labour. As there already exists a comprehensive international framework of juvenile justice, campaigning on youth justice has focused on exposing poor State practice in order to push for change (e.g. Amnesty International, Human Rights Watch).

However, recently international organisations have collectively turned their attention to an omnipresent problem – the overuse and arbitrary use of deprivation of liberty. Led by Defence for Children International, the campaign seeks not only to promote the implementation of the international juvenile justice framework, but also to promote the adoption of binding standards to better protect children and young people who are deprived of their liberty.

### ‘No Kids Behind Bars’ Global Campaign

In 2004, following extensive research into the issue of children in detention, Defence for Children International (DCI) launched the No Kids Behind Bars! Global Campaign.

By promoting the implementation by States of the international standard that the arrest, detention or imprisonment of a child must be in conformity with the law, and must be used only as a measure of last resort and for the shortest appropriate period of time, the campaign aims to reduce the number of children being held behind bars.

The Campaign claims that children are being detained unnecessarily because governments have not planned programmes and facilities that would manage them constructively in their communities or with their families. Funds used to lock up children and young people could be used more humanely and effectively. By 2007, the Campaign wants all governments to have developed and implemented national action plans on juvenile justice that are aimed at reducing the number of children deprived of their liberty and at improving the conditions for arrested, detained or imprisoned children.

Specifically, the Campaign aims to reduce the number of children in detention by 25% in five years and 50% in 10 years. In order to achieve this objective, the campaign advocates that States:

- do not place children under the age of 15 in prison and stop detaining all children for petty offences;
- do not build any more prisons for children;
- develop and strengthen alternatives to deprivation of liberty, and community and family programmes to manage youth and to prevent crime;
- invest in the prevention of juvenile delinquency;
- focus on the implementation of all international juvenile justice standards, not just non-institutionalisation; and
- collect, collate and analyse data on children in conflict with the law, to inform legislation and policy development.
Recognising that a small minority of young offenders will need a residential placement, the Campaign also urges States to improve conditions in detention centres.

In 2005, DCI hosted an international conference - ‘Kids Behind Bars’. The outcome document from the conference was the Bethlehem Declaration which, as well as restating the principles of the campaign, called for:

- international NGOs to lobby to place the topic on the international agenda, organise for a world congress and stimulate plans of action;
- national NGOs to establish national campaigns on No Kids Behind Bars, monitor government actions and conditions in detention, and collaborate on a regional level; and
- community organisations to work closely with youth at risk, to participate in local action plans and to support children in closed institutions.

DCI also recommends that International Governmental Organisations (such as UNICEF, WHO etc) should lobby for an Optional Protocol to the Convention on the Rights of the Child on minimum standards for children in closed institutions, to make the existing international standards (Havana Rules) binding on States.

**CHILDREN AND VIOLENCE**

Although not exclusively focused on children in conflict with the law, the UN Study on Violence Against Children is a highly significant new international initiative.

In 2003, the UN appointed an independent expert, Paulo Sérgio, Pinheiro, to head up a worldwide study on the use of violence against children in all areas of children’s lives. Mr Pinheiro has invited national and international organisations to submit research and commentary to him so that he can compile a comprehensive report. The UN study on violence has led to national events and nine regional consultations being held, with the wide involvement of children and young people and has raised awareness globally about this issue. One of the key areas of research is violence against children in conflict with the law.

The report, due to be ready in 2006, will include recommendations for action by States, the UN and civil society on effective remedies, and preventive and rehabilitative measures on the national and international levels, in order to combat violence against children.
The international juvenile justice framework, detailed in section 1, exists to guide States in the development of a juvenile justice system that is not only child rights compliant, but that also seeks to prevent offending and re-offending among children and young people, while protecting children’s rights and their due process guarantees. The framework promotes a system that focuses on rehabilitation and reintegration rather than punishment, the diversion of children away from the formal criminal justice system and the use of alternatives to custodial sentences.

However, this framework only provides a structure for juvenile justice and the standards which States need to implement, rather than a model juvenile justice system. It is not prescriptive in how a juvenile justice system should look and what schemes and programmes should be developed, i.e. it tells States what to do but not how to do it. States are free to develop their own approaches within the framework.

It is common for State and non-State bodies to take inspiration and guidance for juvenile justice initiatives from other countries. There are a plethora of different approaches, programmes and schemes worldwide to choose from, which have had varying levels of success. Both the ‘positive’ (child rights compliant) and ‘negative’ (non child rights compliant) initiatives have influenced States in the development of their own systems. An example of negative inter-State influence has been the ‘zero tolerance’ approach. Originating in New York under Mayor Giuliani, ‘zero tolerance’ has been enthusiastically introduced in many countries around the world, including Honduras, Nicaragua and the UK, much to the dismay of juvenile justice and child rights organisations.

This section, therefore, brings together examples of positive and innovative projects from all over the world, highlighting relevant international standards and best practice principles. These examples do not cover all aspects of the juvenile justice system, but highlight a number of successful initiatives and good ideas in prevention, diversion, community alternatives, representation and support (both legal and non-legal) and challenging negative public perception of young people: key areas for all the focus countries.

**Prevention is Better than Cure**

International Juvenile Justice Standards recognise that the prevention of delinquency is an essential part of crime prevention in society. Preventing delinquency among under-18s greatly reduces the likelihood that they will get involved in crime when they are adults. International standards recommend that States develop prevention strategies backed by legislation, policy and a range of programmes. This requires State investment and long-term commitment. However, overall costs are reduced as less crime leads to reduced expenditure on crime control (police, prosecutors, courts and the prison service) and on the effects of crime. Social costs are also reduced with less victims of crime, less public insecurity and increased community safety.

In England and Wales it is estimated that crime costs up to £60 billion per year. The costs of individual crimes range from £500 for an incident of criminal damage to £19,000 for an incident of violence against another person (excluding homicide). A small investment in prevention schemes that produce even a modest reduction in crime can result in huge overall savings.

Data collection and collation, research and evaluation are essential to understanding the trends, problems and causes of juvenile crime and delinquency and the impact of different responses to offending. This information is indispensable for developing prevention and juvenile justice strategies. However, the majority of States fail to maintain accurate statistics and up to date information or to carry out periodic assessments of programmes and policies.

**Tackling Root Causes**

Prevention can be a very wide concept relating to the design and implementation of policies and programmes for the entire population that seek to increase everybody’s well being. The development of social welfare programmes, which improve education, housing, health and employment opportunities, and poverty reduction strategies, contributes to tackling the root causes of offending.

Consequently, crime prevention cannot be the mandate of only one agency, but must be implemented through a multi-disciplinary and multi-agency approach.

The State also needs to make efforts to support the family unit. The family has the main responsibility for bringing up the child and therefore plays a key role in preventing crime. Marginalised children from lower income families, dysfunctional and disintegrated families and those in the care system are more vulnerable to becoming involved in offending. A difficult and abusive home life can prompt children to run away. These young people often end up living on the street where their vulnerabilities multiply. The effective delivery of social services and child protection is therefore an essential part of crime prevention.
Communities (through youth clubs, sports activities, theatre groups, volunteering, work experience, skills development programmes, drop in centres etc.) and schools have an essential role in preventing delinquency, ensuring the inclusion and integration of young people into society, the provision of socially useful activities and the creation of opportunities. International guidelines emphasise that the intervention of justice agencies should be a last resort and encourage useful activities and the creation of opportunities. Other local services and organisations such as housing, health, and sports and recreation as well as parent organisations are also included on the SSP coordinating committees and are involved in implementing the project work. 30 years after they were first established, the SSP cooperation is operating in 94% of the municipalities.

Denmark was the first country in the world to establish a National Crime Prevention Council (Det Kriminalpræventive Råd) – set up in 1971. The Council works with six government ministries and has an active advisory board with representation from a range of sectors and agencies. In order to tackle offending among children and young people, the Council set up the SSP cooperation which brings together schools, social services and police at the municipal level to develop and implement local strategies for crime prevention. The MORI Y outh Survey 2004 carried out in England and Wales showed that young people start committing crime (usually non-serious, petty offences and anti-social behaviour) between 10 and 12 years old and that the younger the person is when they commit their first offence, the more likely it is that they will become involved in serious offending in the future. The survey also found that the self reported peak age of offending in these countries was 14, but that if young people had not offended by that age then they were unlikely to offend in the future.

In the USA, an evaluation of delinquency prevention programmes has indicated that schemes are most in domestic burglary, 12 per cent in vehicle crime and 31 per cent in drug offences in the community.

**TARGETING ‘AT RISK’ YOUNG PEOPLE**

Prevention can also be a narrower concept, focused upon identifying young people who are ‘at risk’ of offending in order to target specific services and programmes. At its narrowest, prevention focuses on reducing re-offending amongst children and young people in conflict with the law. However, targeted prevention schemes can include a wide range of activities, which can be delivered by both State and non-State bodies.

‘At-risk’ young people are usually identified by the behaviours that they display or the particular factors in their life that are recognised as precursors to delinquency e.g. abuse, neglect, family breakdown, truancy, substance abuse, being on the street and gang membership. These factors are not causal in nature but can increase the probability that a young person will get involved in offending.

However, these risks can be mitigated by supportive relationships with parents, relatives or other adults, positive role models, commitment to school, positive social orientation and life skills, and support from peer groups who engage in conventional or less risky behaviour. Prevention and early intervention services and programmes often focus on introducing these positive elements into the young person’s life.

In particular, ‘at risk’ children should not be criminalised.
successful when they are targeted at younger children - from eight years old, although gang prevention and substance abuse prevention works better when children are slightly older (middle school – 12-14 years).\(^{163}\)

Of course, different country situations and trends in juvenile delinquency will influence the age at which prevention programmes should be started and the age groups at which specific types of prevention activities should be targeted.

In England and Wales, youth offending teams (YOTs)\(^{164}\) (which are inter-disciplinary groups made up of representatives from the police, probation service, social services, health, education, housing etc.) implement a range of targeted prevention programmes for 'at risk' groups aged 8-17 years. Similar structures operate in other countries.\(^{165}\) YOTs run a wide range of prevention activities at the community level, sometimes, but not always, in partnership with local organisations. Schemes include: Youth Inclusion Programmes, Youth Inclusion and Support Panels, Safer School Partnerships, Mentoring and Parenting Programmes.

Youth Inclusion and Support Panels (YISPs) aim to prevent anti-social behaviour and offending by identifying 8-13-year-olds who are considered to be at high risk of offending, and ensuring that these young people and their families have access to public services that can address their needs. The Panels which identify those 'at risk' are made up of representatives of different agencies (e.g. police, schools, health and social services). Families must consent to the referral of their case by the YOT to the Panel. Youth Inclusion Programmes (YIPs) are located in 72 of the most deprived/high crime estates in England and Wales. Each programme targets the 50 most 'at risk' 13-16-year-olds of offending, truancy, or social exclusion. Referred to the project by YOTs, the young person takes part in structured activities (such as mentoring, learning new skills, remedial education, sport etc) in their local community for at least five hours per week, but on average for ten hours per week. An independent national evaluation\(^{166}\) of the first three years of the programme found that 74% of the young people, referred for being 'at risk' of offending, stayed out of trouble and there was a reduction in the number of school exclusions. However, programmes had varying impacts on the levels of overall crime in the target areas.

WORKING WITH FAMILIES

There is a growing recognition that some parents not only need social assistance to provide for their children but also require help to develop their skills in managing the behaviour of their children. Where parents can be taught to set appropriate boundaries and improve communication, the child’s risk of offending will be reduced.

Parenting schemes may be offered on a voluntary basis or form a compulsory part of a criminal justice intervention when a child has come into conflict with the law. Programmes may be delivered by State agencies or voluntary organisations. The skills and experience of the facilitators is key to the success of parenting programmes.

YOTs in England and Wales provide parents and carers with one-on-one advice as well as practical support to handle the behaviour of their children. Where young people have come into conflict with the law or are failing to attend school, the YOT may offer their parents an opportunity to voluntarily attend a parenting programme. Where the parents refuse to attend, the YOT can ask the courts for a Parenting Order which compels them to attend the sessions. The programme has had significant success, reducing offending by a third among the children of participants.\(^{167}\)

In Canada, a comprehensive analysis of a two-year parental training programme was carried out in the 1980s and 90s\(^{168}\). The programme, set up in Montreal in 1985, focused on the parents of disruptive boys aged 7-9. The parents participated in approximately 17 sessions over the two years, which focused on the development of effective child discipline strategies, giving children positive reinforcement and helping them to develop skills to manage family crisis. In addition, the disruptive boys also attended group sessions to improve their social skills to promote positive interaction with teachers, parents and peers, problem-solving and self-regulation skills, and work was carried out with their teachers.

The long-term evaluation found that boys on the programme exhibited less aggression in school, performed better academically, and experienced fewer difficulties in adjusting to school. Up to the age of 15 years, self reported delinquent behaviour was 10% lower among the boys on the programme than the comparison group, there was an 87% lower rate of self reported gang membership at age 11, and 67% lower rate of police arrest between the ages of 13-15.

PREVENTION IN SCHOOLS

Schools have a crucial role to play in preventing delinquency. Schools provide social inclusion and opportunities for children to develop skills for the future. Generally they are in a position to reach the greatest number of children and through the development of curriculum, special courses and activities, are able to influence young people’s views,
behaviour and attitudes. Schools can also promote the positive role and functions of other community agencies, such as the police.

Children and young people who are truanting or excluded from school are more likely to commit crime than school attendees. Schemes that increase school attendance and provide alternatives for children unable to attend mainstream schools are important in preventing delinquency. After school clubs and activities can also contribute to a reduction in crime during the peak time for juvenile delinquency – the hours immediately following the end of the school day during which children are most likely to be without parental supervision.

**Partnerships with the police**

In a number of countries, the police have developed partnerships with schools (e.g. Australia – Police Schools Involvement Programme, England and Wales – Safer Schools, USA – Seattle Police/School Partnerships, South Africa – Safer Schools). There are different models of police involvement in schools including school-based police officer programmes, police as ‘educators’ providing information on crime safety, road safety, prevention of child abuse etc, and comprehensive or broad-based liaison programmes, where police form part of a wider network of local organisations, community or social services working with the school. Programmes may target the whole school, certain grade levels or particular ‘at risk’ groups.

Partnerships often aim to reduce bullying, victimisation, criminality and anti-social behaviour within the school and its community and create a safer environment for children to learn in. Under the Safer Schools programmes in England, the police officer works with the school to reduce truancy and exclusion; implement whole-school approaches to behaviour and discipline; identify and work with children and young people at risk of becoming victims or offenders; and support vulnerable children and young people by ensuring that they have access to local services.

These partnerships also open up an avenue for communication, providing the police with an opportunity to inform young people of what they do and creating an opportunity for young people to voice their concerns and highlight the problems that they face in their communities. When young people feel included in the community and are not simply targeted as ‘trouble makers’ they are less likely to become involved in deviant behaviour or criminality.

School partnerships also contribute to breaking down barriers between young people and the police, to challenging negative perceptions of the police and to fostering more positive interaction. This is especially important in countries which have a long history of police corruption and violence.

Partnerships tend to be more successful when the police officers are based in their assigned schools and work with children and young people in both lower and higher grades, following their transition to high school/secondary school.

According to the US Department of Justice, the DARE: Drug Abuse Resistance Education model is the largest and most widely implemented drug and violence prevention programme in the world, having been adopted in more than 50 countries. DARE is a comprehensive police-led prevention education programme for children from kindergarten to 12th grade that was set up in 1983 in Los Angeles and has now been rolled out across the USA. DARE targets children before they are exposed to drugs. The emphasis is on helping students recognise and resist the many direct and subtle pressures that influence them to experiment with alcohol, tobacco, marijuana, inhalants, or other drugs or to engage in violence and join gangs. It is seen as a collaborative programme between local law enforcement and schools. Additionally, the programme aims to establish positive relationships between students and police, teachers, parents and other community leaders. The officers participating in the programme receive special training in child development, classroom management, teaching techniques and communication skills.

Despite its popularity, good student receptivity and high rates of satisfaction among participants, schools and communities, evaluations have not demonstrated any significant impact on drug use among those taking part neither in the short-term nor in the long-term. In fact a six-year follow-up evaluation found that students in suburban schools who had been through the DARE programme had a slight increase in drug use compared with non-programme students.

**TARGETING GANGS**

Joining up to and being part of a criminal gang exposes children and young people to violence and criminality. It is vital that under-18s are discouraged from joining up in the first place and are encouraged and supported to leave the gangs.

In the USA, the police have taken a proactive role in preventing children and young people joining gangs. Established in 1991 (and modelled on DARE), the Gang Resistance Education and Training Program (GREAT) is an educational, school-based gang prevention programme taught by uniformed police
officers, which has been incorporated into the school curriculum of 47 States. The course consists of 13 lessons which aim to help children set goals, make sound judgements, learn how to resolve conflicts without violence, and understand how gangs and youth violence negatively affect the quality of their lives. There is also an ‘add on’ course which involves the family and the community.

An evaluation of the impact of the project found that GREAT had fostered more positive social attitudes towards the police, higher levels of self esteem and greater attachment to parents and commitment to school. The students also reported that they were committing fewer delinquent acts. A longer term analysis which looked at the impact on participants and non-participants every year for four years, showed little difference between the groups after two years, but a significant difference after four years. GREAT students reported lower levels of risk-seeking and victimisation, more positive attitudes towards the police, more negative attitudes towards gangs, and more friends involved in positive social activities than the other students who did not participate on the course.

**Supporting reintegration**

In order to prevent re-offending, it is vital that children and young people are supported to reintegrate into society. This is especially crucial for the young people who are members of gangs. In Honduras, the draconian approach of the State has both failed to address the widespread problem of gangs and has exacerbated the difficulties for young people who want to leave them. In addition to being in danger of being attacked and killed by their own gang if they leave without permission, and by other gangs and vigilante groups and death squads from whom they no longer have any protection, society has been encouraged to stigmatise and reject these young people, who find it virtually impossible to access education and obtain employment, especially if they have visible tattoos.

In response to the difficulties that young people have in withdrawing from gang life, Save the Children UK has developed a community-based model for the prevention of violence by supporting gang members’ reintegration and rehabilitation in San Pedro Sula (the second largest city in Honduras). The model seeks to provide practical assistance through the creation of livelihood and educational opportunities and referral to support programmes such as drug rehabilitation programmes, as well as social and psychological support and assistance in reintegrating with their families. By bringing together key community stakeholders – community leaders, small business owners, churches, community police, local NGOs, youth groups, neighbourhood associations, health centres, sports leagues – the project aims to provide a network to support the reintegration of gang members and to prevent other children and young people from joining up. The stakeholders also work to highlight the problems that these young people face in reintegrating into society and to promote a positive response to ex gang members among State agencies and communities.

The programme has supported the creation of the youth led organisation Generación X, a group made up of ex gang members which provides peer support for young men and women (aged 15-24) to assist them in leaving the gang and reintegrating with their families and into their communities. Assistance provided by other organisations to gang members is channelled through this organisation. Acceptance into the group is based on the person demonstrating a willingness to change their lifestyle. Generación X has an understanding with the two main gangs that they will not proselytise their members, in return for the gangs not taking revenge on those people that have chosen to leave.

In response to the difficulties that young people encounter in finding jobs, the organisation has established cooperatives among their members which carry out work such as painting and cutting grass. The organisation also carries out prevention work in schools, equipping children and young people with the knowledge and resiliency skills that they need to be able to avoid joining the gangs.

Generación X has also been involved in lobbying local and national government and the donor community and raising awareness of the views and experiences of both gang members and ex gang members.

This model has led to a significant reduction in the incidents of crime and killing and the dissolution of five gangs and has improved relations between young people, the police and the community, increasing public security. Unfortunately, a number of ex gang members have been murdered and the recent downscaling of the community police has increased community tension and insecurity.

**DIVERSION: ALTERNATIVE APPROACHES FOR CHILDREN AND YOUNG PEOPLE**

International standards promote the use of diversion wherever appropriate for children and young people in conflict with the law.

Instead of resorting to a formal trial, diversion removes the young person from the criminal justice process, often referring them to community support services. Diversion can be used at any stage of the decision-making process by the police, the prosecution or other agencies such as courts, tribunals, boards or councils.

Diversion seeks to prevent the negative effects of the trial process, such as the stigma associated with prosecution and conviction, as well as the danger of labelling young people as criminals and trapping them in a pattern of offending behaviour. Diversion schemes can also create better opportunities to identify and address problems
(e.g. within the family, in school, mental health issues) contributing to the young person’s offending.

Schemes can be implemented on a formal basis but, in practice, many pilot projects are instigated by NGOs on an informal basis. Successful projects often pave the way for the State to formally adopt the use of diversionary measures in law.

Options for diversion can include very limited interventions such as a police caution or warning, supervision and monitoring, or a heavier obligation to attend programmes and schemes, run by the State or NGOs and community organisations.

Non-intervention is also a form of diversion, where it is determined that the family, the school and other informal social control institutions have already reacted, or are likely to react, in an appropriate manner and no other action needs to be taken. Diversion does not need to be limited to non-serious offences. The appropriateness of using diversion for more serious offending should be determined by examining the circumstances of each particular case.173

International standards emphasise that any decision to refer a young person to a community scheme or other service requires the consent of the young offender, parent or guardian. Consent should not be left unchallengeable as there may be occasions where a young person consents out of sheer desperation because he is scared about going to court or feels pressurised into giving his agreement.174

**POLICE DIVERSION**

In many countries it is the police themselves that run the diversion schemes. The Police Youth Aid programme in New Zealand, dating back to 1968, is a good example of a police led initiative.175

The programme has evolved from its original model. Now instead of diversion being at the discretion of the police officers, police are under an obligation to deal with young offenders by way of diversion unless this is totally inappropriate considering the seriousness of the offence and the number of previous offences. (This obligation was enshrined in the Children, Young Persons and Their Families Act 1989.) Where the offence is petty, the police officers can provide an on the spot warning followed up in writing. Where the offence is more serious, the case will be referred to the Youth Aid Officers: fully qualified police officers who have chosen to specialise in dealing with children, young people and their families.

In consultation with the child, the family and the victim, Youth Aid Officers decide on a specified plan so that the young person has the opportunity to ‘put right’ the damage done and prevent it from happening again. Diversionary options may include: verbal or written apologies to the victim; repairing or paying for stolen or damaged goods; working directly for the victim or for a community group; making a donation to charity; curfews; restriction from associating with co-offenders or other ‘bad influences’; counselling for the offender to address underlying causes of the offending behaviour; sports activities or increased hobbies to prevent boredom that may lead to committing offences; and writing an essay to show that the offender has understood what he has done wrong.

According to the Achieving Outcomes in Youth Justice evaluation176, the arrest rate of young offenders dramatically decreased from 450 a month to 150, after the adoption of the Children, Young Persons and Their Families Act 1989. 83% of young offenders are now diverted away from the formal justice process.

**PARTNERSHIPS BETWEEN STATE AND NON-STATE BODIES**

Traditionally, in Tajikistan, there has been limited cooperation between State bodies and the voluntary sector, especially in the delivery of criminal justice services. There is also a lack of diversion options, sentencing alternatives and an overuse of detention in poor conditions for children who have committed petty offences.

Following the adoption of an amendment to the Criminal Code in 2004, which prohibited the detention of first time juvenile offenders for non serious offences, UNICEF and the Children’s Legal Centre established the Juvenile Justice Alternatives Programme. The programme runs as a sentencing alternative to custody as well as a diversionary measure utilised by the police and the prosecutors. The scheme accepts young people aged 10-18 years who live in the project areas. Although the age of criminal responsibility is 14 years, children under that age can be deprived of their liberty by the Commission on Minors (welfare body).

The non-residential programme is run by local NGOs in community centres. Young people are provided with individually tailored programmes of psychosocial and practical assistance, family work and access to remedial education and vocational training. Young people attend the programme formally for between 3-6 months, while still attending school. Many of the young people have continued to attend the community centre, in which the project is based, after they have graduated from the programme.

The project has promoted partnerships between State and non-State agencies and a multi-agency approach –
representatives from all of the referring bodies sit on a steering committee with the representative of the NGO to address problems of offending in their district. The project also led to the appointment of the first juvenile judge and the first dedicated local prosecutor to handle all juvenile cases. The programme has had a very low rate of re-offending to date – 5%.

The project was established to demonstrate the benefits of running diversion and alternative sentencing projects, with the objective that the State will take responsibility for running and replicating the project in Tajikistan with the continued involvement of local NGOs.

RESTORATIVE JUSTICE

Diversionary measures include the option for alternative means of resolving disputes. Restorative justice, which has become a popular youth justice response in recent years, is a process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, usually with the help of a fair and impartial third party.\textsuperscript{177} The process must be voluntary and can only take place if the young person has admitted his guilt.

Unlike the trial process (and the traditional sentencing process), restorative justice allows the victim, the child and sometimes the family and even other relevant people (such as teachers, neighbours and friends) to take part in the process, have their say and determine what needs to happen to put things right. The process enables young offenders to understand the consequences of their offence, to express remorse and also make amends for their action either directly to the victim or through activities in the community.

There has not been any extensive research on the impact of restorative justice programmes on offending and re-offending. However, restorative justice programmes report high levels of victim satisfaction, while court processes only report a 20% victim satisfaction rate.\textsuperscript{178}

Examples of restorative justice procedures:\textsuperscript{179}

- Victim-offender mediation, where a trained independent person prepares and then brings together the victim and offender in order to discuss the crime, the harm that resulted from the crime and the steps that are needed to put things right.
- Family group conferencing (FGC), adapted from the traditional Maori practice in New Zealand and now used widely in child protection as well as youth justice cases, involves the family as well as the victim and the young person, other important people in the young person’s life (e.g., teacher, neighbour) and representatives of the youth justice agencies. Once the agencies have explained the services and options available, the group is left alone to develop an action plan for the young person.
- Circles, a practice originating from the indigenous communities in Canada, is the most inclusive process. In addition to all the people involved in FGC, Circles also invites interested members of the community to participate.

These are not the only restorative justice processes and other programmes have combined elements of all these processes.

In Northern Ireland, a Youth Conferencing scheme was launched in 2003. Modelled on the New Zealand model of family conferencing, participants in the session must include the young person, as well as an appropriate adult, a police officer and the coordinator. The session can include the victim, teachers, social workers, the lawyer, family members and community members. All attendees have a chance to voice their opinion and contribute to the development of the action plan for the young person. The plan can include a requirement to apologise, to make reparation to the victim or the community, to attend certain activities and treatment programmes and to abide by curfews. The action plan can last for a maximum of 12 months. The programme has attracted a high level of victim participation (58%) and achieved a high rate of victim and young person satisfaction.\textsuperscript{180}

In England and Wales first time offenders aged 10-17 years old who plead guilty are referred to a Youth Offending Panel to consider the best course of action, if their crime is not serious enough to warrant a custodial sentence. A member of the Youth Offending Team (State agency) sits with two trained volunteer members from the local community. The panel talks to the young person, the parents and the victims and agrees a tailor-made contract aimed at putting things right. This might include a letter of apology to the victim, removing graffiti or cleaning up estates and communities. The programme can also include

### The restorative justice process:

- should only be used where there is sufficient evidence to charge the offender;
- must have the free and voluntary consent of the accused;
- must only create reasonable and proportionate obligations;
- must be governed by procedural safeguards; and
- must implement measures to address power imbalances.

\textit{(UN Basic principles on the use of restorative justice programmes in criminal matters)}
activities to prevent further offending, such as getting young people back into school and help with alcohol or drug misuse.

In 2001, Save the Children UK formed a partnership with an NGO in the Philippines, FREELAVA, to establish a community based prevention and diversion/mediation programme for children in conflict with the law. The programme was prompted by the lack of any effective alternative programmes to custody, the overuse of detention of children in appalling conditions, often in adult prisons, and the fact that 94% of children arrested by the police were first time offenders and had been picked up for petty offences.

As part of the wider project, a community diversion scheme for non-serious offenders was established – the first of its kind in the Philippines. Operating in 12 local government areas, (called barangays), Children’s Justice Committees (CJC) provide a reconciliation and mediation service for young offenders referred to the Committees by the police and the community. The Committees are made up of a chair and co-chair of the Children’s Justice Committees, who are the main mediators and members of the Barangay Justice Committee for adults. There are usually nine other mediators including a gender and development officer, a Barangay senior police officer, a school guidance councillor, a representative of the community volunteers, an NGO representative (usually one of FREELAVA’s outreach workers) and a youth committee member, some of whom are elected.

The victim and the offender are summoned to discuss the possibility of a settlement or mediation. If all parties agree to mediation, then the offender submits his oral or written apology to the victim, or verbal reasons for why he committed the offence. Where a settlement is reached, the CJC members recommend steps for further psycho-social intervention for the young offender through a centre-based or family-based approach.

The young people are supported through the process by trained community volunteers and peer educators, who are young people who have been in trouble with the law but have subsequently adopted a positive lifestyle.

The police are very supportive of the process, utilising the CJC’s rather than the trial process. Having police officers as members of the CJC’s has been key to their support.

In less than three years, 600 children have been diverted from custody. In seven of the pilot Barangays where there is data of diverted cases of children for the last two years, four Barangays show a fall in cases of between 37 and 97 per cent.

The Project recognised that positive media coverage promotes the importance and beneficial effects of diversion projects. Inviting former young offenders to participate in media forums has proven to be valuable. Young people are given the chance to explain how they were able to cope with life after their offence through the assistance of the many sectors of the community. This initiative has had a positive impact on young people, parents and teachers.

**Building on traditional responses**

Forms of restorative justice have been operating in many traditional communities, particularly in Africa, East Asia and the Pacific Regions for generations. For example, traditional African approaches to conflict resolution place an emphasis on resolving ‘problems’ rather than punishing offences. This approach aims to mend relationships, compensate the victim for any loss, and avoid escalation of conflict within the community. This community justice frequently runs parallel with statutory justice and is often the preferred method of dealing with children and young people. Statutory systems regularly fail to respect due process guarantees and have an overemphasis on punishment and detention, often in prisons that are located in cities far away from their families and communities.

To reduce the number of young people being taken to the police, processed through the courts, and sentenced to prison, programmes have been developed that promote the role of community mechanisms to deal with children and young people in conflict with the law, building on the traditional restorative justice approach.

In Malawi, there is no separate system for children in conflict with the law, no governmental legal aid services and a lack of social workers. In order to reduce the number of children being dealt with by this ill equipped system, UNICEF decided to utilise the strong community ethic of caring collectively for children by setting up Community Crime Prevention Committees.

Distinguished members of the community sit on these committees, along with parents and children. When a child commits a crime, the Committee tries to resolve the matter without resorting to police or prison officials. The Committee offers counselling to the child and the family, and where appropriate, imposes some form of community service such as herding cattle or cooking. UNICEF provided training to the Committees and raised their awareness of children’s rights in order to emphasise rehabilitation rather than punishment.
The scheme reduced the number of children being referred to the justice system. A study found that only 10% of the children in custody were from the districts where these committees had been established.

In Palau the Ministry of Justice established a Restorative Justice Programme in 2001. Communities accepted this process because it reflected traditional community practices of dispute resolution. This Programme is an alternative to criminal prosecution and operates on a non-legislative basis. The Programme does not deal with serious cases. Although the Programme is available for adults and young people, the focus has been on young offenders.

If the victim and the offender agree to participate in the conference they are invited to attend a session with a family member, traditional leaders and community members. The offender must acknowledge the wrong doing and accept responsibility. The victim has the opportunity to tell the offender about the consequences of the criminal act. Everyone present, including the offender, agree on the terms of the restoration for the victim and society. These terms are written, and all participants sign an agreement to specify the actions the offender must take within a year. Terms of restoration normally include community service. If the terms of the agreement are successfully fulfilled, no criminal action is filed. If the participant fails to successfully complete the programme or commits another offence during the time of the restoration period, the case can be referred to the Office of the Prosecutor.

**PROTECTING THE RIGHTS AND PHYSICAL INTEGRITY OF CHILDREN AND YOUTH PEOPLE: THE IMPORTANCE OF REPRESENTATION**

Children and young people in conflict with the law have the right to adequate and appropriate legal assistance, which must be provided for free if the child or his family cannot afford to pay. Unfortunately, young people are often left without effective assistance and representation due to a shortage of resources, a lack of lawyers specialising in children's issues, low interest in handling such cases, the police failing to contact a lawyer for the child, and in some circumstances judges not appointing lawyers as required by legislation. Where there is no one to fight the young person’s corner, they are left exposed to violations of their due process guarantees, a protracted process, a greater chance that they will end up behind bars and an increased risk of maltreatment and abuse.

The provision of and access to appropriate legal advice and representation is crucial for the protection of the child’s rights and well being. The assistance young people receive can mean the difference between freedom and independence, and months or even years forgotten about in the criminal justice system. If a young person has someone to monitor and argue their case, it is more likely that trial and sentencing dates will be met, pre-trial detention will be shorter, the young person will be referred to diversion schemes, be acquitted or receive non-custodial sentences or shorter sentences. Maltreatment is less likely to occur where officials know that this abuse will be spotted quickly by visiting lawyers and challenged.

Both State and non-State bodies have attempted to fill the gap in the provision of legal assistance to young people, through the establishment of a number of initiatives.

**LEGAL AID PROJECTS**

Bar Associations and Law Societies in different countries have been active in setting up schemes to provide free, impartial legal advice for children and young people and ensuring they are represented during the pre-trial and trial stages and during detention.

The Bar Association in Cambodia, with which all lawyers must be registered, was established in 1995. In 2000, in response to reports of poor representation for children in conflict with the law and child victims, maltreatment of children in police stations, overuse of police detention, lengthy periods of detention and failure of the police to inform the child’s parents of his arrest, UNICEF supported the creation of a Child Protection Unit, under the Legal Aid Department within the Bar Association. The unit is staffed by three trained lawyers and one judicial assistant with a specialisation in child protection, including juvenile justice and issues relating to exploitation and abuse of children, and can provide legal assistance and representation nationwide.

The goal of the programme Legal Representation for Children in Need of Special Protection is to strengthen the children’s legal protection by providing free legal representation and assistance for children in conflict with the law and to children who have been victims of abuse, exploitation, trafficking and violence. Poor children, children from poor families, and children in the care of NGOs or Government institutions are eligible for assistance. In addition to providing legal assistance, the Unit monitors children in detention, and trains other law professionals on children’s rights and issues. The experience of the Unit has helped to identify the shortcomings of the justice system and consequently has informed campaigns for the reform of child related legislation.
The Unit handles between 15 and 25 cases a month, with the majority of cases relating to children in conflict with the law. The project has reduced the number of children being deprived of their liberty, reduced the length of time children spend in pre-trial detention, and reduced incidents of abuse and maltreatment of children through sensitisation and training activities.

Due to the size of the Child Protection Unit, there is a limit to the number of cases that it can handle at any one time. Part of this gap is plugged by the NGO Legal Aid of Cambodia, which has a Juvenile Litigation Unit providing legal representation to children in criminal and civil cases, both perpetrators and victims, and a Juvenile Unit which aims to increase awareness of children’s rights and improve treatment of children by law enforcement officers.

NGO LEGAL CENTRES

In many countries, practising lawyers, university departments and NGOs have established centres to provide legal assistance to children and young people in conflict with the law and their families, often staffed by both trainee and qualified lawyers to cover the shortage in professional lawyers who want to take on this kind of work. Often these centres have a wider mandate to pursue prosecutions for maltreatment and abuse of children and young people and violations of their rights, to provide access to complementary psychosocial and practical assistance (e.g. temporary shelter through their own inter-disciplinary team of social workers, psychologists and lawyers or by way of referral to other agencies), and to provide legal education and training to judges, police, prosecutors, detention centre staff, children and young people, the community and the media. It is common for these centres to be involved in campaigning for legal reform.

Recognition of the lack of legal assistance and access to justice for children around the world, which was leaving them vulnerable to violations of their rights, Defence for Children International has set up numerous Socio Legal Defence Centres including in Albania, Argentina, Belgium, Bolivia, Colombia, Ghana, Israel, Macedonia, Sri Lanka, Togo and Uganda. In addition to providing free legal advice and representation, the Centres offer interdisciplinary services to children and their families, such as family therapy and social services. The Centres also monitor the situation in police stations and closed institutions, raise awareness of children’s issues and children’s rights among policy makers and law enforcement officials, and provide training.

In Africa there have been a number of positive initiatives to establish such centres. In 2004, the Children’s Legal Protection Centre was set up in Ethiopia by the African Child Policy Forum to provide legal assistance to abused children, children in high risk situations and those in conflict with the law. The Centre cooperates with a network of non-governmental organisations in order to provide shelter, psycho-social assistance and medical care, ensuring that the child’s wider needs are met. The Centre also provides legal education and training programmes to various target groups, including community leaders, police, and the media.

NON-LEGAL REPRESENTATION AND ASSISTANCE

Although young people need to be provided with legal assistance when being processed through the formal juvenile justice system, they can also benefit from non-legal assistance and representation. For example, in the UK volunteers are recruited and trained to be ‘Appropriate Adults’. Primarily their role is to act as the ‘Appropriate Adult’ when children are being interviewed by the police in the absence of their parent or guardian who would normally take on this role, in order to ensure that the young person is processed as quickly as possible – an under-17-year-old cannot be interviewed without an ‘Appropriate Adult’ being present. However, the role of ‘Appropriate Adults’ has been expanded to ensure that a young person, when he is arrested and detained in a police station, knows his rights and understands what is happening. ‘Appropriate Adults’ also ensure that police are abiding by standards of treatment and care and that the interviews are conducted fairly and properly. The volunteers work alongside the young person’s lawyer.

This UK model was piloted by Save the Children in 2002 in the Panlong District in China, a country in which traditionally parents and care givers are rarely called by police to be present during interviews and children are frequently left without representation. However, unlike the UK model, in China ‘Appropriate Adults’ also promote the use of diversionary measures by the police and continue to provide support and assistance to young people referred to these community schemes. The success of the pilots led to the role of the ‘Appropriate Adults’
Adults’ being formalised and endorsed by local authorities, who now fund these full time positions, and being supported by the police authorities who issued an order for the implementation of the scheme in all police stations in the region. The use of diversionary measures has also been formalised within the justice system.

Access of independent persons and organisations to police stations and detention centres can also help to reduce incidents of abuse and ensure respect for rights.

Even where the young person is going through an informal justice process, children should be provided with independent representation and/or assistance to ensure that their voice is heard and that they fully understand the process and the consequences of giving their consent to plans, activities and programmes.

**KEEPING CHILDREN AND YOUNG PEOPLE OUT OF DETENTION: DEVELOPING ALTERNATIVES TO CUSTODY PRE AND POST TRIAL**

To implement the principle that detention must only be used as a last resort both prior to and following a trial, judges and courts must have a legal duty to implement this principle and have at their disposal a wide range of effective options in deciding how to deal with the young person.

**ALTERNATIVE SENTENCING**

International standards encourage a wide range of alternative sentencing options including “care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes”. Restorative justice measures that oblige the young person to ‘put right’ the damage they have done to the victim and/or society (e.g. community service) are also popular alternatives for young offenders. However, the imposition of fines, which is a sentencing option included in many States’ legislation, is not viewed as an effective alternative to custody.

Whatever the measure imposed, it is important that the young person is supported to stay out of trouble, and assisted to rehabilitate and reintegrate into his community. Multi-agency cooperation and partnerships between State and voluntary organisations are vital for the effective provision of a wide range of options. Involving the family in the young person’s programme is also important as often factors at home contribute to delinquent behaviour.

On introducing alternative sentencing measures, it is crucial that the judiciary receive training so that they are aware of existing schemes (both State and non-State programmes), understand which option would be the best in each individual case and are encouraged to use them. Censure by the media and by politicians about judges being too lenient when they impose non-custodial sentences discourages their use. In addition, ineffective and under resourced alternatives do not instil confidence in the judiciary who then feel that they are left with no choice but to impose a custodial sentence.

In many States, alternatives to custody involve placing restrictions on the movements of a young person (e.g. tagging, curfews and home detention). While home detention and tagging schemes allow young people to serve their sentence at home (as long as they abide by certain conditions), the imposition of these measures in isolation has been criticised as they do not address the root causes of offending behaviour, do not provide support, guidance, rehabilitation or reintegration and therefore do little in the long-term to prevent re-offending. Non-custodial alternatives should provide a combination of supervision and rehabilitation measures.

Where alternative sentences are imposed, children and young people still have the right to certain safeguards, to ensure that penalties are implemented fairly and that the offender is able to complain where he feels that his rights have been infringed. These safeguards are enshrined in the Tokyo Rules, which apply to both adults and under-18s.

The Tokyo Rules state that the failure of the young person to abide by the conditions of his sentence should not automatically result in him being locked up.

While the development of alternatives can reduce the number of children in detention in the long-term, paradoxically measures can also lead to more children being locked up. Often minor offenders who would not have received any sanction are given newly created community sentences, which often include automatic placement in detention if the young person does not complete the requirements of the order.

In England and Wales young people can be referred to Intensive Supervision and Surveillance Programmes in cases where usually remand or a custodial sentence might be imposed. The programme, run by State agencies, is targeted at persistent and more serious offenders. Young offenders are strictly and closely monitored through surveillance, which can involve regular face-to-face contact, voice verification or tagging. The young person will also participate in a supervision programme. For the first three months the young person will engage in a minimum of 25 hours of activities per week including education and training, the development of interpersonal skills, reparation to the victims or communities and family support.
This will reduce to a minimum of five hours a week plus weekend support for a further three months. Surveillance will continue until the end of the young person’s sentence. The programme also tackles individual problems such as homelessness, substance misuse and mental health issues. The Youth Justice Board conducted a cost-benefit assessment of the ISSP which showed that the programme costs 70% less per ‘participant’ than custody. The effectiveness in reducing re-offending was estimated to be close to 50%.

In Philadelphia in USA, young people can be referred to the Youth Advocate Programme instead of the juvenile detention centre. The Programme consists of 15-30 hours of face-to-face supervision in the community, depending on the risks and the needs of specific young offenders. Young offenders are referred to recreational, educational and vocational opportunities in the community. Daily checks on school attendance and curfews are undertaken and supervision can be enhanced with electronic monitoring in selected cases. Staff accompany young people to all court appearances. The Programme has an excellent completion rate, with 92% also remaining arrest-free while in the programme.

**AVOIDING PRE-TRIAL DETENTION**

To avoid unnecessary pre-trial detention, the options available for police, prosecutors and courts need to be as wide as possible and should involve child protection and social services.

In a number of countries, NGOs and voluntary agencies have developed programmes to provide support and supervision for young people who are released on bail, to enable more under-18s to avoid pre-trial detention. In Canada, the Youth Criminal Defence Office set up the Custody Diversion Project in 1990. This initiative was in response to the adoption of the Youth Criminal Justice Act which encouraged a reduction in the use of pre-trial detention and a recognition that a lack of capacity among probation officers was resulting in young people, who were at higher risk of absconding, being held in pre-trial detention. Project staff visit police stations and interview young people in an effort to provide the bail officer with information regarding community support and other support that is available for the young person. The Project also established the Youth Attendance Centre targeted at higher risk youth. The Centre works with the Probation service to provide curfew and residency checks for these young people at times when probation staff are not available. Staff visit the young person’s home and make regular telephone contact to ensure that they are complying with their bail conditions. Without the availability of this additional surveillance, many young people would have to await their trial in detention. The Centre also provides support for young people who have been given community sentences following their trial.

Remand fostering has been one of the options developed in England and Wales to keep young people out of pre-trial detention. Under current legislation, generally under-17s cannot be remanded in custody. However, they can be ordered to remain in local authority care until their trial if they are refused bail. Often this has resulted in a placement in a secure unit, which equates to a deprivation of a child’s liberty. However, the local authority can decide to place the child with a family, relative or other suitable person, in a children’s home or a foster placement. To reduce the number of children and young people unnecessarily being held in secure placements, remand fostering was developed significantly in the 1990s, often in partnership with voluntary organisations. Under the scheme, young people live with a foster family until the date of their trial. These parents are often, but not always, specially trained to care for young offenders. Pilot schemes are currently being implemented to test the viability of using foster placements as part of community alternatives to custody, where the child’s family is considered a contributory factor to their offending. The Anti-Social Behaviour Act 2003 permits such a placement as part of a supervision order.

**NON-CUSTODIAL ALTERNATIVES FOR VULNERABLE CHILDREN AND YOUNG PEOPLE**

Often children who are facing child care issues and family problems are denied access to community alternatives, diversion schemes and alternatives to pre-trial detention. The imposition of these alternatives often relies on the fact that children have a home and a family willing and able to take care of them and guarantee their attendance at court and on community programmes. Where this is not the case, the child is more vulnerable to being locked up. In particular, many young people who are street children or come from dysfunctional families are placed in pre-trial detention not because they are seen as a danger to society, but because it is thought that they will not turn up to trial.

In Uganda, Save the Children developed a ‘Fit Person’ model to tackle situations where children were being deprived of their liberty because their families were unwilling to support them or let them come home because of fear of retaliation, shame or anger with the child. Under the scheme, a respected individual who is a well known member of the child’s community is selected to become a ‘Fit Person’. Following training, that person can agree to act as the guarantor for the child.
appearing before the court, provide shelter and guidance to a child as part of the community supervision order and assist with the child’s reintegration with their family. Since the project began, ‘Fit Persons’ have expanded their mandate to include visiting police stations, tracing children’s families, providing temporary shelter for children involved in child protection cases and have been closely involved in the rehabilitation of the young people in their care. The scheme has led to a reduction in children deprived of their liberty and boasts a very low rate of re-offending. The problem with the scheme is that it is voluntary and funding for payments to ‘Fit Persons’ needs to be found to ensure this initiative can be sustained and replicated.

**A SECOND CHANCE: EFFECTIVE REHABILITATION AND REINTEGRATION OF CHILDREN AND YOUNG PEOPLE IN DETENTION**

It is recognised that in every country there will always be a need for a small number of secure residential placements for serious, violent and persistent juvenile offenders. By catering for only a small number of young people, the State will be able to invest adequately in the infrastructure, facilities and staff at these units to ensure that they can effectively rehabilitate these young people: the main purpose of depriving a child of his liberty.

The UN Rules for the Protection of Juveniles Deprived of their Liberty and the Standard Minimum Rules for the Treatment of Prisoners provide detailed standards for the care, protection and treatment of children. These provisions stress that, in addition to providing an environment which respects the rights and dignity of children, the following standards should be implemented in order to promote the rehabilitation of children.

Centres should be small enough with an adequate staff-child ratio to allow individualised treatment to be carried out, although large enough to ensure that children and young people have access to a range of services and facilities. Each centre needs to be staffed by different specialists including educators, vocational teachers, counsellors, social workers, psychologists and psychiatrists, as well as staff trained to deal with drug addiction. Staff must be sufficiently qualified and trained to work with young offenders.

Young people need to be provided with the skills – education, vocational and social – to be able to adapt successfully to the outside world, and where they are older, to live an independent life. Children and young people also need to be treated appropriately for their age, which requires separating children of different ages to avoid negative influences from older children and young people. The special needs of girls should not be ignored.

To avoid isolation from society while in detention, it is important that young people are able to maintain contact with the outside world. They should also be permitted to maintain contact, not only with their family, but also friends and reputable outside organisations. Young people should, where possible, study, take part in vocational training, and work in the community to promote their reintegration.

Large centralised institutions hamper regular contact between young people and their families. It is preferable for children to be detained in smaller regional or local institutions so that they can more easily maintain contact with their social network.

NGOs and community organisations can provide a vital link to the outside world for young inmates, and provide essential services and facilities, as well as activities such as art and sport and opportunities for apprenticeships and work experience, in the absence of or in addition to State provision. The regular presence of outside organisations in detention centres can also reduce the incidence of maltreatment and abuse, monitor conditions of standards and care and speak out on behalf of the young people.

**LEAVING INSTITUTIONAL CARE**

Effective reintegration is vital to preventing re-offending. Without adequate networks of support for children and young people who have been in detention, any rehabilitative gains made during their time in detention may be lost and they will be highly vulnerable to re-offending.

There should be a range of facilities and services on offer to meet the different needs of young people when they are released, run by competent and adequately resourced authorities. The authorities need to support young people to secure education placements, vocational training and getting a job. As far as possible, these services should ensure that the young person has a suitable place to stay, clothing and sufficient means to maintain themselves upon release.

It is vital that staff work with families to prepare them for the young person’s release and provide practical and emotional support to ensure a smooth transition from institutional care to family life. This transition is easier where families have been able to maintain regular contact with their children throughout their sentence. It is particularly helpful if young people have the opportunity to slowly reintegrate, being allowed to go home on day release and weekend visits.
Plans for reintegration should be developed as early as possible into the young person’s sentence. Authorities responsible for supporting their reintegration should not have to wait until the child is released before meeting with them. Representatives should have access to the juveniles while they are still in detention, so that they can ensure the right support and services are available to the child when he is released.

International standards promote the use of early and conditional release, where it is evaluated that a young person has made satisfactory progress towards rehabilitation. Usually, when young people are released early from their sentence, for a specified period of time they must abide by the condition to engage in certain activities, attend certain centres, and refrain from engaging in certain behaviour. Violation of these requirements will usually result in their placement back at the detention centre. It is important that juveniles are not only supervised to ensure that they are not breaking the terms of their conditional release, but also given support to stay out of trouble.

Where institutions are centralised and young people are returning to families located far away from the prison, it is often impossible for the NGO, which is assisting in the detention centre, to cover all the areas of a country to which a child might return. It is therefore important for NGOs to create support networks to ensure that young people are supported regardless of where they go back to.

In 2004, Penal Reform International implemented a programme in one of the girls’ colonies in Siberia, Russia, which accommodates children from 29 regions of Siberia and the Far East. Being held at such large distances from their families makes family visits virtually impossible, breaks social links and severely hampers reintegration. The girls desperately need support when they are eventually returned home. As Penal Reform International does not have the capacity to cover such large areas, it has set up a network with local NGOs and competent State agencies to actively assist these girls when they arrive back to their communities.

To provide a stepping stone for young people reintegrating into society, international standards also promote the use of semi-institutional arrangements such as half-way houses, educational homes and day-training centres.

Society and communities must also be encouraged to integrate children and young people. Young people will not stay out of trouble for long if they are faced with prejudice, exclusion and a lack of opportunities within the community.

In the absence of State programmes, or to support State initiatives, NGOs, community groups and church groups in many countries have been active in providing support to young people leaving closed institutions. Activities range from providing mentoring schemes and support groups, to temporary shelter and care.

The YMCA in England has been running programmes in young offender institutions (16-21-year-olds) since 1994 (‘Partnerships in Prisons’). The YMCA provides a range of activities in the institutions including sport and arts based initiatives, pastoral support, and working with young people to build their confidence and personal skills. The organisation aims to provide ‘a seamless service’, which provides support while the young person is in the institution, assists them in preparing for release and supports them once they have completed their sentence, both practically – finding housing and employment/work experience through the YMCA’s nation-wide network of accommodation, training centres and youth clubs – and emotionally - assisting them in coping with problems in reintegrating.

One-on-one support

Young offenders often lack positive role models, self esteem and knowledge of the opportunities available to them. Mentoring provides one-on-one support, friendship, advice, encouragement and reinforcement of healthy behaviours and attitudes when the young person is released from custody in order to help him reintegrate into the community and stay out of trouble. Schemes can also help young people secure education and employment opportunities.

Mentoring can be used effectively not only in rehabilitation and reintegration programmes for young people in custody, but also in prevention programmes and alternative sentencing schemes. It can be provided by a young person’s peers, reformed young or adult offenders or adults. Where mentoring is used to assist young people to reintegrate, it is very helpful if the mentor and the young person can get to know each other before he is released.

The involvement of volunteers also assists in breaking down barriers between the local community and young offenders.

In England, a mentoring scheme which is run by a local NGO (Trailblazers) for young people aged 15-21 detained in one of the Young Offender’s Institutions has had a significant impact on re-offending. Out of 300 young people who had taken part in the scheme (as of 2002), only 48% had re-offended within two years compared to a national rate of 76%. On this scheme the young people are linked to a Volunteer Mentor from the community for approximately one year. Visits take place inside the prison every 2 weeks during the last 6 months of the sentence, and then continue for a further
6 months post-release. In addition, Trailblazers offer a life skills programme for prisoners, including topics such as careers advice, job search skills, interview techniques, drug and alcohol awareness and making choices, which all help prepare them for their release.

Mentoring can be highly effective, but schemes have not always been successful. Mentoring is not suitable for all offenders. The success of mentoring depends on the suitability and commitment of the mentors themselves. Therefore time and resources need to be invested in attracting the right people. However, mentoring is a tough job, especially for those not used to working with young offenders. It is essential that mentors are trained effectively and receive support to fulfil their role. In addition, when developing programmes, coordinators must ensure that mentoring does not operate in isolation but is part of a wider range of support services.

In Japan, young people (and adults) leaving institutions are supervised by the probation service. However, since the 1950s instead of being State employees, the vast majority of the 50,000 probation officers are volunteers – Japan has a strong tradition of volunteering. This means that the young person can be supervised by a member of his community. The volunteer probation officer also provides regular (and sometimes daily) assistance and guidance to help the young person reintegrate into society. Although this long running programme has been largely successful, there have been a number of problems in its implementation. As laymen, there is a danger that the volunteer probation officers will treat individuals with partiality depending on their personal views.

In addition, over recent years the age of volunteers has been rising and now averages at over 60. As approximately 70% of the people on probation are under 20, there is a danger that the volunteers and the young people will not be able to relate to each other and the effectiveness of the supervision and guidance will be diminished.

**Stepping stones**

Day centres and non-residential programmes should be established to provide support to young people on leaving closed institutions. However, some young people are not ready to return home straight after their release from prison, or their families are not ready, not able or not willing to take them back. Programmes offering temporary shelter in addition to activities that help young people find their feet are crucial to their reintegration. Without such programmes, it is likely that young people will find themselves on the streets and highly vulnerable to re-offending.

In 2001, YMCA South Africa set up the Sakhithemba Halfway House (for young ex-offenders) in response to the county’s lack of reintegration services and the high rate of re-offending, which had given rise to a reluctance among prison authorities to release young people. This project provides temporary accommodation for young people leaving institutions. In addition to having somewhere to stay, the project provides on site skills training, access to education, life skills training, help finding employment through a network of local businesses, and assistance in reintegrating into their communities. The centre also assists ex-offenders in setting up their own small businesses. The scheme has capacity for 25 people and the average length of stay is eight months.

**REHABILITATING GANG MEMBERS**

In some countries non-governmental organisations have gone beyond providing assistance to children in detention centres and support for when they come out. In Honduras, responding to the widespread problem of young people in gangs, and the failure of the State to provide effective rehabilitation and reintegration services, Proyecto Victoria, the brain child of Reverend Mario Fumero, was set up.

Proyecto Victoria runs residential rehabilitation programmes for boys and young men aged 12–21 years who have expressed a wish to leave their gang. The main institution is located about 45 minutes from the capital and there are two smaller units, one in San Pedro Sula and one in Colonia Kennedy in Tegucigalpa. Under-18s can be referred by the State welfare agencies and the courts or the project can request that the young person is referred to them. If the young person fails to progress at the Centre or wants to leave before they have completed the programme they will be sent to the juvenile detention centre in the capital.

The State supports the project and provides 40,000 Lempira a month out of the 200,000 Lempira that the Centre needs to function effectively. Parents are encouraged to pay, and an economic evaluation is carried out to determine their ability to contribute to their child’s upkeep. If they have no funds, then treatment can be given free of charge.

Under-18s usually stay at the Centre for between six and nine months. Significantly, there is a heavy emphasis on the involvement of the family, who are required to attend family therapy. Controversially, if they do not attend these sessions then they are not allowed to visit their children. The family are also prepared for the young person’s return before the release date and the child is slowly reintegrated into the family through weekend visits. Once the young person has left the centre there are meetings twice a week in Tegucigalpa which support his reintegration. Proyecto Victoria also provides rehabilitated youngsters with
identification cards, which they can show to the police if they get stopped or detained to prove that they are no longer a member of a gang.

Rates of successful rehabilitation and reintegration from Proyecto Victoria are far higher than for under-18s who serve their sentence in one of the poorly run juvenile detention centres.

COMBATING PUBLIC PERCEPTION

Negative public perception not only obstructs the adoption of new child rights compliant domestic legislation, policies and practices, but also hampers the rehabilitation and reintegration of young offenders, making them more vulnerable to re-offending. To effect change, it is essential that the public’s misunderstandings and misconceptions about young offending, the juvenile justice system and the effectiveness of responses to youth crime is challenged.

STATE ACTION

The obstacle posed by public opinion to the implementation of the international juvenile justice framework is not an excuse for the continued violation of children’s rights. Rather than pandering to a misled public, the State has a duty to address misconceptions, promote children’s rights and explore proposals for reforms through balanced debate. Responsible dissemination of crime statistics and court figures can contribute to the public’s understanding of the juvenile justice system, increasing confidence in the system as a whole. The State should be proactive in publishing information on programmes and initiatives that work in reducing juvenile offending and in countering the image that these are ‘soft’ options.

TACKLING THE MEDIA

The media must refrain from publishing names, photos and identifying facts about children and young people in conflict with the law. This is not only a violation of a child’s right to privacy and exposes them to stigmatisation and the risk of revenge attacks, but also encourages sensationalist coverage of stories. In many States, domestic legislation forbids the publication of any identifying details or photos of young offenders (e.g. Honduras and UK). Breaches of these provisions need to be challenged.

The media should be targeted to promote a more positive image of youth and devote more column inches and air time to disseminating positive news stories about young people, rather than portraying them as villains or victims. The media should also be encouraged to provide a more accurate picture of youth offending. Of course, persuading the media to undertake more responsible reporting is not easy. They are running a business and bad news sells faster than good news. However, the media will be unlikely to publish positive stories about children and young people unless they are provided with information and encouraged to do so.

“Focus groups suggest that key message strategies to engage public support for non-custodial sentences include:

- instillation of responsibility and discipline;
- having to work hard, emotionally and physically;
- putting something back;
- paying back to victims;
- restriction of liberty and requirement to change behaviour; and
- treatment of causes of offending.

Messages that focus on the costs of custodial sentences, the rising prison population, or humanitarian arguments are less persuasive.”

In a number of countries, organisations have attempted to establish inter-sectoral groups which involve representatives of the media, as well as NGOs, children and young people, academics, and State agencies, in order to challenge perceptions of juvenile offending and disseminate information about effective responses to youth crime. Reporting ‘codes’ agreed with media and young people on covering stories about under-18s can also positively impact coverage.

In Panama, UNICEF found that despite concerted efforts to reform the juvenile justice system, there was widespread resistance from the public. Children’s rights were seen as a threat and adolescents were viewed with suspicion and hostility. The media continually called for tough measures to keep them under control. Public pressure led to the adoption of a new law which toughened responses to juvenile crime and removed some due process protections for children.

UNICEF decided to target public perception though the media, establishing an alliance with the National College of Journalists, to which 90% of the country’s journalists belong. UNICEF provided the journalists with data on children in conflict with the law in order to help dispel myths and exaggerations of adolescent crime. UNICEF facilitated training courses on the CRC to promote a positive and accurate view of children’s rights and encouraged child protection advocates and relevant academic institutes to have a more proactive role with the media. The programme succeeded in establishing partnerships between the media and advocates for children, creating a more balanced debate and in slowing down the introduction of punitive reforms.
ROLE OF NGOS AND COMMUNITY GROUPS

The NGO community and campaign groups can take a more active role in feeding the press with positive stories and images of young people, tackling misperceptions of crime and the justice system and advocating for more effective responses to youth crime. Young people themselves can be taught media literacy and campaigning, be supported in promoting their perspective on key issues and in challenging negative stereotypes, be trained on how to carry out research and investigations, and can develop and lead campaigns of their own.

Tackling misperceptions locally, rather than nationally, is also important. Groups should target local and community press and local TV and radio stations to provide air space and column inches to disseminate voices of young people and positive news stories on youth. Young people can also publish magazines and newspapers themselves. A number of NGOs and youth groups have also set up websites and online forums to provide a space for young people to express their views and to raise awareness of issues that impact upon them.

On a practical level, community groups which comprise local people, representatives of the police and schools, parents and children and young people, can work positively together to tackle local issues while breaking down barriers between young people and the community and young people and the police. Encouraging meaningful youth participation helps to tackle social exclusion. Participation of young people can also contribute directly to prevention of delinquency by identifying the facilities and services that children and young people need to keep out of trouble – for example, access to recreational activities.

The following recommendations do not attempt to address all aspects of good practice within a system for children in conflict with the law, but propose action that the State and non-State sector should take to address the key issues identified in section 2 of this report.
SECTION 5

RECOMMENDATIONS
YOUTH JUSTICE IN ACTION

KEY ISSUE 1: IMPLEMENTING A CHILD RIGHTS COMPLIANT JUVENILE JUSTICE SYSTEM

Review and reform of law, policy and practice

- States must ensure that their domestic laws, policies and practices uphold international minimum standards on juvenile justice.
- Where it has not been carried out, a review of all relevant laws, policies and practices should be undertaken in order to identify gaps, shortcomings and violations in the system for children and young people in conflict with the law. The review should include customary/traditional laws and practices.
- This evaluation needs to be accompanied by a budgetary review to ensure that the system is adequately financed, and that spending is not disproportionately focused on crime control instead of prevention, rehabilitation and reintegration.
- State bodies need to coordinate their activities and programmes to ensure the implementation of the widest possible range of services for children and young people in conflict with the law.
- Prevention must be a key element of the State’s strategy on juvenile offending.
- In order to inform the development of juvenile justice strategies, States need to establish an effective system of data collection and collation to monitor the trends, problems and causes of young offending and evaluate the impact of different responses to youth crime.

Establishing a separate system for children and young people in conflict with the law

- The State should endeavour to establish a separate juvenile justice system, so that all under-18-year-olds are dealt with under separate laws and procedures and by separate institutions and/or personnel, e.g.:
  - There should be specialist prosecution offices, staffed with or cooperating with social workers and psychologists, so that cases involving children as perpetrators, victims and witnesses in criminal and child protection cases can be dealt with effectively and appropriately;
  - There should be separate juvenile courts, presided over by specially trained judges;
- All young people who come into conflict with the law, regardless of whether they live in rural or urban environments, should benefit from being dealt with by professionals trained in children’s rights and welfare. Although it is not practicable for all States to ensure that there are assigned children’s specialists in every area of the country, efforts need to be made to raise awareness and deliver training on children’s rights and welfare to all law enforcement personnel who come into contact with young people.
- Diversion programmes should be developed and made available at every stage of the criminal justice process, to ensure that all children who have committed petty, non serious offences can be dealt with outside the formal justice system.

Role of NGOs and community organisations

- NGOs and community organisations should recognise the role that they can play, not only in campaigning for reform, but also in plugging the gaps in the prevention, rehabilitation and reintegration services for children and young people, both in terms of the range of programmes and the geographical coverage, and should coordinate their activities in order to provide joined up, complementary services.
- Organisations need to cooperate with each other in order to better coordinate their activities.
- NGOs should involve children and young people in the development of community programmes of prevention, rehabilitation and reintegration.
- States should actively cooperate and collaborate with the non-State sector to implement a wider range of facilities and programmes. However, it must be emphasised that the State must not absolve itself of responsibility for funding and delivering programmes by placing responsibility solely on the non-State sector.
- Organisations providing these programmes should be proactive in publicising their work to judicial agencies.
- Examples of successful programmes, evidenced by evaluations, should be used to advocate for reform. Advocacy organisations should utilise the experiences of programmatic organisations in order to inform their campaign work.
- NGOs should disseminate information on children’s rights to children and young people, communities and judicial agencies.

“Volunteers, voluntary organisations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.”

Rule 23, Beijing Rules
Juvenile justice tends to be one of the most underfunded areas of children’s rights.

- Awareness should be raised among donor agencies about the plight of children and young people in conflict with the law and the desperate need for increased funding.
- Funding streams should be made available for NGOs and civil society to engage in programmes for all aspects of juvenile justice.

**Child protection v juvenile justice**

The child protection and juvenile justice systems have distinct roles to play.

- Children and young people in need of protection must not be criminalised but assisted. Status offences and survival behaviour (such as truancy, running away from home, begging, loitering, vagrancy), victims of sexual abuse and exploitation and anti-social behaviour should be decriminalised.
- A child should never be deprived of their liberty for their own protection, status offences, bad behaviour, for offences for which they should be treated as victims (e.g. prostitution) and because of family breakdown.
- Child protection services have a key part to play in the prevention of juvenile delinquency.
- Children and young people should only be dealt with by the formal juvenile justice system if they have committed serious crimes and pose a threat to society.

**KEY ISSUE 2: COMBATING MALTREATMENT AND IMPUNITY**

**Training**

- There is a need for the police to receive training on children’s rights, welfare, interview techniques and codes of conduct in dealing with children and young people (perpetrators, victims and witnesses).
- Children’s rights and human rights should form core subjects in the training of new recruits in order to develop a culture of respect for rights.
- Sufficient numbers of officers must be deployed when undertaking arrest operations in order to avoid situations where the police feel the need to use excessive force to restrain young people.
- Training should also be delivered to promote the police use of diversionary measures for children and young people.

**Specialist police units**

- Specialist police units should be established in police stations in order to deal with cases involving children and young people, whether they are perpetrators, victims or witnesses. Where it is not practicable to establish such units (e.g. in smaller towns or rural communities, where cases involving children are not common), there should be officers who are on duty or on call 24 hours a day who are trained to deal with children.
- Guidelines/regulations should be developed to govern the handling of young offenders.
- Members of the police force (and in particular those from the specialist units) should be assigned to be the liaison between communities and schools and undertake a wider role of prevention and reintegration work.

**Representation**

- There must be a strict obligation on the police to contact the children’s parents or guardians as quickly as possible after making the arrest.
- The young person must have access to a lawyer as soon as possible after they have been arrested. Interviews must not be carried out without a lawyer and an independent adult (parent, relative or Appropriate Adult) being present who can ensure that the young person understands what is going on, that procedures are being followed and that the rights of the child are being respected.
- The State should provide defence lawyers, who should be trained to handle cases involving children. These defence lawyers should be on call 24 hours a day to ensure that the young person’s case is dealt with as quickly as possible.
- Cases involving children and young people must be made a priority.
- Where the State is not in a position to provide representation, judicial agencies should work with non-governmental organisations to establish mechanisms to ensure that the young person is represented.
- Police stations should be independently monitored to ensure that the rights of children and young people are being upheld.

**Investigating complaints**

A culture of impunity perpetuates violence against children and young people by State agents and by members of the public.

- It is essential that States take steps to combat impunity.
- There is a need for an internal complaints mechanism within the police force to deal with allegations of abuse. This body needs to be sufficiently independent, transparent, accessible and provided with adequate powers and resources to investigate cases and instigate disciplinary actions and/or criminal proceedings depending on the severity of the case.
It is also essential that there is an independent, external body to which cases can be referred when they have not adequately been dealt with by the police and the judicial system e.g. ombudsmen, human rights commissions, special investigation units. These bodies must be adequately resourced and have effective powers and mandates.

Children and young people need to be made aware of the avenues that they have for complaint. NGOs can play a proactive role in publicising the availability of complaints mechanisms.

The police and prosecution services also need to be active in investigating complaints of abuse, maltreatment and killings of children and young people by non-State agents.

KEY ISSUE 3: WORKING WITH GANGS

The recommendations on juvenile justice provided in this section equally apply to young gang members. In addition:

- Children and young people must not lose their right to protection under the law because they are or have been a member of a gang.
- Draconian laws which seek to ‘crack down’ on gangs should not be used to solve the problem of gangs.
- Prevention programmes to reduce the likelihood of children and young people joining gangs are essential. Once young people become members of gangs it is very difficult for them to leave and reintegrate into society.
- In cases where it is appropriate to detain young gang members, it is important that institutions are staffed with professionals trained in how to address their specific needs and problems.
- Gang rehabilitation and reintegration programmes often focus on adults and lump together under-18s and over-18s. In the development and implementation of programmes on gangs, the specific needs of under-18s must be identified and addressed.
- Ex gang members often remain liable to harassment, maltreatment and arbitrary arrest, which acts as a disincentive to leave the gang and hampers their reintegration into society. Police and community groups should actively work with ex gang members and NGOs to minimise the harassment of these young people, and to break down the barriers to education and employment. In countries where young people with tattoos are stigmatised, the State should provide tattoo removal programmes.
- The distinct needs of girls and young women should be identified and addressed through State and non-State programmes.

KEY ISSUE 4: REDUCING THE USE OF DETENTION

The overuse of detention in juvenile justice systems is common throughout the world. In addition to developing effective alternatives to depriving a young person of their liberty, institutions must also be improved to provide a humane, safe environment in which children and young people are rehabilitated and adequately prepared for their release.

Pre-trial detention

- Pre-trial detention must not be imposed on under-18s unless absolutely necessary and domestic legislation needs to reflect this standard.
- The State must develop a range of alternatives to ensure that wherever possible children and young people are not held in pre-trial detention. The development of these alternatives must make provision for young people who do not have families that are willing or able to take care of them.
- The State should work with non-governmental organisations to develop alternatives. There should also be a multi-agency approach to implementing these alternatives.
- Where children and young people are held in pre-trial detention, their cases must be processed as quickly as possible.
- Children and young people held in detention must be separated from adults and convicted juveniles.
- Pre-trial detainees must be treated as innocent and have access to a range of services and facilities, which are not inferior to those provided for convicted young offenders.

Detention

- Children and young people should not be deprived of their liberty/placed in closed institutions except as a last resort, a standard that needs to be reflected in domestic legislation. The placement should be for the shortest appropriate period and be made for the purpose of rehabilitating the young person.
- Legislation must not allow life imprisonment, indeterminate sentences or corporal punishment to be imposed as a judicial sentence.
- A range of alternatives needs to be available for the body making the sentencing decision. These alternatives need to be adequately resourced and available throughout the country.
- Judges need to be made aware of the range of alternatives available and their appropriate imposition.
- It is important that State agencies develop partnerships with community organisations and non-governmental organisations in order to develop and implement these alternative programmes.
The effectiveness of alternatives needs to be evaluated regularly to ensure that children and young people are dealt with in the most appropriate way. Results should be widely disseminated to judicial agencies, NGOs, Ministerial bodies, the media and the public in order to inform the debate on juvenile justice.

**Conditions in detention**

- States need to improve the conditions in detention centres to ensure that they abide by international standards of treatment and care.
- There must be a set of standards regulating closed institutions, which implement international standards.
- Corporal punishment, solitary confinement, denial of contact with the young person’s family and reduction of diet or denial of food must never be used as a disciplinary sanction.
- Children must never be detained with adults, unless it is considered in their best interests to hold them together.
  - When young people reach the age of 18 years but have not completed their sentence, they should not be transferred to adult prisons, but should be held in separate institutions for young adults.
  - 18-21-year-olds should generally be separated from over-21-year-olds (and under-18s) to protect them from criminal contamination, to enable their specific needs to be met and to encourage a rehabilitative focus for this age group.
- Girls should not be held with boys, and their specific needs should be identified and addressed.
- There should be independent organisations, which are mandated to monitor the conditions, treatment, services and facilities, and to receive complaints from children and young people detained in the institution, who should be able to access these complaints mechanisms with ease and without fear of reprisals. All complaints regarding maltreatment and abuse by personnel must be investigated and followed up with disciplinary action and/or criminal proceedings, where appropriate.
- Decentralisation of closed institutions is important for the rehabilitation and reintegration of young people.

**Reintegration**

- The reintegration process should start many months before the young person is released.
- Regular evaluation of the young person’s progress needs to take place to ensure that his needs are being met and that he can be released as early as possible.
- State agencies and institutions should cooperate with NGOs and community organisations to ensure that support is provided both while the young people are detained and when they are returned to their communities. Ideally, prior to their release, a link should be established between the young person and organisations/support groups based in the area in which they will live.

**KEY ISSUE 5: COMBATING PUBLIC PERCEPTION**

**Through politicians**

- Politicians must desist from exploiting a negative image of young people for political gain and from using inflammatory rhetoric.
- Politicians should use statistics, information and polls on youth justice responsibly to encourage a positive debate on responses to juvenile offending.
- Policies and laws which allow for children and young people to be ‘named and shamed’ should be revoked. The young person’s fundamental right to privacy must not be undermined by knee jerk reactions to juvenile offending.

**Through the media**

- The media must take a more responsible approach to reporting on juvenile crime and on young people in general.
- Negative stories should be balanced by positive images of young people contributing to society.
- There should be a ban on the media publishing any identifying information of under-18s who are accused of, charged with or convicted of a crime or anti-social act. This ban should be strictly enforced.
- The media should take a more responsible approach to broadcasting and publishing violent images both in the news and for popular entertainment.
- Standards in relation to media coverage of children and young people should be developed and monitored.

**Role of NGOs and young people**

- NGOs must be proactive in providing the media with positive news stories and images of children and young people. Inter-disciplinary media forums can help to promote more responsible journalism.
- Community panels and committees that include children and young people, play an important role in breaking down barriers and stereotypes and in developing facilities and services which better meet the needs of under-18s and help prevent delinquency at a local level.
- NGOs should work to promote the views and voices of children and young people at a local and national level.
While there is an acknowledgement that young adults should be treated differently from older criminals, there are no international standards obliging States to do this - young men and women aged 18-25 have no more and no less rights than the rest of the population. Rights for over-18s are concerned with ensuring that the process is fair and free from abuse and maltreatment. For example, there is no binding obligation on States to use deprivation of liberty for over 18s as a last resort or to ensure that the sentence they receive is aimed at their rehabilitation. The obligation on States is to ensure that the trial is fair and that the deprivation of liberty is not arbitrary.

As international standards make a clear distinction between under and over-18s, justice campaigns tend to focus on either over-18s or under-18s, groups that should be separated from each other and treated differently within the criminal justice system. Grouping 16-25-year-olds (the target group for ‘Youth Justice in Action’) in campaign messages may encourage States to reduce the protection they provide for adolescents, especially 16 and 17-year-olds.

However, young adults who come into conflict with the law should be treated in a manner that recognises the specific needs and vulnerabilities of their age, not only to protect their well-being, but also to prevent offending and re-offending.

State and non-State bodies should be encouraged to develop strategies, policies, programmes and practice targeted at this age group. In particular:

- The particular vulnerabilities and needs of young adults in conflict with the law should be identified and addressed through targeted services.
- Efforts should be made to apply the principles contained in the relevant international standards on juvenile justice to this age group.
- Prevention strategies should reflect the particular needs of young adults.
- Diversionary measures and alternatives to custody should be developed for this age group.
- Deprivation of liberty should be used as a last resort pre and post trial.
- Where young adults are detained they should be held separately from adults.
- The focus of their deprivation of liberty should be their rehabilitation and reintegration into society.
- Young adults need to be provided with specific support, care and assistance when they leave institutions to enable them to reintegrate into society, many of whom are being released into independent adult life for the first time, having been detained when they were under 18. The voluntary sector can play a vital role in providing this support.

Programmes for young adults are extremely limited in most countries.

- NGOs and the voluntary sector should be made aware of the vulnerabilities and needs of this age group and be encouraged to develop programmes that meet their needs.
- Awareness should also be raised among donor agencies regarding the gap in the provision of facilities and services targeted at this age group, in order to generate greater availability of funding.
- Young adults should be involved in the provision of peer support for young offenders.
NOTES

1. At the beginning of the campaign development, the Occupied Palestinian Territories (OPAT) were identified as a campaign country and therefore examples illustrating a number of the key issues are drawn from OPT. However, because of concerns over the safety of the young people who would take part, identified by the local YMCA, they will not be engaging in any campaign activities at present.

2. Although international standards use the term juvenile delinquency (and this term is used where appropriate in this report), in many countries this has highly negative connotations and its use should be avoided for the purpose of campaigning.


4. Martin, F.; Parry-Williams, J. The Right Not to Lose Hope: Children in Conflict with the Law – A policy analysis and examples of good practice (Save the Children: 2005) at p. 11. In a study on European States, it was estimated that less than 15% of crime had been committed by under-18s.

5. Martin et al above at p. 10.

6. Martin et al above at p. 3.


9. ‘Mid-East executions are condemned’ BBC News Online 20 April 2006.


11. Under the Corporal Punishment Act 1960 boys (but not girls) under the age of 17 years convicted of a crime can be sentenced to receive no more than 12 strokes. Corporal punishment may be administered to juveniles in lieu of any other punishments or as an additional punishment. Only canes or birch rods should be used on juveniles and only on their buttocks. The juveniles should be medically examined to ensure that they are fit before such punishment is inflicted. (Harvey, R. Juvenile Justice in Sierra Leone: An Analysis of Legislation and Practice (Children and Armed Conflict Unit, Children’s Legal Centre: 2000) at p. 13.)


13. CRC Committee General Comment 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Articles 19, 28(2) and 37, inter alia) CRC/C/GC/8, para. 12.

14. It can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). Other non-physical forms of punishment are covered by the prohibition on cruel and degrading treatment, including punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child. (CRC Committee General Comment 8 (2006) above at para. 11)


22. Ratification – a formal agreement by States to implement the treaty.

23. Article 1. In all States, when a child reaches adulthood/majority he gains certain rights, such as the right to inherit and conduct property transactions. However, he also loses the protection he had by virtue of being a child. Commonly, ages at which people can marry and vote, and the age at which they are treated as an adult under labour laws signify the start of adulthood. In other cultures, puberty marks the start of adulthood. However, the Committee on the Rights of the Child has been clear, that as far as possible all under-18s should be protected by the rights contained in the Convention. Setting an age for majority lower than 18 years cannot be used as an excuse for States not to provide protection to children and young people.


25. England and Wales has a distinct criminal justice system from both Northern Ireland and Scotland.

26. Children’s Act 1908 states that the minimum age of criminal responsibility is 7 years. However, there is a rebuttable presumption between the ages of 7 and 12 that a child neither understands what he was doing nor appreciates that it is seriously wrong (doli incapax). However, Article 52 Children’s Act 2001 raised the minimum age of criminal responsibility to 12 with doli incapax from the age of 12-14 years. This article is yet to be implemented.

27. However, there is a rebuttable presumption that children between the ages of 7 and 14 do not have the capacity to infringe the penal law. (South African Law Commission ‘Juvenile Justice’ (1997), Issue Paper 9, at para. 3.5.)
World Programme of Action for Youth to the Year 2000 and Beyond, ECOSOC Res 1995/64.

see European Youth Parliament website - www.eypej.org/?area=3&PHPSESSID=42a7ac92eb70476e683b40874736ee03


In Sierra Leone 17-year olds are treated as adults. A Child Rights Bill is due to go before Parliament which will repeal existing provisions and consequently all under-18s will be treated as children, including within the justice system.

Rule 3(3) Beijing Rules.

Above n. 28.

Clearly not all of the international juvenile justice standards are relevant to young adults – e.g. the requirement for the child’s parent to be present at the trial, the need of the parent to give consent to their child’s participation on diversion schemes are unnecessary measures of protection for over-18s.

Articles 5, 7, 18, and 27 CRC.

Articles 3, 6, 19 and 37 CRC.

Article 9 CRC.

Article 20 CRC. Article 3(2) provides that the State has a duty “to ensure the child such protection and care as is necessary for his or her well being”.

Article 20 CRC.

Articles 32, 33, 34, and 35 CRC respectively.

Rule 3.1 Beijing Rules.


Above.


Article 39 CRC.


Summary Records, Chile, CRC/C/SR.148, see paras. 34-35.

Concluding Observations, Nigeria, Committee on the Rights of the Child CRC/C/15/Add.61, 24/02/1996 para. 21.


House of Commons Written Answer 14 Jul 2005: Column 1212W.


Submission by Irish Youth Justice Alliance to the Department of Justice, Equality and Law Reform, 26 November 2004.

The right to privacy under Article 40(2)(b)(vii) CRC applies to under-18s in the criminal process and therefore to situations where young people are brought to court for a violation of their ASBO.


According to reports of the Independent Complaints Directorate (ICD), between April 1997 and March 2002, a total of 4,644 cases involving police use of force or brutality were recorded. Of these cases, 2,351 were deaths as a result of legitimate and illegitimate police action (excluding deaths in custody), while the remaining 2,293 cases were recorded complaints of non-fatal assaults, out of which 221 were torture, 1,610 were assault with the intent to cause grievous bodily harm (or assault GBH) and attempted murder and 462 were common assault.


Above n. 62.

‘Honduras: Killing of 64 new children and youths in December’ OMCT Case HND 241001.4/HND 241001.4 CC 21 January 2003.


Article 19 CRC, Article 1 UN Convention Against Torture 1984.

Article 6 CRC.

Article 37(a) CRC, Article 1 CAT. Articles 10, 12, 13.14 and 16 CAT provide useful guidance on how to implement Article 37(a) CRC.

Above n. 67.

Special Investigation Unit into the Deaths of Minors Report on the Progress of Investigations (Honduras: June 2004).

Harvey above n. 18 at pp. 118-119.


Harvey above n. 18 at p. 104.


Loots above n. 68.


Loots above n. 68.


In a study carried out on Honduran gangs by the National Inter-institutional Programme to Work on the Theme of Maras, it was found
that 77% of gang members joined before they were 15 and 97.8% joined when aged between 12 and 25. See Harvey above n. 18 at p. 105.


Harvey above n. 18 at p. 105.

Taken from Harvey above at pp. 108-109.

Section 30 Anti-social Behaviour Act 2003.

Above n. 46.


Kokic above n. 77.

Kokic, above.

Widdicombe above n. 89.

Widdicombe above.

Rule 13 Beijing Rules.

Rule 16 Beijing Rules.

Rule 19 Beijing Rules, Commentary.


Rule 17 Beijing Rules.

Rule 16 Beijing Rules.

Rule 16 Beijing Rules, Commentary.

While the Palestinian authorities deal with offences internal to Palestinian society (such as theft), the Israeli military courts handle offences that they deem are relevant to Israel’s security.


Above n. 101. For an in depth analysis of the detention of children in the OPT, see Cook et al above n. 63.


Above.

Harvey above n. 18.

As of March 2006, out of which 196 are girls (Youth Justice Board).


Martin; Parry-Williams above n. 3 at p. 25.

Rule 13 Beijing Rules.

Human Rights Watch South Africa: Human Rights Overview (Human Rights Watch: January 2004). South Africa is among the six countries with the highest rates of incarceration in the world (‘UN Panel on Arbitrary Detention ends Visit to South Africa’ UN Press Release 19 September 2005).


Martin at al above n. 3 at p. 9.

Concluding Observations, Bolivia, Committee on the Rights of the Child CRC/C/15/Add.1, 18/02/1993, para. 11.

Above n. 104 at p. 7.

Harvey above n. 18 at p. 34.

The main document setting out standards for children in detention is the UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Rules, 1990). However, the Standard Minimum Rules for the Treatment of Prisoners (1957), which applies to both adults and children, details additional important standards.


‘Major national campaign to end the deaths of children in custody launched by the Howard League for Penal Reform the Howard’ The Howard League for Penal Reform Press Release 26 September 2005.


“’The seated double embrace manoeuvre involves two members of staff securing the young person in an interlocking hold while seated on a chair or bed. One member of staff is placed at either side of the young person and uses one hand to help secure the young person’s near arm. The other hand is passed around the young person’s back to assist in securing the arm on the opposite side.” Youth Justice Board Update: investigation into the death of Gareth Myatt at Rainsbrook Secure Training Centre (17th June 2004 at www.northants.police.uk/default.asp?action=article&ID=4264 (accessed 5 June 2006)).

Harvey above n. 18 at pp. 70-71

Article 37(c) CRC, Rule 13.4 Beijing Rules, Article 10(2)(b) ICCPR, Rule 8(d) Standard Minimum Rules on the Treatment of Prisoners.


Above n. 46 at p. 27.

Above at p. 43.


Re-’thinking Crime and Punishment’ ‘Alternatives to Prison’ (RCP Briefing paper: undated).


Home Office Juvenile Conviction Rates: Results from the 2003 cohort (Home Office online report 08/05: 2005).

Above.

Sergeyeva, V. ‘Penal Reform International’s activities in the area of juvenile justice’ in Kids Behind Bars (DCI: 2005) at p. 108.

Above n. 130.


‘Child Justice Bill: Briefing by South African Police Services; Correctional Services; Education’ (Justice and Constitutional Development Portfolio Committee: 2003).

Approximate costs for community sentences in England and Wales: Community Rehabilitation Order £3,000; Community Punishment Order £2,000; Community Punishment and Rehab. £4,000; Drug Treatment and Testing Order £8,000; and Intensive Supervision and Supervision Programme £6,000, above at n. 136.


Concluding Observations, Sierra Leone, Committee on the Rights of the Child CRC/C/15/Add.116, 24/02/2006 at para. 92.

Both of these countries had developed some aspects of a separate juvenile justice system prior to ratifying the CRC, but signing up to the Convention prompted a more comprehensive review and reform of their respective systems.

Above n. 136.
Harvey above n. 18 at 133.


This was prompted, in part, by the case of Antony Rice who murdered a woman following his release from prison. He had been sentenced to life imprisonment, but the trial judge had recommended a tariff of 10 years. Rice had served 16 years. The media reported that the decision of the parole board was based on upholding his human rights and his case was assisted by Rice being permitted to have legal representation. However, in reality the Parole Board’s decision was only partly influenced by the Human Rights Act 1998 and was more heavily affected by incomplete information that they had about him. The media debate on human rights also ignored the failure of the prison to effectively rehabilitate Rice and the shortcomings of the probation service in monitoring him and providing support. See Berlins, M. ‘Stop blaming the Human Rights Act’ Guardian Unlimited 15 May 2006.


Above.

The CRC was the first international human rights that South Africa ratified (1995).

Section 29 Correctional Services Act 1994. When the South African Constitution was adopted in 1996, it included the right of every child not to be detained except as a measure of last resort and for the shortest possible period and to be held separate from adults in conditions that take account of his age.


See the website of the International Bureau for Children's Rights - www.ibcr.org.
See the website of the UN Study on Violence against Children - www.violencestudy.org.

It must be noted that it is often difficult to measure either the relative success of these projects, because of ineffective monitoring and different methods of evaluation between projects, or the impact of initiatives because in many countries baseline figures on offending and re-offending are poorly kept or non-existent. Indeed, there is a severe lack of independent international studies of juvenile justice programmes. The examples used in this chapter are drawn from a wide range of sources, including the documentation produced by the organisations running the projects. It has not been possible for the authors of the report to independently verify the relative successes of these schemes. Consequently, the inclusion of a project should not be taken as an endorsement of the particular model, but simply as an illustration of a positive and innovative practice.

Mackie, A; Burrows, J; Hubbard, R. Evaluation of Youth Inclusion Programmes (Morgan Harris Burrows: 2003).


See the website of the Det Kriminalpræventive Råd - www.crimprev.dk/sw159.asp.

Committee of Ministers, Recommendation (2003) 20 Concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

Smart Justice Some best practice examples around the country at www.smartjustice.org/youngpeople/bestpractice.html

Youth Justice Board 2004.

Children who have been excluded from school start to commit crime on average a few years earlier than children attending school.


Youth Offending Teams (YOTs) were established by the Crime and Disorder Act 1998. See the website of the Youth Justice Board - www.youth-justice-board.org.uk.

In Western Australia Juvenile Justice Teams were established by the Young Offenders Act 1994.

Mackie et al above n. 157.

Ghate, D; Ramella, M. Positive parenting: A national evaluation of the Youth justice Board’s Parenting Programme (Policy Research Bureau: 2002).


Shaw, M., above at pp. 13-15.
Shaw, M., above at pp. 13-15.

Article 40(2)(b) CRC, Rule 11 Beijing Rules.
Rule 11.2 Beijing Rules.
Rule 11.3 Beijing Rules.

Bergeron, J. Justice for Children: Detention as a Last Resort.


Basic principles on the use of restorative justice programmes in criminal matters ECOSOC Res. 2000/14. It must be noted that Restorative Justice Processes can be utilised throughout the juvenile justice system, including by the court to help determine the sentence to be imposed on the young person. Restorative justice can also be applied to conflicts in the home and in schools.

See various articles on restorative justice on the website of Restorative Justice Online - www.restorativejustice.org/resources/programme/evaluation/reports.


Bergeron above n. 176 at p. 45. See also Save the Children Breaking Rules: Children in Conflict with the Law and the Juvenile Justice Process. The Experience in the Philippines (Save the Children UK: 2004); and Martin et al above n. 3.


Article 40(2)(b)(ii) CRC.
Focusing primarily on the protection of the rights of street children, Casa Alianza provides legal aid to hundreds of children in Latin America who have had their rights violated by law enforcement officials. Where cases of extrajudicial killing, arbitrary detention/detention with adults and maltreatment have not been resolved by the national courts, Casa Alianza has been involved in taking a number of high profile cases to the Inter-American Commission and Court of Human Rights.

Penal Reform International Index of Good Practices in Reducing Pre-trial Detention (PRI) at p. 31.

Defence for Children International A contribution by Defence for Children International to the UN Secretary General Study on Violence against Children (Defence for Children in Conflict with the Law to Combat State Violence: 2005).

Legal assistance is also provided by DCI Benin, DCI Palestine and DCI Sierra Leone. In addition to offering free legal assistance, Defence for Children International-Sierra Leone monitors the situation for children in detention centres and in police stations, reducing the incidents of abuse, expediting cases, and ensuring the separation of children from adults.

Martin et al above n. 3 at pp. 85-90.

Article 40(4) CRC.


See the website of the Youth Justice Board – www.youth-justice-board.gov.uk.

De Muro, P., Consider the alternatives: planning and implementing detention alternatives (Pathways to Juvenile Justice Reform Series, Annie E. Casey Foundation).

In many States the police, and sometimes the prosecutors, have the power to grant bail.

See the website of the Youth Criminal Defence Office - www.ycdo.ca/legal/bail.htm

'Remand Fostering' (Youth Crime Briefing Nacro: September 2004).

Martin et al above n. 3 at pp. 91-95; Martin, F, 'Save the Children's Work with Children in Conflict with the Law' in Kids Behind Bars (DCI: 2005)) at p. 113.

Sergeyeva above n. 134 at p.109.


For example, Mentoring Plus, run by Crime Concern, provides mentoring and educational support for 12 months to youths aged 15-19 in England and Wales. The aim of the programme is to prevent 'at risk' youths from getting into trouble with the law, to reduce youth crime and other at-risk behaviour. Many of the youths have been referred on to the project by Youth Offending Teams, Educational Welfare Services and schools. The programme also allows communities to get involved in local problems by volunteering. The programme has been applauded by senior judiciary and advocates for more such initiatives that attack the 'roots of crime'. (See the website of Crime Concern - www.crimeconcern.org.uk.)

See the website of 'Trailblazers' - www.trail-blazers.org.uk/. Also see www.hmprisonservice.gov.uk/prisoninformation/prisonservicemagazine/index.asp?id=1581,18,3,18,0,0.

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The Children’s Legal Centre is an independent national charity, which has been promoting the rights of children in the UK and overseas since 1981. Domestically, the Centre provides legal information, advice and representation to children, young people, parents and guardians. It also provides advocacy services for children and publishes legal guides for professionals.

Overseas, in addition to carrying out research and training, the International Section works to reform and establish child protection and juvenile justice systems to ensure that States’ systems are compliant with international standards.

Over the past five years, the Centre has worked in Eastern Europe, Russia, Tajikistan, Turkmenistan, Kyrgyzstan, Moldova, the Palestinian Territories, Sudan and Honduras.

The International Section also comprises the Children and Armed Conflict Unit (a joint project with the Human Rights Centre at the University of Essex). The Unit works around the world to improve the situation for civilian children caught up in armed conflict and civil unrest, and for those emerging from conflict. (www.essex.ac.uk/armedcon)

Y Care International is the international relief and development agency of the YMCA in the UK and Ireland. It works in partnership with YMCAs in Africa, Asia, Latin America and the Middle East to empower young people and their communities to find alternatives to a future of poverty and disadvantage, and to build lives and communities marked by hope and positive change.

Every day Y Care International’s work with young people in the developing world shows that change is urgently needed – so the charity’s campaigns go hand in hand with its international development projects.

In the UK and Ireland Y Care International works with young people through the YMCA movement to raise awareness of and interest in international issues, through a creative programme of global youth work and encouraging them to work for change by participating in campaigning and lobbying.

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Despite a comprehensive set of international juvenile justice standards promoting rehabilitation over punishment, countries all over the world have retained an overwhelmingly punitive response to young offending.

Every State which has appeared before the Committee on the Rights of the Child has been criticised for its failure to implement juvenile justice standards. Violations range from a failure to uphold procedural guarantees, such as fair trial rights, to a failure to protect young people from maltreatment, abuse and murder.

This campaign report, written by the Children’s Legal Centre for Y Care International, sets out the international youth justice framework, provides a summary of key youth justice issues, and makes recommendations for change.

To bring about change Y Care International and its international partners have launched a campaign calling for governments to:

• stop the killing, torture and maltreatment of children and young people in conflict with the law;
• ensure that the needs and vulnerabilities of children and young people are addressed in accordance with international standards on juvenile justice;
• not break international standards and laws in order to combat gangs, and ensure that children and young people are not discriminated against because they are, or have been, a member of a gang;
• ensure that a full range of alternatives to detention is available for children and young people, with detention only being used as a last resort and in line with international standards;

and calling on the media and politicians to:

• take a responsible approach to the portrayal of young people, reflecting the reality of young people and crime and not exploiting negative stereotypes of young people.

To add your voice to the Youth Justice in Action campaign and take action, visit www.ycare.org.uk