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JUVENILE JUSTICE

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The Innocenti Digest is compiled by UNICEF International Child Development Centre to provide reliable and easily accessed information on a critical children's rights concern. It is designed as a working tool for executive decision-makers, programme managers and other practitioners in child-related fields.

INTRODUCTION

This Digest focuses on the situation of children and young people under the age of 18 who come into contact with the justice system as a result of being suspected or accused of committing an offence. Its starting point is the moment of arrest. It goes through to the time when a decision is made, within or outside the formal justice system, on how they are dealt with, and looks at the implications of sentencing options, with particular attention to those involving deprivation of liberty. It also makes reference to the prevention of juvenile offending and the social reintegration of offenders, as well as to the special problem of children incarcerated with their mothers.

Concern over violation of children's rights in these situations, throughout the world, is growing. Policy and practice relating to juvenile justice are among those areas most frequently criticized by the Committee on the Rights of the Child, the body responsible for monitoring the implementation of the United Nations Convention on the Rights of the Child.

The Committee has in fact made reference to problems in this sphere in relation to some two thirds of the State reports it has reviewed so far. Juvenile justice, however, is not seen as a top priority in many countries, and its realities are often hidden or ignored. This *Digest* attempts to highlight the main issues involved and to serve as one basis for improved action.

International standards

In both binding and non-binding international law, juvenile justice and its associated fields (such as prevention of delinquency and conditions of detention) are the subject of provisions whose comprehensive and detailed nature has no equal in the overall field of children's rights.

Relevant international norms have existed for several decades. The 1955 Standard Minimum Rules for the Treatment of Prisoners — themselves inspired by standards endorsed by the League of Nations in 1934 — already set out the principle of separation of "young prisoners" from adults in custodial facilities and, for adults and juveniles alike, the separation of accused and convicted detainees. The 1966 International Covenant on Civil and Political Rights (CCPR) reiterates these principles in the form of 'hard law', as well as prohibiting the death penalty for persons found guilty of a crime committed when they were under the age of 18 (Art. 6.5). The CCPR also contains many safeguards applicable to all persons brought to trial and detained, and specifically states that "[i]n the case of juvenile persons, the [court] procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation" (Art. 14.4).

The main specifically child-focused norms currently regulating this field are contained in the:

- Convention on the Rights of the Child 1989 (CRC), which by end 1997 had been ratified by all countries except Somalia and the United States of America;

Binding and non-binding law

Binding, or 'hard' law, comprises treaties (conventions, covenants) that carry obligations for — and only for — those States that officially notify their agreement to be bound by them by ratifying or acceding to them. Non-binding, or 'soft' law, constitutes all other intergovernmental legal instruments — such as declarations, guidelines and rules — that are approved in an international forum such as the United Nations General Assembly but that carry no formal obligations regarding their implementation.

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs);
- United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines).

Since its drafting largely overlapped with that of the three non-binding texts, the CRC not surprisingly reflects the basic principles and enhances the force of many standards contained in these rules and guidelines.

At the moment of ratifying or acceding to a treaty, States Parties may notify reservations regarding any provisions by which they are unwilling to be bound, provided that the content is not deemed to go against the basic spirit and purpose of the treaty and that the majority of other States Parties make no objection to these reservations. Several countries have registered reservations in connection with Articles 37 and 40 of the CRC (see page 24 for full text of articles).

Given the importance placed on juvenile justice by the international community, as evidenced by the scope and detail of the international instruments it has adopted on the subject, it seems somewhat paradoxical that the rights, norms and principles involved are regularly ignored and seriously violated virtually throughout the world, on a scale that is probably unmatched in the field of civil rights implementation.

The paradox is graphically illustrated in part in the United Nations General Assembly resolution adopting the Beijing Rules, which itself states that "although such standards may seem difficult to achieve at present, in view of existing social, economic, cultural, political and legal conditions, they are nevertheless intended to be attainable as a policy minimum". [83] The comparable resolution

Reservations to juvenile justice provisions in the CRC

Article 37: the main issue subject to reservations in this provision concerns point (c), non-recognition of systematic separation of detained children from adults. While not contesting the principle itself, Australia, Canada, the Cook Islands, Iceland, New Zealand, Switzerland and the UK maintain that there are situations where separation is not feasible (lack of facilities) or is inappropriate (e.g. it would involve distancing the child unduly from his or her family). Japan noted that it effects separation as of the age of 20. In reference to point (a), the obligation to prohibit cruel or degrading treatment and punishment, Singapore retained the right to make "judicious" use of corporal punishment and to take any measures (of imprisonment) that may be required for national security and public order. More generally, the Netherlands specified that penal law can be applied to children as of the age of 16 in some cases.

Article 40: Belgium, Denmark, France, Germany, Monaco, the Netherlands, Switzerland and Tunisia all set limits on cases that could be subject to higher judicial review, and the Republic of Korea declared that it would not be bound by this provision (2.b.v). Germany and the Netherlands further noted that minor offences could be tried without legal assistance (2.b.iii).

In relation to both Articles 37 and 40, Malaysia stated that it accepted the resulting obligations only inasmuch as they are in conformity with the country's Constitution, national laws and national policy. Several countries under Islamic law made general reservations, applying to the CRC as a whole, on the lines of that notified by Saudi Arabia "with respect to all such articles as are in conflict with the provisions of Islamic law".

adopting the JDLs, in contrast, states bluntly that the General Assembly is "alarmed at the conditions and circumstances under which juveniles are being deprived of their liberty *worldwide*".[84] Both resolutions, nonetheless, go on to urge Member States to allocate "the necessary resources to ensure the successful implementation" of each set of Rules.

Some juvenile justice standards — among those governing deprivation of liberty in particular — are reaffirmations of economic, social and cultural rights: adequate food and clothing, access to medical care and education, for example. These rights are to be fulfilled without discrimination, whatever the situation of the child involved. The State clearly bears a very direct responsibility for this where it is acting *in loco parentis*, as is the case for detained children.

But the special norms — the majority — in the overall sphere of juvenile justice are inspired by civil rights, and indeed derive directly from the CCPR. Compliance with them cannot therefore be considered as subject to the qualification made in Article 4 of the CRC concerning the implementation of "economic, social and cultural rights", measures for which are to be undertaken by States Parties only "to the maximum extent of their available resources".

This said, it would be wrong to believe that compliance with juvenile justice standards is only a question of policy, not of resource allocation, simply because they are grounded in civil rights. Prohibition of the death penalty for juveniles clearly requires little or nothing more than a simple decision, with relatively minor financial implications. Setting up a national network of full-fledged juvenile courts from zero, on the other hand, involves the commitment of resources no less significant than might be needed for meeting certain obligations under economic, social or cultural rights. This is not an excuse for non-compliance, of course; it constitutes a CRC-founded injunction to find and commit those resources.

Definitions and terminology

Definitions and terminology are particularly important in this sphere. First, the international instruments are not consistent in this respect, and it is necessary to determine exactly whom they cover in order to use them appropriately. Second, many terms have negative connotations, and their use is to be avoided in efforts to secure respect for the relevant standards.

The main international instruments themselves contain some surprising and unfortunate choices of terminology. The Riyadh Guidelines, while warning strongly against the use of the word 'delinquent' to describe a young person, talk frequently — not just in their title — of 'delinquency' in describing the collective phenomenon of young persons' acts. The drafters of the Beijing Rules chose to use the words 'juvenile offender'. At the same time, and albeit only for the purposes of reading the Rules themselves, they included within the meaning of that term "a child or young person who is

Definitions: 'child' and 'juvenile'

Whereas the CRC covers all individuals below the age of 18 years, "unless under the law applicable to the child, majority is attained earlier" (Art. 1), and uses the generic term "children" to describe them, the JDLs mention no qualification to the 18 years threshold and, as their title suggests, refer to those concerned as "juveniles". In contrast, and while again employing the term "juvenile" in defining their target group, the (pre-CRC) Beijing Rules do not set a fixed age but state that, for the purposes of that instrument, "[a] juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult" (Rule 2.2.a).

The Riyadh Guidelines also contain no explicit definition, but mention that their interpretation and implementation should be "within the broad framework of", among other instruments, the CRC and the Beijing Rules. As far as age is concerned, this suggests the application of whichever is the higher standard of these — the CRC's "under 18" in most cases, no doubt, but the open-ended Beijing definition for those countries where persons of 18 or older may still be tried by a non-adult court. Despite their title, the Guidelines make use more especially of the terms "children" and "young persons", often in tandem, moreover; they employ "juvenile" only as an adjective, as in "juvenile justice system" or "juvenile delinquency".

alleged to have committed... an offence", thereby seeming to break the sacrosanct rule of 'presumption of innocence', as well as that of avoiding labelling and stigmatization, in stark contrast to the tenor of the principles in the text.

The rationale

There is no strict and clear-cut dividing line between the philosophies and approaches underlying a general justice system and that to be applied to juveniles. The difference lies more especially in emphasis, in particular between the weight given respectively to punishment and to securing the offender's social reintegration. Thus, the CCPR contains no indications or obligations regarding sentencing for adults, whereas the CRC sets out a number of restrictions (e.g. prohibiting the death penalty and life imprisonment without possibility of release) and requires (as do the Beijing Rules) that "detention or imprisonment of a child... shall be used only as a measure of last resort and for the shortest appropriate period of time" (Art. 37.b). In its Article 40.4, the CRC also sets out a variety of dispositions to be considered and which would effectively enable a custodial sentence to be avoided.

These provisions stem from the approach that the treatment of a child in conflict with the law should take account of, among other things, "the desirability of promoting the child's reintegration and the child's assuming a constructive role in society" (Art. 40.1). The "reintegration" aim is nonetheless not entirely absent from the regime applicable to adults. The CCPR thus states that "[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation" (Art. 10.3).

The avoidance of merely punitive sanctions against juveniles is also implied in Rule 5 of the Beijing Rules, which states that "[t]he juvenile justice system shall emphasize the well-being of the juvenile". The Rule then introduces the principle of proportionality — "and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence" — which, as stated in the Commentary to Rule 5, is similarly designed to curb undue recourse to such punitive sanctions.

The Beijing Rules also encourage the use of a practice known as diversion (Rule 11), which is steadily gaining favour in many countries. Diversion signifies the avoidance of recourse to the courts — and therefore contact with the formal justice system — for young people committing all but the most serious offences, at least when apprehended for the first time.

Another fundamental consideration is set out in the Riyadh Guidelines: that "youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood" (5.e). Indeed, studies based on victim and self-reporting surveys consistently indicate that between 70% and 80% of children have committed at least one — usually petty — offence that very often has not been reported or discovered. Response to such behaviour when discovered, however, is necessary in the interests of both the community and the perpetrator. At the same time, the form of that response must reflect the fact that, in most cases, it in no way represents society's last chance to try to dissuade the young person from a life of increasingly serious crime.

Juvenile justice is therefore not founded — contrary to a widespread misconception — on a 'lenient' approach as such but on responses to juvenile offending that:

- encourage a process of behavioural change by helping the child or young person to feel accountable for his or her actions and understand their impact on others:
- foster integration rather than alienation;
- hence, avoid the involvement of the formal court system and, above all, to purely punitive responses such as deprivation of liberty wherever possible, and give special importance to constructive community-based solutions.

Age of criminal responsibility

There is no clear international standard regarding the age at which criminal responsibility can be reasonably imputed to a juvenile. The CRC simply enjoins States Parties to establish "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law" (Art. 40.3.a). The Beijing Rules add to this the principle that "the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity" (Rule 4.1). This at least provides some guidance as to the grounds for deciding the age: the findings of medical and psycho-social research rather than tradition or public demand.

It is surprisingly difficult to obtain clear data on the minimum age applied in each country. In particular, one 'age' may hide another: in other words, the official age of criminal responsibility may not be the lowest age at which a child can be involved with the justice system because of an offence. In France, for example, where the minimum age is 13, children between the ages of 10 and 12 can appear before a juvenile judge, who may, however, only impose educative and supervision measures, such as probation, if the child is considered to be at risk. Alternatively, the minimum age may be applicable to all offences except serious crimes. Equally, some countries with low minimum ages have a system of 'steps' whereby different measures are applicable for specified age groups. Thus, in Jordan where the minimum age is 7, offenders under 12 are in principle only subject to supervision and 'behaviour observation' measures.

In some societies no lower limit has been specified, making it in principle as of birth. Where a minimum age has been set, the disparities from one country to another are astounding.

The Committee on the Rights of the Child constantly refers, in its Concluding Observations on State reports, to the

OFFICIAL AGE OF CRIMINAL RESPONSIBILITY

7	8	9	10	12	13	14	15	16	18
Australia: Tasmania Bangladesh Barbados Belize Cyprus Ghana Hong Kong Ireland Jordan Kuwait Lebanon Myanmar Namibia Nigeria Pakistan Sudan Syria Thailand Trinidad & Tobago Zimbabwe	Australia: ACT Saint Kitts Sri Lanka UK: Scotland	Ethiopia Iraq Philippines	Australia: most states Fiji Nepal N. Zealand Nicaragua Sierra Leone UK* Vanuatu	Canada Honduras Jamaica Korea, Rep. Morocco Uganda	Algeria Benin Burkina Faso Chad France Guinea Madagascar Niger Poland Senegal Togo Tunisia	Bulgaria China Croatia Germany Hungary Italy Japan Libya Mauritius Paraguay Romania Russian Fed. Rwanda Slovenia Viet Nam Yemen Yugoslavia	Czech Rep. Denmark Egypt Finland Iceland Lao PDR Maldives Norway Peru Sudan Sweden	Argentina Azerbaijan Belarus Bolivia Chile Cuba El Salvador Indonesia Mongolia Micronesia Portugal Spain Ukraine	Belgium Colombia Costa Rica (17) Ecuador Guatemala Mexico Panama Peru Uruguay

Note: The ages quoted are those of normal application as given in State reports submitted to the Committee on the Rights of the Child, or as interpreted from those reports. Only those countries whose initial reports were submitted by early 1995 are included. In many cases, the ages given are subject to upward or downward derogation in special circumstances, e.g. where discernment cannot be proven or where the act committed is particularly serious. The table is therefore more indicative than definitive.

* United Kingdom except Scotland

desirability of setting the highest possible minimum age. It has in particular criticized countries where the age is set at 10 or below. At the same time, the level at which this age is set is in no way an automatic indication of the way a child is dealt with after committing an offence. Thus, in Scotland where the age is among the lowest (8 years), the progressive 'children's hearing' system in fact avoids contact with the formal justice system for children under 16 – and even many 16- and 17-year-olds – for all but the most serious offences, and is solidly oriented towards non-custodial solutions. This compares with Romania, for example, where the minimum age is 14 and where a child of that age will be brought to court for the same offence and possibly sentenced to detention as a result; or with Guatemala, with 18 as the minimum age, but where a long-term 'socio-educational' institutional placement may be ordered for an offence committed by a child under that age. In sum, the age at which criminal responsibility is set may or may not reflect a repressive or rehabilitative perspective on the part of the authorities.

The lack of due process guarantees is indeed the main concern arising from the establishment of 'too high' a minimum age. For children under that age, it often means the non-intervention of the justice system in which, alone, those guarantees are safeguarded, in theory at least. Hearings and decisions outside that system, including those by administrative bodies, are not bound by the same rules and may, it is feared, easily take on an arbitrary nature.

Due process

Due process is the recognized right of any person accused of an offence to benefit from a fair trial. Some of its elements come into play prior to the trial itself: the right to be informed clearly of the exact charges being levelled; the right to be presumed innocent; the right not to be forced to confess or to give incriminating evidence; the right to legal assistance in preparing for trial; and the right to having the matter dealt with "without delay". The trial itself cannot be deemed 'fair' if any of these rights have previously been violated, and they are indeed set out explicitly in Article 40 of the CRC as minimum requirements.

The elements of a fair trial include the right to cross-examine witnesses and to present one's own witnesses, with the burden of proof laying on the prosecution.

The special treatment to be afforded to children during trial stems from the right to be treated "in a manner consistent with the promotion of the child's sense of dignity and worth [...] and which takes into account the child's age..." (Art. 40.1). The Beijing Rules add that juvenile proceedings should be held "in an atmosphere of understanding" which allows the child to "participate [...] and express herself or himself freely" (Rule 14.2). The case is to be dealt with expeditiously, by a competent and impartial authority. Parents should normally be present, and the child's privacy is to be respected — implying *inter alia* that the proceedings are to be held in camera and the child's identity is not be divulged by the authorities or the press.

Status offences

In many countries, certain acts constitute offences when committed by children but are not considered such when perpetrated by adults. In other words, the conflict with the law stems from the status of the offender — as a child — rather than from the nature of the act itself. These status offences usually concern situations where the child has run away from home, is considered to be out of control, and/or is indigent. Under a 1958 law in Bulgaria, children aged 8 to 18 can be placed in 'Labour Education Schools' — i.e. detention centres — by local non-judicial bodies, without any due process safeguards, for acts as minor as vagrancy or being 'uncontrollable'.[34] In Rwanda, legislation currently in force (though expected to be repealed) allows the police to arrest and take into custody any vagrant child; since vagrancy is not looked upon as a *criminal* offence, moreover, the scope of this law covers all children, regardless of whether or not they have reached the minimum age of criminal responsibility.[66]

'Street children' are indeed particularly vulnerable in this regard, and are often apprehended by the police on such grounds, on an individual *ad hoc* basis or as part of a deliberate strategy that may or may not be sanctioned by domestic law. This practice has been documented worldwide, in countries as far apart as Bangladesh and Peru. In Kenya, "[t]he three most common legal bases for the detention of children in juvenile remand homes are: 'destitution and vagrancy' (1,800); 'beyond parental control' (500); and 'found begging' (480)".[32]

Legislation specifically targeting juveniles in this way is increasingly contested as discriminatory and as unnecessarily 'criminalizing' the acts and situations involved. The CRC avoids explicit mention of the issue, although its provisions clearly militate against the application of repressive measures in such cases. The non-binding Riyadh Guidelines, however, state without hesitation that "legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person". It is interesting to see this stance taken in the context of dispositions designed to prevent offending, rather than in what might be seen as a pure 'children's rights' text.

Instrumental use of children for criminal activities

Growing concern has been manifested in recent years over adults using children under the age of criminal responsibility to carry out criminal activities, in the knowledge that they cannot be prosecuted and will usually be released immediately after arrest. These activities may range from robbery and housebreaking to the transportation or distribution of illicit drugs. The most disturbing developments in recent years are the fact that such activities are increasingly orchestrated by organized criminal groups and that they have an ever-growing transnational dimension. Thus, in Russia, the number of adults charged with involving children in criminal activity reportedly tripled between 1989 and 1994 to almost 21,000 cases.[78] A 1992 study in Italy noted that Mafia organizations were recruiting "thousands" of children and young people to carry out front-line criminal activities, including drug distribution and carrying or hiding firearms.[74] Pakistani children have been arrested in Saudi Arabia for drug trafficking activities carried out on behalf of adult gangs.[77]

TRENDS IN OFFENCES COMMITTED BY JUVENILES

There is a general perception, sometimes correct and sometimes unjustified, that juvenile offending rates are increasing constantly and significantly, and that ever more serious and violent crimes are being committed by ever-younger children. It often underlies, or is used to justify, initiatives in the juvenile justice field whose purely repressive nature tends to go against international standards and guidelines, and which conveniently ignore the precepts of prevention. Such a perception therefore needs to be examined more closely.

Are increasing numbers of juveniles committing offences?

Answering this question is not a straightforward affair. The basis for national figures — when indeed they exist — varies considerably. Meaningful international comparisons are usually, therefore, impossible to draw up.

In some instances the rise in juvenile offending is undisputed, and can be quite dramatic. Many countries in Central and Eastern Europe have seen a sharp increase — in some cases over 100% — in the first six years following the start of the 'transition' (although recorded levels are still far lower than in Western Europe). In Poland, it is reported that the number of juvenile offenders almost tripled between 1984 and 1995.[70] Similar trends have been documented in Romania, Russia and elsewhere in the region. This is attributed largely to the sudden and often extreme economic precariousness in which the majority of the population quickly found itself when drastic measures were introduced to prepare for the market economy, and to the anomie and rejection of authority that often characterized the initial period of post-Communism. The Government of the Federal Republic of Yugoslavia has reported that the 4,000 criminal acts committed by juveniles in 1993 and 1994 equalled the overall number of criminal acts in the six-year period

before war broke out in the former State of Yugoslavia in 1990.[80]

Similarly, Namibia experienced an increase in juvenile offences once the restrictions of the apartheid system — particularly those limiting freedom of movement — were lifted upon independence in 1990. The pre-independence offending rate, however, appears to have been unusually low, and the number of offenders, including juveniles, is still relatively small.[65]

In countries where there have been less obvious landmark events, the picture is not so clear. The authorities of most industrialized countries maintain that the juvenile offending rate has been steadily growing over the past two or three decades, both in absolute terms and as a proportion of all offending. There seems little doubt too that continuing and sometimes extremely rapid urbanization in Africa, Asia and Latin America has produced the relative deprivation, isolation and marginalization that contribute particularly to economically motivated, non-violent offences (invariably the great majority). The development of services, facilities and courts has not matched the evolving situation. Reports from Japan, on the other hand, indicate a 35% fall in police arrests of young persons over the 1985-1995 period, from over 300,000 to less than 200,000.[68]

Girls generally make up less — and sometimes far less — than 10% of juvenile offenders, and because of this, their situation is often virtually overlooked. Very little information exists on factors specific to offending by girls. At the same time, it is known that girls are particularly subject to coming into conflict with the law essentially because they are victims, e.g. for prostitution and, in certain countries such as Pakistan, for having been raped. There appear to be small but steady increases in the number of girl offenders in many countries.[78] The need to respond appropriately to their situation is therefore likely to become all the more pressing.

Are increasingly serious crimes being committed by ever-younger children?

It is nothing new for a juvenile to be convicted of the most serious crimes of violence, such as murder and rape. The inclusion of the prohibition of capital punishment for crimes committed by persons under the age of 18 in the CCPR — which, although entering into force only in 1976, was in fact being drafted back in the early 1960s — is one clear indication of this.

Concern is currently being expressed — particularly in the industrialized countries, it would seem — over an apparent increasing incidence of violent crimes by children of ever-lower ages: the murder of a 13-year-old fellow pupil by a schoolgirl in France in 1996; the rape of a German tourist by a gang of juveniles in London the same year; the killing of an 11-year-old boy in Kobe, Japan, by a boy of 14 in May 1997; the now infamous murder of two-year-old James Bulger by two boys aged 10 in the north of England in 1993[59] ... and even a six-year-old boy accused of the attempted murder of a month-old baby in California in the spring of 1996. This concern is fuelled by sustained media reports of such cases, often accompanied by alarmist commentary of various kinds.

The fact that close media attention is paid to cases of this nature should be seen more as an indication of their extreme rarity than of their growing incidence. A study covering 80% of 10- to 13-year-old children identified as "persistent or serious offenders" in New Zealand in 1994, for example, found that only 22%, i.e. 23 children, had in fact been convicted of a very serious or serious crime.[43] The projection for the country as a whole is therefore just 31 such children for a total population of 3.5 million.

Even so, Estonia reports that in just 12 months (1992-1993) violent crimes as a proportion of all crimes committed by juveniles rose from 8% to 13%.[67] In Poland, juveniles are also said to be becoming involved more frequently in such crimes — in the 1984-1993 period, juvenile involvement in manslaughter reportedly rose by 271%, assault by 330% and armed robbery by 189%. The number of offenders under 13 was found to have risen by 78% from 1993 to 1994.[70] In contrast, official figures from the United States record a 13.3% *fall* in the number of 5- to 14-year-olds committing murder in 1996 compared with the previous year.

It is also necessary to look beneath the surface of certain atrocities allegedly

The trouble with figures

Depending on whether data on reported crimes, arrests, charges, court appearances, convictions or sentences to custodial treatment are used, the picture obtained can be very different.

Several external factors may have significant effects on year-to-year comparisons: differences in detection or reporting rates, for example, could account for much or all of, say, a 5% 'change' in 'juvenile offending rates'.

Figures in this sphere, as in others, are wide open to political manipulation. A government wishing to demonstrate the success of its 'fight against crime' may well find a different set of data to publish from that of a government seeking to arouse a feeling of public insecurity in order to secure support for repressive measures. In addition to factors mentioned above, choice of age group selected can affect perceived trends considerably, as can different definitions of 'serious' and 'non-serious' crimes and, of course, a disguised changeover from 'arrests' to 'convictions', or vice versa, as the basis for figures from one year to another.

Overall rates also hide many important features: if stealing a bar of chocolate and mugging a person in the street simply count as two 'cases', then an additional act of stealing chocolate would seem to increase the offending rate by 50%, but this would obviously give a very distorted picture of the reality of juvenile offending.

Such are often the kind of statistics provided and on which, in particular, somewhat facile and alarmist assessments are based.

committed by juveniles. One example is Rwanda, surely the most extreme situation in recent decades.

On a general level, it is indeed the question of the response to those few juveniles convicted of the most serious crimes that poses a far greater problem than any perceived increase in their numbers. Except in crimes of passion, convicted adult murderers will often face long — sometimes lifetime — prison sentences, or the death penalty; or they will be committed to an institution for the criminally insane. There is, however, no consensus on what response is most appropriate or effective when the perpetrator is a juvenile, especially one close to or below the age of criminal responsibility. In practice, responses can range from nothing less than the death penalty in certain states of the USA and a handful of other countries, through to treatment or confinement in secure accommodation for an initially unspecified time, or even to treatment while remaining in the care of his or her family. It is generally admitted, however, that there is no conclusive evidence to date on the success of treatment or punitive measures of any kind, unless it be that, not surprisingly perhaps, neither has so far demonstrated its efficacy. ●

Rwanda: Responding to the 'crime of crimes'

Well over 1,000 of those arrested and incarcerated on suspicion of participation in the 1994 genocide in Rwanda were under 18 at the time of the massacres, including several hundred under 14, the age of criminal responsibility in that country. However, charges against the vast majority will likely not concern direct participation in the killings — 'acts of genocide' encompass any kind of involvement, including various forms of aiding and abetting. Over and above this, the pressure — propaganda, threats, etc. — on Hutu youth to take part in the atrocities was such as to qualify significantly the voluntary, deliberate and premeditated nature of the acts. Charges have not been filed against the under-14 group, and maximum sentences for juveniles aged 14-17 have been set lower than for adults. Not surprisingly, there has been considerable debate over what kind of sentence can be both 'appropriate' to the circumstances and consistent with the authorities' concern that there be no perception of 'impunity' for acts of genocide. [79]

ARREST AND PRE-TRIAL DISPOSITION

Of all phases of the juvenile justice procedure, it is on arrest and immediately thereafter, while in police custody, that an accused juvenile is most likely to become the victim of torture and other forms of cruel treatment. Girls are especially vulnerable to sexual harassment and abuse on arrest and during interrogation. It is also at this stage that the juvenile is likely to be denied the presence of those — parents, social worker, legal representative — who might best provide protection against such acts.

In January 1996, in Menisa, Turkey, high school students accused — but finally acquitted — of links with a banned organization were detained for 11 days during which they were tortured. "A parliamentarian... came upon some of them lying on the floor [of the police station] naked and blindfolded. Medical reports confirmed the use of torture."[34] According to the same source, two factors leading to "the widespread practice of torture" in Turkey are "long detention periods in police custody" and "the holding of detainees incommunicado with virtually no access to a lawyer and family members". This kind of finding is mirrored in a study in Lahore, Pakistan, which states that 39 out of 50 children detained in police custody for lengthy periods reported having been subjected to harsh treatment or torture at the hands of the police.[51] In Bangladesh too, it is alleged that "[s]ome of the worst violations of human rights committed against children take place... when the children are in the custody of the police... One boy said that he was held for 15 days during which he was beaten and tortured with electric shocks until he 'admitted' his crime".[50]

International standards, including the binding CRC, clearly state that deprivation of liberty should be used as a last resort and then only for the minimum possible period. This norm applies, *inter alia*, to pre-trial detention. It is massively violated in this context: the justifications for its use are too often at best questionable; the conditions of detention are frequently inhumane; and the period of such detention may extend to weeks, months or even years.

Justification: A former Minister of Justice of the Côte d'Ivoire explained the presence of large numbers of pre-trial young persons in Abidjan's main prison as the result of the absence of clear addresses in the city's sprawling suburbs and shanty towns from which most 'offenders' apparently came. He maintained that, consequently, if the police returned the children to their homes, they would never find them again.

In a different vein, legislation in ex-Zaire allows the judge, during the investigatory period, to order a juvenile to be remanded in a prison for up to two months if he is "vicious" or if "no individual or institution is in a position to care for him".[33]

Noting the rise in the number of 15-year-olds remanded in custody in UK prisons — from 126 in 1993 to 224 in 1996 — the Howard League for Penal Reform claimed that "[t]his expensive and damaging use of prison was often needless as most of the children did not receive a prison sentence at the end of their case".[71] Similarly, reportedly "only 13%-17% of under-trial child prisoners are convicted in the end" in Pakistan.[51]

The International Association of

Juvenile and Family Court Magistrates expresses special concern over instances where a child or young person is arrested, held in police custody and then released without there being any trace of his or her detention and without the police ever transmitting any documentation to a judge. This is not uncommon. In Bangladesh, for example, it is reported that many children are never produced before a judge. "They are released after being subjected to a beating and having paid a bribe", and "fear retaliation" if they complain.[50] In Kenya, "[c]hildren are picked up, held in police lockups where they are often beaten and almost always held with adults, and then released back onto the streets".[32]

Duration: Normally, legislation sets at 24 or, more rarely, between 48 hours and four days the maximum period of remand before a juvenile is brought before a magistrate or judge who will decide on pre-trial disposal: returning the boy or girl to the parents or guardians, with or without bail; or maintaining him or her on remand pending the court appearance. This initial rule is frequently violated, especially at weekends when a juvenile arrested on a Friday (or even a Thursday) may not see a magistrate until the following Monday. In some situations, the rule is overlooked completely, and no such encounter takes place at all.

Thus, a 1992 study in Lahore, Pakistan, found that, out of 50 child detainees interviewed, only 16 had been produced before a court within the required 24 hours. Many had been detained well beyond the maximum remand period of 15 days, sometimes for months.[51] Similarly, a report on Senegal notes that, in December 1994, "47 minors between the ages of 13 and 16 were incarcerated at Dakar prison, 38 of whom had been in provisional detention for more than six months".[41]

Legal limits may be raised in what are deemed special circumstances. Thus, "[e]mergency legislation in Northern Ireland allows children to be detained incommunicado in adult interrogation facilities for up to 48 hours, and they can also be detained without charge for up to seven days".[85]

If the magistrate determines that the juvenile should remain in custody, there will usually be a maximum time set by law before which the court appearance must take place or, at least, by which the juvenile has to appear before the magistrate again. The reappearance or hearing is no guarantee that the case will then be dealt with and resolved. It suffices that the parents, a witness or the arresting police officer not show up, or that necessary documents not arrive, for a hearing to be postponed and, consequently, for the juvenile to remain in further pre-trial custody. In some situations, lengthy pre-trial detention is quite simply due to magistrates being overloaded. It is not unusual for juveniles to spend, in total, several months in such conditions.

Authorized periods for pre-trial detention can be quite long. Thus, in France, minors aged 13 to 15 charged with a serious criminal offence can be lawfully remanded in custody for up to a year; that limit is doubled for 16- and 17-year-olds.

Hundreds of the juveniles accused of involvement in the genocide in Rwanda have been on pre-trial remand since the second half of 1994; as at end 1997, none had yet been brought to trial, or even presented before a judge. Elsewhere, in extreme instances, case-files have literally been lost and the juvenile 'forgotten' for years.

Conditions: It is, somewhat paradoxically, during the pre-trial period that a child or young person is likely to face the worst conditions of detention and when relevant standards are likely to be most abused. In comparison with sentenced juveniles, he or she is at much greater risk of, for example, being in contact with adults (e.g. in police cells), being held in unhealthy accommodation, lacking supervision by specially trained staff, being without an activity programme, and having to remain in closed quarters up to 23 or even 24 hours a day.

In Jamaica in 1994, one monitoring group "found children as young as nine or ten were detained in life-threatening conditions in police lockups, sometimes in the same cells as adults charged with serious crimes in violation of Jamaican law". At one such lockup, "inmates urinated into the hallway and raw sewage seeped directly into the sleeping area of the children's cell. Sanitation facilities... overflowed with faecal matter. The lockups did not provide children with bedding or blankets and in some lockups there were no beds. Insect infestation was rampant... Most children had not been permitted to bathe since they were brought to the lockups".[31]

The Children and Young Persons Act of Kenya allows police to detain 16- and 17-year-olds with adults, and application of this possibility would seem to be the rule rather than the exception. Conditions for younger children have also inspired concern. At Nairobi Juvenile Remand Home, children lacked any educational or recreational activities. Since in practice, children are held on remand for as long as three years, this severe deprivation can have dire cumulative effects.[32]

The International Association of Juvenile and Family Court Magistrates points out the lack of appropriate and planned activities during pre-trial detention in an unnamed European country. "We visited a modern remand centre for boys aged 13 to 18... but the juveniles are kept in a cell, for months and for even more than a year, without a single activity: no school, no workshop, no sport. The legal reason given is that the Code [of the country in question] allows no activity before the trial, because the detainees are presumed innocent... We visited another prison, in Africa, where the boys are kept for several months in the courtyard and dormitory reserved for minors, with one or two armed guards. Due to lack of resources, they have no activities whatsoever."[20] Lack of educational or training activities in the pre-trial situation is sometimes justified by the impossibility of planning for juveniles whose length of stay in the facility cannot be determined in advance. As far as detention in police cells is concerned at least, the physical constraints usually render any such activity impossible anyway, even if it were to be envisaged.

THE COURT AND ALTERNATIVE PROCEDURES

Most societies, to varying degrees and in different ways, have long accepted that 'children' should be dealt with somewhat differently from adults when they are found to be in conflict with the law. In Norway, for example, a thirteenth century penal code specifies that "adults might lose both hands if stealing, children 'only' one".[69] Children accused of an offence now have the right to treatment that takes full account of their age, circumstances and needs, but without any basic elements of the general human right to a fair trial being sacrificed — save the right to a trial in public, which they forego in order to protect their privacy.

Juvenile courts

When Illinois introduced a separate system of criminal justice for juveniles in 1899, this was nonetheless a radical concept. Yet it was soon replicated throughout the country and quickly spread abroad: Britain (1908), France and Belgium (1912), Spain (1918), the Netherlands (1921), Germany (1922), Austria (1923). By 1931, a League of Nations Study found that such courts existed in 30 countries.[75] Ironically, it is in the United States that the appropriateness of a special court for all juveniles is now being increasingly questioned.

In fact, no international standards go as far as to require explicitly the establishment of a separate set of courts specifically for juveniles. This is explained simply by reality. A surprisingly large number of countries have never made such a distinction, and would never have accepted such a rule. In those countries, conditions nonetheless invariably change (e.g. closed hearing) when the court hears a juvenile case, and the potential sentences will be different from, and/or less severe than, those that adults could face.

There is nonetheless a more or less implicit presumption that something so different as to warrant the name 'juvenile justice system' is necessary in order to comply with current norms. In the CRC, it derives partly from the various special safeguards set out for children involved with the justice system, and partly from the injunction that "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law..." (Art. 40.3). Of all the instruments, it is in fact the JDLs alone, in their very first sentence, that contain explicit reference to a 'system' as such, and without further elaboration, as though taking its existence for granted: "The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles".

The rise and fall of juvenile courts: the United States experience

The world's first juvenile court was introduced by the State of Illinois in 1899. Its purpose was to decide what was best for the child and for society, rather than judge criminal conduct. Hearings were to be conducted in closed chambers to protect children from stigmatization. The juvenile court could take preventive action in dealing with 'pre-delinquents' (children who were likely to commit crime) and could impose indeterminate sentences so that each child could 'reform' at his or her own pace. A probation system was also established to guide and oversee juveniles after their release from institutions. By 1924, special courts for children had spread to all but two US states.

In the 1960s, doubts began to be expressed in the United States about the 'unbridled discretion' given to juvenile court judges and the risk of procedural arbitrariness. In *re Gault*, 1967, the US Supreme Court recognized that juveniles were entitled to some basic constitutional protections such as the right to counsel, the right to be notified of charges, the right to be protected against self-incrimination, the right to confront witnesses and the right to have a written transcript of the proceedings.

An unexpected result of the Gault decision is that the focus has shifted from the situation of the child to the circumstances of the crime itself. 'Legal ritual' abounds, impeding the system from handling serious offenders efficiently and speedily. As a result of public pressure to 'crack down on juvenile crime', most US states have, since the 1980s, dismantled large parts of the juvenile court system, allowing young people under 16 accused of serious crimes to be tried as adults.[73]

Avoiding contact with the justice system

In a gradually increasing number of countries, the attempt is being made to find viable and constructive ways of avoiding a child or young person coming into contact with the justice system 'unnecessarily'. This is particularly so for first-time offenders accused of, and admitting, non-serious acts. Alternatives may involve being dealt with by a body other than a court, or they may be brought into play at an earlier stage, prior to any hearing.

Screening and diversion: Probably the simplest form of diversion is a police caution. In this case, the police themselves, possibly after consultation with the family and a social worker, decide not to press formal charges but simply to warn the child about his or her behaviour, with the more or less explicit implication that any recurrence of that behaviour will result in a court appearance. The real efficacy of this kind of action is, however, widely questioned.

A somewhat more sophisticated approach is being tried out by juvenile courts in two French towns. Called *Rappel à la loi* ('Reaffirmation of the law'), it involves a formal meeting between a representative of the court and the juvenile and his or her parents. During the inter-

view, the juvenile is appraised of the legal text relating to the offence as well as of the potential sentences of the court. The parents are in addition reminded of their legal responsibilities. It appears that initial results of this experiment are encouraging.

The most developed approach lies in a full-fledged screening process carried out by a social worker before the court appearance. In this instance, the social worker assesses the likelihood of the juvenile responding positively to a structured non-punitive measure. If the assessment is positive, and if the juvenile admits the offence and agrees to the scheme, the prosecution will normally drop the case provided that the juvenile satisfactorily completes a group 'life-skills' course, possibly with individualized supervision and counselling and/or with additional conditions such as apologizing to the victim. Successful completion of the course results in the case disappearing from the records; non-fulfilment of the conditions, on the other hand, usually leads to a court appearance. A good example of such a programme is in operation in Windhoek, Namibia, run by a local non-governmental organization (NGO) — the Legal Assistance Centre — in close cooperation with the public social services and the court. It claims a success rate (non re-offending within two years) of some 80%.[65]

Alternatives to courts: There are now several examples of bodies being set up as a recognized substitute for the formal court system, and which are mandated to deal with young people whose offence is not classified as serious and who admit to having committed that offence.

One such is the now well-known 'children's hearings' system in Scotland. A somewhat similarly-motivated initiative has been developed in New Zealand for 10- to 13-year-olds: a family group conference system, referral to which can be made, *inter alia*, where there is serious concern about a child's welfare by virtue of the number, nature and magnitude of offences committed. In 1991, an apparently successful 'Juvenile Cautioning Programme' was set up in Wagga Wagga, Australia, whereby the police refer most young offenders to a mediation conference involving the victim, the offender and his or her family, social workers and law enforcement officials. A coordinator seeks to reach a consensual decision as to outcome and reparation, formalizes the agreement and sets out follow-up measures to ensure that it is respected.[47]

With the same aim in view, increasing thought is being given to making renewed use of traditional methods of resolving conflicts between an offender and his or her victim while ensuring adherence to the principles of juvenile justice.

In the Philippines, for example, there is a mediation scheme designed to bring about amicable settlement by maximizing the village justice system. A social worker mediates on behalf of the juvenile offender who may be released into the custody of his or her parents or of a responsible member of the community, under the supervision of the Department of Social Welfare and Development.[81] The welfare approach was also the solution largely opted for in Latin America.

The fundamental reassessment of the aims and elements of juvenile justice now under way in South Africa is spawning a number of innovative programmes. Building on the pre-colonial practice of holding forums, led by elders, to repair relationships and decide on restitution when an offence had been committed, a Family Group Conferencing pilot project has been set up in Pretoria. One 'conference' organized following the stabbing of one teenage boy by another provides a particularly evocative example of how such an initiative works. In this case, the families of the two boys concerned agreed that the medical bills would be paid by the offender's family and that the

The 'children's hearings' system in Scotland

This system applies to offenders under the age of 18, unless the nature of their offence is very serious. Instead of appearing before a criminal court, they attend a hearing in conditions that are less formal and adversarial than a court setting. There, a panel of trained lay members decides, after discussion with the family, social workers, teachers and the child concerned, on disposition based on the child's welfare. The decisions of the hearings are subject to appeal to the courts, but a child cannot have legal representation during the hearings themselves. Because this conflicts with Article 37(d) of the CRC, which guarantees access to legal representation, the UK government filed a reservation upon ratification of the CRC. Its motivation was to have the "right to continue the present operation of children's hearings..." which have "proved over the years to be a very effective way of dealing with the problems of children". This reservation was withdrawn on 18 April 1997.

The welfare approach and 'situación irregular'

One way of responding to juvenile offending that gained considerable currency in the 1960s and 1970s was the 'welfare approach'. Under this doctrine, the young offender is deemed to be in need of care and protection and becomes the subject of welfare measures rather than criminal prosecution. In Latin American countries, this response was reflected in the young person who committed an 'anti-social' act being considered as the victim of an 'abnormal' situation — known as 'situación irregular' — where his or her moral or physical well-being is in danger. This approach combines the ostensibly positive features of a high minimum age of criminal responsibility (in some cases 18) with a non-repressive response. Nonetheless, child advocates in many countries question the appropriateness of both its conceptual base and its ramifications in practice. Peru, for one, has now abandoned it.

Among the many criticisms voiced have been the paternalistic nature of the doctrine — whereby the young person becomes a virtual ward of the State instead of a person with rights and legal capacity — and the frequent recourse to placement in 'welfare' institutions which were in reality little different from correctional institutions and where the young person might be kept for several years on 'protective' grounds. Acts constituting 'anti-social' behaviour were not defined in advance, moreover, so due process was excluded.

latter would replace the victim's shirt. The new shirt would be handed over during a feast to be held at the home of the offender, where a chicken would be cooked and shared.

Needless to say, recourse to traditional methods is not to be seen as an automatically positive strategy. Not always do they comply with the letter and spirit of the CRC, as illustrated by a particularly disturbing account from Bangladesh where, in May 1994, a village council *(salish)* sentenced a 13-year-old girl to 101 lashes in public for having been raped.[50]

Due process guarantees in extra-judicial solutions

The CRC explicitly calls on States Parties to promote the establishment of measures for dealing with children "alleged as, accused of, or recognized as having infringed the penal law [...] without resorting to judicial proceedings..." (Art. 40.3.b).

No alternative system — be it diversionary or an alternative to the court itself — can be designed to replace the formal court procedure entirely, however. The functioning of all such alternatives is first and foremost dependent on the juvenile admitting the offence. If he or she denies the alleged act, a court of law is the only forum in which the case should be heard and debated. Second, the response to the offence in question cannot be deprivation of liberty — at the very least without the known and real possibility of judicial review. This is why alternative bodies and schemes are invariably not mandated to deal with 'serious' offences. The listing of offences falling into the 'serious' category varies in its detail from one country to another, but will generally include all major crimes of violence, including rape and armed robbery.

The overall support that exists for these alternative systems among juvenile justice professionals is considerably tempered by one concern in particular that also applies to both 'diversion' schemes and non-court bodies: can these extra-judicial responses provide guarantees for the juvenile that are equivalent to those inherent in due process in a normal court of law — and to which he or she has an absolute right under the CRC? This issue arises above all from the fact that there is no presumption of innocence and, invariably, no right to legal representation. In neither case, therefore, is there any procedure for establishing whether or not the offence was committed as charged. The danger is at least twofold: that the juvenile admits the offence as it stands simply to avoid the formal justice system, and that he or she is not made fully aware of the possibilities of legal representation if the formal path is chosen.

In practice, it is believed that this has so far not resulted in significant problems, as long as the options open to such alternative bodies are restricted to non-custodial and support-oriented or restorative measures. A 1995 report on Viet Nam thus expressed considerable concern over the fact that 90% of all juvenile cases — those classified as less serious — were dealt with by an administrative panel consisting of representatives from the child's school, the Youth Union, the Women's Union, the police and the prosecution, which had the authority to order deprivation of liberty.[52]

The establishment of extra-judicial solutions thus requires each time that clear and known procedures exist for ensuring that the juvenile is never pressured, even passively, into admitting the charge and is aware of the right to representation if he or she chooses the normal court process. Indeed, the CRC obligation to foster the establishment of alternative procedures comes with two qualifications: "whenever appropriate and desirable" and "providing that human rights and legal safeguards are fully respected" (Art. 40.3.b). Ensuring that recourse to due process procedure is always possible, before and immediately after going through the alternative channel, is a fundamental condition in this respect.

DEPRIVATION OF LIBERTY AS A SENTENCE

The Beijing Rules set out a non-exhaustive series of possible sentencing options — reflected more summarily in the CRC — that avoid deprivation of liberty. As during the pre-trial stage, the Beijing Rules and CRC provide that recourse to deprivation of liberty as a sentence should be a last resort and for the shortest possible time. The need to make greatest possible use of alternative sanctions for offenders — whatever their age — is strongly reinforced, moreover, by the 1990 United Nations Standard Minimum Rules for Non-custodial Measures, known as the Tokyo Rules.

The 'last resort' principle as applied to sentencing means that deprivation of liberty must not be imposed unless the objectives of the measure — principally rehabilitation in the case of juveniles — could not, in the opinion of the judge, be achieved in a non-custodial setting. Similarly, the 'shortest possible time' should generally be interpreted as the period within which that custodial treatment may be expected to secure the rehabilitation of the juvenile concerned.

In many countries, deliberately or because of lack of attention or priority to developing non-custodial and constructive responses, the list of options in practice is drastically reduced, often to no more than a caution or conditional discharge, a fine, or a suspended custodial sentence. Other responses may be on the statute books, but are not practical propositions because of a professed lack of financial and human resources. The list is effectively further reduced by the fact that the children con-

Sentencing options in the Beijing Rules

The Beijing Rules specify the following sentencing options:
- care, guidance and supervision orders
- probation
- community service orders
- financial penalties, compensation and restitution
- intermediate treatment and other treatment orders
- orders to participate in group counselling and other similar activities
- orders concerning foster care, living communities or other educational settings

The Beijing Rules also state that social enquiry reports should be requested in the case of all but minor offences, prior to sentencing (Rule 16). The aim of these reports is to enable the magistrate or judge to take due account of the circumstances of the offender (following the 'principle of proportionality') on the basis of information on his or her background and that of the family.

The Commentary to Rule 16 notes that "adequate social services should be available to deliver social enquiry reports of a qualified nature". But such services are lacking in many countries, both in quality and quantity. A request for such a social enquiry report may therefore result in a delay to the proceedings of several weeks or even months, due to heavy workload, and the results may not be especially useful in guiding decisions. If, in particular, the juvenile is to spend the period awaiting the completion of the report in pre-trial custody, the benefits of having access to this kind of information are likely in many instances to be outweighed by the negative ramifications of the process.

cerned, and their families, are quite simply unable to pay fines. And so the 'last resort' becomes a commonplace solution, and the 'shortest possible time' stretches into months and even years.

Of note, particularly in the industrialized countries, is the disproportionately high percentage of children of ethnic minorities and indigenous peoples who are sentenced to deprivation of liberty. This reality is reported from Canada, the United States and Australia, for example, as well as from European countries.

International law accepts that deprivation of liberty may be required for juveniles in certain cases. In so doing, however, it sets out — in the JDLs — a wide range of conditions under which sentences of this nature are to be served. The JDLs essentially try to ensure that deprivation of liberty does not mean deprivation of rights to which all persons under 18 are entitled, whatever their situation. In addition to the fundamental requirement for protection that separation from adults constitutes, these conditions cover all aspects of confinement, including privacy, access to medical treatment, adequate nutrition, clothing, and availability of educational and recreational activities, as well as issues such as contact with the outside world (including family) and preparation for release. The JDLs further set standards for the qualifications of staff dealing with juveniles, and limitations on permissible punishments.

Separation from adults

This basic and long-standing principle has two purposes: to protect children from exploitation, abuse and negative influences by adults; and to ensure that the detention of children is effected in facilities that cater to their special needs. The principle tends to be respected more — or violated less — for children and young people serving a custodial sentence than for those on pre-trial remand.

This is by no means a general rule however. An international study conducted in 1994 found that in the Occupied Territories, contrary to practices in Israel, prisoners as young as 10 are held together with adults and subjected to the same treatment. In ex-Zaire, although separation of minors from adult detainees was policy, no such distinction was made. Indeed, more adults were found in one pavilion reserved for minors than minors themselves.[35] Similarly, national legislation in all Latin American and Caribbean countries explicitly requires separation of juveniles from adults, but is reportedly violated to some extent almost everywhere in the region — in several countries, a significant number of children are reported to be housed in adult penitentiaries for 'protective' reasons.[25] In Bangladesh, "[t]he absence of suitable institutions for the care and rehabilitation of young offenders means these children serve their sentences in overcrowded prisons where their safety and personal development are neglected. The children are held incarcerated in the same rooms or wards as adults".[50] In the United States, "children housed with adults are five times more likely to be sexually assaulted, twice as likely to be beaten and 50% more likely to be attacked with a weapon than those children housed in juvenile facilities, according to the American Civil Liberties Union. Nationwide in 1994, 45 children died while they were locked up in state adult prisons or detention centers".[76]

Separation may also be rudimentary, not corresponding to the accepted definition of being both out of sight and out of earshot of adults, even though physical separation may be ensured. In such instances, too, it is particularly unlikely that the sought-after 'specialized' nature of a juvenile detention facility will exist to any significant degree.

Under the CRC, there can be exceptions to the separation rule, but only "in the best interests of the child". The most obviously acceptable application of this qualification is probably the case of children and parents being arrested jointly for an offence such as illegal immigration. There are, however, also frequent attempts to invoke the exception to justify detention in non-specialized facilities in order, for example, to avoid sending the child concerned to an establishment far from home. In such cases, the arguments are *a priori* clearly less persuasive. Alternative sentences that do not involve confinement would first of all have to be demonstrated as entirely inappropriate for the child in question; only then can serious consideration begin as to whether the "best interests of the child" lie in remaining near the family or being separated from incarcerated adults.

Children in prison with their mothers

Although the situation of children in prison with their mothers is not strictly speaking a

juvenile justice question, it is considered here because it involves the central issue of children deprived of their liberty.

The 1955 Standard Minimum Rules for the Treatment of Prisoners state that "[w]here nursing infants are allowed to remain in the institution with their mothers", there should be a nursery with trained staff to care for them when they are not in the care of their mothers (Rule 23). As in the case of minimum age of criminal responsibility, therefore, there is no international standard regarding the age until which — if at all — a child may stay with his or her incarcerated mother, and this void is reflected in widely varying practices around the world.

In some countries (e.g. China) the rule is that a pregnant woman or a woman with a child under 12 months will not serve a prison sentence until the child reaches that age, and the child will then not accompany her in prison. At the other extreme, children may be 'able' to remain with their mother until the age of three years (e.g. Rwanda, Hong Kong) or in some countries — often on an informal basis — even older (e.g. six years at Makala Prison in ex-Zaire). In between are situations where a baby born in prison is removed from the mother's care within 24 to 72 hours (certain states in the USA) or, whether born in prison or not, may remain with the mother variously until the age of one year (Scotland), 18 months (e.g. France, England and Wales, Uganda) to two years (probably the most common, e.g. Nepal, Sudan, Namibia).

The circumstances of such detention range from an ordinary regime where the mother simply looks after her child within the confines of the female section of the prison, in whatever conditions that may imply, through to special cells or wings with play facilities, and to separate 'houses' (e.g. Scotland, Poland) with an adapted regime.

Whatever the policy decision, it would seem that one basic rule at least should be followed: at a very minimum, the child should not be separated from his or her mother until the age of 12 months. It is now widely recognized that the first year of life is a vital period in a child's development and requires the presence of the primary caregiver at least. This time frame also, of course, covers that of the likely duration of breastfeeding, another important element.

Material and other conditions of detention

While conditions of detention for sentenced juveniles are likely to be better than for pre-trial detainees — including special facilities, trained staff, a programme of educational and recreational activities — this is unfortunately very far from saying that conditions overall are acceptable.

"The children's colonies where the juvenile delinquents served their sentences were overcrowded and poorly financed. The youths received no education there and they were frequently ill-treated and humiliated", says one report on conditions in Kazakhastan in 1996.[34] Under-resourced, repressive detention facilities for juveniles, which may be catering to double or more their intended capacity, are anything but rare, and are to be found — particularly as youth wings of adult prisons — in some of the richer industrialized countries as well as elsewhere.

Juvenile justice systems are essentially designed to deal with boys and are based on assumptions, concepts and explanations about offending by boys. One consequence is a shortage of organizational and other resources for dealing with girls in detention, putting them in a particularly disadvantaged situation.

The main problem areas, and the ones in which international standards are most frequently violated, include:

- lack of information concerning the rules in force and the rights of detainees;
- insufficient space in sleeping and living quarters;
- inadequate clothing and protection from the cold;
- insufficient and/or poor quality food served at unreasonable times (e.g. last meal of the day at 3 p.m.);
- poor sanitary and washing facilities, with no privacy;
- difficulty in accessing medical and dental treatment;
- poor or nonexistent educational and vocational training opportunities;
- little or no contact with the outside world;
- poor supervision: far from being specially qualified and motivated, staff in fact often consider their appointment to a juvenile facility or wing as a negative step in their career.

Disciplinary measures

It is a much-overlooked provision of the JDLs that a wide range of punishments are prohibited in regard to juvenile detainees. In common with adults, any punishment that might be qualified as being "cruel, inhuman or degrading" is of course outlawed. Disciplinary measures that are explicitly mentioned in the JDLs as being forbidden for juveniles are (Rule L):

- corporal punishment;
- placement in a dark cell;

The special situation of girls in detention

The major problems, often highly disturbing in their implications, faced by girls deprived of their liberty include:

- because of the relatively low numbers of young female offenders, specialized custodial facilities, whether pre-trial or post-sentence, are often few and far between, meaning that girls are prone to being held in places far from their family;
- for a similar reason, they are more likely than boys to be held with adults — there are no special young offender institutions for girls in Britain, for example. The practice of mixing girls with adult female detainees is moreover justified by the authorities in some countries as actually being positive for girls, although no decisive evidence on this would seem to exist;
- overall, girls are more likely than boys to be deprived of educational opportunities when detained;
- in common with incarcerated women in general, the special hygiene needs of girls are notoriously subject to being overlooked.

The Beijing Rules recognize the particular concern that girls require, albeit in a summary and only partial fashion (Rule 26.4): "Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured."

- closed or solitary confinement;
- reduction of diet;
- restriction or denial of contact with family members;
- a requirement to work.

In practice, recourse to solitary confinement and reduction of diet in particular is common. This is especially so when juveniles are housed in special wings of adult prisons (or, worse, together with adults), where staff often have neither special training nor motivation for dealing with this age group. Limitations on family visits or other forms of contact are also frequent.

Violations of these provisions are often hard to detect. The juvenile is of course invariably unaware that such measures are indeed forbidden under international law — as indeed are the administrators and staff of correctional facilities. These prohibitions may well not be reflected in national law or in rules governing the facilities, moreover. And despite the additional obligation that all disciplinary measures be recorded, this is frequently not the case.

Connected to these problems is the difficulty found in registering a complaint. Frequently the complaints procedure — together with other aspects of the detainee's rights — is not made known. In other situations, efforts are made to discourage complaints, or the procedure itself is administered or blocked by those against whom a complaint is, or would be, directed. Any such act or omission constitutes, of course, a violation of norms laid down in the JDLs.

PREVENTION AND REINTEGRATION

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

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

This breakdown demonstrates the clear linkage between the concept of 'prevention' and that of 'reintegration'. Reintegration is the stated aim of juvenile justice as a whole. Very often, by this or another name such as 'rehabilitation', it is perceived in terms of simply assisting an offender's return to the community. In fact, reintegration is more usefully seen as a process that attempts to 'go back to square one', looking on the juvenile concerned as being particularly 'at risk' of committing offences and taking appropriate steps, with him or her as well as with the family and community, to reduce that risk as far as possible. Consequently, while reintegration is to be the object of specific measures set out more especially in the non-binding international texts — for instance, vocational training, counselling, conditional release, and halfway houses — there is also considerable similarity between measures to be envisaged for prevention on all three levels and those that are proposed for reintegration itself.

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

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

With specific reference to European countries 'in transition', the growth in juvenile crime is seen as related not only to "the lifting of social and political repression, along with disintegrating public order and the deteriorating economic situation" but also to the "inadequate social support for adolescents at the important juncture between school and work, and family dysfunction".[78] Elsewhere, too, strengthening families and promoting acquisition of parenting skills have been identified as vital preventive factors.[82]

The CRC does not explicitly mention preventive action, but many see implementation of the treaty as a whole as being the best and most fundamental manner in which to approach prevention. Indeed, the Riyadh Guidelines echo many of the rights set out in the Convention as basic components of primary and secondary prevention and, perhaps to a lesser extent, at the tertiary level. Thus, adequate standard of living and access to an education system that transmits positive values to children are both rights (in the CRC) and elements of primary prevention (in the Guidelines). The family's primary responsibility for the welfare, protection and upbringing of the child, and the State's obligation under the CRC both to assist it in this role but also to intervene when parents are nonetheless manifestly unwilling or unable to assume their responsibilities, are basic to the philosophy behind both instruments in terms of secondary prevention. By encouraging responses to offenders that avoid recourse to judicial proceedings, and stipulating a major aim of any response as being the child's reintegration in society, the CRC also reflects the precepts of tertiary prevention as set out in the Guidelines.

The implications of this homogenous approach are clearly that community-based and family-focused initiatives are to be developed to a maximum. This cannot be a task that falls to juvenile justice professionals, but to a wide range of governmental and non-governmental bodies with mandates in these spheres. Surely in part because of this, responsibilities remain undefined and action unsystematic. Prevention and reintegration efforts fully worthy of the name therefore still tend to constitute the weakest links in the chain of actions intended to promote juvenile justice.

NOTHING MORE THAN JUSTICE

by Nigel Cantwell

It would be clearly Utopian to seek the realization of a crime-free society. Yet it is this goal that is the logical projection of the most frequent attitudes and policies towards offending, a two-pronged approach of 'stamping out juvenile crime' and 'protecting the public' from offenders by removing them from society. This is our legacy today, and it creates a very hostile environment in which to promote a mind-set where the 'rule of law' does not just mean bringing individuals who violate it to book, but also ensuring that the human rights of those same individuals are fully respected.

It is a legacy that makes it possible for a British newspaper headline to read "Serves you right, you little bastards" when two 10-year-old boys are sentenced to indeterminate reclusion for murder. It is a legacy that makes it exceedingly difficult to find significant support for the one rehabilitation centre in Abidjan that is — consequently — able to take in just 1% of the juvenile prison population. It is a legacy that, virtually intact, has simply accumulated compound interest over the years, and whose mass is thus continuing to grow.

Most importantly perhaps, it is a legacy that spawns the biggest problem in establishing a more realistic, and certainly more effective, objective: that of first and foremost eliminating those factors and circumstances that almost ineluctably push young people towards behaviour patterns bringing them into recurrent conflict with the law, and ensuring that the response to such behaviour does not simply reinforce that very same tendency.

And that objective is nothing more — but also nothing less — than justice.

Identifying the real issues

The problems to be tackled in the sphere of juvenile justice are manifold and often complex, as the contents of this *Digest* themselves show. All are important from a children's rights standpoint. Some issues nonetheless manage to grab the headlines for less than logical reasons. One such is the age of criminal responsibility. It is true that a 'populist' proposal to lower the minimum age may seem significant, in that it will be seen both to translate a certain attitude towards young offenders and in principle to enable more punitive measures to be taken in their regard. It will therefore gain attention. This *Digest* argues, however, that the apparently simple and basic concept of setting an age below which a child cannot be heard or tried in a criminal court is in fact both a Pandora's Box and, in terms of its practical importance for the proper administration of juvenile justice, invariably irrelevant.

What counts most for juvenile justice is whether or not the rights of children both below and above whatever age is chosen are fully respected when they come into conflict with the law, and that accepted international norms guide the reaction to their situation. In other words, however much importance it seems to be given, minimum age is not a big issue.

On the other hand, two issues arguably stand out as truly crucial — in themselves, in their implications, and in the direct and indirect consequences of tackling them: prevention and detention.

Prevention. A juvenile justice policy is not a policy unless it includes prevention. And prevention will not — cannot — work in a vacuum. Yet most preventive efforts are neighbourhood or local schemes involving no change in those external factors that have been shown to create or foster the breeding ground for juvenile offending. Worse, without effective prevention, the likelihood of being able to implement a juvenile justice system worthy of its name is significantly reduced.

Efforts to prevent offending by young people are, from a practical standpoint, virtually identical with the promotion and protection of the rights of the child contained in the CRC. This may not be surprising, but it appears to be largely ignored. In addition, debate continues — often despite documented evidence — as to the conditions that at least increase propensity to offend while not necessarily being full-fledged causal factors. Thus, for example, material poverty — absolute or relative — is still not accepted in some circles as constituting a precipitating factor, regardless of its being formally and internationally recognized as such in the Riyadh Guidelines.

Such debate can be short-circuited, however, by adopting a 'rights-based approach' to the implementation of the Guidelines. Linking the principles of the Guidelines with the obligations of the CRC serves not only to give greater force to preventive efforts but also to 'mainstream' both the issue and the notoriously neglected Guidelines themselves, often wrongly dismissed out of hand as vague and unrealistic.

Such an approach paves the way for programming and policy development at all levels in spheres ranging from community health to education and family support services. All should be actively taking greater account of their potential contribution to prevention of juvenile offending. This is a far cry from today's situation where, in general, such preventive efforts are relegated to the confines of isolated initiatives and fitful advocacy coming from purely 'juvenile justice' circles.

Detention. In the great majority of countries, most children deprived of their liberty have not been convicted of an offence: they are on pre-trial remand, are accused of a minor and non-violent offence, and will not receive a custodial sentence when they appear in court. As highlighted in this *Digest*, it is during pre-trial detention that many of the worst abuses of all kinds occur. The situation of children arrested and

detained for vagrancy is of special concern.

As regards those juveniles who are indeed sentenced to deprivation of liberty, the high cost and overall ineffectiveness — not to say counter-productive consequences — of custodial sentences are now well documented. Yet recourse to them is nonetheless, in most countries, far too frequent and in total contradiction with the injunction that they be used only as "a last resort".

Concerted efforts in these respects would imply or involve, among other things:

- developing or improving training for all involved in dealing with juveniles within the justice system, including police and magistrates;
- developing specialized social and paralegal services;
- developing 'diversion' and alternatives to the formal court setting, while guaranteeing due process;
- developing restorative justice and non-custodial sentencing options.

Clearly, significant steps in these directions would already go a long way to resolving many of the major problems currently being faced in the juvenile justice sphere.

Restorative justice

From both a 'tertiary prevention' standpoint and to avoid detention of juveniles, restorative justice through alternatives to courts is the kind of response that seems to contain the essential features that juvenile justice professionals would like to see in place for dealing with most offenders:

- the child or young person involved has to take responsibility for, and face the consequences of, his or her act as being illegal (thereby distancing such disposal from the 'welfare' approach);
- he or she may be involved in the decision on sanctions and compensation;
- the problem can be dealt with swiftly, with the process being clearly in relation to the act in question, not chronologically divorced from it;
- there is involvement of both the family and the community;
- there can be salutary contact between the perpetrator and the victim;
- the perpetrator makes direct amends to the victim;
- contact and involvement with the formal justice system is avoided;
- there is no recourse to deprivation of liberty (including, normally, prior to the 'hearing');
- the process is designed to reintegrate, not to exclude or marginalize, the offender.

Tackling 'public opinion'

There has been a widespread belief that 'children in conflict with the law' do not constitute a high priority for most governments. Much effort has been devoted to pushing the issue higher up the international and national agendas. From many standpoints, this effort has probably been misjudged: the issue was already firmly there, at least as a national priority. The problem has been that it is tackled in terms of 'fighting juvenile crime' rather than on the basis of promoting 'juvenile justice'.

The field of juvenile justice is one of those in which the opinion of the public — or more accurately in most cases the opinion most forcefully transmitted by the media — is a major factor, particularly, though by no means only, in the industrialized countries. Environmental issues are another such field. The difference between them of course lies in the fact that, whereas environmentalist groups tend to demand that governments live up to, and improve, international standards on environmental protection, by far the strongest voice heard on juvenile justice matters comes from those actively intent on — and unduly successful at — getting governments (and the judiciary) to violate internationally recognized human rights.

There is every reason to believe that successful attempts to improve compliance with international standards in such countries will have to incorporate efforts to change the balance of popular sentiment. Realistically, this will not happen simply through well-intentioned propaganda. It will require a multi-pronged thrust founded on a number of disparate, though coherent and coordinated, initiatives. According to the country concerned, these could begin with one or more of the following:

- encouraging or requiring magistrates and judges dealing with juvenile cases to visit pre-trial and post-trial detention facilities, of which many have no first-hand experience, in order to sensitize them to the reality of the conditions in which they keep, and to which they sentence, juveniles who appear before them;
- allowing and encouraging local associations to have access to such facilities, both in order to sensitize their members and the community, and also to provide services and to act informally as mediators between the detainees and the administration;
- setting up regular coordination meetings, at local and national levels, between the range of governmental departments concerned and NGOs in order to discuss problems in the light of standards to be upheld and aims to be achieved, as well as to devise common approaches — and public messages — where possible;
- responding systematically to proposals, actions and decisions that run counter to international standards and, where applicable, to national law.

Initiatives such as these could provide a more solid and wider understanding as a basis for bringing about change. And at the very least they would in themselves be positive steps towards juvenile justice.

Regular coordination meetings

One example of such a scheme is the Juvenile Justice Forum in Namibia. It brings together on a regular basis, in the capital as well as in an increasing number of provincial locations, representatives of Ministries (Youth and Sports, Justice, Education, Health and Social Services, etc.), the Department of Prisons, the Namibian Police, the judiciary, local NGOs and UNICEF. It enables both overall policy questions to be debated and individual situations and problems to be raised, with the advantage that immediate reactions can be secured, possible obstacles identified and responsibilities assigned. Specific suggestions for cooperation are discussed, as are draft documents, including proposed legislative and policy texts. The multidisciplinary and mixed (government and civil society) participation provides a constructive and realistic framework for adopting a coherent response to juvenile justice issues.

Links

This section contains information on some of the major inter-governmental organizations, United Nations affiliated institutes and international and regional NGOs working in the field of juvenile justice. It is not meant to be a comprehensive listing; nor does it represent a prioritization or ranking of organizations, but merely a first attempt to provide signposts in a highly complex field. It is hoped that the contacts listed will serve as links to organizations of various other types — international and national professional organizations, academic and other institutes, national NGOs and national bodies — whose work may be relevant to the topic. Some Internet information has also been included, which reflects websites available in December 1997; this information is, of course, subject to change.

UNICEF, as part of its own mandate to protect and promote children's rights, is actively involved in juvenile justice concerns. During 1997, the Child Protection Section of its Programme Division in New York – which provides support to UNICEF field offices in all special protection areas, including juvenile justice – undertook field consultations on juvenile justice in Moscow and Teheran. It has also reviewed and administered funding of juvenile justice projects in Chile, Nicaragua, Namibia and South Africa, and has contributed to international drafting procedures in this area. A review of juvenile justice activities in all UNICEF's programming countries is currently under way (to date, 70 countries have been reviewed). An Innocenti Global Seminar on the subject of juvenile justice was organized by our Centre in Florence in October 1997. A report of the meeting and several case studies will be published in 1998.

Web home page
http://www.unicef.org
A search function is available to find specific items by keywords, including information on juvenile justice.

Australian Institute of Criminology
74 Leichhardt Street
Griffith ACT 2603
or GPO Box 2944
Canberra ACT 2601
Australia
Tel.: +61 2 6260 9200
Fax: +61 2 6260 9201
E-mail: adam.graycar@aic.gov.au
Contact person
Dr. Adam Graycar
Director
Year founded
1971
Geographical scope
Australia and the States and Territories
Activities
A United Nations affiliated research institute. Compiles data on arrests, trials, pre-trial detention and custodial sentencing of children; conducts research on the level and nature of juvenile arrests, disposition of children by courts, measures to prevent crimes by children, and comparison of juvenile and adult crime.

Web home page
http//www.aic.gov.au
Contains full text of selected research papers, some of which relate to juvenile justice in Australia; criminal justice statistics; a bibliography and a list of proposed and previous conferences.

Casa Alianza/Covenant House Latin America
Apartado 1734
2050 San Pedro
Costa Rica
Tel.: +506 253 5439
Fax: +506 224 5689
E-mail: bruce@casa-alianza.org
Contact person
Bruce Harris
Executive Director, Latin American programmes
Year founded
1981 (first programme in Latin America)
1969 (Covenant House in the United States)
Geographical scope
Costa Rica, Guatemala, Honduras, Mexico, Nicaragua
Activities
Provides residential and non-residential programmes for street children, including legal defence and assistance to children under arrest, in pre-trial detention and in prison. Has initiated more than 540 criminal cases accusing security forces and judges of abuse of authority, torture and murder of street children. Publishes specific reports on issues affecting street children. Organizes training courses in areas such as the legal defence of street children.

Web home page
http://www.casa-alianza.org
Available in English, Spanish and French. Currently contains full-text excerpts from its 1997 book *Report on the Torture of Street Children in Guatemala and Honduras*, 1990-1997; list of resources on and off the Net; and information about activities and advocacy work on behalf of street children. Online resource centre being completed which will contain documentation on street children in Central America.

Defence for Children International (DCI)
P.O. Box 88
CH - 1211 Genève 20
Switzerland
Tel.: +41 22 734 0558
Fax: +41 22 740 1145
E-mail: dci-juv.justice@pingnet.ch
Contact
Anne Grandjean
Year founded
1979
Geographical scope
National sections and associate members in over 60 countries on all continents.
Activities
Coordinates legal and social defence teams, training programmes, dossier on international standards related to children's rights, and international network on juvenile justice; carries out studies on children in prison in various countries. Maintains documentation centre on children's rights issues (nearly 12,000 items); publishes a newsletter on United Nations activities concerning the protection of the rights of the child and the *International Children's Rights Monitor*.

Web home page
http://www.childhub.ch/webpub/dcihome
Contains newsletter, overview of recent periodic State Reports to the Committee on the Rights of the Child, and up-to-date information about the Committee (members, agenda, list of States Parties). Also contains full text of relevant instruments (CRC, Riyadh Guidelines, Beijing Rules, JDLs).

Human Rights Watch - Children's Rights Project
485 Fifth Avenue
New York, NY 10017-6104
United States
Tel.: + 1 212 972 8405
Fax: + 1 212 972 0905
E-mail: whitman@hrw.org
Person(s) to contact
Lois Whitman
Director
Year founded
1994
Geographical scope
Worldwide
Activities
Issues reports and carries out advocacy on police violence and arbitrary confinement of children (Bulgaria, Guatemala); police abuse and killings of street children (India); abuse of children by security forces and paramilitaries (Northern Ireland); torture of children (Turkey); the situation of children in confinement (Romania, United States); and children improperly detained in adult lockups (Jamaica).

Web home page
http://www.hrw.org
Contains information by regional office and a search-by-keyword site that links to detailed country reports.

Institute for the Study and Treatment of Delinquency
King's College London
Strand, London WC2R 2LS
United Kingdom
Tel.: +44 171 873 2822
Fax: +44 171 873 2823
E-mail: istd.enq@kcl.ac.uk
Contact person
Carol Martin
Research Development Officer
Year founded
1931
Geographical scope
A worldwide membership organization
Activities
An educational charity and membership organization specializing in all aspects of criminal justice, carries out research and seeks to bring together criminal justice practitioners, sentencers, policy makers and academics through a programme of conferences, courses, seminars, lectures, study visits and publications.

Web home page
http://www.kcl.ac.uk/orgs/istd
Contains information about ISTD (conferences, seminars, study tours, courses and meetings, publications and research).

Institut International des Droits de l'Enfant
c/o Institut universitaire Kurt Bösch
P.O. Box 4176
1950 Sion 4
Switzerland
Tel.: +41 27 203 7383
Fax: +41 27 203 7384
E-mail : institut@ikb.vsnet.ch
Contact person:
Jean Zermatten
Juvenile court judge
Year founded
1995
Geographical scope
Scholarships granted for participation in IDE activities; participants from Albania, Argentina, Austria, Benin, Bolivia, Brazil, Burkina Faso, Cameroon, Chile, Ecuador, Estonia, France, Germany, Guatemala, Guinea, Ireland, Italy, Lebanon, Lithuania, Mali, Mexico, Morocco, Romania, Senegal, Spain, Switzerland, Tunisia, Turkey, Uganda
Activities
Provides information and training on children's rights concerns; coordinates international seminars and a documentation centre on the rights of the child; facilitates contacts between participant members and organizes exchanges.
Information services
Provides information on children's rights, including IDE seminar reports.

International Association of Juvenile and Family Court Magistrates
Molenstraat 15
4851 SG Ulvenhout
The Netherlands
Tel. and fax: +31 76 561 2640
E-mail: j.vandergoes@tip.nl
Contact person
Jacob J. Van der Goes
Secretary General
Date founded
1926
Geographical scope
Affiliated associations and individual members worldwide
Activities
Organizes congresses and seminars; provides training for magistrates, judges and workers in the field of juvenile justice; carries out research in juvenile justice, family law and child protection.
Information services
Provides publications (periodical, research findings), contacts with members and member organizations, and information on ongoing research and projects.

International Catholic Child Bureau (BICE)
63, rue de Lausanne
CH- 1202 Genève
Switzerland
Tel.: +41 22 731 3248
Fax: +41 22 731 7793
E-mail: bice.ch@compuserve.com
Contact person
François Rüegg
Secretary General
Year founded
1948
Geographical scope
Latin America: Ecuador
Africa (French-speaking): Côte d'Ivoire, Guinea, Mali , Republic of the Congo, Senegal and Togo
Central and Eastern Europe: Estonia
Activities
Carries out activities related to arrest and pre-trial detention (use of remand in custody, legal and social support and assistance), prevention (community awareness), children in prison (separation from adults, educational activities, family visits, nutrition/sanitation; release if possible, or alternatives to detention) and social and professional rehabilitation (creation of centres to rehabilitate children; educational activities).
Information services
Information on BICE projects, methodology; BICE position papers.

The International Centre for Criminal Law Reform and Criminal Justice Policy
1822 East Mall
Vancouver, B.C.
Canada, V6T 1Z1
Tel.: +1 604 822 9875; +1 604 822 9522
Fax: +1 604 822 9317
E-mail: dandurand@law.ubc.ca
Contact person
Yvon Dandurand
Director of Policy Development
Year founded
1991
Geographical scope
Global, but emphasis on Asia-Pacific region (People's Republic of China, Thailand and Myanmar)
Activities
Carries out activities relating to policy development and research; technical cooperation, assistance and advisory services; public consultation and information in all areas of criminal law reform and criminal justice policy, in particular activities involving children and youth whether victims or perpetrators of crime.

Web home page
http://www.law.ubc.ca/centres/icclr
Contains information about the Centre, full text of papers and reports on searchable database, and guide to related sites.

International Centre for the Prevention of Crime
507 Place d'armes No.2100
Montreal, Quebec
Canada H2Y 2W8
Tel.: +1 514 288 6731
Fax: +1 514 288 8763
E-mail: cipc@web.net
Contact person
Irvin Waller
Director General
Year founded
1994
Geographical scope
Worldwide, with significant work to date in Europe, North America, Southern and West Africa
Activities
Assists cities and countries to reduce delinquency, violence and insecurity, harnessing best practice worldwide to solve local problems. Focuses on investing in youth and families, breaking the cycle of violence

Links

against women and children as well as promoting greater responsibility among youth as ways of making communities safer. Provides technical assistance, facilitates exchange of expertise and promotes public awareness. Publishes the *Crime Prevention Digest*, which illustrates successes, benefits and directions for prevention.

Web home page
www.crime-prevention-intl.org
Contains information about the Centre, and a selection of 100 best practices for successful crime prevention, including the who, what and how of national and local activities.

International Network on Juvenile Justice
(INJJ)
P.O. Box 88
CH - 1211 Genève 20
Switzerland
Tel.: +41 22 734 0558
Fax: +41 22 740 1145
E-mail: dci-juv.justice@pingnet.ch
Contact person
Anne Grandjean
Liaison Officer
Year founded
1997
Geographical scope
To date, over 60 partners on all continents
Activities
Facilitates the exchange of information between partners; helps coordinate initiatives in the field of juvenile justice; provides services to help States Parties to the CRC to meet international requirements (for example, training programmes); is part of the United Nations Coordination Panel for the provision of technical assistance in the field of juvenile justice. Maintains a documentation centre containing over 800 items related to juvenile justice and an organizational database on organizations active in the field.

Web home page
http://www.childhub.ch/webpub/dcihome
Contains history and aims of Network, a schedule of meetings and information about Network partners.

Office of the United Nations
High Commissioner for Human Rights
Palais des Nations
CH - 1211 Genève 10
Switzerland
Tel.: +41 22 917 3975
Fax: +41 22 917 0212
Contact persons
Luca Lupoli, Officer, Research and Right to Development Branch
E-mail: llupoli.hchr@unog.ch
Year founded
1946
Geographical scope
Worldwide
Activities
The Research and Right to Development Branch undertakes research and analysis; provides information services to other parts of the United Nations system; and develops the policy of the High Commissioner regarding, *inter alia*, the administration of juvenile justice.
The Support Services Branch provides support to United Nations human rights bodies and organs that are involved in various ways with juvenile justice. Among these are, first, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which since 1985 has investigated different aspects of the implementation of international standards on juvenile justice, submitting reports and detailed working papers on juvenile justice to the Commission on Human Rights; and, second, the Committee on the Rights of the Child, which regularly raises juvenile justice issues during its dialogue with reporting States, and which organized a thematic discussion on the subject of the administration of juvenile justice in October 1995.

Web home page
http://www.unhchr.ch
Provides access to a database containing State reports and other information relating to the committees established to monitor the implementation of the principal international human rights treaties, such as the Human Rights Committee, the Committee against Torture and the Committee on the Rights of the Child. A full-text search capacity is available.

Penal Reform International
169 Clapham Road
London 8W9 0PU
United Kingdom
Tel.: +44 171 840 6413
Fax: +44 171 582 4396
E-mail: headofsecretariat@pri.org.uk
Contact person
Helen Towner
Head of Secretariat
Year founded
1989
Geographical scope
Mainly developing countries. Sub-Saharan Africa, Latin America, Central America, Eastern Europe. Offices in Paris and Puerto Rico
Activities
Works with national NGOs to set up projects to promote better treatment of prisoners; promotes international norms and guidelines on human rights and criminal justice; organizes conferences and seminars to bring together penal reform activists.
Information services
Publishes newsletters and annual reports about international developments in penal reform.

Rädda Barnen
(Swedish Save the Children)
Torsgatan 4
S-107 88 Stockholm
Sweden
Tel.: +46 8 698 9000
Fax: +46 8 698 9012
Person(s) to contact
Michaela Sjögren-Westlund/Anna Gravers
E-mail: michaela sjogren-westlund@rb.se
Year founded
1919
Geographical scope
Bangladesh, El Salvador, Ethiopia, Guinea Bissau, Pakistan, Peru, South Africa, Sudan, Sweden, Viet Nam, Yemen and other Middle Eastern and Eastern European countries
Activities
Cooperates with actors at local, national and international level; lobbies; trains personnel within the judicial system such as police, judges and social workers; conducts surveys on the situation of children in conflict with the law in nine countries; issues newsletter concerning juvenile offenders.

Web home page
http://www.rb.se
Contains list of publications, information about world congresses, international symposiums and other major events; and links to other child-related sites.

United Nations African Institute for
the Prevention of Crime and
the Treatment of Offenders (UNAFRI)
P.O. Box 10590
Kampala
Uganda
Tel.: +256 41 221 119 or 285 236
Fax: +256 41 222 628
E-mail: unafri@mukla.gn.apc.org
Contact persons
Isam E. Abugideri
Director
Year founded
1989
Geographical scope
Africa
Activities
Carries out training and human resources development activities and comparative action-oriented research. Undertakes policy development and provides advisory services to governments on request.

Information services
Provides information and documentation services aimed at raising consciousness of law enforcement personnel and bringing about the observance of human rights in the administration of criminal justice. Disseminates knowledge and information on contemporary crime levels.

United Nations Interregional Crime and Justice Research Institute (UNICRI)
Via Giulia 52
00186 Rome
Italy
Tel.: +39 6 687 7437
Fax: +39 6 689 2638
E-mail: unicri@unicri.it
Contact persons
Herman F. Woltring
Director
Renaud Villé
Associate Research Officer
Year founded
1968 (under the name of UNSDRI)
Geographical scope
Worldwide
Activities
As the interregional institute of the United Nations Crime Prevention and Criminal Justice Programme Network, carries out research, training and technical cooperation activities in the field of crime prevention and criminal justice; implements activities related to minority youth and the administration of juvenile justice. Maintains a large library, which is available for consultation.

Web home page
http://www.unicri.it
Contains news about ongoing and completed projects, conferences, meetings. Also lists publications and information about long-distance services and facilities (by mail/fax and Internet).

United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD)
Calle 17, Avenidas 6 y 8
Edificio del OIJ
Corte Suprema de Justicia
3er. piso. ILANUD
P.O. Box 10071-1000
San José
Costa Rica
Tel.: +506 257 5826
Fax: +506 233 7175
E-mail: ilanud@micron.ilanud.or.cr
Contact person
Dr. Rodrigo París Steffens
Director General
Year founded
1975
Geographical scope
Latin America
Activities
Research, technical assistance, particularly in relation to children in prison. Compiles and makes available data on countries of the region.

Web home page
http://www.ilanud.or.cr
Contains details of programmes and projects in five areas (citizen safety, environmental offences and misdemeanours, public corruption, new forms of organized crime, and improvements in the administration of justice), publications and current agenda.

United Nations Office at Vienna
Centre for International Crime Prevention
Office for Drug Control and Crime Prevention
Vienna International Centre
Wagramerstrasse 5
P.O. Box 500
A-1400 Vienna
Austria
Tel.: +43 1 21345 4269
Fax: +43 1 21345 5898
Contact persons
Ralph Krech
Crime Prevention and Criminal Justice Officer
E-mail: rkrech@unov.un.or.at
Tel: +43 1 21345 4283
Vincent Del Buono
Interregional Adviser
E-mail: vdelbuono@cpcjd.un.or.at
Tel: +43 1 21345 4194
Year founded
The Centre was created on 1 November 1997. It is the successor to the Crime Prevention and Criminal Justice Division.
Geographical scope
Worldwide
Activities
Acts as coordinator and arbiter of the United Nations Crime and Justice Information Network (UNCJIN). Objectives of UNCJIN are to facilitate information exchange and interlinkages among policy makers, planners, practitioners, scholars and other experts, as well as United Nations national correspondents and research institutions; to provide gateways permitting the transfer of knowledge, including research results; to link criminal justice documentation centres and libraries around the world; and to establish and expand computerized national and local criminal justice systems.

Web home page
http://www.ifs.univie.ac.at/~uncjin/uncjin.html
Contains full text of UN documents, various statistical sources, country information, laws, treaties and constitutions, and access to numerous other UN and non-UN information sources in criminal justice and crime prevention.

World Organisation Against Torture
P.O. Box 119
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Year founded
1988
Geographical scope
Global
Activities
The world's largest network of human rights organizations fighting against all forms of torture; cruel, inhuman or degrading treatment; forced disappearances; summary executions or other more subtle forms of violent repression. Issues urgent appeals about torture involving children. Country reports, originally submitted to the Committee on the Rights of the Child, highlight *de facto* situations of grave abuse of children's rights and legislative measures that carry risks for children, and provide critiques of reports presented by the governments in question.

Web home page
http://www.omct.org
Contains list of programmes and publications as well as information about its Children's Programme, including urgent appeals on behalf of children, urgent assistance to child victims and reports to the Committee on the Rights of the Child.

On the Web
UNOJUST
Sponsored by the National Institute of Justice of the U.S. Department of Justice and the Bureau for International Narcotics and Law Enforcement Affairs of the U.S. Department of State, UNOJUST is a technical assistance programme designed to help member nations use the Internet to share criminal justice knowledge. Access to searchable archives, databank, and wealth of other information, including reports, statistics and articles related to juvenile justice.
http://www.unojust.org

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Article 37
States Parties shall ensure that:
a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40
1 States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2 To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
i) To be presumed innocent until proven guilty according to law;
ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4 A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Our next *Innocenti Digest* will be on inclusive education for children with disabilities.
We invite comments on the *Digest* and suggestions on how it could be improved as an information tool.

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The UNICEF International Child Development Centre, often referred to as the *Innocenti Centre*, was established in Florence, Italy, in 1988. The Centre undertakes and promotes policy analysis and applied research, provides a forum for international professional exchanges of experiences, and disseminates ideas and research results emanating from its activities. On a highly selective basis, in areas of programme relevance, the Centre also provides training and capacity-building opportunities for UNICEF staff and professionals in other institutions with which UNICEF cooperates. The Centre is housed within the *Spedale degli Innocenti*, a foundling hospital that has been serving abandoned or needy children since 1445. Designed by Filippo Brunelleschi, the *Spedale* is one of the outstanding architectural works of the early European Renaissance.

This issue of the *Innocenti Digest* has been compiled principally by Nigel Cantwell, who is currently based at ICDC. The founder of Defence for Children International (DCI), he participated actively in the drafting of the CRC and JDLs and has carried out many consultancies for UNICEF on juvenile justice and other children's rights issues.

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PAST ISSUES

ID 1: Ombudswork for Children, 1997, 20 pp.
This *Digest* provides information on the recent and expanding phenomenon of ombudsmen/commissioners for children. It discusses the history of ombudswork; patterns in the origin, development, mandate and status of the different types of ombudsman offices; the functions of ombudswork in theory and practice; and characteristics essential to this kind of work. It ends with details of 16 existing ombudsmen/commissioners for children and a selected bibliography on the topic.

ID 2: Children and Violence, 1997, 24 pp.
This *Digest* explores violence by and to children, using the Convention on the Rights of the Child as its framework. The focus is on interpersonal violence, both intrafamilial and extrafamilial. Sexual abuse and exploitation, children's involvement in armed conflict, the prevalence of violence involving children and the reasons that children become violent are among the main issues explored. The *Digest* ends with a discussion on strategies for combating violence involving children. Contact and programme details of regional and international NGOs working in this area, and a compilation of selected readings are also provided.