

KIDS BEHIND BARS

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

(Executive Summary)

editor Stan Meuwese

with the support of Plan International The Netherlands.

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*An international study on the situation of children in prison with country reports from:
Albania, Argentina, Bulgaria, Burundi, Canada, Costa Rica, Ghana, Germany, Indonesia, Kenya, Kyrgyz Republic, Mauritius, The Netherlands, Palestine, Pakistan, Philippines, Romania, Spain, Tanzania, Ukraine, United Kingdom, United States of America*

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Preface

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

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

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

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

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

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

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

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

Stan Meuwese
executive director Defence for Children International The Netherlands

Executive summary

Introduction

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

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

The unwanted child

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

Children deprived of liberty

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

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

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

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

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

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

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

Need for research first

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

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

Definitions

The following definitions are used in this report:

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

International standards

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

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

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

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

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

The Havana Rules are based upon the following fundamental principles:

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

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

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

Other international rules, guidelines and documents

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

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

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

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

General

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

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

Definitions

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

Children under arrest or awaiting trial

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

The management of juvenile facilities

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

Admission, registration, movement and transfer

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

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

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

Classification and placement

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

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

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

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

Physical environment and accommodation

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

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

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

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

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

Education, vocational training and work

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

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

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

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

Recreation

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

Religion

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

Medical care

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

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

Notification of illness, injury and death

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

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

Contacts with the wider community

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

Limitations of physical restraint and the use of force

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

Disciplinary procedures

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

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

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

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

Inspection and complaints

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

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

Return to the community

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

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

Personnel

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

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

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

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

Country reports

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

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

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

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

Conclusions and perspectives

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

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

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

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

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

Recommendations and actions

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

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

International Governmental Organisations

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

International Non-Governmental Organisations

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

National Governments

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

National Non-Governmental Organisations

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

Local Governments

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

Local Non-Governmental Organisations

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

Researchers and Trainers

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

A global campaign

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

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

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

1. Introduction

1.1. A need to know

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

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

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

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

The unwanted child

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

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

Children’s needs and rights

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

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

Juvenile justice

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

Children deprived of liberty

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

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

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

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

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

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

Instruments

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

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

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

Violations

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

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

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

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

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

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

Death penalty cases

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

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

1.2. Children in prison research and action

Need for research first

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

Definitions

This study uses the following definitions:

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

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

1.3. Methodology

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

Phase I

During the orientation phase, DCI:

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

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

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

Phase II

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

The report highlights areas which require urgent attention:

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

1.4. Content

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

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

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

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

2. International standards

2.1. The Convention on the Rights of the Child

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

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

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

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

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

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

Juvenile justice

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

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

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

Article 37

States Parties shall ensure that:

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

Article 39

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

Article 40

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

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

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

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

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

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

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

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

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

2.3. Other international documents

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

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

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

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

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

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

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

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

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

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

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

General

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

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

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

Definitions

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

Children under arrest or awaiting trial

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

The management of juvenile facilities

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

Admission, registration, movement and transfer

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

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

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

Classification and placement

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

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

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

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

Physical environment and accommodation

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

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

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

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

Education, vocational training and work

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

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

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

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

Recreation

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

Religion

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

Medical care

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

Notification of illness, injury and death

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

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

Contacts with the wider community

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

Limitations of physical restraint and the use of force

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

Disciplinary procedures

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

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

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

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

Inspection and complaints

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

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

Return to the community

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

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

Personnel

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

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

4. Comparative overview

4.1. Introduction

The 22 country reports in chapter 3 reflect the diversity of juvenile justice systems worldwide. Unfortunately, in many of these countries, the situation of children deprived of their liberty does not meet international standards. Often, children suffer from maltreatment, live under unhygienic conditions, are detained together with adults, and do not get enough to eat. Of course, there are also examples of good practises which need to be highlighted, too.

This chapter provides a comparative overview of the national research findings on a number of key issues: international and national laws; numbers and registration; sanctions; age of criminal responsibility; separate juvenile justice system; police and pre-trial detention; conditions in closed institutions; legal protection; education, work, sports and recreation; contact with family; staff training; and children's rights violations. For more detailed information on each of these items per country, see chapter 3.

4.2. International and national laws

National laws in relation to imprisoned children differ from country to country. Certain countries have specific laws for minors and a special juvenile justice system, others rely on laws included in more general legislation. Often, several ministries are responsible for detained minors, including the ministries of legal affairs, interior, health, education and social affairs, but the exact responsibilities vary from country to country.

In most countries, the laws are in line with the Convention on the Rights of the Child (CRC) or the countries are in the process of working towards compliance. In practice, however, implementation of the CRC is lacking and, in the country reports, violations of international norms and standards are frequently noted by the experts.

The CRC has been ratified by all of the countries involved in this study, with the exception of the United States, which has only signed the CRC. Several of these countries, however, have submitted reservations which state that, under certain circumstances, minor detainees do not have to be separated from adult prisoners.

United States: Although the United States has made a significant contribution to the development of the current international system for the protection of human rights, it still stands alone against the rising tide of international concern in this area by failing to ratify key human rights treaties, including the Convention on the Rights of the Child.

The Netherlands: The Netherlands was the 167th country to ratify the Convention on the Rights of the Child, in 1995. The Dutch government proposed to parliament to make a reservation to article 37 in order to have the possibility to detain minors and adults together in cases of emergency or lack of cells. The parliament rejected this proposal, however.

Germany: The legal position of minors who have committed an offence is regulated in the German Criminal Code for Minors, which deals with both formal and material aspects. This Code is part of the Law of the Federal Republic of Germany and applies in all of the 16 states.

Kenya: There is only one Juvenile Court which is situated in Nairobi. In other towns, adult courts are converted to juvenile courts on an ad hoc basis. Under the Children and Young Persons Act, children may be deprived of their liberty when they have been in conflict with the penal law, when they need social care, or in cases of neglect or abuse. In these instances, children may be placed in a juvenile remand home awaiting trial.

Mauritius: The Mauritius juvenile justice system deals with 11-18 year olds. There are special judicial arrangements regarding offences committed by children under the age of 14. Detained minors below 14 appear before a magistrate in chambers and the proceedings are held in camera (no public and no press is admitted). In practice, there are no juvenile courts and the magistrates do not have any specialist training in cases involving young offenders.

Ukraine: Matters concerning the administration of juvenile justice are laid down in section 8 of the Ukrainian Code of Criminal Procedure. In general, juvenile justice is administered in accordance with the general rules governing the procedure in criminal cases. Juveniles cases are tried in courts of general jurisdiction. The participation of a defending council is permitted from the moment the charge is brought (article 44) and, in the case of arrest, from the moment of arrest. Under article 8 of the Pre-Trial Detention Act, minors are detained in investigation blocks separately from adults. As an exception, no more than 2 adults who are being prosecuted for the first time in connection with non-serious crimes may, with the sanction of the prosecutor, be placed in a cell together with minors. This is in order to avoid overcrowding.

United Kingdom (England): The legal position of minors is regulated, *inter alia*, by the Crime and Disorder Act 1998 and the Prison Service Order 4950, which sets forth targets for the care of children in prison. Children in prison are excluded from the main piece of child protection legislation, the Children Act 1989. The government also has a Crime Reduction Strategy dealing specifically with young offenders.

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

4.3. Numbers and registration

Recent studies say that approximately one million children are deprived of their liberty worldwide (Cappelaere, 2000). Others say this estimate is probably too low. Clear figures are not available. Most of the questionnaires and studies used for this research do not give any clear statistics. It turns out that, also at national level, registration is often poor. If statistics are given, it is often piecemeal data covering a few number of years or a certain region in the country. That would could be found in the country studies and available reports is listed below.

Argentina: There are approximately 20,000 minors in juvenile institutions. The exact number of children held in police cells is not available. According to the latest data available from the General Attorney of the Supreme Court of the Province of Buenos Aires, on 31 December 1999, 1,737 minors under 18 years of age were deprived of their liberty on penal grounds in Buenos Aires. Out of this total, 1,556 boys and 40 girls were confined in special institutions for minors, 85 boys and one girl were confined in prison units, and 55 boys and no girls in police stations.

Tanzania: In the year 2000, 880 minors were held in the prison system. According to an assistant prison commissioner, the minors held in prison fall mainly into 4 categories: born in prison; living with their imprisoned mothers; children under 16 years of age, including some held for being street children; and young prisoners aged between 16 and 21 years.

United States: On a randomly chosen day in 1999, 107,000 children were recorded as being incarcerated in the United States. Of these, 14,500 children were held in adult facilities, 9,100 in local jails awaiting trial and 5,400 in adult prisons. The remainder were in juvenile facilities.

Romania: According to the Romanian Prison Administration Web Pages, the following data was officially recorded as of February 2001:

- in the 34 prisons of the country: 904 minor detainees;
- in the 5 prison hospitals of the country: 20 minor detainees;
- in the 2 re-educational centres: 564 minor detainees.

Ukraine: The number of youngsters in prison on penal grounds in the year 2000 was 3,200. Of this total only 160 were girls.

The Netherlands: In the year 1991, 714 minors were placed in closed institutions, of whom 291 based on criminal law and 423 on family law. The figures for 2001 are 1,708 in total: 970 based on criminal law and 738 on family law. This shows an enormous raise of the total number and a remarkable shift from family to criminal law.

United Kingdom (England): In the United Kingdom, 7,653 minors were sentenced to prison in 1999. This figure is up from the 5,464 sentenced to custody in 1995. At any one time, around 4,000 minors are serving prison sentences for violating criminal law, with around 2,000 minors being refused bail and thus spending some time in prison awaiting trial.

4.4. Sanctions

Sanctions for juveniles recognised as having infringed the penal law vary extremely worldwide. Imprisonment is used in all countries and very often not as a measure of last resort. Most country studies give examples of deprivation of liberty for simple cases of theft and other first offences. In some countries, such as (in certain States of) the United States, the death penalty may be imposed for offences committed by persons below the age of 18 years.

Germany: Detention of a minor should be a measure of last resort and primarily alternative sanctions should be used. Detention is only used if the minor has a lot of “criminal energy” (Schädlichen Neigungen) or in cases of serious crimes. The following alternative sanctions are used: community service (in the form of a work penalty and/or in the form of an educational penalty), compensation orders for the victim/restorative justice. This system seems to work well.

Costa Rica: Under the Juvenile Justice Penal Law, 3 different kinds of deprivation of liberty can be sanctions for penal code crimes:

1) The imprisonment of minors in a special Institution Centre. This is the penalty for minors who are sentenced to more than 6 years of imprisonment.

The maximum sanction is 15 years for juvenile offenders aged 15-18 years. The maximum sentence for minors aged 12-15 is also very high, namely 10 years.

2) Imprisonment in leisure time. This measure must take place in a Special Centre in the minor’s free time during the week. The total period of time for this type of detention may not exceed one year.

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

The Juvenile Justice Law introduced alternative sanctions. The law gives priority to a wide range of alternative sanctions: community service in the form of an educational penalty and compensation orders. The law provides various sanction possibilities in order to avoid, when possible, the imprisonment of youngsters. The Alternative Sanction Programme was created in August 1996, with the purpose of monitoring and supervising the practice of alternative sanctions. This programme is meant for minors aged 12-18 across the entire country.

Ghana: There are alternative sanctions within the juvenile justice system, including the following: compensation orders for the victim/restorative justice; sending the juvenile to an industrial school or an industrial institution established under the law of Ghana; ordering parents to guarantee the juvenile’s good behaviour; entering into recognisance. Nonetheless, many youngsters still end up in prison.

Ukraine: Article 24 of the Criminal Code prohibits the death penalty for minors. Persons below the age of 18 may not be sentenced to more than 10 years deprivation of liberty (article 25). Minors may not be detained in solitary confinement cells. However, many children serve long sentences in the military regime. Convicted minors serve their term of punishment in educational-labour colonies under one of 2 regimes: general or reinforced. The conditions in such colonies are designed to ensure the inmates’ social reintegration, including socially useful labour, social educational work, provision of general education and vocational training.

Indonesia: Studies conducted in 1997 suggest that juvenile offenders brought before the courts in 1995-1997 tend to be sentenced to prison (CRC First Periodic Report). Irwanto (1998) reported that, among 1,727 offenders aged 16 and younger in 27 provinces in Indonesia, 82.5% were sentenced to prison, 10.5% received probation, and only 4.04% were returned to their parents. The First Periodic Report on the implementation of the Convention on the Rights of the Child also suggests that 99.3% of juvenile offenders in 1995, 98.7% in 1996 and 99.8% in 1999 were sentenced to prison. When observing the 1995-1997 statistics on the severity of the prison sentences (Table 4), it is clear that most juvenile offenders received a sentence of below one year and that no one was sentenced to life imprisonment. The number of those sentenced to 5 years or more, however, is over 10% of the total number, which is quite

concerning. In addition, males or boys over-dominate the population, including in the group of children who received over 5 years of imprisonment.

4.5. Age of criminal responsibility

In the 22 countries involved in this study, the age of criminal responsibility varies from 7-14 years of age.

Indonesia: The purpose of the Juvenile Court Act is to provide umbrella protection to children accused of, or recognised as having infringed the penal law. The enactment of the law is not without criticism. The definition of a child, for example, refers to marital status. This puts girl children at more risk of being treated as adults. The age of criminal responsibility is very low - 8 years old - and is inconsistent with the Beijing Rules and the Riyadh Guidelines.

United Kingdom (England): UK law treats minors differently according to their age:

children under 10 years of age are not held criminally liable;

minors aged between 10 and 16 years are subject to special juvenile laws. These provide, for example, that the criminal courts may imprison minors only from the age of 12. Minors aged between 12 and 15 years will be held in a local authority secure unit or in a secure training centre. Here, the standards of care are higher than those applicable to minors held in prison. Minors aged 15 years and over will be held in a designated juvenile unit, usually located within an adult prison and, hence, losing the protection that they would otherwise have had under the Children Act (see above); and

17 year olds are sentenced under juvenile law but are dealt with under adult legislation with regard to police detention and remand provision.

Albania: The minimum age of criminal responsibility is 14 years of age. The majority of the minors are in prison for infringing the penal law. The most common offence for which minors are held in prison was found to be theft.

Tanzania: Under Tanzanian law, the age of criminal responsibility is now 10 years; until 1998 it was 14 (or in certain cases 12) years of age, although courts may not impose a life sentence or the death penalty on a minor. In addition, minors who are under 16 benefit from special procedural rules designed to ensure that their best interests are respected both on arrest and later in the judicial process.

Spain (Catalonia): The minimum age of criminal liability in Catalonia is 14 years and the maximum is 18 years. Due to the flexibility of the law, minor detainees can remain under the protection of the juvenile justice system until they are 23 (depending on the length of sanction).

The Netherlands: In the Netherlands, children are held responsible under criminal law as from the age of 12. Between 12 and 18 a separate juvenile justice system is active, which can also be used for youngsters up to 21.

Costa Rica: The age of criminal responsibility is 12.

4.6. Separate juvenile justice system

Most states have, at least on paper, a separate Juvenile Justice System. There are also countries without a separate system including Burundi and Liberia.

Burundi: In Burundi there is no special juvenile justice system. Coupled with the lack of a separate system for juveniles, is the lack of any distinction between adult prisons and juvenile institutions. Therefore, minor detainees are held together with adult inmates.

Tanzania: In Tanzania, laws regulating a separate juvenile justice system are in place, but it has limited facilities specifically for minors in the juvenile system: a single donor funded juvenile court has operated since 1998 and there are 5 juvenile remand centres. In other cases, minors are tried and held in the adult system.

Albania: The imprisoned minors between 14-18 years of age are in on-going contact with the adult prisoners. They are held in a specific closed part of an adult prison but the facilities such as showers, kitchen and playgrounds are shared. Male and female minor detainees are held separately. Five to 9 persons are held per cell.

Argentina: The law makes a distinction between minors under 16 years of age and from 16 years of age up to their 18th birthday. For those under 16 years of age, the applicable law is the valid tutelage legislation (the 1919 Minor's Law, 10.903), which fails to incorporate children's rights into Argentinean law. This law grants judges an absolute power of discretion to decide what will happen to minors on the basis of their personal circumstances, without any reference to an objective code of the sentences to be imposed based on the type of offence committed. It allows a judge to rule that a minor under 16 years of age who has committed murder be returned to his parents, and to imprison another, such as a street child, who has not committed any crime.

Bulgaria: Criminal law treats juveniles differently from adults. The legislator stipulates different kinds of punishment as well as a different procedure for their application. Juveniles are divided into 2 groups: 14-16 year olds and 16-18 year olds. They bear reduced criminal responsibility compared to adults and the degree of reduction diminishes for the 16-18 group. The legal status of juveniles deprived of liberty is regulated by the Law on the Execution of Punishments (LEP). This law stipulates that the objective of the execution of the "deprivation of liberty" punishment is primarily re-education and preparation for socially useful work. This objective is different for adults, whose prison sentences have also the goal of segregation or prevention.

Mauritius: The Juvenile Offenders Act provides a number of alternatives to imprisonment for convicted juveniles. The court can choose among:

- a. community service;
- b. discharge of the offender;
- c. sending the offender to an industrial school;
- d. ordering the offender to pay a fine, the damages or costs; if he/she is in employment in cash or if not otherwise;
- e. ordering the parent or guardian of the offender to pay a fine, the damages and costs;
- f. committing the offender to custody in a place of detention provided under the Juvenile Offenders Act;
- g. dealing with the case in any other manner in which it may be legally dealt with.

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

Canada: The core principles of Canada's new Youth Criminal Justice Act state that: protection of society is the paramount objective of the youth justice system, which is best achieved through prevention, meaningful consequences for youth crime and rehabilitation. The Government of Canada is working to establish a renewed youth justice system - one that commands respect, fosters values such as accountability and responsibility and makes it clear that criminal behaviour will lead to meaningful consequences.

4.7. Police and pre-trial detention

Many children are kept in pre-trial detention without knowing how long they have to stay. Practice is often not in line with laws and regulations. Minors are not always treated well by the police.

Albania: In 2000, 479 thefts took place. The total number of offences committed by minors aged 14 to 18 years was 795. The vast majority is still awaiting trial. The maximum period of pre-trial detention is 12 months.

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

Ghana: Some juveniles are kept in juvenile remand homes pending trial of their cases while others are kept in police cells together with adult criminals.

Kenya: According to reports of Human Rights Watch, Amnesty International and children's rights organisations, once arrested, street children are held under deplorable physical conditions in crowded police station cells, often without toilets or bedding, with little food and inadequate supplies of water. They are almost always mixed with adults, beaten and harassed by police in the station, and held for

periods extending from several days to weeks without any review of the legality of their detention by judicial authorities.

Indonesia: There are instances in which the law is used by corrupt officers to extort offenders. Observations in Jakarta and elsewhere, for example, indicate that the police or district security officers may arrest suspects or detain the subjects - such as children involved in prostitution and suspected drug users - and release them when they negotiate their way out.

4.8. Conditions in closed institutions

Housing

The housing situation differs extremely, for example from 50 minors in a cell in bad conditions to private rooms with all facilities (including radio/tv). Most reports contain critical observations about housing. Overcrowded prisons are a common phenomenon in many developing countries. In many states, minors are detained with adults in violation of article 37(c) of the Convention on the Rights of the Child (CRC).

Burundi: In Burundi, cells are small, overcrowded and shared with adults.

Canada: One legal protection for children laid down in the CRC has already proved to be problematic for Canada. The government made a reservation to article 37(c) which relates to the provision of separate detention facilities for adult and juvenile offenders. Canada has accepted the general principles of the article, but reserves the right not to detain children separately from adults where this is not appropriate or feasible.

Kenya: In Nakuru, minors are deprived of their liberty in dormitories. Each dormitory is about 7 square metres, has bunk beds and is provided hospitality to 25 young persons. Not all of the dormitories have toilet and washing facilities. Central heating and/or air conditioning are not available.

Liberia: Detained minors are not held in a specific closed part of an adult prison, but share the same cell together with adult inmates. As reported, more than 50 minors are held in a cell without toilets and washing facilities.

United States: In the Baltimore City Detention Centre, Maryland (an adult detention centre housing some 150 children), male children are housed in the men's detention centre and females are housed in the women's detention centre. The 2 juvenile sections are subdivided into 3 areas: a section for the general population, one for those under protective custody (i.e. for those inmates who are particularly vulnerable or have been threatened by other juveniles) and an administrative segregation section.

Mauritius: The Probation Home for Girls in Curepipe is a semi-open institution for girls aged between 11-18 years. The girls are accommodated in a common dormitory that contains toilet and washing facilities. There is also a room for recreation. Central heating and air-conditioning facilities are not available.

Pakistan: Overcrowding is a great matter of concern. In the whole country there is only one Borstal institution and 2 certified schools.

Romania: It is reported that, in one prison, 8-28 minor detainees are held per cell. Toilets are outside the dormitory and the detainees must be accompanied by a guard to get there. There are no data available on the exact size of the cell.

Spain (Catalonia): L' Alzina in Palau de Plegamans is a closed institution for males with a total capacity of 55 places. In February 2002, 32 minors were being held there. L' Alzina has 25 single and 15 double cells with toilets, washing facilities (shower and taps), central heating and air conditioning. The size of each cell is 4x3 metres. There are 12 square metres available per person in a single room and 6 square metres available per person in a double room.

Ukraine: The youth institutions are housed in very old buildings, which are in poor and often very bad condition.

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

Food

The quality and quantity of food varies. In most developing countries, there is a lack of variety and vitamins, and often there is not enough. In most western countries such as The Netherlands and Canada,

the food is good and sufficient, also according to most youngsters living in the institutions. Some institutions have projects whereby the youngsters, on certain days, can cook for themselves.

Ghana: At the Accra Borstal Home in the capital, where 150 inmates are kept, food is provided free of charge from a central kitchen to the detained minors on a 3-times-a-day basis. The food is examined daily to ensure safety, adequacy and quality by the matron of the institution. But cleanliness rules are not observed regularly by the prison officers.

Liberia: Food is theoretically provided by the administration on a once-a-day basis. The quantity is quite inadequate. Food frequently runs out and prisoners must purchase their own recipients.

Romania: According to estimates, the food is not adapted to the nutritional needs of a child.

Ukraine: The support of the Department for material support, food etc. is very minimal and mainly covers only the salaries of the personnel. This has impact on the quality and quantity of the food.

United States: Complaints in the Baltimore City Detention Centre mainly concern the insufficient quantity of food. Many children need to supplement their regular meals with food purchases.

Health care

Health care in one form or another is always provided, but most of the time this care is not sufficient. Circumstances such as bad hygiene and housing result in more sickness and disease.

Burundi: Medical care and sanitation are cruelly lacking in the prisons in Burundi.

Kenya: Minors are medically screened for physical and mental health problems when they enter the juvenile remand home. There is medical staff available but because of the lack of a hospital or a health care unit, in matters of emergency, minors are transferred to the provincial general hospital. Drug users of glue and marihuana seem to be a matter of concern. It has been reported that all minors were found to sniff glue on admission. Tuberculosis victims have been reported as well.

United Kingdom (England): The main health problems experienced by minors in prison in the United Kingdom are drug and alcohol abuse related as well as to do with mental health. Tuberculosis and skin diseases are not an issue. Inmates get drugs from visitors and from other inmates who have been out of the prison to court. Drug users are not held separately from other minors. Some, but not all, prisons offer drug therapy programmes. It is not clear how many minors in prison have HIV-AIDS.

Mauritius: The girls in the Probation Home for Girls in Curepipe are medically screened when they enter the Probation Home for both physical and mental health problems. The screening procedure takes place periodically. There have been no reports of suicide victims during the last 3 years, but it is claimed that sometimes detained girls are adopting suicidal behaviour.

Romania: In Gaesti re-education centre, detained minors are screened medically in a special health care unit. This happens when they enter the centre, but it concerns physical problems only.

Hygiene

Hygiene is another matter that causes concern over the health and well being of kids living behind bars. Some of the interviews and reports show that hygiene conditions can be deplorable.

Burundi: The hygiene conditions seem to be deplorable. There are no showers but only cans with water are available. In Burundi prisons deprivation has reached extremes as there is no soap, no toilet paper, no housecleaning products. Minor detainees have to pay, which is not possible for them. There are inadequate bathroom and toilet facilities. The water supply does not work efficiently and the hot water supply is breaking down. The scarcity of soap, toilet paper and cleaning products leads to serious hygienic problems.

Tanzania: There is no medical screening of new prisoners and serious health problems exist at the Juvenile Remand Prison - Dar-Es-Salaam. Hygienic standards are low, which also results in diseases. The more serious diseases are HIV-AIDS, hepatitis and tuberculosis. Drug abuse (mostly marihuana) and suicide attempts are another problem.

Spain (Catalonia): In L' Alzina in Palau de Plegamans (closed institution for young males), prisoners take a bath every day. The water supply works efficiently and there is warm water as well. The standards of hygiene in L' Alzina seem to be high. Toilets and showers are reported to be clean. Housecleaning products, toilet paper and soap are distributed free of charge.

4.9. Legal protection

Legal aid

Legal aid or intervention from probation officers is frequently lacking for juveniles in conflict with the law. Basic principles are often not met. Children are often not even informed of their rights.

Tanzania: The children held in the Dar-Es-Salaam prison may see a lawyer once a week. However, there are no telephone facilities, radio, television, books, newspapers or magazines.

Catalonia: Minors deprived of their liberty in Catalonia's institutions have the right to complain officially about their treatment. The complaints are sent to the inspectorate of the Ministry of Justice. These issues are sometimes - but not systematically - mentioned in the annual reports of institutions. Minors are entitled to legal aid. Lawyers are allowed to visit them whenever necessary.

United Kingdom (England): Minors detained in the United Kingdom have the right to legal aid and to receive as many visits as necessary from their lawyer.

United States: Detainees are allowed only attorney visits and receive no commissary privileges.

Disciplinary actions

Some of the disciplinary measures and procedures used in prisons are in violation of human rights. Sometimes torture is used. In some countries, this has resulted in cases of death. Placement in closed or solitary confinement happens quite often, in various settings quite arbitrarily, and with no complaint mechanisms in place.

Burundi: Placement in an isolation cell is the most common punishment. Its use is often arbitrary and left to the discretion of the director or the correctional staff. In addition, beating is a kind of formal violence that is allowed to maintain order.

Liberia: The Constitution prohibits torture and other degrading treatment, but according to reports detainees are tortured while in detention. Victims reported being held in water-filled holes in the ground, being injured when fires were kindled on grates over their heads, being urinated on, and suffering beatings and sexual abuse. Regarding incarcerated children, corporal punishment takes place above all.

Albania: Corporal punishment, placement in an isolation cell, deprivation of visits and extra work (cleaning up, washing the dishes, etc.) are the most commonly adopted disciplinary measures. Detained minors can officially complain about their treatment but only to an ombudsman. Monitoring bodies do not make annual reports.

United Kingdom (England): In terms of discipline, common measures are placement in an isolation cell, placement out of a group into their own cell, and deprivation of privileges such as television, association and spending money. Until fairly recently, prison officers were able to add days to a minor's prison sentence for misbehaviour and used this, or the threat of this, as a disciplinary measure. Many prison officers blame the loss of this disciplinary tool for increasing levels of disorder in juvenile prisons in the country. Although corporal punishment is not permitted, there is a high incidence of complaints that prison staff do use violence and abuse to discipline minors in prison. There are also concerns that bullying, abuse and violence is taking place between the prisoners themselves.

4.10. Education, work, sports and recreation

Through education and work young people in conflict with the law can learn important skills with which to continue their lives in society. Unfortunately, such facilities and possibilities for youngsters are frequently lacking. This differs per region. In most western countries, education, possibilities to learn working skills and recreation are well provided. But in Tanzania, for example, it is reported that children are subjected to hard labour while detained.

Albania: Most detained minors are denied the right to education and work. Bullying, abuse and torture is used against them by the stronger inmates and by the correctional staff as well. Depression is reported to be the major health problem in prison.

Germany: Education is provided. In addition, minors receive physical training. There is a special area where different kinds of sports can be played. Alternatives for those who are not interested in sports are music, handicraft and discussion groups. Radio, tv and cd players are allowed. There is also a library.

Ghana: Formal education is provided for school children who become offenders, and vocational training for non-school children. On average, minor detainees have only followed a few grades of elementary school. They receive some vocational training during their imprisonment in areas like wood works, leather works, draughtsmanship, electrical installation, ceramics. etc.

Kenya: Education opportunities are extremely limited and vocational programmes do not exist. The average educational level of minor detainees is a few grades of elementary school. They have to work in cleaning- and cooking facilities 4 hours per day. They do not receive any payment or other privileges for this. In Nakuru Juvenile Remand Home, the opportunities for sports and recreation are few. Minors receive daily exercise in the open air for 4 hours every day. During their free time they can play soccer in a special field of the institution.

Pakistan: It is claimed that only about 10% of the children in the borstal are attending school classes.

Tanzania: The inmates are required to work between 8-10 hours a day doing heavy work such as farming, digging, fetching water and firewood, and cleaning houses and toilets. They are not paid for this, although they do gain other privileges.

United Kingdom (England): The law aims to ensure that imprisoned minors are educated during their time in prison. Provision of vocational training and work experience is at the discretion of each institution. Some provide it, others do not. (cf. NAYJ info which states that educational and vocational training and the provision of work is obligatory “by prison orders and contracts only”).

4.11. Contact with family

Family visits are not always allowed or can be impossible because of long distances between the prison and the place where the parents or other family members live. In some countries, parents do not visit their children because of shame or lack of interest, or because they are not able to.

Germany: Family visits are allowed once a week. Exceptions are possible. There are no restrictions on access to legal aid.

Mauritius: Family visits are authorised at least once a week in the Probation Home for Girls in Curepipe. Girls are also allowed to contact by phone their parents whenever necessary. Frequently, girls receive visits from probation officers, too. Their lawyers can visit them upon request. Minor detainees have the right to ask for these visits at any time.

Tanzania: Visiting day is once a week. Minors are allowed visits from family, friends and neighbours. In practice, however, most children do not have any family members to visit them since their parents are often divorced or have died, for example due to AIDS. Many children are from single parent families or have left home because of poverty. In the male Butimba Prison, for example, 85% of the children were living alone and 90% of them have no contact with parents and relatives.

4.12. Staff training

According to experts, staff training must be improved in almost all countries.

Germany: A specific problem in youth institutions in Germany is the lack of staff and of staff training. Furthermore, insufficient training is provided to young prisoners to assist them in returning to society after release.

4.13. Human rights violations

International human rights standards are frequently violated when it comes to the conditions and circumstances under which children are being deprived of their liberty in prisons and other closed

institutions. Contraventions of the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and other relevant international instruments occur on a daily basis. International and national action is needed to stop these practices. Measures concerning alternatives and rehabilitation must be taken at the national level, as stipulated in the critical assessments. In the majority of the countries of Latin America that have completed the legal reform process and are in an advanced stage of institutional reform, the most common violations of children's rights are: the use of prison as a measure of first, rather than last, resort; unacceptable conditions in children's prisons; and the systematic confinement of children and adolescents in adult prisons or police stations for lengthy periods of time.

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

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

Lack of adequate financial resources to maintain existing facilities and also to cater for the detained minors. No renovations have been made to the buildings and other infrastructures since their establishment. This has led to the wearing out of these structures, especially the windows of the dormitories and the workshops.

The detained minors are often neglected by their relatives.

Deterioration of training facilities. The machines and other equipment in the workshops are old and obsolete. Many need to be replaced.

Inadequate space for accommodation and recreation for detained minors.

Inadequate security available at the institutions.

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

Mauritius: Among the most serious problems facing the juvenile prison system are:

1. The lack of training of personnel at regular intervals;
2. The lack of a satisfactory number of psychologists and counsellors;
3. The lack of regular medical visits.

Pakistan: International Prison Watch concluded in its report of 1999 that: "The age of criminal responsibility is 7 years. Over 4,000 minors are being held in adult prisons, the majority still awaiting judgement. Two specially designated juvenile facilities are in existence. Approximately 50 under-age children are sentenced to death. Torture is endemic in central police stations. Poor accommodations and low sanitary standards exacerbate the ill-health of detainees."

Tanzania: According to reports, corporal punishment is used in prisons where minors are held even though it has officially been abolished. Corporal punishment is still used in schools and against adults and children under 16 years of age as a sentence in relation to criminal offences.

Romania: "Many minors undergo maltreatment in police stations. Children of gypsy origin are the main object of discriminatory practices during arrest and detention. Minors can be placed in rehabilitation centres or in reserved zones of the prisons for adults. The buildings are depressing. Hygiene and conditions for food preparation are not respected." (Children in Prison report, International Prison Watch, 1999).

Spain (Catalunia): The Spanish juvenile justice system in general does not give priority to preventive action. The risk factors leading to marginalisation and delinquency are not being assessed. There is a need to adopt specific programmes and policies at all levels. Furthermore, human resources and facilities need to be boosted to implement the measures decided by the courts. There is a tendency to send the minors to detention centres rather than to apply measures which can be implemented in a non custodial environment, such as community service or probation.

United Kingdom (England): Amnesty International has shared with the Committee on the Rights of the Child its concerns about the extent to which the United Kingdom has implemented the Convention on the Rights of the Child, *inter alia*, the right of children in prison not to be subjected to torture or other ill-treatment in certain young offenders institutions in England and Wales.

Canada: DCI-Canada takes the position that the new juvenile justice legislation does not meet the standards of the Convention on the Rights of the Child. It will do nothing to address the question of discrimination which results in higher percentages of poor children, of indigent children, and of black children. It pays lip service but provides no protection for the best interests of the child as a “primary consideration”. It does not establish an effective mechanism to assure the right of the child to be heard.

5. Conclusions and perspectives

One of the conclusions to be drawn from the research results, especially the main tendencies described in chapter 4, is that the norms and principles laid down in the relevant international instruments are frequently violated when it comes to the conditions and circumstances under which children are being deprived of their liberty in prisons and other closed institutions.

The information in the country reports shows the need for more focus on prevention and alternatives. At the same time, the number of children in prison needs to be drastically reduced.

The focus should be on the following 4 goals:

1. Put no children under 15 in prison;
2. Use alternatives for imprisonment;
3. Focus on prevention;
4. Improve the conditions of children in closed institutions.

The age limit of 15 has been chosen to apply here because it is seen as a transition age under international instruments on children's rights. Article 38 of the Convention on the Rights of the Child, for example, obliges states parties to take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. In many countries, children up to 15 are obliged to attend school; beyond that age they can make their own choice.

5.1. Drain the swamp

It is much better to drain the swamp than fight the alligators. Across the world more than one million children and youth are behind bars on an average day. Many of these children and youth are placed behind bars through processes and under conditions that do not meet the international minimum standards that were agreed upon by governments and laid down in, among other instruments, the Convention on the Rights of the Child. We are convinced that fewer children in better conditions will result in less crime.

The governments of the world have agreed at several UN forums to invest more in well-planned prevention because it is more cost effective and sustainable than paying to incarcerate children and youth. This is particularly important in developing countries where the demands on limited resources are acute.

This significant shift has been inspired by evidence brought together by prestigious national commissions involving government officials, police leaders, public health experts and others in the United States, the United Kingdom and elsewhere.

The situation as regards children and youth deprived of their liberty needs to be improved and their numbers reduced. One important remedy is to invest more in prevention. Another remedy is to improve the conditions under which children are being incarcerated.

5.2. Prevention

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

These guidelines assert that:

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

Several other international organisations and major agencies in the UN system have come to similar conclusions.

In May 2002, the UN General Assembly Special Session on Children culminated in the adoption of an Outcome Document with 21 specific goals and targets for the next decade. This plan includes many

references to general prevention, but also the following paragraph which specifically states that governments should:

Promote the establishment of prevention, support and caring services as well as separate juvenile justice systems consistent with the principles of restorative justice that fully safeguard children's rights, and provide specially trained staff that promote children's reintegration in society.

Another example is Habitat's programme on "Safer Cities" to assist developing countries (UNCHRS). This programme, with projects in Johannesburg, Dar-Es-Salaam and Abidjan, emphasises the critical role that cities play in well-planned crime prevention, as demonstrated in Europe and North America in the Nineties when several achieved unprecedented reductions in crime. In October 2002, the World Health Organisation released a World Report on Interpersonal Violence and Health, which argues that greater investment in prevention, combined with improved services for victims, is the way in which to reduce the costs of interpersonal violence. The above-mentioned *Guidelines on Crime Prevention* produced by the UN Commission on Crime Prevention and Criminal Justice provide the most detailed proposals. These guidelines build on earlier decisions of the Commission, such as the workshop on crime prevention that took place during the 10th UN Congress on the Prevention of Crime and Treatment of Offenders in 2000, where it was re-emphasised that crime had multiple causes, including:

- difficulties in social development, such as the exclusion of youth from school, particularly in situations where the gap is widening between rich and poor;
- cultural problems, such as violence in the home and community or rapid urbanisation with atomisation of families and communities;
- increased availability of products that encourage crime, such as:
 - * cars and consumer goods without adequate security and surveillance; or
 - * increased access to firearms, alcohol and other drugs.
- the limits of traditional methods of enforcement and justice to provide protection.

The guidelines call for action:

- all levels of government should play a leadership role in developing effective and humane crime prevention strategies, and in creating and maintaining institutional frameworks for their implementation and review, in particular:
 - * centres or focal points of responsibility with expertise and resources;
 - * a crime prevention plan with clear priorities and targets over time.
- cooperative partnerships between agencies responsible for policing, justice, schools, families, private sector and others should be an integral part of effective crime prevention, given the wide ranging nature of the causes of crime and the skills and responsibilities required to address them. To support this, governments must:
 - * advance knowledge of what makes partnerships successful;
 - * foster the formation of partnerships at different levels;
 - * tackle crime problems through diagnosis of causes, focussing on solutions and evaluating results.
- crime prevention should be based on knowledge about crime problems, the multiple causes and promising and proven practices, and governments must therefore foster:
 - * professional development for senior officials in relevant agencies;
 - * universities, colleges and other relevant educational agencies to offer basic and advanced courses, including in collaboration with practitioners;
 - * the educational and professional sectors to develop certification and professional qualifications.
- crime prevention must take into account issues of gender, diversity and individual rights;
- successful improvements will require public engagement, planned change and raising the awareness of senior officials.

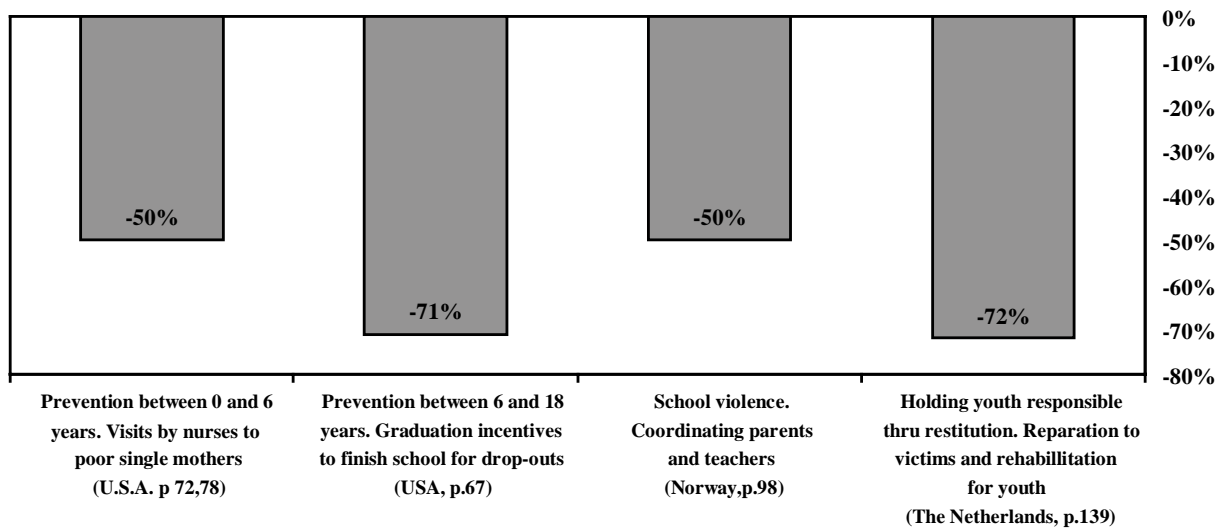
The basis for the UN directives can be traced back to several prestigious commissions who have confirmed that projects which tackle risk factors reduce crime significantly, for instance by:

- assisting teenagers at risk by mentoring or helping them to complete school;

- working with families in difficulty to help them raise young children and those attending school;
- tackling bullying and other violence in schools;
- assisting victims with information on how to reduce opportunities for crime and limiting accessibility to firearms;
- taking care of victims, promoting community justice and encouraging reparative sanctions (for examples of what has worked, see: ICPC, 1999b; Sherman et al. 2002 and 1997; Elliott, 2002: Goldblatt et al, 1998).

These types of projects have led to significant reductions in offending. Indeed, they have resulted in much greater reductions than have been achieved through placing children and youth behind bars, where the reductions are little more than those achieved during the time the kids are behind bars.

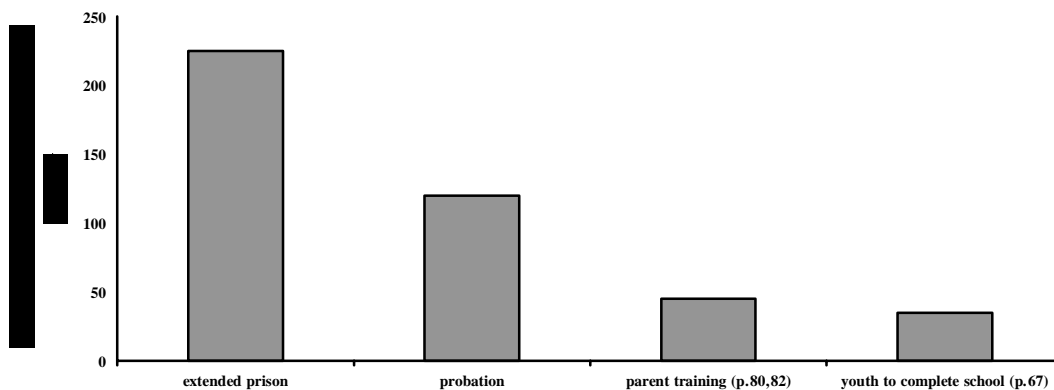
Examples of programs in USA: reduction exceeds 10% (ICPC, 1999b)



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The comparative costs in reducing crime by placing kids in trouble behind bars or on probation, rather than assisting their families or providing incentives for them to complete school, are illustrated in an analysis by the ICPC. This analysis uses data from a study by the Rand Corporation to illustrate the increase in taxes that would be necessary to achieve a 10% reduction in crime in the United States.

Increases in taxes to achieve 10% reduction in crime (ICPC, 1999a)



extrapolated from evaluations of programs (wallerirving@msn.com)

It would cost American taxpayers an additional USD 225 per year in taxes to achieve a 10% reduction through putting persons behind bars, whereas training parents at risk and helping youth at risk to complete

school would achieve the same through increases of only USD 35-45 per year in taxes. In addition, these prevention programmes provide many important collateral benefits, as the children at risk grow up to be citizens who contribute to society as parents and taxpayers themselves.

This analysis would most likely apply to Western Europe and other similarly situated countries such as Australia, Canada or New Zealand without major modifications.

In many developing countries, the expenditures on prisons are low because the institutions do not meet international minimum standards, but prisons cost more than community programmes because of the costs of building and maintaining the prison. Furthermore, strategies that tackle well-established causes in the community are much more likely to reduce crime and provide long-term benefits for the youth and society as they grow up. The nature of the strategies may focus more on social bonds between the family, the school and the family than on parent training or incentives to complete school.

The *Guidelines on Crime Prevention* of the UN Commission on Crime Prevention and Criminal Justice also reflect the success that several cities have had in Europe and North America in reducing crime and violence. Reductions of 50% or more in rates of violence and property crimes have been achieved over the last decade. These reductions were often as much as double the reductions in the rates of crime in the surrounding areas that have been ascribed to trends in the demographics of the population, crime or sanctions. The strategies used have included:

- the Mayor making the reduction of crime and violence a city priority;
- a joint effort by municipal government and police services to address the causes of crime in the city;
- a plan to identify the causes, the current responses, joint initiatives and evaluations (see for instance ICPC, 1999a, 2002a).

5.3. Reduction of the number of children and youth behind bars

In order to reduce the number of children and youth behind bars, courts should be required to keep young offenders in the community and to use alternatives to prison such as fines, reparation to victims, community work and mediation. Incarceration should be restricted to those cases where it is the only acceptable sanction (i.e. measure of last resort), and may only be imposed for the shortest appropriate period of time.

5.4. Alternatives

In the last 20 years, countries have widened the range of alternatives to incarceration in an effort to reduce the number of persons behind bars. Often, in the medium-term, these alternatives have increased rather than reduced the number of children and youth behind bars. For example, in countries where the alternative punishment of community work has been introduced, some offenders who would have previously been sent to prison are sentenced to community work, but another group of offenders who would not have been sent to prison are also sentenced to community work. Many of these offenders become re-involved in crime and the court imposes a prison sentence, which is longer than the one that would have been imposed the first time round because they offended after having been given a chance.

Nonetheless, alternatives that tackle the causes of the offending successfully will reduce crime. Alternatives that foster reparation to the victim may be better than incarceration. Some countries are using mediation in the community as opposed to sanctions in an effort to resolve disputes in a manner that satisfies both victim and offender. Other forms of *restorative justice*, such as family group conferences and circles, whereby restoring the harm created by the offence and taking responsibility are central, are also being more widely used. For youth, it is necessary that parents, the school and the community in general set clear limits on what is acceptable or not.

6. Recommendations and actions

6.1. Who should do what?

In chapter 5, conclusions and priorities for the future are drawn. The main 4 goals are:

1. Put no children under 15 in prison;
2. Use alternatives for imprisonment;
3. Focus on prevention;
4. Improve the conditions of children in closed institutions.

This chapter focuses on concrete recommendations for international and national actors. What are the main tasks for the organisations and players involved in the chain of dealing with children in conflict with the law? First of all, the role of International Governmental Organisations (IGOs) is discussed, followed by that of International Non-Governmental Organisations (INGOs), in lobbying and improving conditions in prisons. The main tasks and obligations of national governments and NGOs, local governments and NGOs, and other actors are also addressed.

6.1.1. International Governmental Organisations

The main tasks of international governmental organisations (IGOs) and linked bodies, such as UNICEF, the UN Criminal Justice Branche in Vienna, the UN Committee on the Rights of the Child, the World Health Organisation (WHO) and the UN Youth Programme, are to lobby and undertake action to improve the conditions of kids behind bars worldwide.

The IGOs should lobby the national and local authorities. Their main activities in this regard should be:

- 1. To set targets to reduce the number of children in prison**
They should set targets for the total number of children in prison, and to reduce the number of children in prison with 25% in the coming 5 years and 50% the coming 10 years.
- 2. To get recognition for kids behind bars**
Kids behind bars are often a forgotten group. IGOs should lobby to get recognition and more attention for the issue, which is still not a priority for governments.
- 3. To stimulate implementation of international instruments**
They should aim to improve conditions by stimulating the implementation of the UN Convention on the Rights of the Child (CRC) and related instruments, such as the Havana Rules (UN Rules for the Protection of Juveniles Deprived of their Liberty) and the Riyadh Guidelines (UN Guidelines for the Prevention of Juvenile Delinquency).
- 4. To lobby for an Optional Protocol on Minimum Standards for Children in Closed Institutions**
IGOs should lobby to put the contents of the non-binding Havana Rules into an *Optional Protocol to Article 37 of the CRC on the Minimum Standards for Children in Closed Institutions*, which would be open to ratification by the state parties to the CRC and can thus become a binding international instrument.
- 5. To collect and analyse national data on children deprived of their liberty**
IGOs should monitor the standards and norms in institutions by collecting data from national governments and/or specialised organisations.
- 6. To lobby for a Special Rapporteur on children deprived of their liberty**
Another important task is to lobby for the instalment of a UN Special Rapporteur on children deprived of their liberty. This Rapporteur will undertake country missions and report on the situation of imprisoned children to the United Nations. Human rights violations can come to light. This can lead to serious international pressure to change laws and practice.
- 7. To prepare a Handbook on best practices**
They should work on a joint Handbook that can be used as a guide to improve standards and

policy in closed institutions, including an assessment form, which could be filled in by national governments and NGOs.

6.1.2. International Non-Governmental Organisations

The main role of international NGOs (INGOs) is to get the topic of kids behind bars on the agenda. To this end, their main activities should be:

8. To lobby and campaign to get the topic on the international agenda

They should lobby and campaign with the United Nations, the European Union, the Inter African Committee and other regional institutions for the realisation of the 4 goals listed above.

9. To stimulate a World Congress and Plan of Action on Kids behind Bars

They should prepare a World Congress on Kids behind Bars, such as existing in the field of the Commercial Sexual Exploitation of Children. Goals for the future can be set at such an event, including, for example, the launch of an International Plan of Action on Kids behind Bars.

10. To start an International Working Group on Kids behind Bars

INGOs should get together to start an International Working Group on Children Behind Bars (IWCBH), consisting of both academics and activists, for the launch of a global campaign focused on monitoring.

The most relevant international NGOs can be divided into the following 3 groups (taking into account that more organisations could be mentioned here):

1. Human Rights Organisations (e.g. Amnesty International, Human Rights Watch and the International Commission of Jurists).
2. Children's Rights Organisations (e.g. Defence for Children International, International Catholic Child Bureau, the International Bureau on Children's Rights, Plan International, Save the Children and Terre des Hommes,).
3. Criminal Justice Organisations (e.g. Penal Reform International, Restorative Justice lobby, Quakers, Groups of Judges and the World Society of Victimology).

6.1.3. National Governments

The main tasks of national governments are:

11. To reduce the number of detained children

In national policy, governments should focus on the reduction of the number of children deprived of their liberty within the country.

12. To focus on and to invest in prevention

They should focus on prevention of crime and assistance to youth at risk and their families.

13. To use alternatives

The focus should be on using alternatives, such as mediation and community work, as much as possible. Deprivation of liberty should be used only as a measure of last resort.

14. To improve conditions in institutions

They should see to it that the conditions within institutions for youngsters are in line with the CRC and the Havana Rules, including aspects such as housing, hygiene, health care, access to education and other activities, contacts and protection from cruel treatment.

15. To develop a National Action Plan

They should develop a National Action Plan on Children behind Bars in order to get responsible and comprehensive responses on the issue of child criminality and sanctions.

16. To install a National Board to monitor the situation of children deprived of their liberty

They should install a National Board to develop and implement such an action plan and to ensure data collection and training. This board can also be used for the inspection and monitoring of the implementation of national standards.

17. To focus on international cooperation

The governments should also focus on cooperation and shared international solidarity and responsibility.

6.1.4. National Non Governmental Organisations

The main activities of national NGOs, such as children's rights, human rights and victims' rights organisations, should be:

18. To set up a national campaign

The national NGOs should set up a campaign and lobby nationally to reach the 4 goals mentioned above: reduction, prevention, alternatives, improving conditions.

19. To monitor the government

They should monitor the progress made by national governments on these 4 main goals and on the implementation of recommendations 11-17.

20. To work together at regional level

The NGOs should work together at the regional level by forming coalitions. These coalitions can improve expertise and lobby by organising conferences and expert meetings.

6.1.5. Local Governments

Tasks of the local governments, such as provinces and municipalities, are:

21. To monitor the situation in youth prisons

The local governments should monitor and supervise the youth prisons and other (closed) institutions by establishing an independent monitoring and complaint commission for each facility.

22. To launch a Local Action Plan on Kids behind Bars

They should launch a Local Action Plan that concentrates on prevention and alternatives in relation to youth criminality, including developing activities and care for youth at risk.

6.1.6. Local Non Governmental Organisations

The main tasks for local NGOs should be:

23. To participate in a Local Action Plan

They should participate in a Local Action Plan to be set up by the local governments.

24. To work with youth at risk

Local NGOs should deliver services to youth at risk and to community work in relation to prevention of youth delinquency.

25. To support children in closed institutions

Local NGOs could set up support groups to assist children in closed institutions, to pay them visits on a regular basis, to provide them with (extra) food, books, toys, drugs, clothes and whatever else is needed, and to arrange professional legal aid.

6.1.7. Researchers and trainers

Other actors involved in the combat to get children out of prisons and to improve their conditions are academics and practitioners such as police, prison staff and social workers.

The tasks for these actors are:

26. To continue research on detained children and alternatives

Academics should focus on additional research on the situation of kids behind bars in countries, regions and worldwide, but also on prevention and alternatives. By conducting follow up research and cooperation among universities data collection in this area can improve.

27. To initiate ongoing training

Ongoing training and courses for practitioners should be given and monitored. The people working directly with the youngsters, from the police to social workers and prisons staff, need to know about international standards, and the ways to work best with these children.

6.2. A global campaign

Investment in children-in-conflict-with-the-law in the community is better than their incarceration for both the society and the child. Children and youth are held behind bars because governments have not planned the programmes and facilities that would manage them constructively in the community or in their families. It is a shocking statistic that at the start of the new millennium over one million children and youth were being held behind bars in police cells, pre-trial detention centres, prisons and other closed institutions. The conditions in which they are held are often inconsistent with widely accepted international norms, and are degrading, overcrowded, unjustified and dangerous.

The short-term protection to society from holding children and youth behind bars can be achieved in more humane and affordable ways by investing in programmes known to reduce crime in the community by managing and developing young persons. Furthermore, these investments provide long-term benefits to the young persons and society, instead of long-term costs to victims and the public purse.

Recent declarations and reports by, for example, government commissions, the CICIP, the WHO and the UNHCHR confirm that funds used to detain children and youth even in abject conditions could be used more humanely and effectively to manage the children and most youth in their families or communities.

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

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

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